



*"One day a pupil in uniform walked in our office with a gloomy face and greeted us with such a commanding tone such that we were all jacked up. She introduced herself as Mary Banda, a grade 11 pupil at Petauke Boarding High School. ... She said, 'I have come here to seek some assistance to reclaim land which belonged to my late stepfather who gave [it to] me and has been grabbed by my aunts upon my father's death.'"*

**Zambia Land Alliance<sup>1</sup>**

80-year-old Rufina Gibson, a groundnut farmer in Malawi, works her field. ©ILRI, Flickr

# 7 Land

**W**e argue throughout this book that empowering women demands change strategies at multiple levels. One of the most important is promoting women's direct access to, and control over, productive resources. Land is clearly a fundamental resource in agricultural production, yet across the continent very few women have statutory land title, largely due to their weak capital base. Huge numbers of African women still access land through male kin in customary land tenure systems, and their livelihoods are thus dependent on their ability to maintain relationships with fathers, husbands, sons and other male relatives. When these relationships fail – due, for example, to widowhood or divorce – women may be made to leave their land by their husband's clan. In customary systems single mothers may not be able to access any land. Young women in general may see no place for themselves in rural areas and move away. Thus, women at key turning points in their lives often have to move to the towns and cities to find work.<sup>1</sup>

Despite all the evidence of positive food security and livelihood outcomes when women have equitable access to land, there is unfinished business in the area of land reform. In many Sub-Saharan African countries, land reforms have consistently failed to develop novel ways of securing women's access to, use of, and control over land. These are often the direct outcomes of gender-biased – or “gender-neutral” – land reforms which fail to take into account the different ways in which women and men access resources, and which therefore fail to level the playing field. In Zimbabwe, for example, customary access to land works reasonably well for married women, but poorly for divorced and single women.



Chukwura Social Farmers Association members prepare a tree nursery. © Trees for the Future, Flickr

<sup>1</sup> Chapter 7 title page quotation: From an unpublished case file, shared through a personal communication with the authors.



Widowhood often presents problems for land use for women, especially in the absence of adult sons to defend their mother's land use rights. In such cases mothers may want land to devolve to sons rather than daughters as a strategy to hold onto the land.

Development outcomes improve when women have direct access to land. It is known that promoting women's rights over land and natural resources strengthens the livelihoods and food security of smallholder households.

Research by the OECD Development Centre shows strong associations between women's control over land and progress towards MDG targets. In relation to MDG 1: Eradicate extreme hunger and poverty, for instance, countries where women lack any right to own land have on average 60% more malnourished children.<sup>2</sup>

Secure access to land also supports women in their function as primary caregivers for children, elderly people, and family members living with HIV/AIDS and other chronic conditions.<sup>3</sup> Since women are often responsible for ensuring food security, increasing their influence over land allocation can help to ensure more of it is devoted to food crops for household use, or that enough of the proceeds from selling crops are used to purchase food. This said, programmes working to strengthen women's land rights in association with food security should ensure that they do not inadvertently undermine the roles of men in household food provisioning.

Women everywhere are engaged in agricultural production – whether it is for their own families, or for local, regional or international markets. They thus depend upon reliable access to land for their livelihoods. Land is also a crucial form of collateral for loans to invest in agricultural and non-agricultural businesses, and when women do not own land – or have to ask permission from a male relative to put it up as collateral – they often cannot access funds to expand their businesses.<sup>4</sup> At best, they may be able to access informal credit, which is of some help but is likely to be much smaller-scale.<sup>5</sup> Thus women often remain

A 14-year-old farmer in Gura Teberero Union, Ethiopia, shows off her land ownership certificate. Photo by Links Media, © USID



