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## Women's Access to Land and Security of Tenure post 2013 Constitution in Zimbabwe

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### ABSTRACT

Rural women's livelihoods in Africa are dependent on their rights and entitlement to land as well as security of tenure. Equally important is how land laws and land governance systems shape and reshape women's access to land and tenure security. As such, this paper focuses on women's access to land and tenure security after the adoption of a new Constitution in 2013 and Statutory Instrument 53 of 2014 in Zimbabwe. Whereas both legal instruments are progressive and guarantee women's rights to property, their realisation is shrouded in complexities and contradictions. Customary practices still insist on male privileges to own and allocate land whilst women have fragile usufruct rights and limited sole or joint ownership. State land administrators are also complicit in violating women's rights. Overall, there is need to uphold both the Constitution and related laws to promote gender justice when it comes to women's land rights and tenure security.

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## **1. INTRODUCTION**

Ability to use and control land are central to rural women's livelihoods in Africa. In this regard understanding land laws and administration systems is imperative. Zimbabwe is underpinned by a dual legal system, namely, statutory and customary laws. Against this background this paper focuses on women's access to land and tenure security after the adoption of a new Constitution in 2013 and Statutory Instrument 53 of 2014 (here in referred to as SI 53/14). The former is analyzed pertaining to what has happened to women in communal areas whose land is predominantly governed by customary laws whilst the latter is examined as it relates to women's rights to land at death of spouse or divorce in resettlement areas created during the fast track land reform. The key question underpinning this paper is to what extent has these two formal laws improved women's access to land, ownership and tenure security?

## **2. CONCEPTUAL APPROACH**

The frameworks build on key questions that define the scope of this paper in terms of women's Access to, Control and Ownership of land, and tenure security. According to the Women's Empowerment Framework (Longwe Framework) access is about ensuring equality between men and women by removing discriminatory factors of production and removing provisions in the laws that discriminate one's sex. Within the context of the Harvard Framework access simply means that one is able to use a resource; but this says nothing about whether one has control over it. The Longwe Framework says control is about power to make decisions and this has to be understood within the wider context of social relations that govern societies. On the question around land ownership and land tenure, focus on key basket of rights is useful. The idea is to analyse if the 2013 Constitution enhanced (or not) women's rights within the context of the baskets of land rights. Rukuni (1998:2) notes that security of tenure is associated with four sets of rights as follows:

- a. Use rights: are rights to grow crops, trees, make permanent improvement, harvest trees and fruits, and so on;
- b. Transfer rights: are rights to transfer land or use rights, i.e. rights to sell, give, mortgage, lease, rent or bequeath;
- c. Exclusion rights: are rights by an individual, group or community to exclude others from the rights discussed above; and
- d. Enforcement rights: refer to the legal, institutional and administrative provisions to guarantee rights.

## **3. METHODOLOGICAL FRAMEWORK**

This paper is derived from a baseline study conducted in 2017 in two districts in Zimbabwe. Women, men and youths from the communities, the Zimbabwe Land Commission, traditional leaders, local government leaders and government agencies participated in the study. A questionnaire was used to collect data from women in Makoni district. Two group discussions were conducted in Chiduku ward in the district to understand how the different genders perceive women's access and control over land in the context of customary laws and the Constitution. A total of six in-depth interviews were conducted with women. Key informants in the study included government officials in land related ministries, departments and institutions such as the district and provincial land committees, councilors and traditional leaders. A review of two formal legal instruments, that is, the 2013 Constitution and the SI 53/14 was also conducted.

#### **4. WOMEN AND LAND IN ZIMBABWE: A BRIEF HISTORICAL ANALYSIS**

Zimbabwe's land question has a long historical trajectory, and involves complex interplay of racial, class, gender, ethnic and generation questions. Since the pre-colonial era women have had access but lacked ownership and control of land in the country. Access to land by women was negotiated within familial and kinship relations in various societies. Land expropriation by the British reconfigured women's access to land. Among other factors, customary practices were misinterpreted and became the basis for women's exclusion from accessing land (Cheater 1986, Gaidzanwa 1981). This discrimination against women continued post-independence. The inequalities and discrimination women faced were also embedded in the old constitution of Zimbabwe (Section 23 (b) permitted the practice of allocating land to men and not women). The Communal Lands Act of 1981 also provided that land should be given to families that customarily lived in the specific area, and Section 8(2) instructed the Rural Development Councils to follow allocation and land use practices based on customary laws (Bhatasara 2010). In 2000 fast track land reform, women faced dual laws, a constitution that was discriminatory, insecure rights to land, and patriarchal customary practices (Bhatasara and Chiweshe 2017) hence only a few benefited.

