



Women's Land Rights And Development In Africa:

Contesting Normative and Cultural Exclusion

Introducing Women's Land Rights, Normative and
Cultural Exclusion in Africa

REPORT

Introduction

This was the first of a three-part series seminar on Women's Land Rights on the continent by the Konrad Adenauer Foundation, through its Rule of Law Program for Sub-Saharan. The last four years have seen a move towards the recognition and promotion of women's rights in Africa to achieve sustainable development, including land rights.

Many countries however, remain with laws that are patriarchal and discriminatory against women in spite of having national, regional and even ratified international laws for the protection of women's rights. Given that agriculture is still the backbone of the economy in many African countries, denying women land access, ownership and use rights is to affect the potential of about half the population on the continent, stifling national socio-economic development across the continent.

The series seeks to interrogate the social and cultural practices discriminating against women to pursue reform in an inclusive manner for inclusive outcomes.

Context

In 2017, Konrad started the process of deconstructing concepts on exclusion and dispossession across the continent. This particular series seeks to explore the exclusion and discrimination of women through legal frameworks across the continent and the effect that has on women's participation in the economic sphere. For women, among the population largely living in rural areas land access and use rights are a cornerstone to other social and economic rights, a phenomenon observable across the African Continent.



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Zimbabwe

Land Co-ownership, Joint Registration and The Law A woman's perspective

In Zimbabwe women holding agricultural, mining or A1 land (land from the community land in Zimbabwe) is disproportionately low when compared to men.

Less than 24% of women have land title in Zimbabwe though they constitute 53% nationally with 86% living in rural Zimbabwe while providing 70% of agricultural labour (Women and land study, 2008)

Women are seen as labour and given access rights as relations to holders as wives, sisters, daughters of land rights but not as direct land holders.

Legal Framework

Constitution Amendment 20 of 2013

Section 17

Provides that government institutions at every level must take every measure to ensure that women have access to resources including land.

Section 72

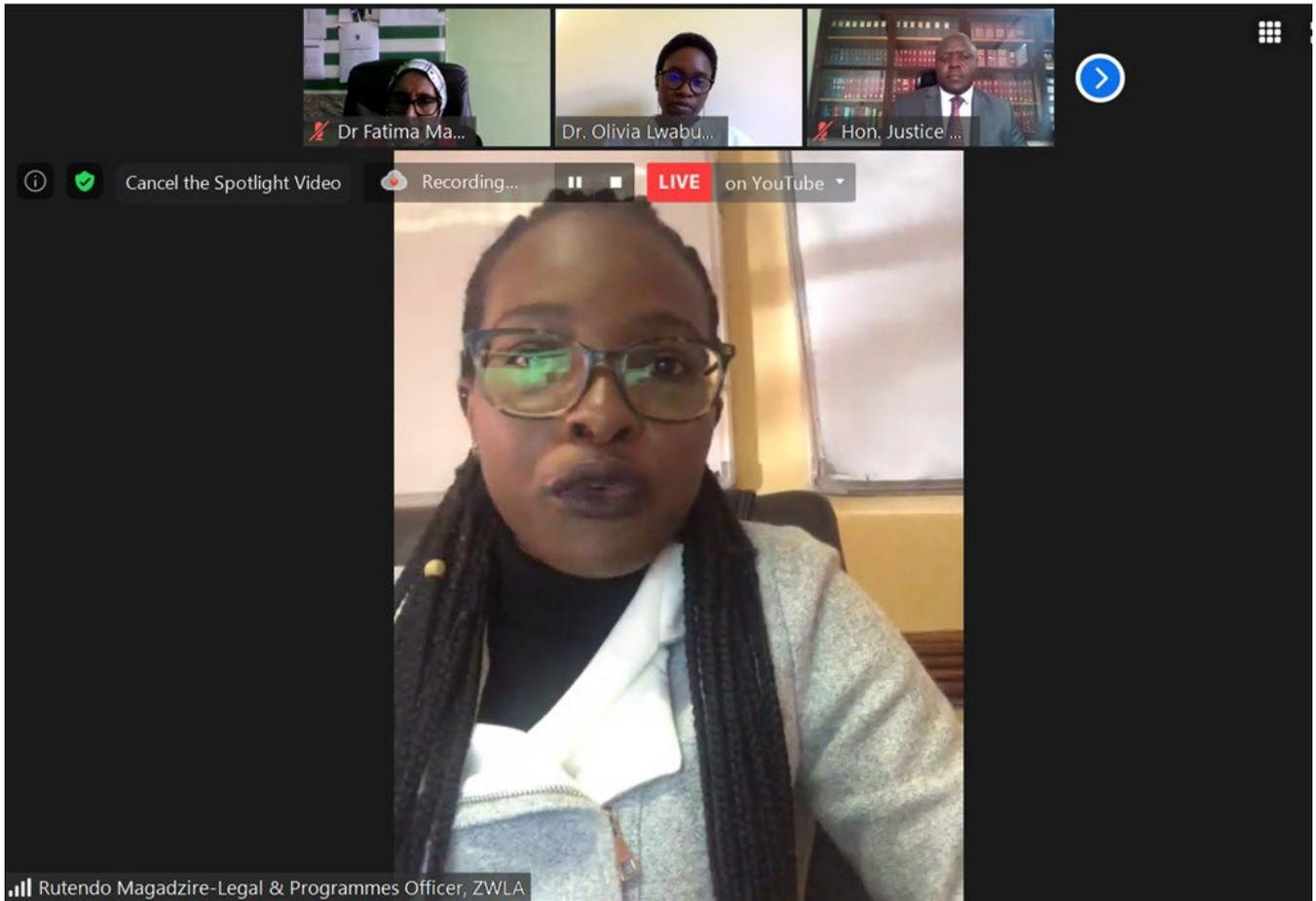
Gives rights to agricultural land, which land is reserved for the state ownership, that has resulted in the skewing of opportunity towards men. This land reserved for the government is governed by communal land regimes, governed by customary laws that by nature discriminate against women. Titles in customary law are held by men in Zimbabwe.