- 2 OECD Development Centre (2010). *Gender Inequality and the MDGs: What Are the Missing Dimensions?* 'At Issue' brief. Organisation for Economic Co-operation and Development, Paris. <http://www.oecd.org/development/poverty/49016646.pdf>.
- 3 See, for example, Izumi, K., ed. (2006). *Reclaiming Our Lives: HIV and AIDS, Women's Land and Property Rights, and Livelihoods in Southern and East Africa : Narratives and Responses*. HSRC Press, Pretoria, South Africa. <http://www.hsrcpress.ac.za/product.php?productid=2168>.
- 4 See, for example, Almodóvar-Reteguis, N., Kushnir, K. and Meilland, T. (2012). *Mapping the Legal Gender Gap in Using Property and Building Credit*. Women, Business and the Law. The World Bank, Washington, DC. [http://wbl.worldbank.org/reports/~/\\_media/FPDKM/WBL/Documents/Notes/Legal-Gender-Gap-in-Using-Property-and-Building-Credit.pdf](http://wbl.worldbank.org/reports/~/_media/FPDKM/WBL/Documents/Notes/Legal-Gender-Gap-in-Using-Property-and-Building-Credit.pdf).
- 5 See, for example, Owuor, G. and Shem, A. O. (2012). *Informal Credit and Factor Productivity in Africa: Does Informal Credit Matter?* Presented at the International Association of Agricultural Economists (IAAE) Triennial Conference. Foz do Iguaco, Brazil, 18–24 August. <http://ageconsearch.umn.edu/bitstream/126624/2/Owuor.pdf>.

locked into value chains as poorly paid producers with scarcely any opportunity to move into off-farm value-added activities. Work on enabling women to have direct access to land – as opposed to being mediated through kinship networks – can help women to improve their productivity and to strengthen their decision-making power with respect to crop/livestock choice and with regard to how the income is used. In terms of our empowerment framework, ensuring women have direct access to land helps them to make meaningful choices (resources + agency = meaningful choice).

Although customary laws have generally made it difficult for women to access land except through their husbands, there are exceptions. For example, the Isukha Luyia ethnic community in Kenya historically ensured that women, regardless of marital or child-bearing status, were able to access land. Since Isukha men were polygamous, they passed their land to their wives for their use. The land was shared equally, regardless of whether a wife was childless, or whether she “only” had daughters. In cases where a woman was childless, the husband’s family was responsible for identifying a son to support her, and to act as her son. When she grew too old to farm actively she would pass her own land to this son. For this she could demand compensation, for example a cow, but she would be allowed to live on the land until her death. At that point the son could take the land. However, this tradition has not been maintained into modern times, though village elders still remember it. Today, Isukha and Luyia<sup>6</sup> men rarely give land to childless wives, or to women who only have daughters. This has marginalized these women.

The jury remains out regarding the degree to which formal land titling programmes empower women. Factors contributing to empowerment under land titling include strengthening women in household level decision-making processes, and the participation of women’s networks and other civil society actors to ensure appropriate forms of land titling. Experience shows that land title is only the start of the process. Complementary programmes to promote women’s access to other resources, including credit, tools and information, are vital if they are to farm their land effectively.<sup>7</sup>

Three case studies are presented in this chapter. The first, from Kenya, highlights how the women’s movement came together to ensure that the Constitution recognized women’s land rights in full. This study is complemented by a second Kenyan study which emphasizes the importance of grassroots organizations in ensuring the implementation of legal reforms. The third study highlights Zimbabwe’s experience and draws out lessons.

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6 These are ethnic groups residing near the Kakamega area in Kenya.

7 See Quisumbing, A. R. and Pandolfelli, L. (2010). Promising Approaches to Address the Needs of Poor Female Farmers: Resources, Constraints, and Interventions. *World Development*, 38(4). 581–92. DOI:10.1016/j.worlddev.2009.10.006.

## CASE STUDY

### Women's land rights under the Constitution of Kenya, 2010

In Kenya, the women's movement fought for over 20 years to get women's land rights recognized in policy and the legislature. Their struggles were rewarded in 2010, when Kenya adopted one of the most progressive constitutions in Africa, with an explicit assertion of gender equality in land rights and protections for spouses and other dependents upon the dissolution of marriage or the death of the male landowner.<sup>8</sup> This is an important step forward for Kenyan women; our case study explains how they achieved it, and it also explains what remains to be done to ensure that women really can benefit from the provisions of the Constitution. Though much progress has been made, there is still a long way to go.