#### **5. WOMEN AND LAND IN MAKONI COMMUNAL AREA: INSIGHTS FROM THE FIELD**

Makoni district is situated in Manicaland province, under Chief Makoni. Most of the households are defacto male headed (47.2%) and 33% are female headed, whilst 19.4% are de jure female headed. Farming is the dominant source of income (72.2%). In terms of community leadership, only 6, 35 and 5 women are headmen, village heads and Councillors respectively.

##### **5.1 Land Ownership Patterns**

The majority (58.3%) of women indicated that women do not own land in their own right. Similarly, the majority of married women confirmed that they are not registered owners of land, whilst 19.4% of those widowed agreed that they were registered but do not own the land. Amongst those who indicated that their land was registered, a significant number indicated that the land was registered in the name of the husband. In the context of the Longwe framework, women predominantly lack control and decision-making powers on land in communal areas of Makoni because they are not owners of the land. To also show that women have no ownership and control over land but fragile access, it was noted that the husband may actually refuse to allocate the wife a piece of land so that she independently grows her own crops. Women's access to land is not direct or guaranteed but it is negotiated at the household level as well as extra-household context. Similarly, Gaidzanwa (1981) found that land belonged to men and women's access to land was mediated through men in Shona societies.

The men in the study noted how land is linked to their ancestors, thus when a woman is married into a family she cannot own land. The land remains in the lineage and passed on through male children through inheritance though, as the traditional leader noted widowed or divorced daughters who return home maybe allocated land. Culturally, single daughters are expected to get married and move to their husbands' place of residence (through the practice of patrilocality) hence they are not given land. In fact, women are regarded as people in transit from their homes of birth to joining their husbands, through whom they are expected to access land (Moyo et al. 2015).

##### **5.2 Land Allocation Dynamics**

Analytically, the process or system of land allocation is highly gendered. Almost all women in the case study (83.3%) fully understand how land is allocated and 94.4% indicated that the Sabhuku (village head) is a major player in land allocation. Fathers also allocate land to their sons. Customary laws insist on the idea that women are essentially 'vatorwa'<sup>1</sup>. This idea was further reinforced by women who

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<sup>1</sup> Shona word loosely translated to mean non-relative.

continuously referred to the land they use and live on as 'munda wevaridzi'<sup>2</sup>. Female members are allocated land but only through their male counterparts, be they husbands, sons or members in their kinships (World Bank, 2008). As noted by Moyo et al (2015), the land administration system continues to permit discrimination against women in owning and controlling land by submitting to customary laws. Women may be part of the committee that supports the village head and also the District Land Committee but they have no say in land allocation.

### **5.3 Women's Rights over Land**

Borrowing from Rukuni's (1998) framework on basket of rights, women in Makoni have limited and insecure rights over land. The Food and Agricultural Organization (FAO, 2002) confirmed that there is a strong correlation in many societies between the decision-making powers that a person enjoys and the quantity and quality of land rights held by that person. Post 2013 Constitution, Moyo et al (2015) exposed that the land rights available to women in Communal and Resettlement Areas are the most limited in scope and insecure, while women's access to land in commercial farming areas, including the leasehold lands and remaining large-scale farm areas is largely limited by various market related resource constraints. Fundamentally, in Makoni, women's access to land is not framed in terms of rights in the first place but the dictates of culture and tradition. Cultural or local prohibitions against women's ownership of land are often more powerful than written laws (World Bank, 2008). In the limited circumstances where women have access to land, they only have limited and temporary use rights (rights to grow crops, trees, make permanent improvement, harvest trees and fruits, and so on). They do not have transfer, exclusion and enforcement rights over land. The use rights, however, may not grant enough security for women and other dependents when traditional family structures dissolve (FAO, 2002). Women's access to and rights over land also deteriorate upon the death of their spouses. In actual fact, women may become even more vulnerable depending on circumstances. Divorced or widowed daughters are also allocated land but they only have access rights as they are expected to return the land once they remarry.

In monogamous marriages, the surviving spouse can register her name but simply for the purposes of paying land development taxes. However, the woman may have more access and control rights over production decisions but, this is dependent also on the late husband's kinsmen (including sons), who may dispossess her. In polygamous marriages, the surviving spouses also do not get ownership of land but may have more flexible access and use rights. The senior wife registers the land in her name, again for the purposes of paying taxes and she may decide on access rights of other wives.

## **6. 2013 CONSTITUTION AND WOMEN'S ACCESS TO LAND**

### **6.1 Constitutional Provisions Focusing on Women's Land Access**

The majority of the women (77.8%) in the study are aware of the 2013 Constitution. However, they could not clearly explicate on the specific Constitutional provisions connected to their realities. Even the officers in government departments also do not have a clear appreciation of the provisions relating to women and land. Women's access to agricultural land is enshrined in the 2013 Constitution but their reality is shrouded in complexities and contradictions. The Table below outlines some of the Constitutional provisions and their flaws.

