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Women's Land Rights in the Wave
of Land Acquisitions in **Malawi,**
Swaziland and Zambia



Commonwealth
Foundation



**AMINA MAMA
WA AFRIKA**



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LIST OF ACRONYMS

AMwA	Akina Mama wa Afrika
AU	African Union
AWLI	African Women's Leadership Institute
CDC	Commonwealth Development Cooperation
CECWODA	Centre for Conflict Management and Women Development Affairs
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
COWFA	Coalition of Women Farmers Association in Malawi
EU	European Union
FAO	Food Agriculture Organization
FGDs	Focus Group Discussions
GVH	Group Village Headman
HMK	His /Her Majesty the King/Queen
ICT	Information, Communication Technology
ILC	International Land Coalition
KIIs	Key Informant Interviews
LSLBI	Large Scale Land Based Investments
MNLP	Malawi National Land Policy
MoAIWD	Ministry of Agriculture, Irrigation and Water Development
MoLHUD	Ministry of Lands, Housing and Urban Development
NAP	National Agriculture Policy
NGO	Non-Governmental Organization
NGOGCN	Non-Governmental Organization Gender Coordination Network
OPV	Operation Youth Vote
PLAAS	Institute for Poverty, Land and Agrarian Studies
PWD	Person with Disability
SADC	Southern African Development Cooperation
SNL	Swazi Nation Land
T/A	Traditional Authority
TIZ	Transparency International Zambia
UNDP	United Nations Development Fund
USA	United States of America
VGGT	Voluntary Guidelines on Good Governance
WDI	World Development Index
WLSA	Women and Law in Southern Africa
WOLREC	Women's Legal Resources Centre

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"As for us women, especially the elderly, we do not know what to do in this place. As you can see, the plots are very small, and the ground is terrible and rocky, good for nothing. Above all, there is no water. The chief has a borehole and he lets us get water either once or twice per week. We are just lost for what to do, ready to die here as there are no opportunities for anything."



Executive Summary

Land is a critical tool of production and its role as an anchor to heritage and cultural identity makes it an instrument of wealth and power. In the face of population growth and amid the global push to not only modernize infrastructure but also produce food to meet the new demands that the increasing population poses, and cognizant of land's finite nature, it has become more urgent than ever to secure land to ably compete in this new world order. This has resulted in a scramble for land with States, foreign investors, and the local citizenry jostling for space and leaving a trail of victims, mostly women and children in their wake.

This research examines the gendered implications of large scale land acquisitions in, Malawi, Swaziland and Zambia. The findings reveal a common thread of deliberate disenfranchisement of women from participating and controlling the use of land across the three countries. Evidence shows that weak and unenforced policy regimes on land guided by patriarchal cultural beliefs that do not regard women as custodians of land contribute to dispossessing women of land. This climate has made it easy for predatory forces to exploit and accumulate massive pieces of land for themselves.

Most of the large-scale land grabs have been carried out by foreign investors, many times with the support of the State. These processes of land acquisition have been non-consultative and non-participatory resulting in people being arbitrarily displaced in the name of investment with little or no compensation. Many times, the cost of relocation has far outweighed the amount that has been compensated, first as property is destroyed amid evictions, and as people are relocated to far flung places where the land is unproductive and where they cannot easily participate in the economy.



An examination of the land regimes in the three countries shows that patriarchal beliefs and norms play the leading role in rendering women landless. This report shows that a system of male power and authority dominates land ownership and use. Patriarchal beliefs dictate that only men own land and that it is passed on to different generations through male heirs. These could be sons, brothers or uncles. In this regard, women can only access land through their male relations. Gender expectations and roles in this patriarchal system reinforce the low position of women when it comes to land. With men seen as the providers, they have legitimacy to have control over high value assets like land while women are seen as not requiring land to execute their roles because they are already taken care of by men. This means that women cannot carry out large scale investments, particularly commercial agriculture because the parcels of land that they are given access to and control over are usually small and of poor quality. Women can therefore only grow subsistence crops like tomatoes and green vegetables with which they can feed the family. With patriarchal beliefs so entrenched, even women who purchase land with their own resources register it in their husbands' names in compliance and respect of culture.

Interestingly, this practice continues even in matrilineal societies where inheritance of land is through the female line and women are not only respected for their child bearing roles but most importantly have power over lineage as children are seen as belonging to the woman instead of the man as is the norm in many other cultures. This respect, however, does not translate to real power as women are looked at only as caretakers and not as bona fide owners of land. Examples from Malawi showed that although women in matrilineal societies control more than 65% of the land, they had no real power over land while in subsisting marriages. Once they were widowed or divorced, they regained what power they had had over land before they got married but remained at the mercy of male relations who subtly dispossess them of land by making life so difficult that they are forced to leave. Other times the male relations gradually take away small pieces of the women's land until they have none left. Ideally women should have the power to control the land in matriarchal societies. However patriarchal values seep through as men still end up controlling how the land is used. This is because men are still regarded as heads of the families with access to financial resources to purchase farm inputs. In this way they get to control what is grown on the land.

These patriarchal norms continue unchecked because of the dual nature of the legal system that defers to both customary and statutory legal provisions and the varied land tenure systems that are governed differently. Most of the land in rural areas is governed under customary tenure which is regulated, managed and administered under customary law. As customary law is patriarchal in nature, locating men as the sources of power and authority, the odds are stacked against women in this governance regime. Relatedly, the judicial system is also designed such that local traditional courts are the first point of entry in resolution of land disputes. Women are further disenfranchised as traditional courts are governed by customary law. Since most people, especially women, live in rural areas and on customary land, they are unlikely to get any kind of recourse in the event of conflict. Furthermore, customary tenure is more likely to be abused as it has no accountability mechanism and depends on the whims and wishes of the chief who is overseeing the land distribution. In some cases, chiefs have even demanded for sexual favours from women to give them new pieces of land.

The effects of dispossession of women of land have socio-political and economic consequences. Women bear the brunt of land disenfranchisement. Because 80% of the agricultural workforce comprises of women, dispossessing them of land means they are unable to produce food optimally. And yet if these large numbers of women had ownership of, access to and control over large tracts of land they would produce even more food to counter food scarcity. FAO estimates that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. These gains in agricultural production could lift some 100–150 million people out of hunger (Gomez et al 2016). Furthermore, women are unable to use land as an asset to secure credit which would help them invest in development initiatives at the same level as men. Also, women with land have higher status in society because they are backed by the power and influence that comes with land ownership. Dispossession of land means that women do not have the bargaining power that men have. Lastly, land also opens space for political participation for both women and men. Lack of it by many women means that they do not have collateral to secure resources to participate in elective politics.

A series of recommendations have been made to enable women not only access land but also control its use. A review of the policy

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and legal framework reveals that overall, the existing laws are sufficient to address women's land rights issues. However, patriarchal beliefs and systems and lack of political will deter their use. Reform of customary laws and practices and development of guidelines is therefore required to create an enabling environment for women's participation in the land economy. This law reform process will entail aligning existing laws with constitutional principles of equality and non-discrimination. Traditional legal structures are not impartial when overseeing cases involving women as they are informed by cultural norms that do not see women as owners of land. The reform process cannot be complete without working closely with traditional leaders especially village chiefs who are the custodians of culture and the enforcers of the cultural practices that violate women's land rights. Legal reform can also be pursued through strategic litigation as was the case in Swaziland where section 16(3) of the Deeds Registry Act 37 of 1968 which excluded women married in community of property from registering title in their names was challenged. The Supreme Court confirmed that the provision was discriminatory and declared that bit of the law invalid.

It is important to note however that existence of a law is not enough to guarantee that women's interests are protected. Women's leadership, participation and decision making over land is indispensable if women are to be recognized as worthy players. Women's

opinions should be a matter of course in land committees. Malawi is pursuing the establishment of Customary Land Committees where at least three of the six members are supposed to be women. Penetration of these spaces should go hand in hand with capacity building for leadership and negotiation skills to enable meaningful participation by women. Women also need to be educated about their property rights to give them the tools to demand what is due them. Raising women's awareness should be matched with encouraging registration and titling of land to ensure security of tenure to protect women from displacement from their land.

Lastly, the recommendations and the contents of this report should be used to advocate for the substantive participation of women in the land economy. Women presently feel helpless when it comes to negotiating around land, as succinctly put by some women from Zambia;

"We do not do anything with the hope that one day we or our daughters will enjoy the land rights we are denied today."

Although their helplessness is understandable, given the present raft of challenges, women should not be regarded as passive players on land issues. This report looks to equip women with the information, and by extension the power to support them advocate more effectively for land that should be rightfully theirs. Women should fight now so that their daughters may profit from this struggle sooner.



1.

Introduction

While women's land and property rights are vital to development, the reality remains that in many parts of the world these rights are often not shared equally between men and women, and are routinely violated, denied, and given insufficient protection and enforcement (Gomez 2016). Gomez further reports that the Food and Agriculture Organization (FAO) has recognized that, globally, Gender inequalities in land rights are pervasive. Not only do women have lower access to land than men. They are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. The obstacles which prevent women from effectively enjoying these rights equally with men are complex, and at times context specific. They range from inadequate legal standards and implementation of laws, to discriminatory social norms, attitudes, and programs at the national, regional and local levels which taken together result in wide discrepancies in practice between development outcomes for men and women.

Akina Mama wa Afrika in partnership with the women's movement in Malawi, Swaziland and Zambia, with support from the Commonwealth Foundation, sought to contribute to securing women's land rights in the wake of large scale land acquisitions in Africa. The intervention focused on strengthening feminist and transformational leadership capacities specifically through enhanced feminist research skills to enhance documentation of women's lived realities. In that regard, the project commissioned three feminist researches on the implications of land acquisitions on gendered land usage, ownership and control in Malawi, Swaziland and Zambia which was led by Women's Land Rights Movements in those Countries. In Malawi the research was led by a network established in 2016 to advocate for the protection of women's land rights. Doo Aphane, an independent feminist consultant in Swaziland led the Swaziland Study and the NGOCC took lead in Zambia, with the aim of promoting evidence- based advocacy to effectively influence decision makers.



Malawi, Swaziland and Zambia, like many African countries have developed a raft of legal and policy frameworks to uphold equal rights and non –discrimination of women. However, there are huge gaps between the laws, policies, legal proclamation and implementation. This is coupled with dual land tenure systems, which makes women increasingly vulnerable, not only to land grabs but to violence as well. For instance, where women's rights are recognized under statutory provisions, they are generally denied the same rights under customary tenure despite their pre-eminent role in agricultural production. Therefore, this research proceeded on the premise that women played a large role in the land economy and yet they are denied ownership, access to and control over land. This has been exacerbated in the new wave of large scale land acquisitions.

1.1. BACKGROUND

This research follows three feminist training workshops carried out by Akina Mama wa Afrika AMwA in Malawi, Swaziland, and Zambia in 2013, 2014 AND 2016 to strengthen women's leadership capacities on economic rights, specifically on women's land rights. The training focused on three AMwA African Women's Leadership Institute (AWLI) curriculum modules of feminist research, advocacy and movement building, aimed at amplifying women's collective voices to be able to take part in decision-making processes and enhance feminist perspectives on secure and equitable land rights. As a follow up to the training, a feminist research on the gendered implications of land acquisitions was commissioned with the aim of using it as a tool to inform advocacy campaigns to influence policy makers and law enforcement agencies on women's land rights.

AMwA identified the three countries as project focus countries based on previous work carried out in these countries, and the identified gaps and opportunities for securing women's land rights in the Southern Africa region. Although Malawi, Swaziland and Zambia, like many African countries have progressive laws that uphold equal rights and non –discrimination of women; there are huge gaps between the laws, policies, legal proclamations and Law enforcement and implementation. This coupled with women's ignorance of tenure systems or even their rights under law - statutory and customary-makes them increasingly vulnerable, not only to land grabs but to violence as well. Even

where women's rights are recognized in the statutory law, biases still exist especially as men control the land as is evident in Swaziland and Zambia. Women in these countries still lack bargaining power in land matters, yet effective participation at all levels of implementation is key for gender –equitable land tenure systems.

Drawing on existing initiatives, the overall objective of the feminist research is to build a vibrant women's movement advocating for women's land rights in the new wave of large scale land acquisitions.

1.2. METHODOLOGY

The research for this report relied on three main methods: comprehensive literature analysis, key stakeholder interviews and focus group discussions or community meetings. These three methods are meant to complement one another through the triangulation of key facts and to ensure the perspectives of each group are considered. Key stakeholder interviews were conducted with relevant authorities when available. The research teams were able to meet with several stakeholders; men, women, chiefs and government officials in all three countries. Their willingness to take part in the research facilitated the successful completion of the studies. In these studies, the researchers ensured that the land rights of women in both the patrilineal and matrilineal communities were investigated.

Literature analysis was conducted to gather background information pertinent to the studies. This included analysis of the land laws and policies existing materials, and information on women's land rights. In addition, relevant literature to the wider and contextual issue, such as agricultural development in Malawi, Swaziland and Zambia, was compiled.

This report is a compilation of three research studies undertaken in the three countries by teams from the women's and land rights movements. Each country research team designed the study with a focus on the country's context. The specific methods used in each country will be discussed under each country below but with the ultimate objective of investigating, assessing and establishing the status of women's land rights in those countries. The limitations to the three research studies are also discussed therein.

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Malawi



2.1. COUNTRY CONTEXT

Malawi is a small and democratic country, with one of the lowest per capita incomes in the world. In 2011 Gross National Income per capita (Atlas Method) was US\$340. With a population of 14.9 million (WDI 2010), it is also one of the world's most densely populated countries. Malawi is land-locked, has unexploited natural resources, and is highly vulnerable to shocks. It regularly suffers from droughts and floods. Its production and export structure are not diversified. Despite improvements in its food security, the country still experiences frequent food shortages, especially in the south of the country. The economy faces numerous structural, institutional, and infrastructure constraints and is not well integrated into regional and global markets. Despite growth averaging 7 percent for 2006–10, absolute poverty has barely reduced: from 52.4 percent in 2004/05 to 50.7 percent in 2010/11. Although poverty in urban areas reduced from 25.4 percent in 2005 to 17.3 percent in 2011, this gain was counterbalanced by a worsening in rural poverty from 55.9 percent to 56.6 percent. It appears from the stagnant rural poverty rate that despite an increase in per capita income, inequality in Malawi is rising. Poverty rates among female headed households are significantly higher than male headed households, with their limited access to larger land holdings and failure to engage in cash crop production contributing to the higher household poverty (World Bank 2012).

Land is the primary resource in household livelihoods and food security in rural Malawi where communal/customary tenure systems predominate. Livelihoods strategies, while largely agricultural and land based, are mixed in that the use of the land resource is varied, and include the production of food for household consumption, grazing for livestock and the production of cash crops. In addition, land is also used for harvesting other natural resources such as grass which is used for thatching roofs, reeds for building, timber for coal as well as fishing. Despite its centrality to the livelihoods of rural Malawians, not all Malawians enjoy secure access to adequate land for their livelihoods and insecure land access tends to have a female face (Mbaya 2002). Malawi has been profoundly modernized since it embraced democracy in 1994, yet it remains a very traditional society; where establishing real gender equality will take time. Existing inequalities between men and women are largely due to customary laws and traditions despite the Constitution of Malawi, which was adopted in 1994, upholding the principle of equal rights for men and women and prohibiting discrimination based on gender or marital status. (Section 24, Constitution of Malawi).

To address land-related conflicts, the government of Malawi established a policy planning unit in the Ministry of Lands in 1995. The unit carried out several studies on how to reform the 1965 land legislation. This was followed by a Presidential Commission assigned to review land-related laws, which submitted its report in 1999. The result was the adoption of the Malawi National Land Policy (MNLP) by the Cabinet in February 2002. The main goal of the MNLP is to ensure tenure security and equitable access to land, and to facilitate the attainment of social harmony and broad-based social and economic development through optimum and ecologically balanced use of land and land-based resources (Republic of Malawi 2002) ((PLAAS 2015). The policy was recognized by Silungwe in 2002 as forming the basis for 'a comprehensive land law with immense economic and social significance' (Government of Malawi, 2002:8). Silungwe (2002) further noted that the policy seeks to provide 'a sound institutional framework for democratizing the management of land and introduces procedures for protecting land tenure rights, land-based investments and management of development at all levels' (Government of Malawi, 2002:8). (Silungwe 2002). Despite such progressive provisions, implementation of the policy remained a challenge as it needed to be supported by an effective legal framework.

In 2013 therefore, an attempt to reform the land law was made when Parliament passed the Land Bill and the Customary Land Bill. These bills provided security of tenure of land for existing occupiers and smallholder farmers. However, former President, Joyce Banda withheld her assent to pass these into law because of petitions launched by the traditional chiefs and civil society organizations. The chiefs objected that the new laws would weaken their administrative powers over customary land while civil society organizations objected to the omission of provisions to enhance women's rights to land (PLAAS 2015).