First it is helpful to take a step back to appreciate why land reform was so necessary. Overall, it is estimated that 27% of the smallholdings in Kenya are solely managed by women, whilst a further 47% of smallholdings are managed by women in the absence of their husbands.<sup>9</sup> However, Kenyan women only hold about 5% of registered land titles together with their husbands, and just 1% in their own name.<sup>10</sup> Female land ownership is so low partly because women generally have limited economic resources and therefore



Women in Mombasa, Kenya, demonstrate for land rights. ©Tom Chandler, Flickr

- 8 See Republic of Kenya (2010). *The Constitution of Kenya, 2010*. Nairobi. [http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution\\_of\\_Kenya\\_\\_2010.pdf](http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution_of_Kenya__2010.pdf).
- 9 Kenya Land Alliance/Centre for Land, Economy and Rights of Women, 2004. *The National Land Policy in Kenya. Critical Gender Issues and Policy Statements*. KLA Issue Paper No. 1/2004.
- 10 See Ellis, A., Cutura, J., Gillson, I., Manuel, C., Dione, N. and Thongori, J. (2007). *Gender and Economic Growth in Kenya: Unleashing the Power of Women*. The World Bank, Washington, DC. <http://hdl.handle.net/10986/6810>.

find it difficult to buy land on their own, but it has also been kept low by discriminatory practices under customary law. And although Kenya's Constitution of 1963 was amended in 1997 to explicitly prohibit discrimination, including on the basis of sex, it made a major exception, for laws and provisions "with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law".<sup>11</sup> Patriarchal norms also continued to prevail in the distribution of land. Very often, fathers continued to transfer land only to sons. In most cases, matrimonial property is still registered in the name of a spouse, typically the male, or considered to belong to him. Even now, despite having been made illegal, the disinheritance of widows remains a widespread phenomenon across the country.<sup>12</sup> Kenyan women as a group (daughters, sisters, wives, mothers, grandmothers) are discriminated against in land ownership regardless of how the land is acquired, whether inherited, held individually or communally. In the event of singlehood, marital separation, divorce or widowhood, women who depend solely on land for their livelihood often become destitute upon their removal from the land.

To address this situation, civil society organizations including the Kenya Land Alliance, the Centre for Land Economy and Rights of Women (CLEAR), the Women's Political Caucus, and Federation of Women Lawyers Association (FIDA-Kenya) worked closely together to secure women's rights to land during the Constitutional Review (2000–2010). This involved rethinking and re-fashioning lobbying and advocacy strategies. The organizations aimed to hold the government accountable for commitments it had made regionally, nationally and globally to women's rights. Lessons were learned from neighbouring countries, particularly Uganda and Tanzania, where activists have managed to ensure that women's concerns have been addressed in their national constitutions.

To guide the process, CLEAR, in partnership with the Kenya Land Alliance, developed an informational tool for lobbying the constitutional delegates, communities and policy-makers. The Kenya Land Alliance commissioned CLEAR to carry out a study and recommend measures to rectify the situation. The outcome of the study was a booklet, *Gender Aspects of Land Reform: Constitutional Principles*, which was used to lobby the constitutional delegates, government representatives, NGOs and other stakeholders during the Constitutional Review.<sup>13</sup> The booklet compares the realities of women's land rights with core constitutional principles, including the ban on discrimination on the basis of sex; equal rights regarding inheritance, succession and matrimonial property; and equal rights in relation to land distribution, resettlement schemes, and land markets, among others.

The Kenyan Constitution was promulgated on 27 August, 2010, and is considered one of the best constitutions in Africa for women. It comprehensively addresses gender equality, enshrining it in the Bill of Rights, which promotes women's representation, participation, opportunities and empowerment of women as equal citizens. Three separate articles also protect women's rights with regard to land. Article 60, the first in a section on land reforms,

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11 See Republic of Kenya (2009). *The Constitution of Kenya* (1963, Revised Edition 2009). Nairobi. [http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution\\_of\\_Kenya\\_\\_2010.pdf](http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution_of_Kenya__2010.pdf). Article 82 (4)(b).