National Gender Policy

States the equality of genders but this is difficult to realize because the traditional leaders enforcing rules in rural Zimbabwe deal with women as 'perpetual minors' who lack legal capacity and thus are unable to own and dispose of land.

Married Persons Act

Provides that registration of properties can be by one party, under one name which allows patriarchal practices to leave women disadvantaged. The property will usually be registered in the name of the husband as a result. This creates further significant challenges at the dissolution of marriage since equality of parties is protected in marriage but not at the dissolution of marriage in Zimbabwe. This results in the woman leaving without a share in such property, even though the property is likely to be matrimonial.



The Issue of Custom

Zimbabwean custom views women as perpetual minors, meaning they lack legal capacity to own land. This is especially significant and impactful in rural areas where the majority of women live. Women in urban areas are more likely to hold titles of land. However, they still experience difficulty when dealing with this land within the marriages due to the patriarchal understanding of women in marriage.

Women are seen as resources to cultivate the land but do not reap the financial benefits. For example, in rural agricultural settings, the harvest will be taken and sold in the market by the men, leaving the women without money. More significantly, their ability to then purchase their own land is hindered.

Attempts at Reform

Registration of tenure documents requires the registration of both persons. Adopted by the local government. The success of this initiative is however limited due to the difference in practice by different local councils.

In conclusion, even though Zimbabwe has a constitution that declares equality between men and women, the legislation and implementation still ends in the denial of land rights for women. Zimbabwe embarked on a land reform program about 20 years ago meant to address the historical imbalances. The process has however focused on racial imbalance and not much on gender.

It is necessary for the practices and standards for the support of women's rights to land are enshrined in law.



Kenya

The interface of legal recognition of customary land tenure and women's land rights in Kenya

Customary law is part of Kenyan Law by Constitutional Recognition Article 2(4), providing though it is applicable it must be consistent with the constitution and must not be repugnant to justice and morality.

The Land Act recognizes land rights as rights that are derived from customary law.

Custom generally is derived from the practices of communities. The history of land ownership in Kenya and the continent generally is one where women only accessed land through user rights and not land ownership rights. These access and user rights accrued through relations with owners of land as wives, daughters, sisters.

Land inheritance in Kenya is patrilineal where land passes from one man to another in Kenyan communities.

The evolution of Customary Law in Kenya

Kenya was a colony from 1895 to 1963. There were two legal regimes: law governing Africans and law governing European Settlers.

The law governing Africans was applicable to issues of personal law and was enforced by community tribunals. This is how customary law took root and made its way into the Independence Constitution.

Sec 82(4) of Kenya's Post Independence constitution entrenched the discrimination of women in land issues by retaining the enforcement of customary law in personal matters. This provision was used by courts post-independence to disenfranchise women and insist on the application of customary law. A notable case was that of S.M Otieno, where his widow was barred from burying the deceased, insisting on the application of the personal law of the deceased husband.

Constitution of Kenya 2010

Recognition of women's rights and protection against discrimination

Article 27 the Constitution disallows discrimination when dealing with cultural and social spheres, where customary land rights are understood to fall. The constitution is soon to recognize that cultural practices entrench discrimination and as the supreme law of the land outlaws such, including in customary land law.



Land Act 2012

Section 5

Provides for the recognition of customary land rights under section 5. It clarifies that there shall be no discrimination under any land holding tenure; free hold, leasehold, or customary in access or ownership issues.

