



## LAND TENURE AND RESOURCE RIGHTS FOR WOMEN AND YOUTHS

## **PREPARED BY:**

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### **RESEARCH:**

**Leya Namonje Tembo** (Researcher) with the support of **Bernadette Deka Zulu** (Executive Director)

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### **TECHNICAL REVIEW:**

**Salim Kaunda** (Head of Research and Analysis)

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### **EDITORIAL TEAM:**

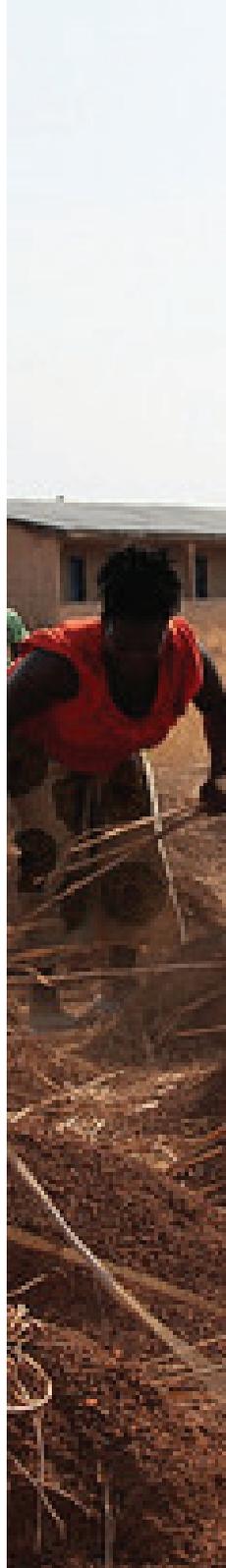
**Chiti Jacob Nkunde** (Communication Specialist) **Layout and Design**  
**Melody Simukali** (Head of Communication and Grants) **Editorial**

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## ABBREVIATIONS AND ACRONYMS

7NDP	Seventh National Development Plan
CEDAW	Convention on Elimination of All forms of Discrimination Against Women
UN	United Nations
ZAAPs	Zones of Planned Agriculture Development



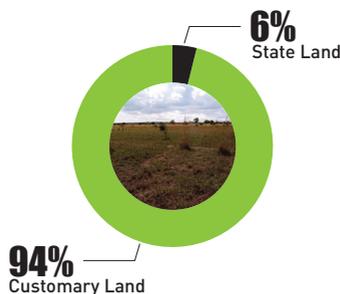
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## Introduction

In any nation, land is regarded as one of the most important assets due to its insurmountable value and the power it holds in building societies that are **inclusive**, **resilient**, and **sustainable**. It can be a vital part of cultural and social identities, a valuable asset to stimulate economic growth, and a central component to preserving natural resources.

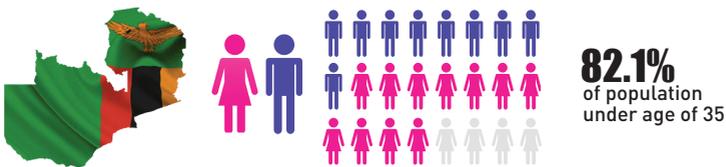
**Land tenure refers to the relationship that individuals and groups hold with respect to land and land-based resources, such as trees, minerals, pasture, and water.** Land tenure rules define the **ways in which property rights to land are allocated, transferred, used or managed in a particular society.** When land tenure is secure, land can be a cornerstone for economic growth and an incentive for investment, but when land rights are insecure, this can lead to conflicts, instability and the exclusion of vulnerable groups, such as women, indigenous people and the poor (USAID, 2020).

Land in Zambia is divided into **state land** and **customary land**, where state land comprises about 6% and 94% of the land is owned under customary law (Kabala, 2014).