<b>Constitutional Provision</b>	<b>Gaps</b>
Section 71 [2] Every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms	It does not relate to agricultural, which is essentially state land. State land (as property) cannot be disposed or sold. This right also does not extend to

<sup>2</sup> Loosely translated to mean that the land has owners and as women they are just living and working on the land.

of property, either individually or in association with others.	women in the case of customary land who are governed under the Communal Lands Act.
Section 17 [1] (c) The State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men	Customary laws concerning land tenure such as the Traditional Leaders Act do not reflect this.
Section 14 [1]: The State and all institutions and agencies of government at every level must endeavour to facilitate and take measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalised persons, groups and communities in Zimbabwe	There are laws that are still not aligned to ensure that all marginalised persons or groups are included in land allocation. The constitutional provision on culture and traditional institutions and leadership (Section 1) still limit the empowerment of women. The Communal Lands Act and traditional leaders act also run counter to women's empowerment.
Section 71 [3a and b] No person may be compulsorily deprived of their property except where, (a) the deprivation is in terms of a law of general application and (b) the deprivation is necessary in the interests of defence, public safety, public order, public morality, public health or town and country planning or in order to develop or use that or any other property for a purpose beneficial to the community	Reality shows that no one can ever fully protect himself or herself from losing land. <sup>3</sup> One can lose land, more so on agricultural land where compensation will only be for the improvements done on the land.

**Table 1: Constitutional provisions related to women and land**

However, it is also important to note that Section 80(3) provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void to the extent of the infringement. The Constitution is the supreme law of the nation and "all laws and any law, practice, custom or conduct inconsistent with it is invalid to the extent of that inconsistency..." This is a fundamental starting point in rethinking land policy in Zimbabwe.

## **6.2 Land Access Policies Post 2013 Constitution**

The land policies are biased towards resettlement farms. Officials from the then Ministry of Lands and Resettlement indicated that land allocation is undergirded by the 'One family, One farm' policy. However, in Zimbabwean patriarchal societies the assumption of a family unit assumes male headship thus male control and ownership of land. Within this rubric the question of gender maybe catered in that single women can still apply for land in their own right whilst married women have joint access to land with their husbands. The initial land offer letters were registered mainly with male spouses but as leases and permits are now processed the Ministry insists on registering both husband and wife or wives in the case of polygamous situations. This means that the government firmly believes that women have adequate access to land through marriage and also single women in their own right. But in reality, officers within the Ministry argued that their work ends with allocation and registration of permits; issues beyond this are more aligned to the politics within marriages which the Ministry cannot meddle in. In essence, without joint land permit, married women in most instances have use rights but these are also limited to usufruct (no transfer rights or selling rights).

<sup>3</sup> Many cases of evictions have been reported in different localities



## **7. DIVORCE AND INHERITANCE RIGHTS ON RESETTLEMENT LAND: THE PROVISIONS OF SI53/14**

Statutory Instrument 53 of 2014 deals with Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014. The SI speaks directly to the issuance of permits to resettled A1 (communal like model) farmers. It outlines the rights and responsibilities of permit holders noting clearly in Section 6 (1) that:

- a. Every permit holder has the following rights with respect to the occupation, holding and use of the allocated land –
- b. To occupy, hold and use the allocated land for agricultural, pastoral and personal residential purposes; and
- c. To develop the land and erect any infrastructure and other improvements there on related to the purposes specified in paragraph (a)

Section 6 (2) is however critical to foreground the discussion of women's land rights. This is because the question of tenure security is central to protecting women's claims to land as will be discussed below. Section 6 (2) notes:

*For the avoidance of doubt, it is declared that a permit holder does not have title over the allocated land, that is to say, he or she may not sell the allocated land, but may, however, transfer, lease, hypothecate, bequeath or otherwise encumber the allocated land in the manner provided under section 7.*

The inability to sell the land becomes a contentious issue when discussing sharing and disposal of property in case of divorce. Section 14 (1) reads:

*If the marriage or in the case of polygamous marriage, any of the marriages between a permit holder who is the sole signatory of the permit and his or her spouse is dissolved, the non-signatory divorced spouse shall retain his or her rights as a joint permit holder and a joint head of household unless the signatory permit holder compensates the divorced spouse for his or her assessed share under the permit.*

This in essence means that anyone who does not become joint signatories (through section 10 (3)) will essentially get a raw deal in case of divorce. This is because the assessed value determined by an arbitrator chosen by the Minister will only be for the improvements. In this case, equal registration is not enough to guarantee women's land rights in case of divorce. Interviews with government officials and literature review shows that in some very rare cases (especially on large land holdings) divorced partners have been made to share the land equally (see Chiweshe 2015, Matondi 2012). Table two below shows the various provisions relating to women and land in case of death and divorce and implications on women in varying circumstances.