12 See, for example, <http://grootskenya.org/sitez/index.php/resources/item/120-forum-meeting-in-nakuru>, and <http://kelinkkenya.org/2012/09/innovating-justice-for-widows-in-kenya/>.

13 Kenya Land Alliance (2002). *Gender Aspects of Land Reform: Constitutional Principles*. Nahuru, Kenya. Available at <http://www.mokoro.co.uk/other-resources/east-africa/kenya>.

starts with the assertion: “Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable”. It then outlines several principles, including equitable access to land, security of land rights, and “elimination of gender discrimination in law, customs and practices related to land and property in land”. Article 40, meanwhile, guarantees all Kenyans’ right to acquire and own property and offers protection from arbitrary takings or limitations on property use. And Article 68 calls for a series of land reforms to, among other things, “regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage”, and “protect the dependants of deceased persons holding interests in any land, including the interests of spouses in actual occupation of land”.

As a consequence of the professionalism of the women’s movement and the broad consensus for change it was able to achieve, the relationship between the government and the women’s movement changed for the better. Historically, this relationship has always swung between cooperation and conflict. Women used the arena provided by the Constitutional Review process to the maximum to ensure that the constitution adopted strong language on gender equality. The creation of consultative alliance building and networking processes to establish common ground with respect to addressing women’s land rights was vital. Commitment, knowledge, strength in numbers, and a unified voice were all central.

In terms of our empowerment framework, the women’s movement worked to develop the legal framework – the “structure” – fundamental to the ability of women to realize their rights to land. However, the women’s movement recognizes that the underlying norms which have legitimized discrimination against women for generations still remain largely unaffected by the changes to the law. Traditional practices and patriarchal land institutions will continue to discriminate against women with regard to land access and ownership. Complementary programmes such as raising women’s awareness of their rights, legal literacy programmes, and advocacy strategies of various kinds, will have to be employed for a long time to come before culture, attitude and perceptions change.

The women’s movement also exploited the “relations” aspect of empowerment to the utmost. It learned from its past experience in fostering partnerships, networking, and developing collaborative alliances with community-based women’s organizations, other civil society organizations, and policy-makers. Drawing out the critical issues and policy recommendations in the form of an accessible booklet for advocacy worked well. Campaigners for change were able to speak with one consistent voice and could provide clear messages to policy-makers.

This said, more work remains to be done in terms of building relations. Development partners can help farming women to realize their land rights by strengthening national and local women’s networks. Such networks need support in monitoring the implementation of the land laws, in ensuring law enforcement, in taking challenges in court, and in helping to roll out the constitution in local languages. All this costs time and money, and money in particular is desperately needed.



## **CASE STUDY**

### **GROOTS Kenya**

GROOTS Kenya provides some ideas of how civil society organizations can work to ensure the law is implemented. As part of its support to women living with HIV/AIDS, GROOTS works with women who have lost their land upon becoming widows. Together with these women GROOTS approaches decision-makers – including land tribunals, elders, and representatives of the Provincial Administration (chiefs, assistant chiefs and district officers) – to ask them to explain their position on women’s land rights. Part of this process is described in Chapter 6 on community empowerment methodologies. Following agreements with decision-makers, women leaders and the various bodies involved with land rights set up “Watchdog Groups” to oversee the implementation of agreements.

Watchdog Groups are further enlisted to track what is happening in the community and to act quickly should other women lose their land. The groups also work to inform the wider community about the consequences for women of being disinherited upon their husband’s death. Specific activities include educating women on the key legal documents they need to assert their rights to land, such as land titles, marriage and death certificates. Finally, the Watchdog Groups encourage community members to write wills, so widows’ and orphans’ inheritance rights are clearly asserted.

GROOTS Kenya realized that the Watchdog Groups needed a better understanding of the law in order to work well. Thus, it developed a Community Paralegalism Programme, whereby a person selected by the community is trained as a paralegal expert able to articulate the law. Several community paralegals are widows who have survived discrimination following the death of their husband. Importantly, the Watchdog Groups work to avoid conflict over land. They achieve this by providing a community level mechanism for resolving land issues, as opposed to encouraging people to engage in long, complex and costly court cases. The ultimate aim is to ensure that widows have land to settle on with the agreement of the whole community.