Different land tenure systems have their advantages and disadvantages. **Customary systems, which are often based on traditional, unwritten, and locally relevant rules about how to use and allocate land and resources, facilitate social cohesion, but they may not be able to withstand increasing pressure on land and resources both from within the community and from the outside (compared with statutory systems which provide written legal rules or written case law about these issues).** Individual land ownership may put land to the most economically efficient use, but it may exclude disadvantaged populations, such as the poor, and limit state land management options. **Public (or state) land ownership may withhold land for conservation purposes or public land management and facilitate more equal access to prime locations, but it may lead to poor land use and land management outcomes as a result of bureaucratic inactivity.** For inclusive and sustainable land governance, it is important that land systems are evaluated holistically, to understand how and why decisions on land and natural resources are made, implemented and enforced in both formal and informal settings (USAID, 2020).

As is the case with 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 (Kabala, 2014). A study done by SAIRLA in 2019, reported that **majority of the Zambian population depend on agriculture for all or part of their livelihoods, therefore, access to land plays an important role in eradicating poverty in Zambia.** Zambia is one of the countries in Africa with a youthful population, as statistics show that 82.1 percent of the total population are under the age of 35 (SAIRLA, 2019).



According to the National Youth Policy, it has been estimated that **36.7% of the national population are aged between 15-35 years.** Not only does Zambia have a youthful population, majority of its population comprises of females. According to the 2018 World Bank’s collection of development indicators, **females account for 50.49% of Zambia’s total population.** This enormous population of women and youths presents an opportunity for increased economic activities if they are empowered with resources, which includes land.

Women and youths play a cardinal role in national development and require recognition and empowerment through skills and resources such as land. Although various efforts have been made to mainstream gender and youth into Government policies and initiatives, more needs to be done to actualize and tap into the potential and full benefits of having both women and youths empowered through indiscriminate access to land for development purposes which include, food security, nutrition and income generation for community and national wealth creation. This document therefore, seeks to highlights the current legislation and challenges faced in land tenure and resource rights for women and youths in Zambia.



Source image: Zambia: Quest for Women Land Ownership - allAfrica.com

## Women and Youths' Land Rights in National and International Law

Women's land rights in Zambia are governed by both law and custom. **Although formal law, such as the Constitution and the Lands Act supports property rights and prohibits gender-based discrimination, customary rules and practices often discriminate against women when it comes to access and control over land** (Focus on Land in Africa, 2020). A study done by Kalaba in 2014 equally alluded to the fact that both international and national legislation upholds gender equality in matters related to land, women's access to and ownership of land. **However, the major challenges that women face are customary and cultural practices, as the Zambian Constitution explicitly excludes customary law from its prohibition on discriminatory practices.** This entails that the legal framework governing property rights for women under customary law is inadequate as there are no obligations to adhere to statutory law.

Other than the Constitution and the Lands Act, Zambia is a signatory to various international treaties and conventions that aim to uphold the rights of women and youth as a way of improving their access to land. Firstly,

Zambia ratified the United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 and the African Charter on Human and Peoples' 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 (Kabala, 2014).

Secondly, Zambia is signatory to the United Nations Charter of 1945, which sees human rights, economic and social development as closely interrelated. The Charter acknowledged the implications of insecure land tenure on people's livelihoods, dignity and survival. **Land rights are therefore human rights and, as a result, any practice which allows women's land rights to depend on the will of their male relatives is discriminatory.** The Charter also recognises the need for changes in cultures to ensure that women have uninhibited access to land, secure land rights and the power to make their own decisions about land use. Such changes are a cardinal requisite for fostering human rights and democracy in Africa (Yeboah, 2014).

Thirdly, Zambia ratified the African Youth Charter in 2009. The Youth Charter does not only provide Governments, Youths, Civil Society and International partners with a continental framework, which underlines to the rights, duties and freedoms of youth; it also paves the way for the development of national programmes and strategic plans for their empowerment such as the right to own and inherit property by every young person in which state parties such as Zambia, should ensure that young men and women enjoy equal rights to own property. It provides important guidelines and responsibilities of Member States for the empowerment of youths in key strategic areas – education and skills development, poverty eradication and socio-economic integration of youths, sustainable livelihoods and youth employment, among others.