In 2016 however, two significant policy reforms were achieved; the Ministry of Agriculture, Irrigation and Water Development (MoAIWD) adopted and launched a new National Agriculture Policy (NAP) that proposes commercialization of agriculture as the way forward for Malawi; and the Ministry of Lands, Housing and Urban Development (MoLHUD) passed 10 land bills in parliament, all of which were duly signed into law by the incumbent President of the Republic of Malawi, Professor Peter Arthur Mutharika. The ten land bills include the Land Bill; the Customary Land Bill; the Land Survey Bill; the Physical Planning Bill; the Registered Land (Amendment) Bill,





the Land Acquisition (Amendment) Bill; the Local Government (Amendment) Bill; the Malawi Housing (Amendment) Bill; the Public Roads (Amendment) Bill; and the Forestry (Amendment) Bill (ILC 2016). While as the land reforms were taking place, ILC (2016) further reports that in recent years there have been several “land grabs” by large-scale investors, with dispossessed farmers receiving no compensation and having no recourse to justice. There has also been an increasing number of disputes and conflicts related to land and other natural resources (such as water), often stemming from poor enforcement of regulations or corruption by officials. Another serious issue is the marginalization of women in land ownership. This Commercialization of land in Malawi has aggravated pressures on land in a context of land scarcity and has negatively affected the livelihoods of smallholder farmers especially women who undertake 80% of the agricultural labour.

2.2. ABOUT THE RESEARCHERS:

The research was collectively done by a team of nine women from different professional backgrounds who are all members of the Women’s Land Rights Movement in Malawi. In this regard, the team was composed of members who are working with women living in rural areas as well as social scientists who have had professional training in research work. The main aim of having a multi-disciplinary team was to ensure that data collection and its analysis are done from different perspectives. The research team was therefore composed of the following members:

Maggie Kathewera Banda- a gender expert. She is a founder and Executive Director of Women’s Legal Resources Centre (WOLREC). **Caroline Kayira-Kulemeka-** She is the Chairperson of Women’s Land Rights Movement of Malawi and works for OXFAM as a Programme Manager.

Caroline Mvalo- She is the founder and Executive Director of CECWODA. **Lomathinda Mtema-** a Programme Manager for Women’s Legal Resources Centre (WOLREC). **Chikumbutso Ndaferankhande-** a Women’s Rights Manager with Action aid. **Ellen Matupi -**Chairperson of the Coalition of Women Farmers in Malawi. **Kate Chibwana -**a Programme Officer at Land Net Malawi. **Memory Lundu-**a Paralegal at Women and Law in Southern Africa (WLSA) and **Alice Kachere-** Chairperson of Rural Women’s Assembly.

2.3 OBJECTIVES AND PURPOSE OF THE RESEARCH

This research was conducted by the Women’s Land Rights Movement in Malawi which is a network established in 2016 to advocate for the protection of women’s land rights in Malawi. The research was therefore conducted to gather information on gaps and opportunities for advancing women’s land rights in Malawi in the context of the new legal framework. This is in line with the aspirations enshrined in progressive legal instruments on gender equality including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW obligates all member states including Malawi to “address rural women’s precarious living conditions and lack of ownership of land and inheritance by ensuring that appropriate measures are taken to eliminate all forms of discrimination against women with respect to ownership and inheritance of land.”

The Malawi National Land Policy (2002) also has the definite objective of ensuring equal opportunities for the acquisition, use and enjoyment of land for all citizens. From the institutional perspective, land policy is primarily concerned with social actions that influence and control people’s use of the land. The policy recognizes further that often, the rights of women, children and the disabled are denied based on customs and traditions that are no longer relevant, or they are totally disregarded due to prejudice and lack of effective representation. This being the case and in view of the effects of increasing land pressure due to population as well as the devastating effects of the HIV/AIDS pandemic, a clear policy on gender access and the rights of children and the disabled should always be considered in policy planning and implementation strategies. (MNLP 2002). Apart from the policy, the government of Malawi has also gone further to put in place a legal framework that aims to support implementation of the land policy. In this regard, ten land related bills were enacted in the Malawi National Assembly in 2016.

The purpose of this assignment was therefore to facilitate a participatory process to assess gaps and opportunities for advancing women’s land rights in Malawi in the context of the new legal framework on land so as to establish and fore-tell implications on women’s land rights. Considering the above, the research was guided by the following objectives:



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- Examine the land laws and policies and their implications on Malawian women's land rights amidst large scale land acquisitions by private investors
- Examine the new land law and highlight the gender gaps that exist and potential areas for women's advocacy to ensure that women's land rights are protected and promoted
- Identify the systemic issues that serve as barriers to women's land ownership.
- Identify current barriers and opportunities for women's land rights from a woman's perspective
- Identify strategic partners and allies that would be important to engage to advocate for women's land rights (who is around her, who does she talk to, who makes the decisions around women's land rights, who can facilitate her access to justice?)

Apart from reviewing the laws and policies, field research was also carried out in both matrilineal and patrilineal communities in four districts namely; Chikwawa, Machinga, Mchinji and Mzimba. This was out of recognition that these two distinct social systems influence women's land rights in ways that are different. Therefore, any work on promoting women's land rights must understand women's experiences as well as customary practices and rules governing land in these systems.

2.4. THEORETICAL PERSPECTIVES, APPROACHES: CONCEPTS, MEANINGS AND DEFINITIONS.

Being a Feminist research the "follow the woman tactic" was used to understand the lived realities of women regarding their ownership, access to and control over land. However, it was viewed as important that while we follow the woman, her lived experiences should be analysed using a political economy lens to understand the sources of power as well as how economics and power intersect to enhance or hinder women from enjoying their rights to land. It has been recognized

over time that land governance is a political-economic issue. This means that any work to be done on land has to take into considerations the political and economic issues that surround the same. The premise of this analysis is that existing dictates of social, political, administrative and economic power lead to unequal distribution of land and its related resources. Power imbalances at various levels of society result in growing insecurity of land tenure, loss of access to resources by smallholders, increasing food and livelihood insecurity, and human rights abuses (Scurrah et al 2015). Land is not only an asset with economic and financial value. In most African countries including Malawi, land constitutes a major political asset. Over the years, a range of political forces and influences have affected the processes of land allocation in Africa. Land policies are determined largely based on political considerations and the choice of institutional structure through which land rights are to be managed has major implications for the distribution of power within society (Cotula et al., 2004). Longstanding differences between men and women regarding land ownership can be viewed as the results of a complex interplay between statutory laws and informal and customary justice systems since the time of colonialism. Therefore, the research proceeded on the premise that women's land rights are being contested due to the political and economic interests that exist on land.

2.5. METHODOLOGY

The study involved both field and desk research and was entirely qualitative. It adopted the "follow the woman" tactic, to ensure that the woman's story is heard. In this regard, the field research team applied different methodologies in the data collection and analysis to capture the qualitative richness of women's land ownership within matrilineal and patrilineal societies in Malawi. The desk research on the other hand, looked at the newly enacted land laws including customary land law to assess the extent to which it can protect women's rights to land within the existing social systems of matrilineal and patrilineal societies. The researchers also looked at other instruments such as the Malawi National Land Policy as well as instruments that protect women's rights such as CEDAW, WGT among others.



2.5.1. Data Collection Techniques

2.5.2. Focus Group Discussions

Five focus group discussions (four for women only and one for men only) composed of 15 people were conducted in each of the 4 districts of Chikwawa, Machinga, Mchinji and Mzimba. In total, 300 people (240 women and 60 men) were involved as respondents in this research. The use of focus group discussions was beneficial to this research because they facilitated a space conducive for discussion and the articulation of various points of view, particularly within same gender groups. These discussions also allowed for elaboration and negotiation of public opinion and enabled the researchers to witness rather than influence interaction between respondents. During such discussions, the research team also employed tools such as access to and control over resources tools from the Harvard Analytical Framework to analyse the extent to which women and men access and control land in their communities as well as their control over land and its resources therein.

At least two case studies were documented from each of the districts to showcase the challenges that women face regarding their land rights. In total, 8 case studies were documented. The case studies have provided profound information in describing the lived realities of women. The case studies will also become instrumental in the lobbying

and advocacy work that the Women's Land Rights Movement will undertake in advancing women's land rights in Malawi.

A focus group discussion for women in Machinga District.

2.5.3. Key Informant Interviews

Five key informant interviews were conducted in each district of research. These informants included Traditional Authorities, Government Extension workers, NGOs, Opinion leaders among others. In total, 20 Key informants were interviewed. They were interviewed to get their views and knowledge on various issues concerning land issues within their context. The leaders were also asked about their role in the administration of land, the kind of land they administer in order to find out the laws/customs that govern land administration in the four research districts as well as their role in addressing land disputes when they arise. Furthermore, discussions also centered on cases of land disputes which occur in their areas and how they handle cases of land dispossession and other land conflicts that are reported by women. Of interest to the researchers was on what they think should be done to ensure that women are able to own land and control the same. These interviews therefore provided in-depth information on how land tenure systems work in both matrilineal and patrilineal societies.



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A Researcher from Women's Land Rights Movement in Malawi interviewing a Key Informant in Mchinji district.

2.5.3. Scope/ Study Areas

The research was conducted in all the four political regions of Malawi namely; Northern, Central, Eastern and Southern Regions. Within these regions, the research teams collected data from both the patrilineal and matrilineal social set up. Below is an overview of each of the four districts

CHIKWAWA DISTRICT

Chikwawa District is one of the 28 districts in Malawi and is in the Lower Shire zone in the Southern Region of Malawi. It shares boundaries with four districts, namely Mwanza to the North, Blantyre to the North East, Thyolo to the East and Nsanje to the South. Chikwawa also shares an international border with Mozambique to the West. The total area of the district is 4755 sq. km, accounting for 15 % and 5.04% of the total area for the Southern Region and the country respectively. In terms of Agriculture, the total land area is 471, 957 hectares of which 20, 118 hectares is dry arable land and 29,962 hectares is wet arable land. Estates occupy 19,000 hectares while public land covers 211,788 hectares. The predominant tribes in Chikwawa are Sena and Mang'anja with different social systems. The Sena follow patrilineal system where descent is through the male line while the Mang'anja

follow a matrilineal system where descent is through females. The district was also of interest because of the 'land grabs' that have been taking place there, perpetrated by multinational companies, local companies and the local political elites. Through this research therefore the team wanted to analyse how land grabbing plays out in denying women their rights to land.

MACHINGA DISTRICT

Machinga District is one of the thirteen districts in the Southern Region of Malawi. It is located between Lakes Chilwa, Chiuta and Malombe and shares common boundaries with Mangochi District in the North, Zomba District in the South, Balaka District in the West and the Republic of Mozambique in the East. The district is approximately 101 Kilometres North of Blantyre City, the country's main commercial and financial centre, and about 258 Kilometres South of Lilongwe, the Capital of Malawi. The predominant tribes are the Yao and Lomwe. It is largely matrilineal where decent is through the female although the research team found that in some instances, patrilineal culture was being followed especially by people that moved into the district from other areas under the World Bank funded "Kudzigulira malo programme" (Community-based Rural Land Development). This was a programme that was implemented in 2004 and aimed at increasing the incomes of 15,000 poor rural families by implementing a decentralized, voluntary community based reform approach in 4 districts in Southern Malawi. The programme





enabled Malawi citizens who were landless or had small pieces of land in their districts of origin to identify land in other more spacious districts. When such land had been identified, the communities would then be assisted by Government to relocate to their newly acquired land. The district has the following Traditional Authorities; Chamba, Chikweo, Chiwalo, Kawinga, Liwonde, Mlomba, Mposa, Ngokwe, Nyambi, Sitola but the research was done in T/A Kawinga and Liwonde. This was of interest due to its matrilineal set up but also the land reform programme.

MCHINJI DISTRICT

It is a district in the Central Region of Malawi located about 109 km from Lilongwe the Capital City of Malawi- the major hub of government and general business. As of 2008, Mchinji District had an estimated population of 458,556. The area's economy is sustained by rain-fed agriculture. Harvesting rain-fed agriculture is the main occupation in Mchinji, with groundnuts, tobacco, soya and cassava beans being the primary cash crops. Maize, yams, velvet beans and pumpkin are prominent food crops. During the dry season, secondary activities are pursued, such as brick-making, beer brewing, bicycle repair and carpentry. Due to a food shortage partially caused by the region's many droughts and partially caused by poor government planning, a UNDP rural development program was established in Mchinji. Mchinji is currently the location of a pilot project of a social cash transfer to benefit very poor members of rural areas. There are ten Traditional Authorities namely; Mkanda, Mavwere, Zulu, Mlonyeni, Pitala, Simphasi, Dambe, Kapondo, Mduwa and Nyoka. This research was done in three T/As namely; Dambe, Mlonyeni and Zulu. The district was chosen because it is matrilineal, is a border district and also because of the large farmland acquisitions that are taking place by private individuals which would constitute as 'land grabs'.

MZIMBA

Mzimba District is situated in the Northern part of Malawi covering 10,430 square kilometres and is the largest district in the country. It borders Kasungu to the south, Nkhata Bay to the east, Rumphi to the north and Zambia to the west. People in Mzimba depend on agriculture for their survival and the main crops grown include; tobacco, maize, groundnuts and beans. Mzimba has 10 Traditional

Authorities (chiefs) in the district namely M'mbelwa, Mtwalo, Kapingo Sibande, Jaravikuba Munthali, Chindi, Mzikubola, Mabulawo, Khosolo Gwaza, Mpherembe and Mzikuzuku who are the overall custodians of culture practiced by the people in the district. The research in Mzimba was done in T/A Khosolo, Jalavikuva and Mzikubola. This district was chosen because it is a patrilineal society where inheritance is through the male lineage. It was therefore important to examine the extent to which such culture allows women's access, ownership and control over land given the fact that it is the male members who are regarded as "legitimate" owners of land.

2.5.4. Limitations of the Study

There were several limitations regarding this study. Firstly, it was challenging to get information from some of the women respondents when members of the same family were in the same group especially in the patrilineal communities. It is generally difficult for young women to speak freely when their mothers-in-law are present. Secondly some members of the community were not willing to engage in discussions due to the sensitive nature of the research topic. It is worth knowing that this research has been done at a time when some quarters of the society are challenging the legality of the newly enacted customary land law and therefore it was a sensitive topic for most of the traditional leaders as they view the new law with contempt because they believe that it is taking away the powers of chiefs over land administration. The researchers therefore had to spare some time to convince the chiefs that this research which was simply trying to assess how the law would assist women within the existing social context. Thirdly funding was a major limitation, hence the research was done over a short period of time and in few districts.

2.5.5. Literature Review

This chapter presents some of the existing literature on women's land rights. It was necessary for the researchers to understand how issues of land rights for women are manifesting in different contexts. This chapter therefore presents literature from other jurisdictions as well as Malawi based on previous studies carried out on land rights for women. This is the same literature that helped researchers determine areas of interest for further research.

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A) LAND OWNERSHIP



Women risk losing entitlements in case of divorce, widowhood or their husband's migration. Single women or those whose marriages are not formally recognized also typically have more tenuous rights to land.

While women's land and property rights are vital to development, the reality remains that in many parts of the world these rights are often not shared equally between men and women, and are routinely violated, denied, and given insufficient protection and enforcement (Gomez 2016). Gomez further reports that the FAO has recognized that, globally, "Gender inequalities in land rights are pervasive. Not only do women have lower access to land than men. They are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. Women thus risk losing entitlements in case of divorce, widowhood or their husband's migration. Evidence also shows that women's land parcels are generally of smaller size and lower quality" than men's. Single women or those whose marriages are not formally recognized also typically have more tenuous rights to land. The obstacles which prevent women from effectively enjoying these rights equally with men are complex, and at times context specific. They range from inadequate legal standards and implementation of laws, to discriminatory social norms, attitudes, and programs at the national, regional and local levels which taken together result in wide discrepancies in practice between development outcomes for men and women.

The link between women's land and property rights and sustainable human development is evident for a wide range of issues. For example, from the perspective of women's empowerment, food security and poverty alleviation, Swedish International Development Cooperation Agency (SIDA) has noted that "Women's access to land and property is central to women's economic empowerment, as land can serve as a base for food production and income generation. Agricultural production and food security also increase when women are granted tenure security." FAO estimates that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. These gains in agricultural production could lift some 100–150 million people out of hunger (Gomez et al 2016).

In the context of Malawi, literature presents two scenarios. Banda et al (2010) found that in matrilineal system of marriage a great portion of the family's land is given out to the daughters of the family and not the male children. By culture, when boys get married they move out of their parent's village and go out to live in their wives' villages. This is where they find fields to cultivate. The man has user rights but the land belongs to the woman. On the other hand, in patrilineal societies, according to Banda et.al (2010) people use lobola to marry their wives and as a result a woman is looked at as an entity/object that is bought off from her parents. Wherever she is taken, she has no power to influence decisions or own property. In this system, women by culture do not own land. Some of the women explained in their own words "*Ise ndise wakamwana, tirije chakuyowoya*" literally meaning they are daughters-in-law so they cannot have any say, or in Chikwawa ife ndi okwatidwa basi literally meaning that as women we are the ones that are asked into marriage by a man and not the other way around. In other words, they are passive players so cannot have a say. Here, they are usually assigned small gardens near their houses for growing beans, tomato and other crops typically considered feminine. It is worth noting however that literature in Malawi shows that whether it is a matrilineal or patrilineal system, women have lesser control over land (Ngwira et.al.). This stems from patriarchal legal systems and perceptions, in some cases, as well as eroded customary laws and practices in others. However, in comparison to the regime under patrilineal system, there are some positive customs under matrilineal, which if followed could foster greater opportunities for women (Liwewe, 2008). The research therefore proceeded by looking at the current patterns of ownership and examined how ownership of land issues are being addressed in the new land law.



