

# SECURING LAND TENURE FOR WOMEN AND MEN LIVING ON CUSTOMARY LAND IN ZIMBABWE

## POLICY BRIEF 58

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This policy brief reports on findings from a study investigating the impact of formalisation of customary land on tenure relations and livelihoods for women and men living in rural Zimbabwe. The research was conducted in Munyokoweri, Mahachi and Kondo villages as well as the Checheche growth point located in Chipinge District, Manicaland Province between 2020 and 2022. The study reached 156 respondents through in-depth interviews and focus group discussions. In addition, the researchers conducted a survey of 100 households across the three villages.

### KEY MESSAGES

1. Increasing state-led eviction of children, women and men living on customary land as almost one in every three respondents (31%) experienced non-voluntary dispossession from their land in the last five years.
2. Increased rate of homelessness for the vulnerable and for poor women due to the destruction of their property by the local state and failure to pay council leases and rentals.
3. Changes in land uses from agricultural to residential purposes leading to precarity.
4. Commodification of customary land leading to the exclusion of poor and vulnerable women as 59% of inhabitants paid cash to acquire customary land (though illegal) in the past five years.
5. A process of concentration of land among the few connected elites who acquire land for speculative purposes.
6. Miniaturisation of farms, in that farms are occupying less land but accommodating more people.
7. Intensifying conflict over land, revealing deepening social and gendered divisions.
8. Decline in crop yields over the past five years partly due to conflicts over land and loss of arable land.
9. The majority of female respondents (92%) prefer to live under customary tenure systems but with more democratic and gender-equal land administration institutions.
10. Institutions and agencies of government are increasingly disregarding the constitutional clause (section 74) that prohibit arbitrary eviction.

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## CONTEXT

Formalisation is taking different dimensions in sub-Saharan Africa. Zimbabwe has two ongoing processes of formalisation of property rights in land for people who live under customary tenure. The first is the acquisition of customary land inhabited by black families for private large-scale land-based investments. The second involves the conversion of customary land to state land for the government's various rural development projects. This policy brief focuses on the latter. Both interventions seem to draw heavily from the modernist school of thought whose central logic is that 'the African relationship to the land, African authority and African society' are backward, traditional, and unready for the strict discipline and rationality of modern rural development (Alexander 2006:4). As Scott (1988:88-89) writes, high modernism envisages a 'sweeping...engineering of all aspects of social life in order to improve the human condition'. For proponents of this developmental pathway, the only way to develop long neglected rural areas in Africa is to expel 'traditional' and 'backward' small producers from their land and replace them with large-scale projects and modern aesthetic cities.

Informed by this developmental paradigm, the Zimbabwean state is using colonial master-plan maps rooted in disastrous authoritarian high modernism projects of the 1940s and 1950s which were meant to dispossess black communities from their prime land (Alexander 2006). In Munyokoweri, the state was using the colonial master plans of the 1950s to displace indigenous families. On the other hand, in Mahachi the state dusted off failed urban development plans anchored on the 1982 National Transitional Development Plan (NTD). The NTD meant to modernise the countryside through a transition from villages to rural service centres, to district service centres, to growth points and to towns and cities which entailed changes in land tenure systems. It was within the NTD that Checheche was Gazetted

by Government in 1982 with an initial total of 1 055 hectares. However, consistent with most high modernist projects, the plan remained more in the planners' grandiose dreams than in reality. It was only at the turn of the millennium that the state started to action its 1982 plan to make Checheche a city, now covering about 2 203 hectares. Proponents of this developmental trajectory expect the state to 'truly leave no-one behind', prioritise 'human dignity' and eradicate citizens' despair in no time at all by 'addressing the structural causes of inequality and marginalisation' (Chenana, 2022, para. 18). We therefore look at the consequences of the intervention, including for women who are usually neglected by modernists and make precise recommendations for the Government of Zimbabwe.

## STATE-LED DISPOSSESSION OF PEOPLE LIVING ON CUSTOMARY LAND

There is an increase of state-led non-voluntary dispossession of men and women living on customary land. The dispossession is characterised by two central features of coercion and non-voluntary consent. From our survey, 31% of respondents lost either residential or arable land in the last five years. Within this matrix, the majority of losses were recorded in Mahachi Village (58.15%), followed by Munyokoweri (22.5%) and Kondo village (19.35%). The dominant actor involved in dispossessing people was the state. The reasons for losing the land included local and central government expropriation (64.2%), family conflict (9.6%), lack of evidence of tenure (3%) and private elites' expropriation (10.3%). Some families also lost land to neighbours in unexplained circumstances (12.9%).