Source image: <https://www.weforest.org/project/zambia-luanshya>

## Zambia Land Legislation and Policy Initiatives

There have been a number of legislative and policy interventions put in place by the Zambian Government to support equitable and sustainable socio-economic development as well as the participation of women and youths such as the National Gender Policy.

**The National Gender Policy was adopted in March 2000, to be used as a major yardstick for measuring Governments' commitment to gender mainstreaming.** Through this policy, Government committed to changing many stereotypes that impinge on women's participation in national development by taking appropriate legal and administrative measures to eliminate discrimination. The revised National Gender Policy of 2014 builds on the previous policy's goal of attaining equity and equality in the development process. One of the areas of action is tackling gender-related land issues and it seeks increased access and control over productive resources such as land through which Government is still committed to gender mainstreaming across all sectors.

This was further supported by the **National Youth Policy of August 2015**. The policy is anchored on a set of guiding principles, one of which is the value placed on equality and equity being equal to opportunities and the equitable distribution of resources, programs and services. Simply put, Government cannot neglect the need for youths and women empowerment to own land, as this has been established as a sure way of facilitating women and youths' participation in national development.

Zambia is in the process of finalising the draft National Land Policy, through which Government seeks to guide land administration and management and ensure that citizens enjoy similar legal protection of rights and freedoms to own and transact in land, whether State or Customary land. Government policy on Customary Land administration is not contained in one constitutive document but can be found in several laws, Presidential and Ministerial and Cabinet Circulars. Current land law allows a person who has attained the age of 21 years to hold land. There is public concern that the contractual age of 21 years is high, taking into account the increase in the child headed households. The challenges regarding youths and land are lack of recognition of the land-related empowerment needs of the youth and the absence of promotion of land ownership among the youths (SAIRLA, 2019). These challenges have been recognised and attributed to the lack of an elaborate and comprehensive policy on land to guide the provisions of the law.

In addition to the Lands Act of 1995, the Gender Equity and Equality Act No. 22 of 2015 provides for the elimination of discrimination of all forms of discrimination against women, seeks to empower women achieve gender equity and equality by giving effect to (Convention on Elimination of All forms

of Discrimination Against Women) CEDAW and the Protocol to the African Charter on the Rights of Women in Africa as well as the SADC Protocol on Gender and Development. Other relevant pieces of legislation include, but are not limited to, the Lands and Deeds Registry Act, the Lands Acquisition Act and the Lands Tribunal Act.

Zambian women and youths, like in many African countries, face various challenges with regards to accessing secure land which include the following;

### Challenges Faced by Women and Youths in Accessing Secure Land

Challenges faced by women in accessing secure land	Challenges faced by youths in accessing secure land
<ul style="list-style-type: none"> <li>• <b>Constitutional Bias</b> - In recent times an increasing number of countries have recognized women's equal rights in their Constitutions, thus complying with international human rights standards and obligations, for example the United Nations (UN) Human Rights Charter and Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). However, some Constitutions are neutral while others such as those of Zimbabwe, Zambia and Lesotho have discriminatory provision in customary and personal law matters such as inheritance (UN-Habitat, 2006)</li> <li>• <b>Stereotype</b> - The patriarchal setting on the African continent whereby males dominate on matters concerning land makes it difficult if not impossible for women to access and own land in their own right. They are allocated land by male forks within their clan or through their male spouses. This state of mind-set has prevailed at all levels of society for time immemorial (Odeny, 2013).</li> <li>• <b>Lack of awareness on legal provision</b> - Although most countries in Africa have constitutions which ascribe to equality between male and female and land laws which are either gender-neutral or affirmative on women's land rights, generally the general public are not aware or conversant with such provisions.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Unfavourable land tenure systems and customary practices.</b> In Africa, only about 10% of arable land is registered (compared with 95% in Western Europe). The remaining 90% is unregistered, mostly communally owned and managed according to customary law under a customary tenure system. This customary tenure system is disadvantageous to the youth: while almost every adult is given access to farm land, the youth virtually have no access to it except through inheritance. Customary practices, which mostly favour inheritance by boys, make access to land for girls and young women even more difficult. While many countries in Africa have adopted statutory laws that grant women equal rights to land, customary laws continue to deny these rights in practice (Byamugisha, 2013).</li> <li>• <b>Lack of resources to buy or rent land.</b> The youth lack resources to purchase land and they cannot access them through credit markets because they are not well developed, especially for long term credit. Moreover, as they do not own land or other assets, they cannot provide collateral such as land and savings. Leasing land may be an option in this case, but this is still not always possible for lack of resources (Andrianaivo, 2009).</li> </ul>