In Malawi whether it is the matrilineal or patrilineal system, women have less control over land. This stems from patriarchal legal systems and perceptions, in some cases, as well as eroded customary laws and practices in others. However, in comparison to the regime under patrilineal system, there are some positive customs under matrilineal systems, which if followed could foster greater opportunities for women.

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B) WOMEN'S RIGHTS VIS A VIS LARGE SCALE LAND BASED INVESTMENTS (LSLBI)

Large-scale land deals have been a recurrent phenomenon in sub-Saharan Africa, especially since 2008. This has been triggered by the proliferation of large multinational companies from the West, other parts of Africa and Asia whose primary interest now rests in land accumulation in Africa to grow flex crops. However, this new wave of land investments has affected the populations in African countries and it is particularly important to note that women have been the most affected of the citizenry (Mutopo 2015). Recent studies conducted in Africa show that some primary agricultural investments that have taken place during the last years are having complex and mixed economic, social, cultural and political effects on local communities. Moreover, research has highlighted that positive outcomes do not flow automatically; rather, they depend on many factors, including the prevailing agriculture and rural development model; the institutional, policy and regulatory framework in place; the type and degree of inclusiveness of the business models adopted, and the extent to which social and gender equity issues are considered, among others. Certain types of investments, large-scale land acquisitions, may have negative effects on host countries such as displacing small farmers, undermining or negating existing rights, increasing corruption, reducing food security, aggravating gender and social inequalities and environment degradation.

Conversely, other investments adopting more inclusive business models and respecting rural populations' rights seem to be more beneficial for the livelihood of small farmers and workers and for long-term development. In the context of Malawi, it is well documented that large scale land-based investments have been taking place in the country and the impact the same have had on the citizenry especially women are enormous. In 2015, PLAAS recorded that commercialization of land in Malawi has aggravated pressures on land in a context of land scarcity and has negatively affected the livelihoods of smallholder farmers. More than 89% of Malawians depend on agriculture as their main means of earning a livelihood (Republic of Malawi 2012). The research therefore proceeded to examine how the LSLBI are affecting women's land rights and how the new land law for example would assist in addressing this challenge.

C) POLICY AND LEGAL FRAMEWORK VIS A VIS WOMEN'S RIGHTS

An enabling policy and legal framework is important in addressing women's land rights issues. Under international human rights law, women have a right to own and administer property without discrimination (UDHR; arts. 2 and 17, CEDAW, art. 15), and to an "equal treatment in land and agrarian reform" (CEDAW, art. 14(2) (g)). Within the family, both spouses have equal rights in the "ownership, acquisition, management, administration, enjoyment and disposition of property" (CEDAW, art. 16). The ACHPR also guarantees without discrimination the right to property (arts. 2 and 14), and mandates states to eliminate every discrimination against women and to protect women's rights (art. 18(3)). The Protocol to the African Charter on Human and People Rights on the Rights of Women in Africa provides for the integration of a gender perspective in national legislation (art. 2(1) (c)), for equality of rights of the spouses within marriage, including in relation to property (art. 7), for the right of married women to acquire and freely administer separate property (art. 7), for equality of property-related rights upon divorce or annulment of marriage (art. 8(c), for equality in inheritance rights (art. 21), and for women's access to land (art. 15(a)).

Furthermore, in 2004, FAO adopted Voluntary Guidelines on Responsible Governance on Tenure (VGGT). The Voluntary Guidelines encourage States to "respect and protect the rights of individuals with respect to resources such as land, without discrimination" and, where necessary and appropriate, to "carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land" It also provides that "States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit." The guidelines therefore do provide a basis for advancing women's land rights. In the Malawian context, strides have also been made in putting in place a policy and legal framework that seeks to protect land rights in general and women's rights to land. As already alluded to in this report, ten land bills were enacted into law in 2016. However, of interest to this study is on whether such laws especially the Customary land law do address women's land rights and whether they can provide security of tenure for women.



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D) WOMEN'S AGENCY IN GAINING OWNERSHIP OVER LAND

Verma has defined women's agency as the creative and powerful ways women use to negotiate, contest, resist and create room for manoeuvre in their struggle over land. Therefore, recognizing women's agency, creativity and backdoor resistance and activism is crucial for advocating recognition and protection of women's rights.

Verma quoted in Banda et al (2010) argues that while women may be rendered vulnerable and marginalized in accessing, defending and controlling land and other productive resources, they are not powerless actors. Verma has defined women's agency as the creative and powerful ways women use to negotiate, contest, resist and create room for manoeuvre in their struggle over land. Therefore, recognizing women's agency, creativity and backdoor resistance and activism is crucial for advocating recognition and protection of women's rights. Abwuzza (quoted in Verma 2007) in fact argues that women adopt postures of deference to patriarchy in public while creating room to manoeuvre in back door spaces (Verma 2007: 2). Therefore, it is necessary when analysing women access and control over land that one should be able to go deeper and understand differences between what is portrayed in public and the hidden power and negotiations women have. As Kandiyoti (1997) observes, women strategize within a set of concrete constraints, which she calls patriarchal bargain. This exerts a powerful influence in shaping gendered subjectivity and determines the nature of gender ideology in different contexts. The research therefore proceeded on the premise that women do seek justice and fight for their rights when experiencing land rights violations. In this regard, it was important to identify who the woman talks to and where she goes to seek justice. It was also important to identify key actors in defending women's rights to land.

2.6. RESEARCH FINDINGS

In trying to understand women's land rights, the study sought to analyse how women access land and if they have control over the same within the matrilineal and patrilineal social systems. It was understood that we can only understand the implications of the new enacted land laws when we have understood

the current arrangements in both matrilineal and patrilineal societies in so far as land rights for women are concerned. The research adopted definitions by FAO and therefore looked at the following;

- Access to land - defined as the rights to use the land for grazing, growing subsistence crops as well as gathering minor forestry products with consent.
- Control over land - defined as the right to make decisions on how the land should be used and to benefit financially from the sale of the crop
- Ownership of land - defined as the rights to sell or mortgage the land, to convey the land to others through intra-community reallocation or to heirs and to reallocate use and control rights (FAO, 2002)

The researchers therefore looked at how women can own land, use land and at the same-time how they are able to make decisions on the same.

A) WOMEN'S LAND RIGHTS VIS -A- VIS LARGE SCALE LAND-BASED INVESTMENTS

The study found that women's land rights are being threatened because of large scale land-based investments. There are rampant cases of land grabbing in Chikwawa district which are being perpetuated by multinational companies such as Illovo which is a sugar producing company. PLAAS (2015) noted that Illovo Sugar Company Limited, a South African sugar company, owns Illovo Sugar (Malawi) Limited, which operates estates in Malawi. Illovo Malawi is the country's sole sugar producer with more than 60% of total sugar sales sold to domestic consumer and industrial markets, and the balance exported to preferential markets in the EU and the USA, and the surrounding region (Illovo Sugar Limited 2015). In 1995, it opened to sourcing sugarcane for its mills from private growers, prompting interest among Malawians to enter this industry. This led to the birth of organizations like Kasinthula Cane Growers Limited in Chikwawa. PLAAS (2015) further noted that the expansion of sugarcane out-grower schemes in Chikwawa and Nkhotakota districts have become a great concern for the local people in these areas. Here, sugarcane fields have been established on customary land which was already used by local communities. The non-consultative and non-participatory processes have characterized these land acquisitions. The company has been buying large tracts of land through the



chiefs usually without consent of the affected community members. Women explained that they would just be told by their village chiefs that their pieces of land have been bought. In most cases, compensation is also hard to come by.

Apart from companies, it was also reported in Chikwawa that even “rich” people from the Blantyre the commercial city of Malawi have been buying large pieces of land for very little money. What the research found was that the burden is now placed on the women to start looking for another piece of land. This is also met with sexual abuse as chiefs demand sexual favours from women in order to give them new pieces of land. This was also confirmed by men in Chikwawa who complained that some of the village chiefs have been demanding to sleep with their wives. Also, important to note is the fact that women tend to lose access to natural resources such as water and forestry products due to these land grabs.

B) THE LAND LAWS AND WOMEN'S LAND RIGHTS

Malawi is regarded as having one of most progressive legal frameworks in protecting the general human rights of women. Section 20(1) of the Constitution of the Republic of Malawi states that “discrimination of persons in any form is prohibited and all persons are under any law guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status. Furthermore, Section 20(2) of the same Constitution states that “Legislation may be passed addressing inequalities in society and prohibiting discriminatory practices and the propagation of such practices and may render such practices criminally punishable by the courts”. As such the Constitution does protect women from discrimination on anything including their access to land. This means that women can use such provisions to advocate for protection of their land rights.

Over the past ten years, Malawi has been working on reforming land laws so that they are responsive to rights and gender discourse. Such reforms culminated in the enactment of land bills in 2016 that seek to address the land tenure systems in Malawi. Among such bills was the Customary Land Bill which was enacted into law the same year. The customary land law is of interest to this study because 80% of the population of Malawi live in the rural areas where they use customary land. The new Customary Land Act provides for registration of customary land in

form of customary estate. The most important aspect regarding the creation of customary estate is that an individual will now be able to own land in her/his own right thereby having a guaranteed tenure security. With the creation of a customary estate under the new Customary Land Act, an individual, either man or woman will be registered as the owner of the land which in turn can be used to create a lease or sub-lease. The Customary Land Act, 2016 also allows registration of persons as joint tenants or tenants in common (Ref section 20 of the Customary Land Act, 2016 and section 95 of the existing Registered Land Act (Cap. 58:0). However, the law does not provide for mandatory spousal joint registration which means an individual can choose to register with their partner or not.

This option seems to work better for women in a matrilineal system who if they choose to register in their own name means that they have exclusive rights over their land. The situation is different in the patrilineal system, where women already do not own land by custom. What this means is that there would be need for women's agency to be developed in the patrilineal societies so that they can bargain within patriarchal systems to own land jointly with their husbands before they talk about the registration of the same altogether. If nothing of that sort happens, it means the status quo will remain the same despite having a new law in place. However, with the introduction of the customary estates, it means that citizens including women will have to be paying fees for their leases. While it is a positive administration arrangement, this may force women to sell off their land as they cannot afford to pay such fees. This will lead to further poverty. It is worth noting that in Malawi, poverty wears a female face because most women neither own nor have access to profitable resources that would assist them in improving their livelihoods. Close to 70% of the labour force in the agricultural sector are women and gender inequalities are widely spread in the sector as women only benefit from 30% of the agriculture earnings. In addition, women cover 90% of the domestic chores at the household level, which underscores the “double burden” women are carrying at the household level (Dan Church Aid, 2011). There are clearly, significant gender disparities that undermine women's economic empowerment. Women work more hours than men but spend considerably less of their working time on income generating activities. In the agricultural sector, women grow crops for home consumption than men, who are more likely to cultivate at least some cash crops (OXFAM, 2011).



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The new customary land law also provides for the establishment of Customary Land Committees which will be responsible for the management of customary land as opposed to the previous arrangement where traditional leaders were the managers. To ensure that there are women's voices in the committees, membership is supposed to be comprised of six persons, at least three of whom shall be women. Similarly, membership of the customary land tribunals shall have at least three female members out of the six. The assumption with this arrangement is that if women are in the committees and tribunals, their interests will be taken on board. However, experience by women's rights NGOs that participated in this study shows that women may be taken in committees but as long as they do not have the necessary negotiation skills, it will be a challenge for them to influence decisions. What this means is that if there will be meaningful participation of women in these committees and tribunals, there will be need to empower women with necessary skills.

Experience from other jurisdictions shows that although the law may provide for such things as registration, it is not automatic that women will be able to register their land. For example, a study on the impact of statutory land policies and land reform in Uganda's Kapchorwa and Luwero districts found that most women did not have land registered in their names. In most cases, the few women who purchased land registered the land in their husband's names, according to custom. The same study showed that women have limited knowledge of their property rights under the legal system, and that gaps in the legal system prevent inheritance and co-ownership of property acquired in marriage (Women's Land Link Africa et al., 2010). What this shows is that even in our context, registration of land is not the only answer to alleviating problems that women are facing regarding land. Meanwhile, apart from the statutory bottlenecks, women's land rights continue to be inhibited by the patriarchal nature of customary law, which breeds negative customs and practices. In terms of customary land across both matrilineal and patrilineal systems of marriage, these harmful practices include the fact that women have few or no independent rights to land. This situation prevails despite a constitutional provision that invalidates all customary laws and practices that contradict constitutional provisions.



[A]lthough the law may provide for such things as registration, it is not automatic that women will be able to register their land. The few women who purchased land registered the land in their husband's names, according to custom. Women also had limited knowledge of their property rights under the legal system, gaps in the legal system prevent inheritance and co-ownership of property acquired in marriage.

C). OPPORTUNITIES AND BARRIERS FOR WOMEN'S LAND RIGHTS FROM A WOMAN'S PERSPECTIVE

Role of Culture

In Malawi, it is interesting to note that while culture dictates present themselves as opportunities in matrilineal society to advance women's rights, they are a barrier in patrilineal systems. It was found that women's access to land and ownership is guaranteed by customary law in matrilineal system where descent is through the female line and they are regarded as owners of land by culture. For women that are married, their husbands follow them to their native homes which means the women remain among their kin making it more secure for them. In this sense, a lot of land in the area is owned by women. During the discussions, the majority of women from Machinga and Mchinji districts stated that '*malo ndi athu chifukwa azimbuyathu anatigawilako kuti tizilima. Amunathu sanganenepo kanthu zamalowa chifukwa ndi anthu,*' literally meaning "We own the land because it was passed down to us from our grandmothers. Our husbands do not have a say on the land because it belongs to us". It was said that when a family has discovered that the land that they currently own is not enough because of the children that they have, they might go to the chief and ask for some more land. If they are given the land, this land is said to be for the children. The wife has little say on this newly acquired land. They said that this land is passed on to the children and not the wife because she might think of remarrying after the husband's death. Therefore, the children might hold on to this new land as the wife and the new husband continue using the wife's inherited land.

Many women and men alike agreed that a great portion of the family's land must be given out to the daughters of the family and not the male children. They said that in patrilineal societies, men get married and move out of





their parents' house. As they start a new life with their wives, they find fields to live on and cultivate. On the contrary, in matrilineal societies a girl/woman belongs to the village, meaning that she will grow, get married, have children and die in the same village. When she gets married, a man comes and joins her on her land which will be passed on their children. For these reasons, they said that it is justified that women should have a lot of land compared to men. This also explains why a lot of land in this society is owned by women.

This also confirms the Liwewe (2008) study where she found that women in matrilineal societies are looked upon as the root of the lineage (tsinde). The basic unit of organization within the matrilineal system is sorority of the nuclear family units that are based on matrilineal descent. Liwewe further asserts that matrilineal rules give women rights of ownership to land, and residency is commonly matrilineal. This means that Matrilineal households in Malawi centres on the woman who has primary rights to land and other natal property through her lineage. Liwewe also observes that normally in matrilineal societies, a mother gives pieces of land to her children when they are mature enough to have a piece of land on their own or when they get married. For male children, their access to land diminishes when they move out to marry. While for female children, access is guaranteed even in situations where they are not physically present in their original homes (Banda et al 2009). While female children can inherit land, male children in principle have only user rights". (Stein Holden et al. 2006 in Liwewe 2008). This organization in matrilineal societies 'acts as a levelling mechanism in gender relations, as it awards women direct land rights and ensures their autonomy' (Liwewe 2008:).

Kachika (2009) noted that in Machinga district, where matrilineality and matrilocality predominate and chiefs can allocate land to women in their own right, about 65 per cent of women had land. This research was also able to confirm the same. Where it was estimated by the Key informants that 60% of women own land. Similarly, in Mchinji district, the chiefs pointed that at least 65% of the women own land in their own rights. It is however worth noting that this ownership was not documented as by the time the research was being conducted the new customary land law had not yet started functioning. However, the research found that although women may have guaranteed access to land, their control over the same differs depending on their marital status. The women respondents in

Machinga and Mchinji districts reported that for married women, control over land use normally rests with their husbands. This was attributed to the belief that a man is the head of a household. Some women categorically stated that *"mwamuna ndi mutu wabanja ndiye ali ndimphamvu yopanga ziganizo za mmene malo akuyenera kugwiritsidwa ntchito"* literally meaning *"a man is the head of the household so he has all the power to decide how land should be used"*.





When a woman is divorced, she loses access as she returns to her native home where culture does not allow her to own land. Her access to land depends on the goodwill of the father, her brothers or her paternal uncles. Culture dictates no longer belong to their native villages when they marry. Women are expected to get married and leave their native villages and when they do that they no longer belong to their native villages. This might explain why women will remain in abusive marriages in fear of losing access to land. WOLREC's research in 2010 found that most divorced women remarry so that they can secure access to land.

