



## **NON-GOVERNMENTAL GENDER ORGANISATIONS' COORDINATING COUNCIL**

*Building Solidarity for Women's Empowerment*

### **NGOCC'S POSITION ON THE LANDS ACT, 1995**

Prepared by NGOCC,  
P.O Box 37879  
Plot 5168 Villa Elizabetha  
Phone: +260 211 224724  
Fax: +260 211 227514  
Email: [info@ngooc.org.zm](mailto:info@ngooc.org.zm)  
Website: [www.ngooc.org.zm](http://www.ngooc.org.zm)  
Lusaka, Zambia

July 2023

## **1.0 NGOCC Background**

NGOCC is an umbrella network organization that was formed in 1985 out of the realization that the empowerment of women in Zambia needed concerted efforts. Its formation by a few women NGOs was an outcome of the United Nations Conference on Women that was held in Nairobi, Kenya in 1985. Since then, NGOCC has grown to a membership of 111 organizations spread in all the 10 provinces of Zambia with a presence in 68 districts. NGOCC has continued its coordinating role and strengthening its member organizations to enhance their relevance and effectiveness in championing gender equity and equality.

In its over 38 years of existence, NGOCC has attained a strategic positioning as the focal point of the women's movement in Zambia and is poised to utilize this comparative advantage to continue as the voice for women's empowerment in addressing the gender agenda. NGOCC has, thus, become an influential voice in advocating for the implementation of gender-sensitive and responsive national policies, legislation and all developmental processes.

In line with its broad mandate, NGOCC's vision is, "A society where women are empowered and fully participate in social, cultural, economic and political development." The mission is "To promote women's empowerment for gender equity and equality through coordinated advocacy, capacity development of member organizations and linkages with government, local and international partners."

## **2.0 Background on Women and Land in Zambia**

Land is typically the most important asset for people in the developing world, the majority of whom, depend on agriculture for their livelihoods. Secure land rights can increase agricultural productivity and income, address food insecurity, and alleviate poverty. With this understanding, there have been efforts in the recent past, the world over, to undertake land reforms focused on ensuring that families gain secure rights to the land they occupy and farm. While secure family land rights are important, NGOCC contends that it matters who in the household has those rights. Over the years, it has become increasingly clear that the improvements in household welfare are typically more pronounced when women hold the rights.

The importance of land for sustainable livelihood and as a social asset has over the years been diluted with its value being reduced to only commercial or economic value. Generally, the respect for the value of land in sustaining and promoting human well-being has been lost because different stakeholders want to access and control land for economic purposes and this makes it difficult to protect non-commercial land uses. The core problem affecting the land sector in Zambia is the diminishing of the intrinsic value of land as a scarce and special resource.

However, women in the developing world, Zambia included, are constrained in their ability to own, access, and control land. As compared to men, women comprise on average between less than 5 percent to less than 20 percent of agricultural landholders in the main developing regions. For instance, in Zambia, women constitute 52 percent of the population and more than 60 percent of them are engaged in agriculture and yet they face several challenges in access and control to land compared to their male counterparts. Some of the challenges faced include cultural beliefs, lack of awareness, discriminatory official responses, expensive legal justice, and inadequate participation of women in institutions that deal with land.

This gender disparity leaves women and the households they manage economically and socially vulnerable. Without access to land and property rights, women especially widows and orphans, are often left homeless and destitute, especially after the death of their husband or

father and this has tended to extremely undermine women's economic security and independence as well access to food and housing.

On the other hand, it has been observed that there exists a positive correlation between agricultural productivity and land ownership and control. Further, research has shown that land plays an important role in the economic empowerment of women in any given society.

Studies have shown a compelling link between secure land rights for women and household welfare:

- Women with land rights contribute a greater proportion of income to the household, exercise greater control over agricultural income, and are more likely to receive credit.
- Women who own land are more likely to have the final say in household decisions.
- The odds that a child is severely underweight are reduced by half if the mother owns the land.
- When women own a larger share of the household's farmland, families allocate a larger proportion of their household budget to food.
- When women in the household have land rights, children have higher levels of educational attainment.

Based on the foregoing, a country must have a policy that is gender sensitive and responsive to this important resource. Land Policy covers the agreed principles and measures to govern tenure, use and management of land resources to enhance production and contribute to social, economic and environmental development and poverty alleviation. It also gives guidelines to the state on how land is to be administered and managed in the country. The Zambian land policy has been in draft form since 2006 and currently, there are efforts to bring to the finalization the formulation of the policy.

In May 2021, Zambia launched the first National Lands Policy after almost three decades of preparation. This process started in 1993 and at various times over the ensuing decades, drafts were produced and consulted on, including in 2006, 2013, 2015, 2017, 2018, 2019 and 2020. A year after its approval, in May 2022, the Ministry of Lands and Natural Resources published the National Lands Policy Implementation Plan for five years (2022 – 2026).