This is because once the land policies are adopted and land laws passed, there is no deliberate efforts made by the State to sensitize the general public on what these documents say about peoples' land rights in general and women land rights in particular (Odeny, 2013).

- **The gap between high-level commitments and implementation practice** - Most African Governments have ratified the international Convention on Elimination of All forms of Discrimination Against Women (CEDAW) and made commitments to the Constitutive Act (Article 4 (I)) to gender equality and AU Protocol on the Rights of Women in Africa (2003) (ratified by 31 states to date). In addition, national Constitutions ascribe to equal rights between men and women. Implementation of these high-level commitments remains a challenge because "the principle is not prioritized as a policy objective, nor serious attention is paid to how to carry through these commitments in practice, outside of a small number of dedicated projects" (Walker, 2002)

- **Undeveloped sales and rental markets**- Even in situations where the youth have resources, sales and rental markets are not always well developed especially in the majority of areas where land is communally owned. Even in land-abundant countries such as Ghana and Zambia, the majority of landholdings are below commercially viable units. In Ghana, 60% of farm plots are under 1.2 hectares and 85% are under 2 hectares, the minimum size needed to commercialize and move out of poverty, while in Zambia, 50% of farms there are smaller than 2 hectares (ACET 2017).
- **Inadequate access to information and lack of legal protection of land rights for youth**- In Africa, there is a lack of knowledge on land rights by all age groups including the youth (Deining, 2008), and this impacts negatively on land tenure security for the youth as they are not aware of the relevant legislation and policies they can use to access and secure land. Moreover, legal protections of inheritance for youth, and especially young women, are weak, making the youth vulnerable to losing succession rights to the land they are meant to inherit (ACET 2017).
- **Over reliance on inheritance which limits choices in terms of timing, size, quality and location of land**- Inheritance of land is the main means by which young people obtain access to land. Even when inheritance of land takes place, the timing is uncertain. Elderly farmers are often opposed to hand down land while they are still alive, as they often rely on it for their survival. At the same time, with life expectancy increasing in many countries, the youth have to wait longer to inherit their share of land. This means they have to work on the family land until this time comes, observing the rules of the elder as opposed to taking primary decisions as business owners. Finally, even when land is inherited, the recipient has no choice of land size, quality and location (Byamugisha 2013).

## Strategies for Strengthening Women and Youths' Land Rights

Successful practices and programs have been developed to facilitate women and youths' property rights in many parts of the world. These methods provide valuable examples of how the complex issue of women and youths' rights to access and own land can be addressed in different contexts. The following are some of the strategies aimed at strengthening women's and youths' land rights;