Additionally, the women also explained that because most of the time it is men who have financial resources, they control how land is used since they are the ones that can buy farm inputs. When asked if women have power to decide whether to sell their land or not, they highlighted that the decision to sell is normally done in consultation with either their brothers or maternal uncles. However, it was noted that those women who buy land whilst alone have full ownership and control of the land than those bought with their husbands. This brings to an interesting debate on how people get married in Malawi thus whether out of community of property or in community of property. For widows and divorced women, their access remains the same as the land already belongs to them and they are also in their native villages.

In patrilineal society, culture is a barrier as women by culture do not own land. The study found that women can only access land through their male counterparts. For example, in Chikwawa, and Mzimba districts it was noted during the research that being patrilineal societies, access to land by women is mostly through males who can either be their husbands, sons, paternal uncles, fathers or their in-laws. For married women, their



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access to land as indicated by the women respondents is through their husbands. What it means is that a married woman will enjoy such access if the marriage is subsisting. When a woman is divorced, the research found that she loses access as she returns to her native home where culture does not allow her to own land. Her access to land depends on the goodwill of the father, her brothers or her paternal uncles. It is worth noting that by culture women are expected to get married and leave their native villages and when they do that they no longer belong to their native villages. This might explain why women will remain in abusive marriages in fear of losing access to land. WOLREC's research in 2010 found that most divorced women remarry so that they can secure access to land.

Many women and men alike agreed that a great portion of the family's land must be given out to the daughters of the family and not the male children. They said that in patrilineal societies, men get married and move out of their parents' house. As they start a new life with their wives, they find fields to live on and cultivate. On the contrary, in matrilineal societies a girl/woman belongs to the village, meaning that she will grow, get married, have children and die in the same village. When she gets married, a man comes and joins her on her land which will be passed on their children. For these reasons, they said that it is justified that women should have a lot of land compared to men.

On the other hand, the research found that for widows, access to land varies from clan to clan but it really depends on the goodwill of their deceased husbands' relatives. This was an interesting area of discussions as traditional leaders indicated that widows remain in their deceased husband's villages and continue using the land. Women respondents however noted that although relatives from the male side may tell them to remain in the village, they end up using subtle ways to dispossess the land. The women respondents explained that the relatives may come to the widow and ask for certain portions of land and as the women explained it becomes difficult for them to say no. As time elapses, the women find themselves with very small pieces of land not worth anything. In some cases, widows are chased away from their husband's villages. The case study below illustrates these assertions:

CASE STUDY

After a long marriage that produced three children, Mary's (not real name) husband committed suicide for unknown reasons. The husband's relatives chased Mary away from her land blaming her for the suicide even though the police had cleared her of any charges. She also refused to be inherited as wife in a practice known as *chokolo*. She then went to live in her uncle's village where one of her in-laws got interested in her case and looked further into how she had been dispossessed of her land. This in-law then forced the relatives to give her a small portion of land and they reluctantly agreed. Now every growing season her in-laws shift the boundaries and encroach on her piece of land where she cultivates food. She is afraid to ask for more land due to the delicate nature of the situation. Furthermore, she must rent another piece of land to supplement what she was given.

Her in-laws have even gone as far as physical abuse in their quest to deny her land. All this is happening despite a ruling from the chief that favoured her and demanded that her in-laws give her land back and rebuild her house which they had destroyed when grabbing the land. She also approached the women forum in her community for help to no avail. Because of her predicament, her children stopped attending school and she has difficulty getting necessities like clothes and food.

D) GENDER BASED VIOLENCE AS A BARRIER

Gender based violence also acts as a barrier for women when it comes to access and ownership of land. For example, in Chikwawa, the research team found that all land has been allocated to community members, but chiefs demand some land back and this is done in subtle ways. The women complained that chiefs take advantage of their vulnerability to demand sex in return of land. For the women that refuse, consequences in different forms follow. The researchers were told by a man how his wife has been pressurized by the village chief of their area to offer sexual favours to guarantee their rights to land. Since the woman has been refusing to do the same, the family has been ostracized so much that they are not able to benefit from the activities taking place within their villages. The case

SEX FOR LAND

Rose (not real name), a 42-year-old woman from Chikwawa district was asked to have sex with the Village Chief in exchange for land. Her husband having died in 2012, the mother of three returned to her home where she asked the GVH of the area to give her land for her to settle on with her children. She started farming on the land and in the second year built a good house. The Chief who gave her land propositioned her and when she refused became angry and told her not to continue building on the land. He said she would be given another piece of land, but she refused insisting on maintaining her land. One day the chief entered her bedroom and the woman called the chief's son and sister who helped to settle the matter. The chief accepted and apologized but this worsened the relationship between the woman and the chief. On several occasions, the chief wanted to force this woman to have sex with him by entering her bedroom, but the woman refused him. In retaliation, the chief has made sure that the woman did not benefit from all handouts from government which her fellow villagers were receiving which included subsidized fertilizer.

study below highlights the plight of some of the women experiencing such kind of abuse.

E) WOMEN'S ACCESS TO JUSTICE ON LAND

When it comes to the attainment of justice on land rights, women in both patrilineal and matrilineal societies are thrown off balance; they are not accounted for. It was clear from the study that the continued use of customary laws perpetually oppresses them under the guise of obeying and following mdauko (culture) in the case of patrilineal societies or mwambo (culture) in the case of matrilineal societies. True to this observation, the constitution invalidates all forms of culture that discriminate women and grants women to seek legal redress on any oppressive cultural practices, yet this legal redress can only be sorted out from the very traditional leaders who oppress them. The study found that women do not choose to go to customary leaders of their own volition, but they are forced by circumstances, since these are the

institutions that are within reach.

"We have nowhere to go with our land grievances, when we go to the courts we are sent back to the village to first resolve the issue with our local leaders, and most of the times out of fear of these leaders we just come and sit back" complained Nyakamera (not real name of Traditional Authority Jalavikuva). Similarly, another woman in the same area expressed the same challenge in the following way "We do not do anything with the hope that one day we or our daughters will enjoy the land rights we are denied today"

A key informant in Mzimba blamed the patriarchal norms which the Ngoni hold on strongly for the continued denial of satisfactory justice on land rights for women. She also blamed lack of knowledge by the leaders and communities on women's land rights as well as the prevalent customary laws in the area which privilege men and discriminate against women in matters of land acquisition. In matrilineal society, there were mixed observations regarding access to justice for women. In some instances, the study found that because women are in their own native villages, they feel comfortable to approach their village chiefs as they already know them and making acquisition of land easier. Despite this perception, the study found that challenges still exist regarding access to justice in matrilineal societies. In Machinga district for examples, the study found that access to justice for land rights remains a challenge.

Women alleged that traditional chiefs tend to favour men. However, the study found that there are also women's Non -Governmental Organizations that have been promoting women's rights to land and have been able to assist women to obtain justice although their coverage is limited. In Mzimba for example, the study found that Coalition of Women Farmers (COWFA) has been instrumental in engaging traditional leaders to give women land. In this way they can present the challenges that women are facing so that the traditional leaders can assist women. In Mchinji, the study found that organizations such as Women Hope for Change has been supporting women go through the court process on land cases. This includes coaching them on how they can defend themselves in the Magistrate Court in the absence of legal representation. It is worth noting that there are other organizations that are not operating in the four districts but do provide legal assistance to women seeking justice. Thus, the study found that WLSA a women's rights NGO that assists women in Thyolo and Nkhota-kota to gain justice

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whereas WOLREC assists women in Balaka and Salima. CECWODA and RWA also assist women to gain justice on issues of land in Blantyre and Lilongwe districts.

In addition, the study found that while some women knew where to seek justice, there were many women who did not know the laws that promote their land rights let alone what they can do to challenge these human rights violations. This lack of knowledge affects the extent to which they can seek assistance as well as challenge the human rights violations which they face. In all the four districts, the research found that although there were some women that were challenging land rights violations, many of them seemed and sounded helpless when asked what they have done about land rights violations. They did not know what the legal provisions or which justice structures to engage with. The dilemma, the study reveals, is that while the government recognizes both customary and statutory institutions, matters of land are mainly left under the custody of customary institutions except when the cases go to the courts of law.

2.7. CONCLUSIONS AND RECOMMENDATIONS

It is clear from the study that although mechanisms have been put in place including enactment of laws on land, enjoyment of women's land rights in Malawi remains a challenge. The study has shown that several factors interplay to deny women's land rights. Although the matrilineal systems seem to present a more secure alternative for women, the research has confirmed that such security is mostly limited to access and not control over land especially for married women. It is therefore a paradox that even though women are regarded as owners of land in this context, they cannot independently make decisions about how to use their land. On the other hand, patriarchal norms are more entrenched under patrilineal systems which dictate that women cannot own land. What this means is that some of the provisions of the Land Act, will not be applicable to them. For example, although the newly enacted customary land law is encouraging registration of land, women in the patrilineal setting will not be able to enjoy this provision as most of them do not have land which they can call their own. The research has shown that despite having a law in place, customary laws and institutions still have more power regarding what is happening on the ground. The customary laws and practices are so entrenched that there will be need for more work with

customary institutions to secure land rights for women in Malawi. This confounding legal regime leaves fertile ground for LSLBI which are taking advantage of these loopholes and acquiring land in large quantities. Women are losing their land to multinational companies as well powerful political elites with little to no compensation.

RECOMMENDATIONS

It is therefore clear that more efforts are needed to promote women's land rights. The following recommendations are proposed to enable the women acquire and enjoy land rights.

A) OWNERSHIP OF LAND BY WOMEN

The culture in patrilineal societies/communities does not allow women to own land while women in matrilineal societies are regarded as owners of land. The role of chiefs in changing the status quo in patrilineal communities cannot be overlooked as they are considered custodians of culture which sometimes violates women's land rights. Therefore, working closely with chiefs would help in bringing about social change. Any advocacy strategy which can be put in place should be twofold; community based, and involve policy makers focused. There is therefore need for a multidimensional approach to women's land rights by manoeuvring through the spaces in the current legal pluralism.

In addition, the study has shown that women are also losing their ownership over land to LSLBI. There is need to engage Multinational companies and powerful elites so that they can follow the right procedures of acquiring land as well as compensating affected community members. Also important is to empower communities with the right information on how investments are supposed to be established so that they can challenge any decisions that are not in line with the land law provisions on land-based investments.

B). PARTICIPATION OF WOMEN IN LAND MANAGEMENT

The new Customary land law has put in place mechanisms to ensure that women's voices are heard. This includes 50% representation of women in both Land Management Committees and Tribunals. The analysis on the laws has shown that if women are not given the necessary skills to participate in decision-making, their participation will be reduced to numbers. It is important that when women get elected to such structures, they should be empowered with the necessary negotiation

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skills so that they can ably participate in the decision-making process. There will be need therefore to conduct capacity building initiatives once these structures are elected.

C) ACCESS TO JUSTICE FOR WOMEN

The study has shown that access to justice for women is hindered by several factors which include unresponsiveness of traditional structures and women's lack of knowledge on laws, among other things. Where women's organizations have assisted, the outcome is positive. It is important women be sensitized on the new land law and how it is trying to protect their rights. Secondly there is need to work with women's rights NGOs so that they can give the necessary support to women that are seeking justice. There is also need for

such NGOs to build up strategic alliances so that in places where NGOs are not operating, women can still be referred to the available NGOs and get the required assistance.

D) ENHANCING WOMEN'S AGENCY

The study found that most women that had experienced land rights violations felt helpless about their situation. As a result, they were suffering in silence. There is need to enhance women's agency by mobilizing women into groups which will be able to engage traditional structures in their quest to enjoy land rights. Experience has shown that it is more secure to work in groups on sensitive issues like land. When individuals work on their own, they are easily targeted.



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Swaziland



3.1. COUNTRY CONTEXT

Swaziland is one of the smallest countries in Africa, comprising a landlocked area of 17,364 square kilometres. It is bordered by the Republic of South Africa on its north, west and south border and by Mozambique in the northeast. The country's population is currently estimated to be 1,317,007 people, comprising of an estimated 668,939 females and 648 068 males.¹ 78% of the population lives in rural areas and 63% is classified as poor, with women forming the majority in both cases. Swaziland is an agro-based society with land playing an important role both for subsistence and commercial farming. In addition to residential and livelihood uses, land has socio-cultural significance. The land resource is central to the lives of women living in rural areas as they have the additional responsibilities of providing domestic household necessities relating to food security, education, and healthcare.

However, land administration and management in Swaziland is amongst the country's most challenging areas of governance. Contributing to the complexity of dealing with land are the legacy of colonialism, an underdeveloped policy and legal framework, and the dual governance system. In addition to these, women asserting their land rights must deal with patriarchal and discriminatory socio-cultural norms and practices that create further barriers for women's access to and control of land. Nonetheless, women themselves have been in the forefront of challenging this complex multi-layered web of limitations. The Constitution, adopted in 2005 with provisions on equality, non-discrimination and gender equality in land acquisition, has increased women's confidence in asserting their rights. Increased registration of land by women, and challenges to unconstitutional laws and practices, have given momentum to women's greater consciousness regarding their rights.

In the context of large scale land acquisitions, women's lack of security of tenure has created vulnerability to land grabbing and exposure to negative consequences, not only for individual women but also for their families and the development of their homesteads. Tenure is critical because it has an impact on the extent

to which women are involved in any processes of change to their land and how women and their families can engage with these processes – whether their voices are heard and how – so that they are able to not only recover from any negative consequences but are also be able to improve their circumstances. While at the global level, the phenomenon of land grabbing has several permutations, most notably those that are spurred on by foreign investment related to food security and alternative sources of energy, in Swaziland, it is mainly domestic players who have played a role in grabbing land for various purposes, mainly government development projects and tourism. This report examines women's land rights within this context to understand women's experience of the land-grabbing phenomenon and identify potential opportunities for women to strengthen the full enjoyment of their rights. The report will therefore address the policy and legal context governing land administration and management in Swaziland, inclusive of national policies and laws; the situation of women's land rights within this context, giving examples of land grabbing cases and the impact on women and their families. The report also identifies stakeholders that are relevant for advancing the women's land rights agenda as well as recommendations for some initial actions in this regard.

3.2. OBJECTIVES AND PURPOSE OF THE RESEARCH

The concept note called for conducting a "feminist research on the impact of large scale land acquisition on women's access to land and security of tenure in Swaziland, to examine the policy environment around women's land rights in Swaziland and highlight the gaps." Thus, the point of departure and guidance in conducting the feminist research was an appreciation that the research's orientation would lean towards critiquing and changing society regarding women's land positioning and how in particular large-scale acquisitions and other developments have a peculiar effect on them

- Commitment to women, placing women's shared experiences at the centre of all forms of analyses and political action.
- The existence of multiple female voices,

¹ United Nations Department of Economic and Social Affairs: Population Division, Swaziland Population, http://countrymeters.info/en/Swaziland#Population_clock The results of the national population census conducted in 2017 have not yet been published. The last official Population and Housing Census was in 2007 and placed the country's population at 1 018 499 inhabitants, comprising 537 021 females and 418 428 males





positions and different lived realities as opposed to a universal female experience was taken into consideration as espoused by (Hall, 1996; Wright, 1995).

Therefore, being a feminist research, it is ethically motivated and has a major role in changing social inequality. It thus is an expectation that the research product will not just add knowledge but also spur action for transformation in the immediate, short and long term. To this end, women are not just added to the research but are viewed as key locators of culture, society and politics. Women are thus viewed as players not victims in this regard.

3.3. THEORETICAL PERSPECTIVES, APPROACHES: CONCEPTS, MEANINGS AND DEFINITIONS.

The choice of approach was influenced by the felt need in crafting the concept on impact of large scale acquisitions on women in Swaziland. The research methodology sought to capture the voices and notions of those who are affected by large scale land acquisitions and other moves that have a bearing on their land and related rights. I approach the research as a feminist with declared public interest in women's rights to access, control and be part of all forms and levels of decision making in land and matters ancillary thereto. As such the research unearthed the land situation of Swazi women from their perspective and processes that will be true to transforming the situation for the better. The use of feminist research methodology sought to better understand the nature of oppression and struggles women have endured as a group, bringing out knowledge on how to change and improve the situation of women. Qualitative methodology was highly adopted in this research. Review of different researches was done, and analysis of interviews done, which were all shaped by various feminist methodological considerations, including, but not limited to:

The choice of combining the feminist research methodology with this is because of their complementarity. This perspective seeks to understand the role of law in the social subordination of women i.e. their labour, qualities and activities. Three methodological bases can be distilled being; the ethical, empirical and legal doctrine. It gives the freedom of use of available sources of material wherever they can be found. In common with feminist research methodology it regards women as knowers and situates knowledge taking cognizance of what is known and the way it is known is reflective of situation or perspective of knower. This perspective facilitates looking at a situation, women's land situation, interaction with investors from the bottom where the woman is situated. It thus allows that law, morality and reality be viewed from a women's perspective, that is taking women as the starting point. Additionally, the women's law methodology has activism as a comparative advantage whereby the researcher does not have to distance herself from the issues facing interviewees on the guise of research neutrality. As a matter of fact, this perspective expects her/him to apply their expertise to help them out.

3.4. Methodology

The research did not employ a structured instrument as such, it made it possible for each interviewee to freely give information on implications of land acquisition on women. This allowed for a free flow of information about land especially as it impacts on women. It was open ended and allowed free usage of sources by interviewees as some not only referred to themselves but their significant others as well, in line with the women's law perspective of free usage of data and taking women's lived realities as the starting point. A literature review was also undertaken.