The Chipinge Rural District Council's eviction process was authoritarian, arbitrary and unconstitutional. They hardly followed Section 74 of the Zimbabwe Constitution which states that: 'No person may be evicted from their home, or have their home

demolished, without an order of court made after considering all the relevant circumstances' (p. 37). For example, on 29 April 2019, the state served eviction notices to 750 families in Munyokoweri without a court order. In addition, these families had socially legitimate claims over the land resulting from their dispossession by the colonial regime. On 24 July 2020, The High Court in Mutare granted an interdict to prevent the eviction. Recently, on 23 June 2022, the High Court of Zimbabwe also interdicted the Chipinge Rural District Council from evicting land rights holders (the majority of whom are women) living on customary land in Kondo village.

In many cases, the locals' failure to adhere to the eviction notice resulted in violent evictions, destruction of livelihoods and loss of life. For example, Kundai Makata, a 28-year-old divorcee was beaten up by the police for failing to adhere to the eviction. Modernist development visions from above that are detached from the quotidian concerns of the ordinary people seem to be always accompanied by an authoritarian force. Muchirori committed suicide

after getting an eviction notice just after building his house in April 2020. Eva Chipamuno said she suffered a miscarriage when authorities came with bulldozers to evict her on 3 December 2020.

### CHANGES IN LAND USES FROM AGRICULTURAL TO RESIDENTIAL PURPOSES LEADING TO DESTRUCTION OF LAND-BASED LIVELIHOODS

The changes in land uses from agricultural to residential purposes destroyed land-based economic activities critical to the day-to-day survival of many, especially women. For example, the Dhlwayo family moved into Mahachi village in 1971. They acquired 18 hectares of customary land through the traditional customs. They used the land for farming, producing about 18-20 bales of cotton every season and for keeping more than 100 cattle, more than 100 goats, hens, sheep and some donkeys. However, after their land was acquired by the Chipinge Rural



*A vulnerable woman facing eviction from the local state in Chipinge, Zimbabwe. Picture credit: Phillan Zamchiya.*

District Council for residential purposes they had to relocate some of their livestock to neighbouring Mozambique.

This change in land uses has also led to a shift in livelihoods. Many women who used to largely survive on farming now had to mainly rely on the precarious informal sector. Most women who were dispossessed from their arable land, like Agnes Pahlo and Anna Mahachi, had to sell firewood, venture into brickmaking, work on nearby farms like the Makata estate as casual farm labourers and buy and sell goods such as plastic shoes, satchels and second-hand clothes. People are also continuously losing common property resources for grazing livestock, collecting firewood and other natural resources central to their livelihoods.

## COMMODIFICATION OF CUSTOMARY LAND

The urbanisation plans catalysed the rise in informal customary land markets and land prices in surrounding communal areas. In the past five years, about 59% of our respondents have acquired customary land through the market (though illegal) rather than through social norms. The forms of land payments varied with 84% having paid in cash and 16% paid in kind, including sex. As Lovemore Mahachi explained: 'People survived through farming but the growth point took their land. Now people pay for fields in the adjacent communal area that belongs to Chief Garahwa'. However, a whopping 74% of respondents noted that the fees were exorbitant and unaffordable to the poor and to vulnerable women. Vester Taruwana from Mahachi village said: 'I cannot always rent a field because they want USD and Rands. My husband goes to drink illicit beer so I cannot always afford. It costs R700 or USD35 to rent a hectare per season.' This might not be new but it is intensifying with the rising demand for customary land.

## INCREASED RATE OF HOMELESSNESS

There is an increased rate of homelessness amongst the vulnerable and poor women due to failure to pay council leases and rentals. People are losing their homes through the destruction of their homes built on land targeted by the state for urbanisation. The house of a single mother, Kundai Makata, a 28-year-old divorcee, was reduced to rubble by the police in Checheche.

There is also an existential threat because urbanization which does not accommodate the dispossessed is creating unaffordable costs for many poor families as council service fees, lease and levy fees must be paid to the Chipinge Rural District Council. Failure to pay means that the court can order the property to be attached and to be sold to the rich who can afford it.

## ELITE CONCENTRATION OF LAND AND MINIATURISATION OF FARMS

The new urban-aligned property system became a machinery to redistribute land from the small to large owners who could leverage real estate markets. This resulted in a new land question of elite concentration. Major beneficiaries are mainly the locally employed, urban elites based as far as the capital city Harare, located about 500 kilometres away, migrants who worked in South Africa and the local big shots. A village head said, 'I've got 20 stands for free with my madhodha (his male local advisors) and we were expected to pay the lease and the rates. Most of my council members sold the stands. I sold mine.' There were local speculators who acquired multiple stands for reselling and sometimes sold one stand to many applicants in corrupt practices. The private developers of residential stands like the Zimbabwe

Amalgamated Housing Association (ZAHA) were alleged to have some patron-client relations with the key political decision makers.

With scarcity of land, small farms in communal areas adjacent to our study sites are occupying less land but accommodating more people. One logic of Zimbabwe's post-colonial land reform from the 1980s was to decongest the communal areas (Zamchiya, 2011). Here the new trends of congestion are a time bomb.