<b>Provisions of SI53/14</b>	<b>Implications</b>
10 (1): If a permit holder is married to one or more spouses at the time the permit is signed, his or her spouse(s) shall be deemed to hold equal joint and undivided share in the allocated land...	The permit holder however remains signatory and has protected rights in case of divorce. He/she is given the option to buy out the other spouse(s) at a rate determined by the Minister or appointed arbitrator (see section 14(1). The clause is also limited by the Matrimonial Causes Act (Chapter 5:13) which does not recognize unregistered customary law unions.
10 (1) continues to say: Provided that if any spouse was not on the date the permit is signed, and for a period of at least twelve months before such a signature, cohabiting as man and wife and with the signatory, such spouse shall not be deemed to hold an equal joint and	This is a progressive step to protect the rights of cohabiting partners especially women who are not married officially. The Matrimonial Causes Act (Chapter 5:13) however still only recognizes registered marriages and this needs to change to reflect the SI53/14. Even if the marriage is

undivided share in the allocated land, unless the spouse in question is, at the time of the signing if the permit, a joint signatory of the permit or in occupation of, or otherwise actively involved in developing, the allocated land.	registered, the Act is further problematic as it provides only guidelines as to what is just and equitable. The interpretation is left to the individual judge or magistrate.
10 (3): A signatory permit holder or (if there are two or more signatories of the permit), every signatory permit holder jointly, may request an amendment of the permit to enable his or her spouse to become a joint signatory thereof.	This allows women to become joint permit holders and not only registered on the permit. It improves security and control over the land.
11 (1) (a): If a signatory permit holder was married to one spouse in a potentially polygamous marriage at the time the permit is first signed upon its issuance, and subsequently marries another spouse or other spouses (hereafter in these regulations referred to as "subsequent non-qualifying spouse(s)"), every subsequent non qualifying spouse shall not become the holder of an equal joint and undivided share in the allocated land, unless the spouse married on the date the permit was first signed upon its issuance signifies in writing her consent to the additional spouses as the case may be, becoming the holder of an equal joint and undivided share in the allocated land	This section protects both women in polygamous and monogamous marriages. But leaves the other wives in polygamous marriages at the mercy of the senior wife.
12 (1) If a signatory permit holder was not married at the time the permit is signed by him or her, but subsequently becomes married, his or her spouse shall be deemed to hold an equal joint and undivided share in the allocated land.	The Administration of Estates Act Chapter 6:01, recognizes an unregistered customary law marriage for the purposes of inheritance where the husband does not leave a will. Where the husband has a will and leaves out the widow she can go to court to contest the will.

**Table 2: SI53/14**

## **8. IMPLICATIONS FOR GENDER JUSTICE IN LAND POLICY**

This policy of one family, one farm needs to be aligned and redefined within the context of the 2013 Constitution that does not in any way separates women according to marital status. Table 3 below provides some policy considerations for the Zimbabwe Land Commission.

Area of focus	Specific issues
Implement provisions of 2013 Constitutions regarding women and land	Ensure through specific policies that 50/50 land allocation will be implemented especially given the continued calls for reducing some farm sizes after the on-going land audit
	Clarify protection of women's access to land in communal areas by magnifying Section 80(3) which provides that all laws, customs, traditions and cultural practices that infringe the rights of women conferred by the Constitution are void.
	Push for alignment of laws such as Traditional Leaders Act with the 2013 Constitution as it relates to women's access and control of land.
	Ensuring that gender equality is at the centre of the work of ZLC by producing a clear plan of action with measurable targets/indicators for achieving gender equality.
	Foster gender mainstreaming in all land policies as outlined in the constitution. One way of doing this is to ensure that current policy on 'one family, one farm' is revisited and reframed from a gender lens.
Implement SI53/14	The ZLC should be actively involved in ensuring alignment of laws such as Matrimonial Causes Act with the dictates of the SI53/14. The Commission should be at the forefront of protecting women's land rights by providing legal literacy for women living and working on agricultural land.
	Ensure gender parity of the Commission itself. The current commission is dominated by men which further entrenches certain patriarchal constructions around land ownership.
	ZLC should forge strategic partnerships with institutions and organisations working in the gender sector.

**Table 3: Issues for Zimbabwe Land Commission to consider**

## **9. CONCLUSION**

As shown in this paper, women's access and rights to land in certain rural contexts remain problematic despite a progressive Constitution and other legal instruments in Zimbabwe. Women continue to face a different reality in their everyday lives due to different facets imposed by patriarchal practices, culture and traditions. The current Constitution, if taken seriously, fundamentally affords women the rights to access and control land in various circumstances. It should therefore be the reference point for all efforts on gender justice in land allocation and ownership in the country.

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