3.4.1. Process

While reflecting on the research process one had to pay attention to;

- the voices of the different interviewees;
- Letting different expressions emerge from the analysed data;
- Prioritising women's voices and taking them as authorities on interpretations of their situation;

Women's Law Perspective

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- Confidence in working with contradictions.

3.4.2. Sampling

Sampling was influenced by the terms of reference of conducting a feminist research on the impact of large scale land acquisition on women's access to land and security of tenure in Swaziland, examining the policy environment around women's land rights in Swaziland, and highlighting the gaps. It was also highly influenced by the very limited time and financial resources that were at the disposal of the researcher. Therefore, largely the study was desk-based analysis, with a limited sample. The sample considered the different types of land tenure systems and key players involved therein.

Hhohho Regional Administrator	Manzini Regional Administrator
Chief of an area in Hhohho	World Vision
Indvuna of an area Manzini	Land Management Board.
Chief Regent Manzini.	Royal Swaziland Sugar Corporation
Chief Regent Hhohho	Women and Law in Southern Africa Trust
Swaziland Investment Promotion Authority(SIPA)	Swaziland Water and Development Enterprise
Registrar of Deeds	Evicted Families Malkerns
Illovo	Evicted Women Malkerns Phondo
Focus Group of women	

3.5. STUDY FINDINGS AND ANALYSIS

3.5.1. Manifestation of the large-scale land acquisitions and land-grabbing phenomenon in Swaziland

The nature of the land grabbing phenomenon in Swaziland does not manifest in the classic large-scale land acquisition sense, spurred on

by foreign investment related to food security and alternative sources of energy such as biofuels. In Swaziland, the threat is from within. In this case, large-scale displacement of women and their families are occurring, mainly on land purportedly designated as farms when ownership is contested, and issues of tenure and the rights attached thereto arise. This in turn determines what rights women are entitled to and how far they are involved in consultations and decisions about what will be done on the land, including in the case of resettlement. For instance, in the Nokwane case of land grabbing and subsequent evictions detailed below, government evicted families for a development-related project. At Phondo and Malkerns communities, private persons claimed ownership of the land. However, in both cases the affected residents claimed the land had been in their families for generations, some with the belief that the land was held as Swazi Nation Lands (SNL)², including as concessions.

The issue of tenure is thus at the heart of land-grabbing because it is the issue of competing claims that result in protection or deprivation of land rights. The findings reveal that thus far the issue has been dealt with at a superficial level in the sense that there has not been a deeper interrogation of how residents that are due for eviction originally occupied the land. In the case of women, additional issues of occupation through marriage also arise, in some instances weakening the woman's insistence on her rights to the homestead land. Some examples of this arose in the Nokwane evictions where women heads of households could only trace their rights through anecdotal evidence of what they had been told by their in-laws when they had married into the families. Without the in-laws to attest to these rights, it was difficult for women to prove that they indeed had rights to the land.

In view of the historical questions about the nature of some of the land in Swaziland, which is exacerbated by the absence of a comprehensive registry that defined land boundaries, the issue of tenure must be further problematised so that doubts about the nature of the land and in turn what rights can be claimed from it are dealt with. It has also emerged from the research that in some

² SNL is land in Swaziland which is under the rule of chiefs for settlement of Swazi people.[1] It is vested in the king in trust of the nation. On SNL communal land is typically used for pasture with livestock belonging to residents of a chiefdom freely roaming. Land for homesteads and small farms is allocated by chiefs who also settle matters of land disputes (Source: Wikipedia. Accessed on 18/4/2018)





cases, chiefs themselves are not clear about boundaries of the areas under their control and have been known to erroneously allow *khonta*³ on land that is of another type of tenure outside their areas. In such cases, community members, who have undertaken all processes and duties required by custom lack protection when it emerges that the land that they *khonta*-ed on is not SNL.

The following cases of the Nokwane and Malkerns cases illustrate the land-grabbing and displacement consequences that result from this lack of clarity in tenure and attendant rights.

Nokwane Community: Land Acquired for Ministry of Information, Communication and Technology Development Project

In September 2014, the Swaziland government demolished several homesteads affecting more than 70 people at Nokwane community, including very young children and elderly women. Several of the homesteads were women-headed with a few elderly women taking care of grandchildren, amongst whom were orphans.

Government, represented by the Ministry of Information, Communication and Technology (ICT), claimed that community members were illegal squatters on government-owned land at Nokwane, in the Manzini region. On application to the High Court⁴ the Ministry wanted residents evicted to make way for additional space for the construction of the Royal Science and Technology Park, one of its development projects in the quest to fulfil the King's vision of a first-world Swaziland by 2022. Included in government's application was that the alleged delay caused by the community's refusal to move, was costing government millions and further delays would jeopardise the sponsor's continued support to the project.

The court stated that the community members (respondents in the "evict and demolish" application) "dismally failed to adduce any

evidence on how they got to occupy the farm in issue. The Respondents woefully failed to state before Court the circumstances under which they got to occupy the farm."⁵ The court further stated that, "there is overwhelming evidence that the Applicant is the holder of the title deed of the farm in issue as is clearly reflected under Title Deed Number 176/2005. It is evident that ownership of the property is vested in the Ingwenyama in trust for the Swazi Nation and that His Majesty has allocated the land to the Applicant through the Ministry of Information Communication and Technology for the construction of the Royal Bio-Technology Park."

According to accounts of community members⁶ given to civil society organisations⁷ who were first responders when the demolitions started, they acquired the land through the customary process of *kukhonta* in the Lobamba Lomdzala chiefdom. They stated that the chief had acknowledged accepting the allegiance paid by those aspiring to join a chiefdom and be allocated land. In the case of one family not involved in the case, an officially signed and stamped document confirmed the allocation of the land to them. The community members' claims to the land were not tested in court and while an appeal was made, the demolitions had already taken place and many of the community members had left the area. The Supreme Court thus declined to engage the merits of the case on the basis that it had been overtaken by events and entertaining it was a mere academic exercise the court was unwilling to engage in.⁸

In terms of compensation, the ICT Ministry claimed it had offered community residents compensations and planned for them to access land in a neighbouring chiefdom but that residents had refused and were now giving government no option but to evict them and demolish their homesteads to enable the Bio-technology Park project to proceed. Accounts of residents indicate that issues of compensation were not agreed on. Civil society actors on the ground noted that

3 SNL is land in Swaziland which is under the rule of chiefs for settlement of Swazi people.[1] It is vested in the king in trust of the nation. On SNL communal land is typically used for pasture with livestock belonging to residents of a chiefdom freely roaming. Land for homesteads and small farms is allocated by chiefs who also settle matters of land disputes (Source: Wikipedia. Accessed on 18/4/2018)

4 Swaziland Government v Jabulane Dlamini & 19 Others (1155/14) [2014] SZHC401 (5 December 2014)

5 Ibid.

6 These include community members not part of the court action. (Some community members, though affected, were not included in the court case due to inability to contribute to legal fees)

7 These included the Lutheran Church of Swaziland, Swaziland Coalition of Concerned, Council of Swaziland Churches (CSC); Lawyers for Human Rights Swaziland (LHRS); Trade Union Congress of Swaziland (TUCOSWA); and Lutheran Development Service (LDS)

8 Jabulani Dlamini & 9 Others vs Swaziland Government (51/2014) (2015) SZSC 07/9 December 2015)





apart from giving residents an opportunity to remove their belongings from the houses and offering limited transport, government did nothing to assist those evicted. A collective civil society effort led by the Lutheran Church attempted to support those evicted. Those who could not find alternative accommodation immediately were housed for several months in tents pitched on the grounds of the Lutheran Church.

Despite the best efforts of the Church and civil society, the displacement was extremely traumatic for community members. The tents were insufficient; hence residents were cramped, and families were separated as different genders were housed in separate tents. Food security was also an issue as many of the homesteads, including those headed by women, had gardens with subsistence crops and now they were dependent on donations that had to be shared. Health issues also arose as did security issues as the conditions caused conflicts and criminal activity. The young, working women were travelling longer distances to and from work and getting to the tent site later than they would have returned to their old homes hence exposing them to attacks of gender-based violence.

The Church supported by civil society, negotiated a relocation of the residents to a nearby chiefdom. However, to date many of the community members have not been able to establishment themselves in the chiefdom for various reasons, such as reported chiefdom disputes, or lack of resources to build a new homestead from scratch, particularly for the elderly women taking care of orphans. It is not clear whether residents are taking any action against government for compensation.



Members of civil society inspect the site and speak to community members before the demolitions



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Two of the elderly women heading households awaiting the demolitions

Malkerns Community: Competing Claims to Ownership and Compensation - Umbane Limited vs Sofi Dlamini and Three Others

The women are clear that they are not moving anywhere; they say they will wait for police to forcefully remove them if need be and for Red Cross tents. They have nowhere to move with their children.

This case involved questions regarding the nature and ownership of an area, cited as "Farm 670, Manzini District, Portion 8 of Farm 45 Manzini District and Portion 6 of Farm 45 Manzini District"⁹ in the court action between Umbane Limited and residents of the farm. Umbane claimed ownership of the property, having purchased it from Usuthu Pulp Company Ltd (Usuthu Pulp) in 1999 and showed title to that effect. On the other hand, the residents of the farm essentially claimed that the farm was concession land and that their families had lived there for generations and had thus acquired ownership by "acquisitive prescription." According to Scott (2006), "Prescription can be defined as an original method of acquiring ownership in terms of which a person who controls (possesses) a thing openly and as if he/she were the owner for a lengthy period of time becomes its owner. This is termed acquisitive prescription and is the means whereby real rights, in the form of ownership and servitudes, may be acquired (or lost) through the passage of time."¹⁰

One of the respondents who is a community member and part of the court action, related his understanding of the land ownership as follows: "I was born here at Mbetseni in 1956. This is where my father grew up. My grandfather was allocated the land by HMK Sobhuza II for purposes of being in close to proximity to his workplace at the Royal Kraal. To the best of my knowledge the now TDL farm was a concession to CDC Commonwealth Development Corporation. CDC bought Usutu Pulp but there are no records of conversion of the said property to TDL or even 99-year lease. So as far as we know, this was a concession granted to a certain Mr. Smith by King Sobhuza II. CDC took over from Mr. Smith in 1928 or thereabout."

During the court case two witnesses also spoke to why they thought their families owned the land. One witness stated, "This court has been told through evidence that your family had been allowed or given permission by Usuthu Pulp Company to establish[ed] temporary structures as its employees. This I deny because since my birth I have always known that to be my home. The way the houses were built here by our fathers and I cannot say much. All I know is that the area is our homestead" ... What I mean however is that the people are there because that is their home, they have done everything there, including spending their whole life there"¹¹

⁹ Umbane Limited vs Sofi Dlamini and Three Others (13/2013)[2013] SZSC 25 (31 MAY 2013)

¹⁰ Scott, S., Some Thought on the Law of Property in Swaziland

¹¹ Umbane Limited vs Sofi Dlamini and Three Others (13/2013)[2013] SZSC 25 (31 MAY 2013)





and, "I am not sure who gave the homes, that land, but I heard from the elders that when the trees were being planted the King directed that the homesteads should give way and built where they are established now."¹²

The Court found that the concept of acquisitive prescription did not apply and ordered that the residents vacate the farm within 21 days of the order. It also ordered "that the Deputy Sheriff for Manzini Region...evict the Defendants from the said premises and if necessary to seek the assistance of the Royal Swaziland Police Malkerns Station."¹³ Despite this, the residents remained on the property and have not yet vacated it. The respondent from the area stated that women and children have been most affected by this issue. He noted that amongst the challenges, has been food security. Per the court's orders, the residents were not allowed to cultivate their fields since the eviction order was granted: "...we have not been planting fields for three seasons now". However, he also noted that the women in the community had been critical in getting them reprieve in that, "Women and children are the majority of the people affected. It is through the women's intervention that sheriff listened to us when we asked for an extension. The women are clear that they are not moving anywhere; they say they will wait for police to forcefully remove them if need be and for Red Cross tents. They have nowhere to move with their children."

In addition to ordering the evictions, the Court was of the view that compensation for deprivation of property, as envisaged by the constitution, did not apply to the case: "... Section 19 (2) of the Constitution which states that "a person shall not be compulsorily deprived of property or any interest in or right over the property of any description " clearly, as amplified by subsections (a) and (b), envisages a situation where the state or an organ of it expropriates land. Section 19 (2) of the Constitution finds no application in casu." With the Supreme Court having made its decision as the highest court of the land, the residents decided to approach the King in his capacity as iNgwenyama, traditional head of the Swazi nation who has ultimate appellate authority in terms of customary law. According to the respondent, "The King said he respects court rulings but insists that we should be compensated. As to how, and on what scale and by whom that is not clear. The eviction is pending, and we were informed by the Sheriff that the new deadline for vacating the premises is 14 December 2017." In terms

of compensation, the respondent stated, "We are prepared to vacate as soon as we have been compensated. We want to be paid for our trees, movement of graves and above all our shelter." He explained that most of the residents were relocating to "Ngwenyameni, not too far from Malkerns" as the chief there had offered to assist. Those who are not interested in settling in that community would get places elsewhere.



"We are prepared to vacate as soon as we have been compensated. We want to be paid for our trees, movement of graves and above all our shelter."

An additional challenge noted in the cases of evictions was that even the legal representation of displaced residents did not necessarily delve into the merits of their clients' rights of occupancy of the land but rather sought claims to the land dismissed on narrow technical grounds. This was not only been unsuccessful, but also left questions of appropriate compensation for displacement open to such an extent that resettlement and compensation are left to the mercy of those able to prove their ownership to the courts. The continuing case of the Malkerns evictions should be interesting to observe in this regard because even though the court dismissed the question of compensation, the residents' appeal to the king resulted in him pronouncing that they should receive compensation. The question, however, is who is liable to pay this compensation since the landowner was released from this obligation by the court. This leaves evicted residents without recourse, a situation that is more acutely felt by women who, together with children are the majority of those that were evicted and do not have the resources to establish new households. In Malkerns, for example, the respondent noted that they were living insecure lives because even though they have not yet been evicted, they were unable to develop the land and had not cultivated the land for years, which affected their ability to grow food for subsistence.

Land acquisition inevitably results in the displacement of communities in the affected area, raising issues of compensation for residents, which is inextricably linked to the nature of activities on the land to be expropriated. The displacement of the community had adverse effects as described by respondents at eGebeneni and eNdlinilembi.

¹² Ibid.

¹³ Ibid.





Their case involved a dispute on the status of the land and nature of tenure. Respondents related how they had been moved from their homesteads which had been claimed by a certain Mr. Hulley as private property yet their understanding was that the land was Swazi nation land where their families had lived for generations. One woman traces this history as follows: *"I am 63 years old, when I married as young girl with a first born who is now about 50 years of age, my in-laws were already living there. My mother in law is in her 80's and that is where she got married too. The place was Swazi nation land under Chief Mlobokazi...Yet we are told that the Hulleys bought our land, but we don't know from whom and how". The father of JJ Hulley is the one who asked our grandparents to bring his sheep to graze at our lush place (akhotsisa). With time he passed on and his son now an old man, JJ Hulley continued. We had cordial relations, we worked on their farm. We had our own fields, orchards, built homes buried our dead and so on. We are told that Hulley's father informed the community way back that he had bought the place they were settled on, it was part of his farm, but he was not going to move them, they would have rights to live there in perpetuity passing the same to their successors."* She explained that the dispute eventually went to court and Hulley was ordered to relocate the homesteads and compensate them for their losses. However, respondents indicated that the resettlement had worsened their conditions of living.

A respondent described the effect as follows, *"We are a distraught community. We had a good living there. We used to work at Hulley's farm or neighbouring farms and wherever we chose. We had livestock, orchards and good markets in close proximity. As for us women, especially the elderly, we do not know what to do in this place. As you can see, the plots are very small, and the ground is terrible and rocky, good for nothing. Above all, there is no water. The chief has a borehole and he lets us get water either once or twice per week. There is no transport – the bus is once a day and drops us three kilometres away. We are just lost for what to do, ready to die here as there are no opportunities for anything. The chief had said with time he will try to get us fields but there is a chieftaincy dispute with the adjacent community. The sad thing is that to earn a living here, one still needs to travel back to Malkerns."*



"I am 63 years old, when I married as young girl with a first born who is now about 50 years of age, my in-laws were already living there. My mother in law is in her 80's and that is where she got married too. The place was Swazi nation land under Chief Mlobokazi...Yet we are told that the Hulleys bought our land, but we don't know from whom and how". We had our own fields, orchards, built homes buried our dead and so on.