GROOTS Kenya has learned that resettling widows on land is only the first step. Experience showed that such women frequently lease out their hard-won land because they have no money for tools and inputs. To address this situation, GROOTS Kenya sets up collective farming groups. Extension officers provide technical support to the entire group. GROOTS Kenya also provides a basic agricultural start-up kit for each group. The kit includes tools like pangas (machetes), hoes, pumps, seeds and seedlings. The kit is not repaid by the recipients. Rather, GROOTS works to ensure the group’s sustainability over the long term. Members are encouraged to be innovative, for example by selling products when prices are high, engaging in village-level saving and credit schemes, and saving seeds. Many women are now engaged in greenhouse production and in the planting drought-resistant crops.

The work of GROOTS relates strongly to our empowerment framework. The Watchdog Groups work to ensure the implementation of the law (visible structure). To do so, they help to push for change in the underlying norms of society (invisible structures). They have a very clear target group, innovative strategies and are very firm in what they expect to achieve. At the same time, the Watchdog Groups recognize that conflict is counterproductive, and they also recognize that the legal system per se can be complex and hard to manage. For



this reason, they work to get the whole community to agree to widows settling new land, or retaining their own land. This is a powerful way to refashion gender norms at the community level and to bring them into alignment with statutory provisions on gender equality.

Development partners often shy away from helping grassroots women to organize, yet their support would make a big difference. For example, they could help to support capacity development programmes aiming to strengthen the leadership capacity of grassroots women. This may involve helping to facilitate meetings, peer learning, exchange visits and supporting community-level dialogue processes. Assistance with paying for office space is very helpful. Development partners can support land reform programmes by assisting with the supply of basic farming inputs.

Furthermore, development partners could consider direct grants and capacity development to local-level women's groups rather than higher-level federations. Local groups often lack the ability to apply for funds from international donors, and they also need to demonstrate that they have the technical capacity to manage funds. However, working directly with local women's groups can yield great results in terms of empowering them at all levels, and in making a difference to their farming productivity. Development agencies should therefore develop innovative ways to reach local women's groups. The Global Fund for Women has some experience in this respect which can be built upon.<sup>14</sup>

## CASE STUDY

### Women and land in Zimbabwe

Zimbabwe's land reform process was originally "gender-neutral", but in a male-dominated society, neutrality results in gender gaps in land ownership, control, management and productivity.<sup>15</sup> At the onset of the Fast Track Land Reform, the policy framework did not provide an enabling environment to redress gender imbalances of land and inheritance issues, especially for widows. The permit, offer letter or lease was in the name of the applicant, irrespective of marital status or gender. This resulted in ad hoc practices based on prevailing customs. The existence of the dual legal system, with both customary law and statutory law in issues of inheritance and marriage, resulted in women's discrimination in terms of accessing land in their own right or as equal citizens.<sup>16</sup>

Early on in the struggle for women's land rights, the Utete Land Committee recommended that 20% of the land to be given to women. The Committee also supported the inclusion of women's names on land offer letters. However, most provinces did not reach the 20%

14 For a quick introduction to the Global Fund for Women's approach to grant-making, see <http://www.globalfundforwomen.org/what-we-do/how-we-grant>.

15 See, for example, The World Bank, FAO and IFAD (2009). *Gender in Agriculture Sourcebook*. The World Bank, Food and Agriculture Organization of the United Nations, and International Fund for Agricultural Development, Washington, DC. <http://go.worldbank.org/5Z9QPCC7L0>. Module 4, on gender issues in land policy, notes that a common problem with land reforms is "'gender-neutral' legislation and programs that, because they ignore the normative and practical constraints women face in obtaining land rights, are in fact biased against women" (at p. 24).

16 Jirira, K. O. and Halimana, C. M. (2008). *A Gender Audit of Women and Land Rights in Zimbabwe*. Paper prepared for the Zimbabwe Women's Resource Centre and Network. Harare, Zimbabwe. At p.14.

threshold. Variations occurred depending on the strength of the women's groups and their lobbying skills in specific areas.