Strategies to Strengthen Women's Land Rights	Strategies to Strengthen Youths' Land Rights
<ul style="list-style-type: none"> <li>• Ensuring that women have legal rights to own, inherit and transfer land;</li> <li>• Supporting efforts to help women exercise their legal rights, for example, through support to legal aid clinics;</li> <li>• Educating local land administration officials on women's land rights and how to promote and enforce these rights;</li> <li>• Enhancing women's decision-making capabilities on land they use, regardless of whether they are a named owner of the land or if their names appear on legal documents;</li> <li>• Giving attention to individual rights within a household, not just household rights as a whole;</li> <li>• Addressing norms and customs for how women acquire land (e.g., purchase, inheritance), the quality of land they receive, and how land is transferred at marriage or a spouse's death;</li> <li>• Addressing social norms that support violence against women in order to mitigate harmful behaviour;</li> <li>• Undertaking land governance reforms, including legal reforms in linked sectors to harmonize family, marriage, and inheritance laws and both the national and local levels;</li> </ul>	<ul style="list-style-type: none"> <li>• Improve tenure security over communal lands by organizing and formalizing communal land-owning groups, demarcating the boundaries of their land, and registering it as Mexico has done successfully;</li> <li>• Develop local land governance institutions to improve the allocation and leasing of communal lands;</li> <li>• Improve tenure security over land that is now individually owned through systematic land titling, using simple low-cost mapping technologies like Rwanda has done successfully;</li> <li>• Ease restrictions on land rental markets as Ethiopia is doing, following in the footsteps of countries like China and Viet Nam;</li> <li>• Improve land information systems through re-engineering and computerization to reduce land transaction costs and improve transparency like Rwanda and Uganda have done;</li> <li>• Bring idle land into use through policy actions including imposing a tax on unused agricultural land to encourage land owners to use, sell or rent it out; developing transport infrastructure to open up inaccessible agricultural lands; and improving mechanisms for allocating unused state land for productive use;</li> </ul>

<ul style="list-style-type: none"> <li>• Expanding legal protection for women's rights to land, and protection from gender-based discrimination in customary and statutory land systems;</li> <li>• Working with customary leaders and systems to promote women's access to and control over land; and</li> <li>• Educating both women and men on the benefits of recognizing women's land rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthen formal and traditional institutions responsible for resolving land disputes; and</li> <li>• Enhance and protect the land rights of female youths through legal and administrative reforms to support gender equality in constitutions, land-related laws, and laws that govern marriage, divorce, and succession, as Rwanda and Ethiopia have done.</li> </ul>
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### Lessons Learnt from Best Practices

The UN Charter of 1945 sees human rights and economic and social development as closely interrelated. Insecure land tenure has implications for livelihoods, dignity and survival. Land rights are therefore human rights. As a result, any practice which allows women's land rights to depend on the will of their male relatives is discriminatory. Changes are needed in cultures to ensure that women and youths can have uninhibited access to land, secure land rights and the power to make their own decisions about land use. Such changes are a cardinal requisite for fostering human rights and democracy in Africa (Yeboah, 2014). Some of the best practices where Zambia can draw lessons from include Ethiopia, Togo and Rwanda.

In 1998, the Ethiopian Government initiated the largest low-cost land certification program at the time in Sub-Saharan Africa. However, household-level land registration often registered land exclusively in the name of the traditional (male) head of household. Without the inclusion of their names on land certificates, women's rights to land remained insecure, especially if they divorced or were widowed (Focus on Land in Africa, 2020). The Ethiopian Government introduced land title certification in 2003 with land titles issued in the joint names of spouses. In effect, the land rights of both men and women are recognised and documented. Changing attitudes regarding women's empowerment also requires well targeted awareness raising over a relatively long time period. Such a strategy has helped to navigate the complex situation of issuing joint titles in places where polygamous relationships are common, as in Ethiopia's Amhara and Orioma regions (Yeboah, 2014).

**Zambia can draw lessons from Ethiopia with regards to effective implementation of the Joint Titling System which has shown many positive benefits. The Joint Titling System has increased women's perception of their tenure security, including in polygamous households; improved**

agricultural productivity; and increased the participation of female-headed households in the land rental market. However, preliminary studies also indicate significant disparities between women and men in regards to access to information and participation in the land certification process (Focus on Land in Africa, 2020). Therefore, if Zambia is to effectively implement the Joint Titling System, there will be need for women to be sensitized on their land rights as well as benefits of land certification.