Another respondent confirmed the difference in the standard of living. *"Phondo was a land of milk and honey to us, we had orchards, medium scale vegetable gardens and I used to sell some of them. I had piped water from the mountain. In the end it was very nasty as Hulley would not allow vans to go through the gate to come and get vegetables and fruits in bulk. We would wake up at 2 am carry them to the gate so that by 4am when the vans came to stock we would be there. We were financially independent in Malkerns. As for me I had an orchard with a variety of trees various types of mangoes, oranges, lemons, avocados and bananas. Even Hulley got vegetables and some fruits from me. We are just not coping with the water situation here. We get water through umphakatsi weekly or twice. Sometimes there is no water when it's our turn. I am trying to harvest all the used water and reuse for watering my trees. Hulley used second hand material to build my house as you can see, including the roof, which leaks. Yet I had good house built with quality materials, some of which he did not bring."*

3.5.2. Women leading change to land rights recognition despite slow law reform processes and changes to customary practice

Women's equality in the protection of and benefit from land rights is recognised in policy and some laws, including the supreme law of the country. But these provisions remain "paper tigers" in that implementation is not forthcoming, either through legal reform or comprehensive changes to customary practices. Looking at the ad hoc and inconsistent enforcement of the constitution, there seems to be no political will to address this resistance to change. In terms of statutory law, this can be seen in the Doo Aphane case detailed below where the change to one piece of discriminatory legislation came seven years after the adoption of the constitution,





and even then, not proactively by government but under compulsion from the courts.

In the absence of a systematic law reform process aligning existing law with constitutional principles of equality and non-discrimination, strategic litigation has led to amendment of provisions discriminating against women in registration of TDL. In *Attorney-General v Aphane Case No. 12/09 [2010] SZSC 32 28 May 2010*, government appealed a High Court decision in which Ms. Doo Aphane had challenged section 16(3) of the Deeds Registry Act 37¹⁴ of 1968 which excluded women married in community of property from registering title in their names. The Supreme Court confirmed that the provision was discriminatory and ordered, that *"Section 16 (3) of the Deeds Registry Act 37 of 1968 is hereby declared to be inconsistent with Sections 20 and 28 of the Constitution and it is therefore invalid."* Additionally, parliament was given 12 months within which to effect the legislative amendment and the court empowered the Registrar of Deeds, pending the amendment¹⁵ to register title in the joint names of spouses married in community of property. The matter was put to rest on 14th June 2012 when the Deeds Registry Amendment Act was promulgated.¹⁶ This means it had successfully been through both houses of Parliament and received Royal assent. It provides that Section 16 of the Principal Act is replaced by the following new section-

Registration of immovable property or real right by natural persons

16(1) Every deed made by and on behalf of or in favour of another person which is executed or attested by the Registrar or notary public and which shall be registered in the Deeds Registry shall state-

- (a) the full and status of the person concerned, whether unmarried, married, widowed or divorced;
- (b) if the person is married, the-
 - (i) full name of the spouse;
 - (ii) type of marriage, whether civil or customary
- (iii) whether the marriage was contracted in or out of community of property;

- (iv) whether the marriage is governed by the law of any other country

The Act also provides for joint registration where parties are married in community of property unless such property or real right is by law a condition of bequest or donation excluded from community.¹⁷ Neither party married in community of property can alone deal with immovable property without the written consent of the other or authority of the court. Section 4 underscores that at the end of it all, property regardless of whose name it is registered in belongs to the joint estate equally owned by both parties. It makes provision that it should be ceded to the joint estate of the spouses pending liquidation in instances of death and also catering for cases of divorce.¹⁸

In *Attorney-General v Aphane*, government appealed a High Court decision in which Ms. Doo Aphane had challenged section 16(3) of the Deeds Registry Act 3719 of 1968 which excluded women married in community of property from registering title in their names. The Supreme Court confirmed that the provision was discriminatory and ordered.

Basically, the legislature has replaced the former offending Section 16(3) with equitable legislation enabling either party in a marriage in community of property to be able to procure title to immovable property. The same also caters for joint registration. The amendment is embracing, giving either spouse room for procurement whilst also ensuring that assets of the joint estate are not disposed without the knowledge and consent of both. The amendment has lived to the prayers that were made to court in *Aphane v. Registrar of Deeds*.²⁰

¹⁴

¹⁵ The amendment was finally passed in June, 2012

¹⁶ The Deeds Registry (Amendment) A act No2/2012

¹⁷ Ibid 16 (2)

¹⁸ Ibid 16 (4)

¹⁹ "Section 16(3) Immovable property, bonds or other real rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bonds or real rights are by law or by a condition of a bequest or donation excluded from the community."

²⁰ Supra



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While this is a step in the right direction, there are several other laws and statutes that have an impact on women's land rights. A year later, in 2013 another woman Nombuyiselo Sihlongonyane²¹ eased the burden of women regarding marital power of their husbands where the marriage was in community of property. The court ruled "the common law concept of marital power in so far as and to the extent that it bars married women from suing and being sued without the assistance of their husbands is hereby declared to be inconsistent with sections 20 and 28 of our Constitution. This invalidity is with effect from 25 March 2013 from which date all married women subject to the marital power of their husbands shall have the right to sue and to be sued in their own names." The court's stern message was made loud and clear with a retrospective effect. Thus conferring full contractual capacity in addition to the right to land and lending impetus to the 2012 amendment.

In this regard, the Attorney General's office has revived the process of amending the outdated and discriminatory Marriage Act of 1964. The Attorney General has since published the Marriage Bill of 2017 and Matrimonial Property Bill of 2017, which together seek to repeal the discriminatory aspects of the Marriage Act and safeguard married women's property rights on an equal basis to those of men. Law reform in Swaziland is a slow process and without the Aphane case challenge, discrimination against married women in registering property would still be in the statute books. Other discriminatory laws remain and because of the lack of a structure such as a law reform commission responsible for systematic law review, there is no telling when other changes may be made.

With respect to SNL, while change is evident in many communities, this is not widespread across the country, especially in rural areas, as noted by the Hhohho Regional Administrator who observed in relation to land allocations to women that while, "It would take visiting each Chiefdom to ascertain the position in this regard. We note there are Chiefs, particularly in peri-urban areas, are the ones who allow women to *khonta*." All the women respondents in the study were asked about the status of this issue in their communities and in most of cases, respondents indicated that the chiefs still do not allow women to *khonta* independently.

Discussions with chiefs during the preparation of Swaziland's Initial and Second State Party Report to the CEDAW Committee revealed

that discriminatory socio-economic norms, beliefs and attitudes about women and their "place" in the family and community contribute to the resistance by traditional authorities to acknowledge women's equality and in turn the rights that flow therefrom. Amongst these factors is the assumed designation of men as heads of households and breadwinners and therefore owners and decision-makers on all homestead related matters, including land. A further issue is the patrilocality of Swazi society, whose implication includes that homesteads are identified by the surnames of men as traditional household heads. Although acknowledging that this different treatment of women and men in terms of land is discriminatory, some of the chiefs who do not allocate land to women insist that this is for the protection of women since in the event of any problems with the land, a male head of the household would be best suited to deal with them through the community structures where it is men who primarily participate in discussions and decision-making. In terms of custom, women are not regarded as being household heads - the assumption is that since women are headed toward marriage where they will be identified with their husbands' families; as such they cannot be allocated land separately. One of the male respondents in the study, who is responsible for regional administration, including oversight of chiefs' affairs, echoed this view from the perspective of "practicality", stating, "The truth is that the Swazi traditional homestead setting does not make *khonta* by women practical. For example, in my case I am from Lozitha - can you imagine my wife deciding to go and *khonta* at Dlangeni [another community]?"

Nonetheless, there are changes taking place on the ground and whether acknowledged or not, culture is showing its dynamism as respondents report a growing number of chiefs now allocating land to women. However, the policy, legal and institutional framework for land governance remains inadequate. Developments de facto regarding women's access to land control of Swazi Nation Land have overtaken the de jure regulation and guidance that could be given by a national land policy and the review and reform of related legislation. Laws are not changing yet circumstances on the ground are fluid. In the current situation of women's socio-economic vulnerability where women are dealing with disproportionate levels of poverty, compromised education, unemployment, and HIV and AIDS, women are being compelled to action and community leaders, confronted with these realities, are being responsive to

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²¹ Nombuyiselo Sihlongonyane v Mholi Joseph Sihlongonyane (470/2013A) [2013] SZHC 144 (18 July 2013)





these changes, causing culture's dynamism to change the historical exclusion of women from being allocated land.

Swazi women themselves have not been passive spectators to the limitations imposed on them by culture and tradition. They have navigated spaces in the family, community and at national level to challenge impediments to their enjoyment of their land rights. Even before the advent of the constitution whose Section 211(3) made an unequivocal provision for gender equality in allocating SNL, women were using those limited inequitable windows of accessing land such as going through their sons or male relatives. Women are actively exercising their agency and using the constitution as a catalyst to challenge discrimination at the national level in terms of legislation and within the local community space to assert their rights and lead transformation of socio-cultural norms about women's ability to independently acquire and control land.

Respondents reported some momentum asserting their rights to acquire SNL on their own using the constitution. Several of them had acquired land (through their sons) prior to the adoption of the national constitution in 2005 and several of them related how, after the adoption of the constitution, they used section 211 on gender equality in access to land to approach the chief's council to replace the registered name from that of their sons to their own names. Of importance to note is that during the interview process, other women who were in similar circumstances were empowered by participating in the discussion as they indicated that they too would want to register their land in their own names. Given that the constitution has been operational for just above ten years it is emerging from this research that women want to "own" SNL in their own right not through their sons. They want the homesteads to be in their names so that they can exercise full control, as opposed to where it is in the name of one of the sons who then dominates the mother or the siblings post death of the mother. Women spoke quite at length on the issues of domination by the son in whose name the homestead is registered and other sons over their daughters.

From the above, it is clear that knowledge of the protective sections of the constitution is very important and in the above cases has been central to women's action in asserting their rights. One of the chiefs blamed women themselves for not using the constitution more in demanding their rights to land yet this presupposes that women do have knowledge

about their rights but are just not interested, which may not necessarily be the case. This research did not establish the extent to which women know about such protective provisions and different responses from their local authorities and imiphakatsi (chiefdoms). Establishing this is equally key, since without the knowledge women cannot insist on their rights. It would be interesting to examine the extent to which women know their rights, the extent to which they use this knowledge, the responses of community and traditional authorities and actions they take when they come across opposition from the authorities.

In addition to using the constitution, women have also taken advantage of the steady but unregulated growth of the cash land market SNL. Whereas it was relatively inexpensive to *khonta*, in recent years, a cash economy has grown around sale and purchase of SNL. One woman respondent stated that she had to pay more than E10 000.00 to get land in a certain chiefdom, inclusive of Inkhomo yemphakatsi (cow paid to chief) at E5000.00; Imbuti yelibandla (goat for the inner council) at E500.00; Imali yelincusa E3000.00. She stated that she had to pay more money for a number of additional things, such as contribution for school, electricity, buying emahiya (Swazi traditional cloth) as appreciation to the chief, and alcohol for meeting the chief." Several government policies and reports refer to the sale of SNL as illegal and amongst the strategies outlined by the Poverty Reduction Strategy and Action Plan (PRSAP) to address access to land is to "Legislate against the sale of Swazi Nation Land." However, the recommended legislative reforms have been overtaken by developments on the ground and commercialization of SNL, which is happening without regulation and is already distorting land management at community level. With respect to women, while payment of monetary consideration enables those who can acquire land in some communities, it also has the danger of creating a layer of inaccessibility for women who do not have the financial resources, excluding them from participating and benefitting from land as a communal resource.

3.5.3. Importance of women's participation in leadership and decision-making for land rights protection

The research also revealed the importance of women's meaningful participation in leadership and how having women in leadership structures has the potential of strengthening women's



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land rights. A respondent, who is a former Senator explained that she and several other women are members of Bandlancane (inner council) in her community and that because of their numbers on the council, their views are considered when they insist on supporting women who come before the council in a variety of matters, including *kukhonta*. She stated, "We need more women in these spaces to stand for the rights of women. If we were not in Bandlancane it would be difficult for women to get land in our area because Basengakeva kahle bobabe (the men are still resistant to change)."

This position may be juxtaposed with the inability of women chiefs to allocate land. None of the women chiefs interviewed for this research had allocated land to women, even though they are supportive of this development, and in one case the chief made an example of her daughters who had been allocated land in another chiefdom. While in one instance, the chief stated that there was no land left in her community and now new allocations were being made even for men, the main reason for the limitation on women's chiefs power to allocate land is that in Swaziland, women are not regarded as chiefs, and even when they are appointed into the position, they hold it in an acting capacity on behalf of the male who will take up the position in due time. As a result, women chiefs do not hold all the rights of incumbency such as being able to allocate land. Nonetheless, since the structure of Bandlancane is central to the land allocation process, and where land is available for *khonta*, a progressive inner council would be supportive of women being allocated land, regardless of the gender of the chief.

The positive influence of women's participation in leadership structures needs to be extended to other structures that are relevant to land issues and rights. Swaziland will be holding national elections in 2018 where the elective positions of Bucopho (chiefdom level position with development functions), iNdvuna yeNkhundla (constituency level position with development functions) and Member of Parliament will be contested. These positions all have influence on development at different levels from the chiefdom level in the case of Bucopho to the national level in the case of MPs. In this latter instance, the unsatisfactory

state of the laws when it comes to women's rights would be impacted positively by more women participating in the legislative process. At this level also, women are appointed to various structures such as Boards and Commissions that make decisions on land matters. Again, more women's participation in such bodies would advance women's land rights further.

3.5.4. Positive Impact of Recognising Women's Land Rights: Women's Meaningful Participation in the Smallholder Farming Projects

The positive impact of women when given an opportunity to make decisions on land was attested to by respondents that work with community development in the area of commercial smallholder sugar farmers. The experience shared by a Senior Community Officer from the Swaziland Water and Agriculture Development Enterprise (SWADE) is illustrative of how women when given the opportunity can contribute to growth and development both for themselves and also for their families and communities. The Officer explained that SWADE supports community development through strengthening residents' capacity for agricultural production. This entails members on SNL making land contributions to a company which they register. The process of donating land for this purpose entails family involvement, as it requires that families renounce a portion of the land to be donated to the project.

The gender dynamics that arise here are that there is potential for women's views not to be taken fully into account as men are the ones seen as "owners" of the land and therefore empowered to make and represent family decisions. Additionally, married women who are interested in participating in the project need to seek consent to participate in the project from their husbands and in-laws. Nonetheless, the officer noted that where women do have the power to make decisions over the land, "they are proactive, informing family members in a timely manner and submitting the relevant letters of renunciation of the said land to the Chief. Men on the other hand have been observed to be late adopters, submitting their requisite documentation very

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late others just making it when the project is starting. A few have been left out as they were opposed to renouncing their land yet they had no means of improving production on their own."

There is also a notable difference in productivity of companies where women are in the forefront. The SWADE officer explained that "some companies are owned by men only. These tend to have the lowest production, while mixed and women only companies do very well. Most of the women members are labourers working in the company but have since learnt a lot such as operating mechanised water irrigation systems, understanding procurement of complex farming inputs, clerical work and finances. They understand dealing in millions. It takes a while for the men to get to this level. "In recognition of their potential, we also offer women leadership training and we are now seeing them learning to articulate their issues in the presence of men, and this is now reflecting positively in community as well," she says.

Despite this progress, she stated that there remain socio-cultural constraints on women's leadership where women, though working hard in the companies, still do not see themselves as leaders. She stated, "Where women lose it is regarding registration of membership. They still believe in registering the companies in the names of men. As such the cheques are paid out to the registered members; many of whom have been observed squandering the money in local bars and other entertainment places when dividends are paid."

A respondent who is an Out-growers Manager at the Royal Swaziland Sugar Corporation also attested to women's capabilities in these sectors, stating, "We work with both women and men even on SNL. We find women to be easier to work with because they stick to terms of agreement once they understand the expectations and obligations required."

3.6. CONCLUSIONS AND RECOMMENDATIONS

The focus on women's land rights in Swaziland is a relatively new area as these rights have tended to be subsumed in advocacy for women's human rights in general yet as can be seen from this initial study, land rights are central

to socio-economic and political advancement and where they are compromised through land grabbing of various forms, the adverse societal impact is far-reaching even beyond the individual woman whose land is grabbed. The findings indicate that for the protection of women's rights to be strengthened, there is a need for various interventions from the policy and legislative level to the grassroots level ranging from resilience of the communities. Taking cognizance of this, it is submitted that the following recommendations can greatly contribute to bringing clarity in terms of the land rights situation in the country as well as ensuring changes are made that strengthen women's position therein.

The implementation of these recommendations requires active participation by a wide variety of stakeholders, based on where they fall on the spectrum of experiencing land grabs and their role in terms of land administration or land rights advocacy. Stakeholders include government, traditional leaders, development partners, local CSOs and partners such as AMwA, and women themselves who are central to this issue and have demonstrated their potential to lead change on the ground through individual action or mobilisation for collective action.

3.6.1 Conducting additional research

The issues emerging from the study indicate that we have just scratched the surface on the land issues in Swaziland, and the recorded women's experience is the tip of the iceberg and requires additional data and analysis.

It is therefore recommended that the current research be scaled up into a fully-fledged study from which diverse conclusions can be drawn on the empirical situation of ordinary Swazis in relation to land. The extent of women's precarious situation relating to land can be fully extracted and exposed by a fully-fledged study on the Swazi women's land situation. The analysis and recommendations would be based on findings with more empirical evidence giving room for more holistic recommendations by women themselves who have the best understanding of their situation. Further, in-depth case studies can also reveal the different experience of women as they are not a homogenous group and their positioning impacts on their vulnerability or protection as relevant. A fully-fledged study will enable the

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identification of additional issues that need to be addressed. It would also be important to have baseline data on allocation of Swazi nation land as well as on women's participation in the TDL market. This would enhance taking better informed action and planning both on the part of relevant authorities across the board, women themselves and those that seek to improve their lot.