Women and Land in Zimbabwe (WLZ), initially the Women and Land Lobby Group, was established in 1998 by academics and activists. Its work, complemented by the struggles of women on the ground, led to real change. The policy framework now ensures an equal quota for women in land allocation schemes and it ensures that both the man and the woman are named on land leases. Single women are also able to apply for a land permit in their own name, and are not discriminated against in land allocation. Women war veterans have been very active in struggling for their land rights. Many have been allocated land in their own right rather than as wives. Over 150,000 families have been resettled through the Fast Track Land Reform Programme to date.

Studies in Zimbabwe show that many women who have received land title, either individually or as part of a family, have had their lives transformed.<sup>17</sup> Many married women feel they are much more involved in farming operations than in the past, and many women state that they are able to negotiate on an equal footing with men. District and land committees have discretionary powers in solving land disputes and inheritance issues. Research indicates that many officers are gender-sensitive and generally sympathetic to women. For example, even where men have been named on permits or offer letters, the general practice is that the widow is allowed to stay on the farm. In such cases, the permit or offer letter is transferred into the widow's name. In one case of a divorce, the husband retained the land but the wife was allocated land elsewhere, since the land committee recognized that she had been the main farmer. Overall it is fair to say that attitudes are changing quite rapidly due to the land reform process, but equality has not yet been reached. One woman said, "You have to be aggressive and strong – you have to act like a man and not give up." Inheritance issues remain problematic. As the Kenyan study shows, even if the legal framework enshrines women's rights to land, struggles to realize these rights must continue.

An important component of the land reform process has been to support women who have been allocated land. The Women Farmers Land and Agriculture (WFLA) Trust was formed in 2006 with the mandate to promote the contribution of women farmers to national food security and to enable economic empowerment of women by means of capacity-building, lobbying and advocacy, and to facilitate their access to farming resources such as equipment, irrigation and inputs. The WFLA Trust now has more than 2,000 members, including women engaged in farming as a business, and single women farmers who are divorced, widowed or never married.

Although numerous women are now "farming as a business", it is clear that the ability of many to reinvest sufficient monies into farming is hampered by their myriad family

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17 See Mazhawiwa, P. and Manjengwa, J. (2011). *The Social, Political and Economic Transformative Impact of the Fast Track Land Reform Programme on the Lives of Women Farmers in Goromonzi and Vungu-Gweru Districts of Zimbabwe*. International Land Coalition Research Report 8. Women Farmers Land and Agriculture Trust and Centre for Applied Social Sciences, University of Zimbabwe. <http://www.landcoalition.org/publications/social-political-and-economic-transformative-impact-fast-track-land-reform-programme-li>. Also: Hanlon, J., Manjengwa, J. and Smart, T. (2012). *Zimbabwe Takes Back Its Land*. Kumarian Press, Boulder, CO, US. [https://www.kpbooks.com/title/Zimbabwe\\_Takes\\_Back\\_Its\\_Land](https://www.kpbooks.com/title/Zimbabwe_Takes_Back_Its_Land). Research in Mazowe, Goromonzi and Murhewa districts is presented in the book, which includes a chapter titled "Women Take Their Land".



Women's rights activists in Harare, Zimbabwe. © Inter Press Service, Flickr

responsibilities, ranging from putting food on the table to sending children to school. Women feel that ensuring household food security is their duty. Poor women in particular find it very hard to meet this responsibility whilst setting aside sufficient money for investment. Some women farmers have failed and have dropped out. However, many other women have made it as successful farmers. Gertrude Chimbwanda is a resettled farmer who earned \$4,200 USD from selling her tobacco in 2011. She says, “As a widow and woman farmer I think I have done well for myself because I managed to build a homestead. I own a few goats and chickens. This farming season I planted tobacco, barley and maize. I am honoured to be a woman land owner, and this has helped to look after my family after my husband passed away.”