Community Land Act, 2016

Recognizes customary land rights

In section 30 every member of the community is declared to have equal right to benefit from community land.

Equal benefit of community land under section 30 protects against enforcement of discriminatory land ownership and practices.

Law of Succession Act, 1981

The disinheritance of female children

Much as the Act states that the children are entitled to inherit from their deceased parents, the girl children have often been disenfranchised in succession law. This is due to the patrilineal nature of inheritance in customary law, where property moves from one man to another on death even though there are women survivors within the immediate household.

Problematic sections of the Act

Section 35

Where a woman's husband dies, the surviving spouse is entitled to a life interest in the residue of the estate. That interest determines upon the remarriage of the widow. The Act is silent on the life interest concluding on the remarriage of a widower. This has been found by courts to be discriminatory and recommended to parliament for an amendment that reflects the equality protected in the Constitution.

Section 32

Provides for certain regions of the country where agricultural land and livestock will only be inherited through customary rights. Regions inhabited by pastoralists with the practice of patrilineal ownership in land. The customs of those regions apply. The implication is that women are likely to be disinherited due to custom.

Judicial Intervention

Pre 2010, interventions were pegged on Kenya's obligations under international law that came from the ratification of treaties that vowed the equality and non-discrimination of women.

Post 2010 interventions are based on Article 27 of the Constitution of Kenya, 2010 that provides for equality and non-discrimination due to gender, which buttresses the protection of women's rights. The courts have declared this inconsistency in customary practices discriminatory and unconstitutional and proceeded to insist on equality of women even in the application of customary law.



Zambia

The Displacement of Women under Large Scale Land Investment

Zambia has ratified many of the regional and international conventions touching on protection of women and non-discrimination. However, the implementation of the obligations there remains wanting and disadvantageous to women.

In Zambia land is in two categories: statutory land and customary land. Statutory land is registered as a matter of statute while customary land is governed by customary law and remains unregistered. The government in a bid to promote development has created a commercial investment scheme that allows agricultural land to be purchased by commercial investors. Zambian law on land allows the conversion of customary land to statutory land, with no option to convert statutory land to customary or to revert. Around 80% of the land in Zambia is customary land.

Land policy in Zambia has been pending since 2006 even though policy review should be every 2-3 years. Most laws in Zambia are gender neutral/gender blind where 'he' implies the inclusion of 'she'. The law has allowed for nuance to extend discrimination in spite of the Constitution, which due to a failed referendum has stalled the adoption of the Gender Equity and Equality Act.

The Land Acquisition Act allows the government to acquire land for development purposes for public interest provided adequate compensation is given to the land owners.

The issue of what amounts to adequate compensation especially for real property, land in particular, remains a heated and complex one. This is because of land's multiple uses and ways of contributing to value for land owners and users, a value that can rise high and whose deprivation interferes with a complex combination of uses. Commercial developers are displacing farmers without compensation with \$50 dollars at the most (18 kwacha to a dollar). The commercial developers have begun work in the land in spite of all this.

Many are losing the basis of their livelihood as loss of land affects access to water, access to their own food and livelihood. For women, it is an aggravated situation as they are responsible for providing food. Without land this is much worse.

Women in customary law have no standing to negotiate and have no legal documents or rights to support ownership.

For example, with the Pongwe cases, the commercial farmers have come and planted wheat and evicted over 60,000 families. In the highest court of Zambia, the commercial developers have been protected as beneficial owners and those with customary title being required to move out of the land.

As a result of having nowhere to go and being found on property that has been acquired without their consent or consideration, women in Zambia can be found in prison serving time for criminal trespass.