## DECLINE IN CROP YIELDS

The loss of land and the disputes have significantly led to a decline in maize yields by 32%, groundnuts by 8% and cotton yields by 9% in the past five years. The table below outlines the four reasons given by our respondents.

## DEEPENING LAND CONFLICTS

There are intensifying conflicts over land revealing deepening social divisions. About 59% of our respondents opine that land-related conflicts are increasing. The top issues include people being denied land access and use (43%); double allocations (5%); and land inheritance (4%). About 65% of respondents reported that some of these disputes were not yet resolved. These conflicts are weakening social cohesion. Owing to the existential threat from the state, 65% now feel insecure on the land. They said that common property resources such as forest land, community grave sites and rivers are the most insecure.

**Table 1: Reasons for decline in crop production in the past five years.**

REASON FOR DECLINE	PERCENT
Disputes concerning land use	45
Loss of portions of land	10
Other such as pests	1
Unfavourable weather conditions	44
<b>Total</b>	<b>100</b>

## WOMEN'S PREFERRED LAND-TENURE SYSTEM

The majority of female respondents preferred to live under the customary tenure system (92%) because: it is cheaper and they do not have to pay council rates; they could collectively share their culture and traditions; it supports a diverse range of land-based livelihoods for the poor and vulnerable and, in some cases, provide easily accessible, responsive and cheaper dispute resolution mechanisms. Most women also cited the 'negotiability, flexibility and adaptability' (Peters, 2004, p. 269) of existing customary arrangements which worked well for the poor

and future generations. This did not mean that the women did not want patriarchal norms and practices within customary tenure systems to be reformed. However, 7% of female respondents preferred individualised tenure systems or titling because it was less open to patriarchal and state abuse, once rights are agreed. The women who were disgruntled with the customary tenure systems included widows without children, single ladies without children and women who were divorced for allegedly engaging in 'witchcraft and prostitution' who all have been treated unfairly by traditional leaders and community members. Others (1%) preferred any form of tenure that gives them permanent rights to their land.



*A single mother sitting on rubbles of her former house destroyed by the local council in Chipinge, Zimbabwe. Picture credit: Phillan Zamchiya.*

## RECOMMENDATIONS

### Government of Zimbabwe should:

1. Draft a new Customary Land Act that shifts the balance of power to families living on customary land because the current Communal Land Act of 1982 vests too much power and authority over land in the Minister (Section 10), Rural District Councils and the President (Section 4 and Section 6).
2. Ensure through the new Customary Land Act that within families, women – in their differentiated nature – should have secure rights legally equivalent to those of men in ‘ownership’ of residential and arable land along with clearly defined access rights to natural resources held in common. This can be complemented through strengthening Family Law and gender policies.
3. Ensure that the new Customary Act legally recognize socially legitimate existing traditional occupation and good faith occupation by individuals (women and men), families and local communities who have been using the land for a period of at least ten years. In such regard, attention must be paid to gender inequality, insecurity of widows, divorcees and single women.
4. Introduce the Principle of Free, Prior and Informed Consent (FPIC). FPIC is an international principle that gives people (women and men) the right to say yes or no (consent) to developmental projects, therefore upholding the universal right to self-determination. There should be an emphasis that no person must be deprived of their right to customary land in the absence of consent which must be differentiated from consultation which is open to multiple interpretations.
5. Amend the Traditional Leaders Act [Chapter 29:17] of 1998 to make the customary institutions of land governance more democratic, accountable and gender-equal, as well as for it to enshrine the principle of consent.
6. Reform agencies of government and state institutions, especially local municipalities and the police, so as to improve their professionalism, legitimacy, integrity and capacity to always uphold the rule of law when dealing with citizens (women and men) over rising emotive land conflicts.
7. Align all land-related laws and policies with the constitution which is the supreme law of Zimbabwe (Section 2.1.) especially the clauses that prohibit arbitrary eviction of land users (Section 74), promote gender-equal ownership and governance of land (Section 17(1)(a-c) and 17(2)) and promote women’s rights (Section 80(1-3)) and in particular Section 80(3) which reads that ‘All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement’ (pp. 38).
8. Provide greater access to justice for women through effective, affordable and accessible means. Alternative dispute-resolution mechanisms should be made easily available to address rising land tenure conflicts and promote social cohesion.
9. Adopt an alternative path to rural development centred on non-partisan public investments that prioritise women in rural agriculture. This has greater and broader poverty-reducing effects than urbanisation without industrialisation with no capacity to create decent jobs. Public investments in rural agriculture can be done through (a) investments in the upstream (inputs), mid-stream (production) and downstream (processing); (b) provision of public goods; (c) facilitating

access to markets through largely state parastatals; (d) provision of extension services; (e) support for institutional innovations to help rural farmers achieve economies of scale against monopolistic markets; and (f) financial incentives.

10. Put a moratorium on rural evictions for people (women and men) who have been living on customary land in good faith for ten years until the nation has made significant progress in coming up with the reforms above.

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