The Zimbabwean experience shows that it is vital to work with policy-makers to help them understand that “neutral” land reform policies serve to embed the status quo. Issuing joint titles is not enough – implementing bodies need to be gender-aware to help guide the implementation of land reform on the ground. Training may be necessary. In common with GROOTS Kenya, activists in Zimbabwe have learned that securing women’s access to land is only one step in a longer process. Women need help with inputs and training in good agricultural practices to make up for years of gender biases in extension, and to compensate for women’s continuing low asset base. The Zimbabwe study further shows that women’s expenditure responsibilities remain a challenge to capital accumulation. Women find it harder than men to succeed in market-orientated farming for this reason.

## CASE STUDY

### Fighting for land rights in Zambia: Mary Banda's story

Traditional or customary marriages – recognized within the tribe but not backed by a legal document – remain common in Zambia. Two factors affect women's land rights in these communities: whether when couples get married, they are expected to settle in the man's village (virilocal) or the woman's (uxorilocal), and whether inheritance is patrilineal or matrilineal.<sup>18</sup>

In matrilineal societies, when a couple marries, the couple is given land by the woman's family, though the man usually controls it for the duration of the marriage. If he dies or the couple divorces and the woman is in her own village, her male relatives will generally control the land, but provide for her. If she's in her husband's village, she will usually be allowed to keep at least some land. In patrilineal societies, however, a woman's access to land is through her husband, and in the event of his death or divorce, the man's family will often take back the property, leaving the woman with nothing. In both patterns of marriage, the couple's children can also be easily disinherited.

This is not what Zambia's laws call for. Under the Intestate Succession Law of 1989, a man or woman who is widowed inherits 20% of the deceased's estate, and shares the house with the children. However, the law excludes property held under customary law – the land that 80% of rural Zambians rely on for subsistence farming.<sup>19</sup> Thus, legal reforms have been of little help to rural women and children.



The road from Petauke, Eastern Province, Zambia. © Sarah Depper, Flickr

Mary Banda walked into the Petauke District Land Alliance office one day in 2008, dressed in her school uniform, distraught but determined. Her land had been taken away, and she wanted help to reclaim it.

Mary was born in Luanshya district, in the Copperbelt Province, in 1978. When she was 2 years old, her father died, and the family moved to Kakwiya village, in Petauke District of Eastern Province. Two years later, her mother married a man who already had two other wives and many children.

18 Zambia Land Alliance materials supplemented here by: USAID (2010). *USAID Country Profile: Property Rights and Resource Governance – Zambia*. U.S. Agency for International Development, Washington, DC. <http://usaidlandtenure.net/zambia>.

19 See USAID (2010), *Country Profile*, op.cit.



The stepfather paid for Mary to attend school, and she and her mother both worked on his land. In 1993, Mary was admitted into Petauke Boarding High School, but after completing the ninth grade there, at the end of 1994, she found herself pregnant and had to drop out. In 1995, she got married.

In 1997, Mary's stepfather called his family members, per the local tradition, and told them he intended to demarcate part of his land and give it to Mary. The family had no objection. The stepfather provided for Mary to inherit 10 hectares of cropland and one hectare of garden.

In 2007 Mary – now a mother of two – got divorced, and decided to go back to school. But her stepfather died that same year, leaving her with no support. Yet she had the land, so she grew maize, sold it, and used the proceeds to buy flour and begin baking buns and scones. This became Mary's main source of income, allowing her to pay for school and support her children. She also had to help her mother, two older sisters and two brothers: Upon her stepfather's death, her mother had been forced off the land and sent back to her village, and her relatives there had only given her a small amount of poor-quality land. Then her sisters had lost their husbands and been forced to move back in with their mother. Mary enlisted them to help with the land and with the baking.

The following year, however, while Mary was at school, her late stepfather's family took her land away and gave it to two of her stepsisters who had lost their own land – one because of divorce, another after because of her husband's death. The family argued that under customary law, Mary wasn't entitled to inherit even a sewing needle. When she returned from school, she found all they had left her was a rocky and unproductive area. Her stepfather's family told her she should go to her father's grave to ask for land, driving her to tears. She went to the village head and the chief's representative, but they saw nothing wrong in what had happened. The local police turned her away, too, but suggested she seek help from the Petauke District Land Alliance.