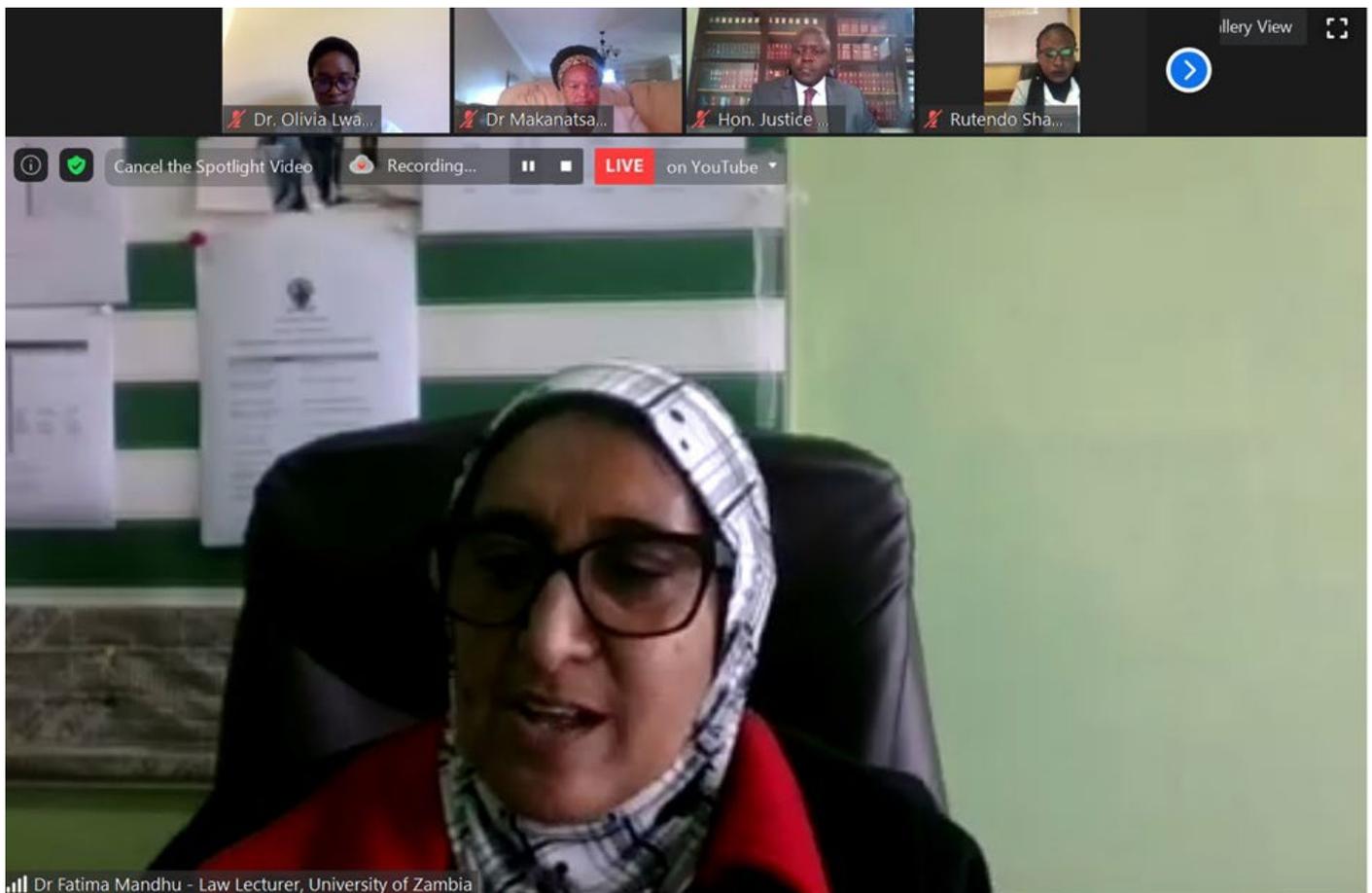
The Problem

Statutory land is considered superior to customary land. Different customs result in a lack of systematic protection of women.

Under the Lozi customary law for example, married couples did not own property jointly, nor did they inherit property from each other. Even though the man may settle in a piece of land owned by a woman, she is then assigned an access right and the title transfers to the husband. The man has no right to the crops and she to the title. Women have no legitimate or strong claim in the face of negotiation.

Recommended Solution

Social tenure domain model to protect women in customary land tenure.



Question and Answer

How should the issue of cultural discrimination that is rampant across Africa be rectified?

Engaging the community leaders and gatekeepers to adopt women's equality as part of their culture, as culture is a malleable aspect that is shaped by society and the times.

Taking a bottom-up approach that emphasizes the engagement of the community to entrench women's equality as part of the community's way of life.

Legal enactment of penalties against violators of equality.

Civil society is encouraged to litigate these issues in the communities they work in as the court and the implementation of the law depends on this kind of engagement.

How can the legal regime balance the realities that women live with in their communities e.g. gatekeepers, traditional dispute resolution, stigma etc. that can make implementation difficult?

Women need to overcome the fear of repercussion and insist on their rights through empowerment.

Training and sensitization of leaders on equality and gender sensitivity for equality and protection of women.

Concluding Remarks

Cultural norms and practices are based on cultures and societies that rely on social developments and contexts. They can be changed to include women and protect their rights even though it is through a consistent and, at times heavily resisted, change of minds. Statutory law is seen by customary law as an outsider on such issues as land rights and cultural practices concerning women, making penetration and enforcement difficult.

There is therefore a great need for consistent engagement with customary law gatekeepers in communities to influence their perspective which will create a positive impact for women's rights.

Impact

Registered



627

Attended



337

Attendance %



54%

Unique Viewers



337

Duration



189

Countries



21