Zambia can also draw lessons from Rwanda which has implemented Statutory recognition of women's land as a way of improving women's access to land. In Rwanda, the 1994 genocide resulted in numerous female-headed households. The dominant established pattern for patriarchal inheritance, as well as a number of discriminatory statutes, meant that women had limited access to land despite assuming more responsibilities. Reforms have been introduced to eliminate statutory barriers to equitable access to land and other economic resources. The land rights of both women and men are recognised by law and can now be registered as a fundamental step to addressing existing inequalities (Yeboah, 2014). Given that most of Zambia's land is under customary law, the implementation of statutory recognition of women's land will help reduce the discriminatory cultural practices as well as provide women with land security.

With regards to improving youths' access to land in Zambia, lessons can be drawn from Togo, which uses a distribution by State approach that aims at improving youths' access to land. This is achieved through the use of Zones of Planned Agriculture Development (ZAAPS). ZAAPS were first created by the Togolese State between 2008 and 2009 to facilitate access to land for young farmers. The State would establish an agreement with a community or landowner to delimit the zone, which is then prepared (through clearing, first tillage, etc.) as ready-to-farm parcels for allocation to young farmers. The beneficiaries of this distribution receive a certificate that provides them with the right to use the land. The State also provides the farmers with supporting interventions such as access to credit and technical advice from the Institute of Technical Advice and Support. The main advantage of this system is that it facilitates access to land for young farmers, even those who are not members of the community or village where the ZAAP is located.

One of the major challenges that youths in Zambia face in accessing land is the contractual age of 21 which is too high given the increase in child headed households. The Zambian Government is urged to consider reducing the contractual age from 21 years to 18 years as is the case in Ethiopia. The Ethiopian federal law (proclamation) entitles every citizen of at least 18 years, access to agricultural land which should ensure adult youth access to land (Benzu, 2014). **The reduction in the contractual age will ensure that child headed households and unemployed youths have access to secure land which is a cornerstone for economic growth and an incentive for investment.**

## Recommendations

As a way of improving women's and youths' access to land, PMRC recommends the following;

- The draft Land Policy must be implemented expeditiously as it will provide a roadmap for land administration in Zambia. In view of achieving this, there is need for Government to assess and address the challenges that have hindered the implementation of the Land Policy which has remained in draft format over a long period of time
- The contractual age of 21 years in which one may obtain land in Zambia is high, taking into account the increase in the child headed households and the numbers of unemployed youths. PMRC therefore, recommends that's the minimum age in which a youth is eligible to access land should be reduced from 21 years to 18 years, this will enable more child headed households to have access to land.
- PMRC urges Government to support and facilitate transparency and access to information between customary and statutory authorities for harmonised and equitable land distribution and management.
- There is need for increased sensitization and awareness programmes to inform the general public, especially youths and the women, of their rights to own land.
- Land ownership should be attached to industrial yards, agriculture cooperatives and fields etc as a deliberate policy that develops the land for women and youth empowerment schemes such as aquaculture.

## Conclusion

Land is a major input of national development in which women and youths are key players. Studies have proven that women and youths possess the ability to contribute positively, if empowered with the right tools, skills and resources. The Seventh National Development Plan (7NDP) aspires to accelerate development efforts towards Vision 2030 without leaving anyone behind. These aspirations can be achieved through improving women and youths resource rights as well as access to land. The major challenge that women and youth face include constitutional biasness and a high contractual age respectively. It is therefore imperative that the Constitution of Zambia be amended to ensure the inclusion of customary law within its prohibition on discriminatory practices. There is also need for the contractual age to be reduced from 21 years to 18 years in light of the increase in child headed households. To this end it is in the interest of the nation to enhance land tenure and resource rights for women and youth in the country.

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**Unlocking Zambia's Potential**

Correspondence on this Analysis can be sent to:  
[info@pmrczambia.net](mailto:info@pmrczambia.net)

Policy Monitoring and Research Centre (PMRC)  
Ministry of National Development Complex, Corner of John Mbita and Nationalist Roads, Ridgeway,  
Private Bag KL 10  
Tel: +260 211 269 717 | +260 979 015 660

[www.pmrzambia.com](http://www.pmrzambia.com)