The new Government elected into office in August 2021 endorsed the Policy by incorporating its implementation in the 8th National Development Plan that was launched in August 2022. Priority areas of implementation are clearly stated in the 8th National Development Plan. One of the priority areas of action in the policy implementation plan is the need to reform laws governing land. This paper looks at the Lands Act Chapter 184 of the laws of Zambia.

It is important to state that Zambia has many laws that set the framework for land administration and governance. These include The Constitution of Zambia (Amendment) Act No. 2 of 2016 which sets the land tenure systems and land policy principles. The principal land administration instrument is the Lands Act Chapter 184 of the Laws of Zambia.

Other relevant laws are the Land Survey Act Cap 188, The Lands and Deeds Registry Act Cap 185, The Lands Tribunal Act of 2010, Lands Acquisition Act Cap 189, and Lands (perpetual Succession) Act Cap 186. Agricultural Lands Act Cap 187, Co-operatives Society Cap 397, Common Leasehold Schemes Cap 208, The Environment Management Act No 12 of 2011, Fencing Act Cap 190, Forests Act of 2015, Zambia Development Agency No 11 of 2006, Landlord and Tenant (Business Premises) Cap 193, Local Government Act No of 2 of 2019, Mines and Minerals Development Act No 11 of 2015, Property Transfer Tax Cap 340, The

Urban and Regional Planning Act 2015, Water Resources Management Act Cap 198 and the Intestate Act Chapter 59 of the Laws of Zambia.

The Lands Act was enacted on 13<sup>th</sup> September, 1995 to provide for the continuation of Leaseholds and leasehold tenure; provide for the continuation of Leaseholds and leasehold tenure; to provide for the continued vesting of land in the President and alienation of land by the President; to provide for the statutory recognition and continuation of customary tenure; to provide for the conversion of customary tenure into leasehold tenure; to establish a Land Development Fund and a Lands Tribunal; to repeal the Land (Conversion of Titles) Act; to repeal the Zambia (State Lands and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 to 1964, and the Western Province (Land and Miscellaneous Provisions) Act, 1970; and to provide for matters connected with or incidental to the foregoing.

The Act is analysed for its effectiveness in providing inclusive land alienation and promoting gender equality in access to and control of land. This paper also looks at whether in its application it can facilitate for land policy measures that advance the interests of everyone especially the poor and vulnerable including the generation of statistics for evidence and planning purposes.

### **3.0 NGOCC Position on the Provisions of the Lands Act,1995**

#### **3.1 Whether the act addresses gender equality objectives**

The Lands Act of 1995 vests all land in the President, who delegates her/his authority to the Commissioner of Lands to issue 99-year leasehold title deeds to applicants. On its face, the Land Act of 1995 is 'gender neutral' and does not discriminate against women. Women in Zambia can apply for any land in any part of the country, just like their male counterparts. It treats women and men the same and does not take cognizance of the differences between women and men as well as the differentiated land relations among women.

However, despite the significant positive changes, women's rights to land are yet to be fully realized under this law. This is because the law ignores the reality of an unequal society in which women have no access, ownership, or control over land. It assumes that there is gender equality in the land and that traditional systems do not discriminate against women. Hence, the law does not provide a gender-sensitive framework under which these imbalances can be checked and corrected.

The Lands Act recognizes the validity of customary law in areas under customary land tenure and therefore automatically privileges men and disadvantages women. Although recognising customary tenure, the Act allows a monetary value to be put on this land and permits the conversion of customary tenure to leasehold tenure.

The Land Act has a market orientation based on neo-liberal reasoning that land reform is more likely to result in poverty reduction if it is implemented per the operation of existing land markets. For women, most of whom are unable to access markets due to economic marginalization and poverty, accessing title deeds is not the best way to help them escape a life of poverty. Rather, it is more important for women to be acknowledged as having equal rights to access, own and use land, and provided with security of tenure.

The Land Act does not exclude women from obtaining title deeds, but the process has to go through the Commissioner of Lands after acquiring a letter from the chief that a certain portion of land, previously held under customary law, can be transformed into a title deed. This is a major constraint for women as customary law does not easily grant such rights to women and access to formal authorities to see the process through is rather complicated and cumbersome for rural women. A title deed however can be obtained from the council but even there, most of those handling the process are men biased against women.

Acquisition of land favors the rich and those with access to media as land applications are advertised through media. The councils that are agents of land administration are gender insensitive and do homogenize women. In Zambia, the media is mainly accessed by the rich along the line of rail and who can read the Queen's language as most if not all are printed in English. On the other hand, councils sometimes advertise on trees and public notice boards which are sometimes missed by the public.