3.6.2. National dialogue on land

There are a myriad of issues, including historical factors that have influence the land situation as it currently exists. The more the land administration and management context and the duality of its character remains unaddressed, the more gaps will emerge, and violations occur. It is thus recommended that:

- A process of national dialogue on land occurs, inclusive of dialogues at the local and regional levels, giving an opportunity to all stakeholders and "ordinary" Swazis to give their views on the land situation and how it can be addressed.
- Forums or engagement between all the bodies and institutions relevant for land administration management board, chiefs, deeds office, surveyor general. These engagements would also have to space for the meaningful participation of the public so that the structures can be informed by the experience on the ground as they address land governance.
- Women must be an integral part of the dialogue not an add-on. Their experiences, skills must be central throughout the process from conceptualization stage.

3.6.3. Review, Policy, Law and Institutional Framework for Land Governance

Land governance issues in Swaziland are complex, as influenced by historical factors such as colonialism, the different land tenure regimes as well as the dual legal system and inconsistencies in application of law and custom. As such the existing policy, legal and institutional framework for land administration and management is inadequate and thus contributes to gaps that compromise land rights in general, and those of women, in particular.

It is therefore recommended that a policy

and legislative review and reform agenda be formulated and implemented based on the overarching national development strategy, national constitution and regional and international instruments to which Swaziland is a party. At a minimum this should include:

- Adopting the national land policy - the policy formulation process has been ongoing since the late 1990's and there is a need to review it to examine its continued relevance and bring it up to date with the current developments on the ground. There would also need to be a process of public consultation on the policy so that it is comprehensive in dealing with issues.
- Reviewing all land related laws and policies (including those related to investment) to remove discrimination, strengthening rights leading to enjoyment of substantive equality in this regard.
- Addressing duality and harmonise of law and custom with the constitution and with the country's regional and international obligations on women's land rights.

3.6.4. Land rights education, legal assistance and skills-building for women

Women who have experienced land grabbing tend not to know their rights and how they can protect themselves against violations of their rights, whether it is refusal by traditional authorities to allocate land or deprivation of land caused by abuses such as property-grabbing in inheritance; lack of tenure because of the classification of the land, or because of displacement due to development initiatives and investments undertaken by government. Recommendations in this regard include: -

- Equipping women on land rights issues, including the "substance" of their rights and processes to protect those rights; factors that may make them vulnerable to land grabbing; actions that can be taken to response to land grabs and opportunities to strengthen land rights.
- Provision of legal representation where land rights violations occur. Advocacy for a legal aid system in Swaziland needs to continue and be strengthened. As part of this the experience of land grabbing should be shared so that issues pertaining





to those who experience forced evictions can be used in defining and addressing the relevant legal issues. In the interim, there should be engagement with organisations such as Lawyers for Human Rights Swaziland, Council of Swaziland Churches, Women and Law in Southern African and the Law Society of Swaziland on providing legal assistance services and representation when evictions are threatened or have happened.

3.6.5. Monitoring responsiveness and promoting accountability of governance structures and institutions

The strengthening of women's land rights requires multi-faceted interventions at different levels. The key actions that need to be taken in some areas require political will and action, including the review, strengthening and implementation of government policies and programmes. Cabinet, government's executive arm is responsible at the policy formulation and execution levels, while the legislature will be expected to act in the review and amendment of land related legislation and provide Parliamentary oversight in monitoring government's actions and programmes as well as allocating resources for same.

- Undertake advocacy and lobbying initiatives targeting government ministries and departments as well as Parliament. This would include individual Cabinet Ministers and MPs, especially from those communities where land grabs have occurred. Further, engagement of the thematic House of Assembly and Senate Parliamentary Portfolio Committees on relevant government ministries such as the Ministry Natural Resources and Energy; Ministry of Economic Planning and Development; Ministry of Housing and Urban Development; Ministry of Tinkhundla Administration and Development; and Ministry of Agriculture, and Ministry of Commerce. This would ensure that the structures are sensitized on land rights related issues and women's rights and would provide accountability as to how far government has gone in implementing land rights related policy and law.

- Monitor and disseminate information on implementation of government policy and development plans to 2018/22, without which the protective provisions will remain a dream in the pipeline.

3.6.6. Promotion of women's participation in leadership and structures of decision making

Women's leadership ability is one of the key strengths that can advance women's land rights. Women leaders in the research clearly demonstrated that where they are present at the leadership level, they can influence decisions taken by governance structures. Developments such as the upcoming national elections in 2018 are an opportunity for women to be elected at the levels of Bucopho (chiefdom level); iNdvuna yeNkhundla (constituency level) and Member of Parliament (national level). It is this recommended that:

- Women's participation in the election be promoted to increase women's representation at these levels and enable these issues to be placed on the legislative agenda in parliament as well the other levels of government.
- Advocacy be conducted for women to be appointed into the various Boards and Commissions that are responsible for land; and women's leadership at community level structures such as bandlancane (chief's inner council) so that they are involved in decision-making around land allocation and the determination and protection of rights according to women who have been allocated land in their areas.

3.6.7. Strengthen civil society and women's rights organisations understanding and skills to promote women's land rights

Land rights in general and women's land rights are not areas that civil society has previously focused on in a sustained way and action in this regard has been ad hoc and reactionary. There is thus a need to:

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- Work towards transformation of communities to be resilient and offer space to the amplification of the voice of women and their organising. Acknowledge that women continue to exercise agency to improve their situation regardless of class, location, education.
- Strengthen civil society's knowledge and advocacy skills on land rights issues, infusing women's experience into the capacity building so that women's land rights are addressed as a focus. Capacity building of CSOs and women's rights organisations on land rights advocacy would have to include effective use of local and international human rights mechanisms such as the Human Rights Commission, African Commission on Human and Peoples' Rights and the UN system.
- Establish a land rights coalition or network under the Land Rights Alliance which will include CSOs working on land issues. There is a need for organisations to share the work they are doing and identify synergies so that they can collaborate on different aspects of protecting land rights. This will ensure that advocacy on land rights are coordinated and have greater impact than when work is conducted in silos.





Zambia



3.6.8. Strengthen the civil society resource capacity

- Strengthening capacity and support for resource mobilization, for these organisations.
- Coordinated and strengthened donor relations for better resource usage.

4.1. COUNTRY CONTEXT

As in most countries in sub-Saharan Africa, land is a central means of production in Zambia where agriculture remains a major source of livelihood for most people in rural areas. Despite experiencing some economic growth in recent years, Zambia still faces challenging poverty levels, especially in rural areas.²² Additionally, access to and control and ownership of land is of utmost importance in Zambia as over 80 per cent of the rural population depends on agriculture-related activities for their livelihood (SNDP, p.108), such as subsistence or small-scale farming. Thus, land is at the centre of rural livelihoods. Therefore, access to quality land and secure land rights are two critical aspects to attain food security for any given community or country. 52% of the Zambian population is composed of women and more than 60 percent of them are engaged in agriculture. However, women and other marginalised groups in society, including young people and people with disabilities continue to face several challenges in relation to control and ownership of land. Cultural beliefs, lack of rights awareness, an expensive legal justice, and inadequate participation of women in institutions that deal with land are some of the contributing factors to these challenges. Without access to land and property rights, women especially widows and orphans are often left homeless, undermining women's economic security and independence as well as access to food and housing (Richardson, 2004). Research has shown that land plays an important role in the economic empowerment of women in any given society as there exists a positive correlation between agricultural productivity and land ownership and control.

4.2. OBJECTIVES AND PURPOSE OF THE RESEARCH

The research intended to use a feminist lens to analyse the gendered implications of large scale land acquisitions in Zambia. With the proliferation of large scale land acquisitions, it

was important to use a feminist lens to gauge whether policy and legal framework exists to protect people especially women in case of these occurrences. It also sought to discover how women participate in the land economy and how land acquisitions are impacting ownership, access and control.

4.3. METHODOLOGY

4.3.1. Study Sites and Sample Size

The survey was implemented in the central province of Zambia in four sites, namely, Moono in Mumbwa, Nkole in Kapiri Mposhi, Makafu in Chief Mukonchi's area in Kabwe/Kapiri Mposhi and Kembe in Chibombo district. The four sites were carefully selected to represent key features within the province. The specific selection criteria included rural representation to get a better understanding of women's access and control to land especially under custom. The province was selected because NGOCC and one of its partners, Transparency International Zambia (TIZ) are jointly implementing a GIZ funded project there on equality of access and control to land, especially by women. A total of 12 FGDs were conducted, three per data collection site. Of the three FGDs at the data collection site, there was a group discussion with females alone, males alone and a combination of the two. A total of 80 people participated in the FGDs with a sex disaggregation of 45 females and 35 males and 8 KILs with a sex disaggregation of 4 females and 4 males.

4.3.2. Data Collection and Analysis

A team of four Research Assistants/ Researchers were trained on how to collect qualitative data using focus group discussions and key informant interviews, data quality and research ethics prior to data collection. Following successful completion of the training, the interview guide was assessed by some CSO stakeholders including Operation Young Vote (OYV); Rural Women Assembly; SWAAZ and ZAW. The Interview guide is attached to the report as an Appendix. An in-depth interview guide was used to collect qualitative data from community members through focus group discussions and key informants. Administered by the Research team, this tool aimed at collecting qualitative data from informants and community members on some of the traditional practices that hinder women from equally accessing and controlling land, especially under custom. After the data were collected from all the four study





sites, data processing was carried out by the Research Team in Lusaka. The data collected through the Key Informant Interviews and the Focus Group Discussions recordings were transcribed and typed. Transcribed texts were read for emerging themes and generation of codes for data categorization. Transcripts were analysed using qualitative thematic and content analysis, which is the process of identifying, coding and categorizing patterns in data.²³ The data were sorted manually by the identified themes and codes. The content analysis too was performed manually to maintain close connection with the data. All transcripts were re-read and re-coded several times to improve inter-rater reliability.

4.3.3. Ethical considerations

Since human beings served as participants, there was need to treat them with dignity regardless of research outcomes. Therefore, it was explained to the respondents that the information being collected was going to be kept confidential and that all responses were to be published anonymously using group data rather than individual data. Participants agreed to participate willingly, and none was forced or compelled. Permission to conduct the study was sought from the traditional leaders in the four study sites and courtesy calls were made to two traditional leaders in Mumbwa and Mukonchi.

4.3.4. Literature Review

A) WHY IS INCREASING WOMEN'S ACCESS TO LAND IMPORTANT?

Women's access to and control of land and other productive property is central to their economic empowerment. Land can serve as a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Land is also a social asset that is crucial for cultural identity, political power and participation in decision making.²⁴ Women's equal access and control to land is a human rights issue. Women's access to and control of land and other productive resources are essential to ensuring the right to equality and to an adequate standard of living. Further, these resources help to ensure that women can

provide for their day to day needs and those of their families and to cope with some of life's challenges. Evidence shows that women's land rights reduce domestic violence,²⁵ and that women who own land are more capable of exiting violent relationships and negotiating safe sex.²⁶ Agricultural production and food security also increase when women are granted tenure security.²⁷ Globally, gender inequality around access to productive resources, especially land is ultimately related to women's poverty and exclusion. The obstacles that prevent women's control to and ownership of land and other productive resources include inadequate legal standards and or ineffective implementation of policies and enforcement of laws at national and local levels, discriminatory cultural practices at the institutional and community level.

Gender disparities regarding land and other productive resources are informed by patriarchal beliefs that view men as heads of households who provide for women's financial security. This implies that women are incapable of effectively managing productive resources such as land. It is further exacerbated by the belief that productive resources given to women are lost to their husbands' families in the event of marriage, divorce, or the husbands' death.²⁸ Other impediments to women's access to land and security are illiteracy, inaccessibility to information, lack of necessary capital to develop land, and labour shortage. There has been found to be a positive correlation between ensuring women's access to land and other productive resources and improved household welfare and enhanced enjoyment of a broad range of rights for women in both urban and rural areas. When women have access and control to land, they acquire power and autonomy in their families and communities as well as in their economic and political relationships. Additionally, it has been found that women's access and control to land, especially for women living in rural areas tends to increase their social and political status and improve their sense of confidence and security.

B) POLICY AND LEGAL FRAMEWORK ON LAND

Various policies and laws affect women's rights to land, natural resources and other

23 Mays N, Pope C. Chapter 9: Quality in Qualitative health research. In *Qualitative Research in Health Care*. 2nd Edition. Available at: www.bmjpg.com/qrh/c/chapter9.html. Accessed 23/10/2010.

24 FAO (2002). *Gender and Access to Land. Land Tenure Study 4*, Rome for the Swedish NGO Foundation for Human Rights.

25 Action Aid (2008). *Securing women's rights to land and livelihoods, a key to ending hunger and fighting AIDS*.

26 COHRE, (2006). *A Survey of Law and Practice related to women's inheritance rights in the MENA Region*.

27 Action Aid (2008). *Securing women's rights to land and livelihoods, a key to ending hunger and fighting AIDS*

28 Canadian HIV/AIDS Legal Network (2009). *Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS*.



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properties in Zambia, including the Amended Constitution (2016), Intestate Succession Law (1989), Lands Act (1995) and the National Gender Policy (October 2014). Zambia is also party to various international treaties that require compliance with non-discriminatory practices (United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Beijing Platform of Action). The Revised National Gender Policy of 2014 articulates a national vision 'where there is gender equity and equality for sustainable development'. The Policy has an objective on economic empowerment of women whose goal is the equitable allocation of resources to women and men. This is to reduce the gender gap between women and men in access and control to productive resources. Among the proposed measures to achieve the policy objective is that women own at least 50 percent of the land allocated. Zambia's Constitution recognizes property rights and protects all individuals against the deprivation of property. Article 2(1) prohibits discrimination by race, tribe, sex and marital status— "no law shall make any provision that is discriminatory either of itself or in its effect." Article 23(4) (c) and (d) of the Constitution, however, explicitly excludes customary law and personal or family law. Therefore, where customary and personal laws discriminate against women, the Constitution provides little support and may actually reinforce such discrimination. The Intestate Succession Act governs the administration of an estate when the deceased did not leave a will. It does not apply to customary land or to family and chieftainship property. Under the Act, the surviving spouse inherits 20 percent of the deceased's estate (Section 5(1)). Where there is more than one widow, the estate is distributed proportionally to the duration of their marriages to the deceased and to the widow's contribution to the property. Natural children of the deceased receive 50 percent in proportion to age and educational needs; parents receive 20 percent; and other dependents receive 10 percent in equal shares. Further, the Act also stipulates that where land or a house of the deceased is held under a State lease, the surviving spouse can remain in the marital home until remarriage or death. The spouse, however, does not inherit the land or house, and cannot transfer, sell or will the property. Where there is more than one surviving spouse and/ or child, they hold the house as tenants in common.

The Lands Act vests all land in the Presidency who holds it in perpetuity for and on behalf of the people of Zambia and provides that the

presidency administers and controls all land for the use or common benefit, directly or indirectly, of the people. The law establishes two main land categories: Customary and State land. The Presidency may alienate State land to any Zambian and, in some circumstances, to non- Zambians. The Presidency may also alienate Customary land but must first consider traditional law, consult with affected persons, and obtain permission from the Chief and Local Authority (UN - HABITAT 2005; Adams 2003). The Lands Act does not make specific reference to gender and does not explicitly discriminate against women. It however, has profound implications for women's land rights because it applies only to statutory land. Statutory land includes State and Leasehold land, including land that has been converted from customary tenure to leasehold tenure. The law does not provide for the documentation, registration or titling of land held under customary tenure. Additionally, in contrast to statutory land, land held under customary tenure and chieftainship property is by the Lands Act administered according to local customs. The law recognizes ethnic groups as de facto custodians (not owners) of customary land and recognizes customary tenure as a form of landholding. The Act states in Section 7(1) "Every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognized and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act". Customary land is governed by traditional leaders. Land is held by the community; individuals and families have user rights to specific plots and some areas are managed as common property.

C) TRADITIONAL PRACTICES/ CONSTRAINTS TO WOMEN'S ACCESS TO LAND

Despite positive policy development, the general community in Zambia does not support women's equal land ownership rights. A number of socio-cultural customs and religious beliefs hinder women's access to land or other resources.²⁹ Because of patriarchal beliefs, many customs do not allow women to access and control land and do not recognize their rights to inherit property. In most cases, women access land through their male relations, mainly their husbands. In the event of divorce or widowhood, some women may be permitted to continue using the land. Most divorced or widowed rural

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²⁹ Zenebeworke, Tadesse Marcos. Revisiting Customary Institutions and Gender Relations: A Daunting Challenge.





women return to their natal families, where they are dependent upon male kin for access to land. The local chief may allocate a plot to a single woman, particularly if she has children, but it would be unthinkable to allocate a plot to a married woman in her own right.³⁰ Further, in customs where women are allowed access to land, only their access rights are recognized but not control. This puts women in a disadvantaged position as they are not able to make decisions at the household level over what to plant on the piece of land. This in many cases compromises the food security situation of the household as women are usually involved in subsistence farming which provides food for the home. Also, traditions that prevent women from speaking in public contribute to their disenfranchisement on land. In African tradition, it is not common for women to speak in public owing to some norms and practices. As such, women's participation levels in a number of developing processes is hampered. Similarly, women do not speak out in the administration of land, especially under custom. This has made it difficult for their needs to be known and addressed in full.