Mary was devastated; she had two years of school left, and without land, her dreams would be shattered. She was also being threatened, but she was willing to fight for her property. The Land Alliance set out to help her.

The village leadership confirmed Mary's story, saying that a ruling had been made by the village court in accordance with Nsenga customs. The Land Alliance staff requested a meeting with Mary, the village head, the chief's representative, and Mary's aunts – and to their surprise, almost the entire village came, including the two stepsisters who had been given Mary's land. After almost three hours of discussion, the family agreed to return the land to Mary. But three weeks later, Mary came back and reported that her aunts had changed their minds and reverted to their earlier decision.

The Land Alliance wrote to the chief, asking him to intervene, and arguing that per her stepfather's wishes, Mary was the rightful owner of the land. If anyone in the family had any objections, they should have raised them in the three years between the stepfather's announcement and his death. The chief sent his Nduna to Mary's village, and he called a meeting with Mary, her stepfather's family, and headpersons from surrounding villages. In the interest of social justice, the Nduna announced, and given the relatives' failure to object

to Mary's inheritance while the stepfather was still alive, the chief found it prudent for Mary to take back her land immediately.

The matter took two years, and Mary worked on the Land Alliance's field during 2009/2010 farming season – the year she completed secondary school. But she got her land back, and now she is a model for other young people in the district.

## Ways forward

In terms of our empowerment framework, land reform is one of the most critical ways to transform gender relations. When women have land title, either customary or statutory, they have direct access to the factors of production and are no longer dependent on maintaining relations with male kin. These relations are anyway largely out of women's control – the death of a spouse can result in their immediate removal from land they may have farmed for decades. The studies show that radical change to the overall "structure" – legislation – is often best achieved by promoting coalitions and networks of women grassroots activists and academics. Attention to "relations" is thus central. To enable women to participate on an equal footing in such networks requires capacity development, particularly for grassroots women, to enable them to create and take spaces in such broad movements. The studies also show that work on identifying positive cultural norms, and continually working to transform norms that favour men for land and inheritance must continue long after equality in the eyes of the law has been achieved.

The continuing responsibility of women for core household expenditures remains a real challenge to women and hampers them from accumulating money for re-investment. Household approaches, discussed in Chapter 5, may well provide a way out of this impasse. Credit, particularly in sufficient quality to actually transform a business, is a further critical input. Training, tools and other inputs often need to be provided to ensure women truly benefit. Figure 7.1 summarizes key activities that can be undertaken to support women's rights to land.

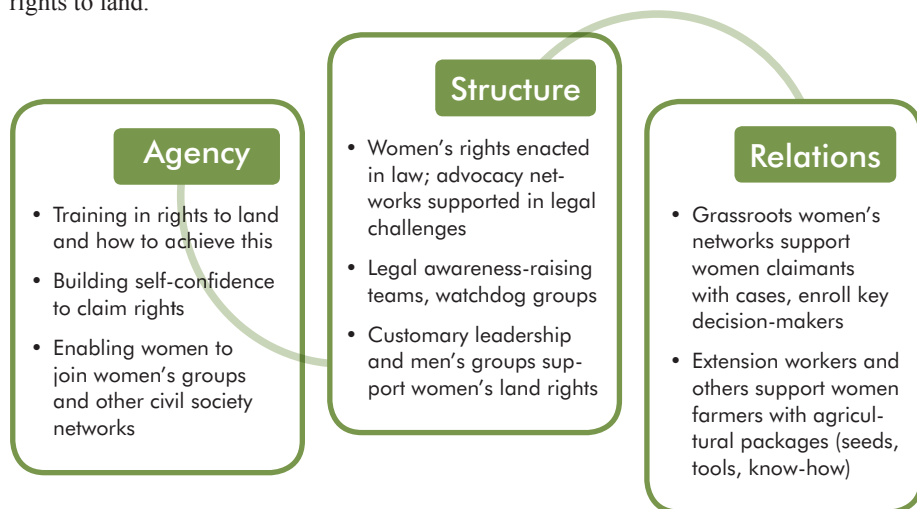


FIGURE 7.1 Activities to support women's rights to land