To meet women's needs and rights in the Lands Act, several key measures have to be taken on board. Although the 1995 Lands Act guarantees women the possibility of being landowners with the security of tenure for 99 years, the major drawback is that the administration of traditional land advantages men.

The poor, especially, most rural women who cannot afford the costs involved in legal disputes, remain not only at a disadvantage but also at risk of losing their land to the rich. Cases have been reported where wealthy people have acquired land and have fenced it, leaving villagers and their animals deprived of water. As a result, the poor have been evicted from their land to make way for the rich who have acquired such land using their wealth.

NGOCC notes that the procedures for all land transactions are well stipulated in the Act for state land. In addition, in cases where grievances arise for state land procedures for resolving differences are well stated. NGOCC notes that the Act has not taken a keen interest in the rights of women and other marginalized groups of people to have access to and control of land, especially customary land. There is a need for the revision of the Act to incorporate the ideals captured in the 2021 National Lands Policy.

Though the Lands Act recognizes customary land the following challenges make it a not-so-inclusive approach, especially in the protection of the land rights of women and other disadvantaged groups:

1. Absence of individual ownership. Customary land is accessed through families.
2. Inadequate security of tenure. Tenure is not defined for a period it is in perpetuity on the condition that customs are adhered to always.
3. Cannot be used as collateral for a loan
4. Ownership may not be recorded

#### **4.0 What are some of the gaps identified?**

- a) No specific stipulation of quota allocation of land for women
- b) No specific stipulation of inclusion of women in the Lands Development Fund Committee
- c) Use of chairmen or vice chairmen, instead of chairpersons, for the Lands Tribunal committees (Part IV, 20-23). Use of “he” for the chief is discriminatory against female chiefs (Sec 31(3))
- d) Alienation of customary land at the prerogative of local traditions which tend to promote and favour male dominance
- e) Lack of stipulation for the issuance of Chiefs’ Land Certificates
- f) Lack of clarity in role of the chiefs as custodians of customary land
- g) Absence of provisions for registration of customary tenure
- h) No jurisdiction for dispute resolution involving land rights originating from customary tenure. This has impacted negatively to women who are the majority in the rural area
- i) Weak restrictions or limitations to foreign ownership of land
- j) The rules and procedures governing access to land for investors are like those of nationals as well as established inhabitants of customary land. There is need for different procedures for land acquisition affirmative to indigenous and nationals over residents and foreigners
- k) The Act has not taken keen interest of rights of women and other marginalized groups of people to have access and control of land especially customary land. There is need for the revision of the act to incorporate the ideals captured in the 2021 lands policy.

## **5.0 Recommendations**

- To protect and equalize the land rights of Women in Zambia, the Lands Act should provide for parity between customary land tenure and leasehold tenure. This may be actualised through the enactment of a separate law for customary land administration. From this, it follows that customary land rights and the customary land administration system must be strengthened and protected by law.
- The affirmative/reserved quota allocation (50%) system to be stipulated in all land alienations, including customary land
- Chiefs' Land Certificates should be recognized and backed by Law, to compel traditional issues them. These are easier to obtain by rural community women than statutory Title Deeds
- Specific quotas for women should be specified in the composition of the Lands Development Fund and Lands Tribunal committees to represent their interests.
- Gender-neutral language should be used in all the clauses to avoid the connotation of male dominance.
- At present the chiefs enjoy legal recognition in their capacity as traditional leaders but do not have legal rights to administer land. This means that customary land, under their custodianship, is weakly protected. Because of this, and in recognition of the need for women's rights to equal access to land, the traditional institutions should be given legal powers to administer land through transparent, accountable, and well-structured arrangements accessible at a local level.
- To strengthen a democratic customary land administration, there is a need to develop, in a participatory way, basic guidelines to be applied nationwide, that spell out the minimum standards for administration of customary land.

## **6.0 Conclusion**

There is a need for legal reform: almost all land-related laws are mentioned as needing to be reviewed in the land policy implementation plan. There is also a need for Institutional reform: to ensure that customary land management is given adequate governance, structure, and streamlining the land use planning for state land with land administration at both central and local decentralized levels.

Land administration and tenure reform are required to provide people-centered systems that serve landowners instead of systems that are only legalistic. The challenge of inefficient land registration or documentation processes needs to be addressed as well as the absence of coordination among ministries, for example, the Ministry of Lands and Natural Resources (MLNR) and Ministry of Local Government and Rural Development (MLGRD), and within departments of MLNR; with perceived independence of each ministry and each department, there are limited incentives for coordination. This makes the process of securing land tenure for women very expensive and cumbersome.

There is a need to ensure that women in more vulnerable positions such as women with disabilities are given legally enforceable protection.