Because of patriarchal beliefs, many customs do not allow women to access and control land and do not recognize their rights to inherit property. In most cases, women access land through their male relations, mainly their husbands.

On the legal front, Zambia's land administration is under a dual legal system of statutory and customary laws. The statutory laws do not explicitly discriminate against women's access and control to land. However, they are limiting as they do not apply to customary land. Customary land administration is left in the hands of traditional leaders whose customs vary within and among the different tribes across the country. For instance, the law that governs administration of an estate when someone dies interstate, that is, without leaving a will, does not apply to customary land or to family and chieftainship property. The non-existence of codified land administration under customary areas has contributed to the challenges that women face in access and

control to land.³¹ This creates insecurity for occupants of land under customary tenure as they are discouraged from creating any capital improvements on land, as there are no incentives to invest in common resources.

4.3.5. Focus Group Discussions

This chapter presents the results of the focus group discussions as well as the key informant interviews first for the individual data collection sites and then collectively.

A) MOONO AREA – MUMBWA

The FGDs and KIIs in Moono area revealed that whenever land is available in any village, the village committee convenes to confirm the availability of the land in the area. Thereafter, prospecting land owners approach their village head person for recommendation to the village committee. The village committee then recommends the prospecting land owner to the Chief. The recommendation from the village head person is based on a prospecting land owner's character and standing in the community.

Generally, land is given to a prospecting land owner based on the following two conditions:

- The prospecting land owner must have a clear purpose for the land (does the person want the land for keeping animals or for cultivation?)
- How big is the immediate family (nuclear family)? In the case of a woman, is she married? (If yes, the husband must give consent for the wife/woman to access land).

A person can be denied access, control and ownership of land in the area based on the village head person's perception of their character. Once the Chief gives approval, the piece of land is given to an individual who then must pay some amount of money as a token of appreciation to the village head person(s). The amount of money paid as a token of appreciation is determined by the prospecting land owner and determines the size of land that one is given. The maximum amount of land that can be given to a prospecting land owner is five (5) hectares.

Further, the FGDs revealed that there is no deliberate policy in place to ensure the participation of marginalised sections of society, including women, young people and people with disabilities, in the administration

³⁰ Machina Henry (2002). Women's Land Rights in Zambia: Policy Provisions, Legal Framework and Constraints

³¹ Ministry of Gender (2014). Revised National Gender Policy.





of land by the traditional leadership. Women participate in the administration of land if they are part of the traditional leadership. Young people are completely excluded as they are considered immature to make decisions on the administration of land. It was revealed that traditionally, it is not acceptable for women to own land in their own right. However, there are exceptions on which women are given access and control of land in their own right. If a woman is divorced, single or widowed, there is consideration by the traditional leadership to allocate land to such a woman. It was also revealed that compared to the men, women in this category are given smaller pieces of land with poor quality as they are considered not to have enough capacity to utilise the given land to full potential. Young men typically are usually apportioned a piece of land or inherit one from their fathers. However, through the village head person's consideration, land can also be allocated based on the young man being recommended by an elderly person of good standing in the community. Young women on the other hand are left to wait for marriage and mainly have access to land through their husbands. Thus, there is no consideration to allocate land to young women in the area as it is assumed that they will have access to their husband's land once they get married. An important observation in the area is that village head persons recently started considering giving land to married women in their own right with consent from their husbands. It has been feared that giving land to married women in their own right may make them 'big headed' and bring problems in their home.

Of the 66 village head persons, 50 percent are female. This is an effort to put into practice the Presidential Directive of 50 percent land allocation to women. However, women's participation in decision making is being hampered by traditional beliefs. Most of the female head persons end up delegating their authority to their husbands because of the traditional belief that women cannot lead or speak in public.

B) KEMBE – CHIBOMBO

The criteria for land allocation in the area is that the prospective land owner approaches the head person to express interest in owning land in the village. If land is available, the village head person in consultation with the village committee give out the required piece of land upon the prospective land owner paying a token of appreciation in the form of livestock – chicken, goats, etc. In some instances, the village head person may dictate what the prospective land owner pays as a token of appreciation, could be a livestock of his/her choice or money. In terms of access to land, women and men do not have equal access and control to land. Like in all the four study sites, men have more access and control to land than women. Until about three years ago, land was not given to women in their own right. In most cases, it is single or widowed or divorced women who are given land in their own right. Further, it is still unacceptable for a married woman to own land in their own right. Married women have access to land through their husbands. However, the challenge is that in most instances, widows lose access to their husbands upon the husbands' demise. It was further revealed that there is no deliberate policy in the area to reserve land for marginalised groups of society and their participation in land administration is not guaranteed.

C) MUKONCHI – KABWE/KAPIRI MPOSHI

In terms of the criteria for land allocation, the prospective land owner approaches a village head person for land and pays a minimum amount of ZMW100 locally called '*amesula kanwa*', meaning opening the mouth. If land is available, the prospective land owner is taken to see the piece of land that he/she is being offered and is required to pay an amount of up to ZMW500 called '*akabangula nsoke*', literally meaning the feet that take the prospective land owner around the village to see the piece of land that is being offered to them. The prospective land owner is then taken to the village councillor who then registers them in the village register. Lastly, the prospective land owner is taken to the chief who issues the land permit. One interesting finding from the area is that there is a great effort by the Chief to ensure that women participate in decision making across all levels, including in administration and management of land. Of the 66 village head persons, 50 percent are female. This is an effort to put into practice the Presidential Directive of 50 percent land allocation to women. However, women's participation in decision making is being hampered by traditional beliefs. Most of the





female head persons end up delegating their authority to their husbands because of the traditional belief that women cannot lead or speak in public. It has therefore been observed that despite the measure of ensuring that women are put in decision making positions, it is still men that tend to make most decisions. Due to the policy by the Chief to ensure the active participation of women in decision making, women's access and control to land in the area has improved progressively. From the year 2010, several women have been given land in their own right. However, there are more men than women that own land in the area. This is because before 2010 issuance of land to women, especially to married women was not acceptable. Additionally, the leadership in the area also gives land to young people, particularly for business. Disabled people are also considered when it comes to land allocation, although there is no deliberate policy in place to set aside land specifically for the both young people and people living with disabilities.

Of the 66 village head persons, 50 percent are female. However, women's participation in decision making is being hampered by traditional beliefs. Most of the female head persons end up delegating their authority to their husbands because of the traditional belief that women cannot lead or speak in public.

D) NKOLE AREA – KAPIRI MPHOSHI

The FGDs and the KII revealed that in Chief Nkole's area, the criteria are that the prospective land owner goes to the village head person and expresses interest in owning land in the area by paying an amount of ZMW300, called *akamumpanga* (meaning for the bush). If land is available, the village head person takes the prospective land owner to the village councillor for registration into the village register and then to the chief for issuance of a certificate. The prospective land owner pays up to ZMW2,500 for two hectares of land to the village head person. Further, the study revealed that women and men do

not have equal access to land. Men own more land than women. Women are not allowed to own land in their own right. Married women have access to their husbands' land. Single or divorced or widowed women are rarely considered for land allocation in their own right. Even when such women are given land, they are not given the same size of land as men. Further, most of the women fail to meet the high fees that are charged once a piece of land has been given to them. It was also revealed that there is no deliberate policy in the area for women, young people and people with disabilities to participate in land administration. This of course translates into there being no deliberate policy to reserve some land for these groups of society.

4.4. OVERALL FINDINGS

The research generally revealed that it is still considered taboo in the provinces for women to own land in their own right. As such, it was acceptable by most women interviewed in the FGDs and KII for them not to be given land in their own right. Many of the women were comfortable having access to land only through their spouses as that is what tradition commands or expects of them. The few women who own land in their own right are either widowed and have had to leave their husbands' village for search of land in another village in order to have outright ownership, or those that are divorced or single. In both cases, the pieces of land given to these women were smaller compared to their male counterparts. This assumes that women do not have strength and capacity to manage a big piece of land. This finding agrees with earlier research findings that women are considered incapable of effectively managing productive resources such as land; and also that resources under their control are lost to another family in the event of marriage, divorce or death of a spouse and that men are to provide for women's financial security.³² Further, the study revealed that where women are given land, it is generally of lesser quality and size than the men's. Additionally, whenever there is need for additional land in the village, the head persons will first consider getting some pieces of land away from women who own land in their own right before considering any other alternatives. An interesting feature of the study sites is that all the areas are matrilineal. This implies that inheritance or determination of descent is from the mother's side. Despite this being the case, the practice is that a

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³² Canadian HIV/AIDS Legal Network (2009). Respect, Protect and Fulfill: Legislation for Women's Rights in the Context of HIV/AIDS.





male person from the mother's side is the one entitled to inheritance. This still results in the males having dominion over access and control to most productive resources, including land.

Generally, the study revealed that the traditional leadership in all the four study sites are aware of the Presidential Directive on reserving 50 percent of land for women. However, all the sites except for Mukonchi indicated that no deliberate policy has been put in place to implement the directive. The study also revealed that the traditional leadership in all sites started allocating land to women in their own rights a few about seven years ago.

The major challenge was that the traditions or culture of most of the study sites do not allow women to own land in their own right. Even for those areas where women are being considered for land allocation in their own right, most of the areas do not have land available to give to the women. Further, because of the high fees paid by prospective land owners, most women even when they have been given land cannot afford to pay the high fees. Most of them default and the land ends up being grabbed from them and given to those with the capacity to pay, who are mostly men. Another challenge that women face in accessing land is that they do not have the decision-making power over which field to plant on or what crop (s) to plant on a certain field at a particular time. The above decision has led in some cases to women being given virgin land each farming season, thereby increasing the time required for them to prepare the land. Further, this has resulted in some cases of women being relegated to growing low value crops (for example maize and groundnuts) as the men prefer to plant high value crops, for instance cotton and tobacco, which they can sell.

Because of the high fees paid by prospective land owners, most women even when they have been given land cannot afford to pay the high fees. Most of them default and the land ends up being grabbed from them and given to those with the capacity to pay, who are mostly men.

The study revealed that there are several benefits that accrue to women when they have access and control to productive resources. The major benefit is that the land is a major factor of production and once women have access and control to it, they will be able to participate in decision making starting from the household level. For instance, once women have access and control to land, they will not be left to wait upon the men to decide for them what piece of land to cultivate and what they should cultivate. In the case where women have title to the piece of land, they can access credit as they can use the piece of land as collateral. Women who have control to and own land can make decisions regarding the transfer of that piece of land to meet certain pressing family needs, such as selling a piece of land to earn money to send a child to school. Further, the time taken to prepare the field will be reduced as they will not be left with no option but to use virgin land. One of the other benefits is that in the event of the death of a husband, women will not be forced to accept to be inherited by a male relative of the late husband or else risk being sent to their relatives. As such, women will be able to take care of themselves and their children without depending so much on the relatives of the late husband. Further, if women have access and control to land, they will be able to increase their productivity which will result in them producing enough for home consumption as well as for sale.

LARGE SCALE LAND ACQUISITIONS

Ordinary Zambians continue to grapple with displacement as they are forced to make way for large scale investments. Attracted by the liberal land tenure system where government gives land to investors, many of them have set their sights on Zambia, to the detriment of the people who have lived there for generations. This has compounded the challenges brought on by the diminishing size of land due to population growth.

For customary land governed by traditional chiefs, the advent of investors has presented an opportunity to make money. Some chiefs are now grabbing their subjects' land selling it to the highest bidder without consultation or compensation. Since customary tenure, is not given equal security and authority as statutory tenure, communities have a weak, tenuous claim to their land and therefore become easier to exploit. Women, especially widows, bear the brunt of the effects of this exploitation which includes displacement. The research showed that participation of





local communities during the process of land allocation, and in discussions on displacement and resettlement is lacking.³³ Given that women are customarily not required to speak up on what are considered weighty issues such as land, they are further marginalized here.

Furthermore, because of the duality of the legal regime, recognizing both customary and statutory law, customary land owners have become squatters on their own land because they cannot prove ownership and do not have laws in place to protect them. Once foreign companies acquiring land on a large scale are given the green light by local governments, they have the prerogative to evict people from the land since they are now viewed as squatters. Women who typically grow crops on this land cannot carry on with critical livelihood activity once ownership is in dispute.

4.5 CONCLUSIONS AND RECOMMENDATIONS

4.5.1. Conclusions

The qualitative study on women's access and control to land was conducted with the objective of understanding the challenges that women face in accessing and control to land, especially under custom. The study revealed that there are no deliberate policies in place to ensure that marginalised groups of society participate in the administration of land. Furthermore, there is no deliberate policy to reserve land for this section of society. Generally, the study revealed that women's control to and ownership of land is not widely practiced in the province. Allocation of land to women in their own right is a new phenomenon that is yet to be accepted by many sections of society, especially the traditional leadership in the province. Women who have had access and control to land in their own right have been given less land in terms of both size and quality compared to their male counterparts. Lastly, displacements due to large scale land acquisitions have had a disproportionate effect on women because of their lower status in society.

4.5.2. Recommendations

Based on the research findings, the following recommendations are made:

- i. There is urgent need for the government, through the Ministries of lands and local government and traditional leaders to put in place affirmative action on women's control to and ownership of land.
- ii. There is an urgent need to address the rights of citizens especially those living on customary land Vis a Vis large scale land acquisitions. This should go further to address the duality of the land tenure system which recognizes both customary and statutory tenure and yet the legal regime governing both systems is in conflict.
- iii. In collaboration with the House of Chiefs, there is need to develop clear guidelines for traditional leaders to follow when allocating customary land for big scale land investment, especially to foreigners. Further, in the case where locals must be moved to pave way for an investment project in the area, it is imperative that the locals are adequately consulted and that they give full consent to be displaced and should be adequately compensated.
- iv. To encourage the participation of women in land administration and management, there is need to ensure that women are fully represented on land administration and management boards or institutions, including those on customary land. Furthermore, their leadership capacity should be strengthened to become more assertive and aware of women's issues.
- v. A national land audit should be conducted to determine the land available and its ownership. This should be with a special focus on finding out how much land is owned by women and how they are using it. This will enable the government make informed decisions when planning, reforming policy and allocating resources.



APPENDIX

5.1. MALAWI

5.2. SWAZILAND

Research Guide

Overarching Probe: Gendered implications

1. How is land acquired by foreigners in Swaziland, whether by persons or legal persona?

Under Swazi Nation Land, Crown Land and Title Deed land.

2. What (criteria) determines the need for land to be expropriated?
3. What is the process for expropriation?
4. How are affected/ interested parties involved
5. What determines whether affected will receive compensation?
6. How are affected communities compensated? (how is compensation calculated)
7. How is land consolidated Swazi Nation Land for large agricultural projects i.e. sugar cane?
8. What is the extent of women's consultation when consolidating Swazi Nation land for projects?

Deeds Office

1. Under what circumstances does the deeds office transfer title to foreigner persons and persona?
2. What mechanism are in place to verify usage of land by foreigners?

Women

1. What were your experiences when acquiring SNL? Were there any additional

requirements as compared to your male counterparts?

2. Were you consulted when land was being appropriated for a national or local project?
3. Were you compensated for land appropriated?
4. How has the move from your land previous land affected you and your family?

5.3. ZAMBIA

Interview Guide

Focus Group Discussions (FGD)/Key Informant Interview Guide

We are a consortium of Zambian CSOs working on women's access and control to land. Thank you for coming to this group discussion. We are going to ask you some questions on the challenges that women and men face in having access and control to land. To start our meeting, we will request that each one introduces him or herself. You are kindly asked to voluntarily take part in this study. You are asked to respond to questions that will be asked using the focus group discussion guide. This study is purely confidential and any information that will be given will be treated as such.

Type of focus group discussion (Single or mixed sex)

Date.....

1. Please give us the land allocation criteria in this area (How do families access land in this area? What are the requirements for women and men to have access and control to land?
2. Who administers the allocation of land in



the area? How do women/young people/people with disabilities (pwd) participate in the administration of land?

3. (a) Do women and men access land equally? Please explain.
(b) Do young people (35 years below) have access to, control and own land? Please explain
(c) Do people with disabilities have access and control to land? Please explain
4. How does this affect the decisions that they make regarding the usage of the piece of land?
5. How long has the leadership in this community been allocating land to women in their own right?
6. Are you aware of the Presidential pronouncement on 50 percent allocation to women?
7. How is the leadership in this community adhering to the Presidential pronouncement on 50 percent land allocation to women?
8. What are some of the benefits (both social and economic) of women and men having access and control to land?
9. What are some of the challenges that families face in accessing land in the area?
10. What are the specific challenges that women and men face in accessing and controlling land?
11. What are the effects of some of the challenges faced in accessing land?
12. What do you recommend should be to overcome the challenges?
13. Do you have any questions or comments?

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ONE DAY OUR
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