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African Women and the Law: Justice Systems, Legal Professions and Land Rights in Zambia

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Abstract

This case study relates to the Women and Law in Southern Africa – Zambia (WLSA – Zambia), an NGO with its headquarters in Lusaka. This organisation is engaged in fighting strenuously and successfully against discrimination, inequalities and gender violence, mainly resulting from the persistence of customary laws and its practices which sometimes jeopardises women and delays their empowerment and emancipation. Since in Zambia, as well as in many other African countries, land is still the primary source of wealth and livelihood, WLSA-Zambia and its members have been highlighting the significant legal, social and political problems caused by of gender inequalities in accessing land. Accordingly, they demand remedial legal reforms, develop citizens' legal awareness and support women's struggle to secure land rights. By presenting individual experiences and different viewpoints, and adopting a wealth of qualitative methodologies, my research work is a contribution, in anthropological perspective, to a better understanding of the multiple ways in which gender and law can interact.

Key words

Gender and customary law; customary law and the rule of law; land rights

Resumen

Este estudio de caso se refiere a Women and Law in Southern Africa - Zambia (WLSA-Zambia), una ONG con sede en Lusaka. Esta organización se dedica a luchar enérgica y exitosamente contra la discriminación, las desigualdades y la violencia de género, principalmente derivadas de la persistencia del derecho consuetudinario y sus

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prácticas, que a veces pone en peligro a las mujeres y retrasa su empoderamiento y emancipación. Dado que en Zambia, al igual que en muchos otros países africanos, la tierra sigue siendo la principal fuente de riqueza y sustento, WLSA-Zambia y sus miembros han puesto de relieve los importantes problemas jurídicos, sociales y políticos causados por las desigualdades de género en el acceso a la tierra. En consecuencia, exigen reformas jurídicas correctoras, desarrollan la conciencia jurídica de los ciudadanos y apoyan la lucha de las mujeres por garantizar sus derechos sobre la tierra. Al presentar experiencias individuales y diferentes puntos de vista, y adoptar una gran cantidad de metodologías cualitativas, mi trabajo de investigación es una contribución, desde una perspectiva antropológica, a una mejor comprensión de las múltiples formas en que pueden interactuar el género y el derecho.

Palabras clave

Género y derecho consuetudinario; derecho consuetudinario y Estado de Derecho; derechos sobre la tierra

Table of contents

1. Introduction

Modern state law is a fundamental cultural system capable of presenting a given institutional set-up as natural, legitimate and just and the behaviour it regulates and qualifies as correct, legal and compliant. As such, law is an important instrument of social control, not only repressive but also preventive, since norms intervene *ex ante* to guide and thus make the behaviour of social actors predictable. It follows that knowing and practising the law is an undeniable instrument of power.

Legal and judicial systems are historically male institutions: until recently, not only were the study and practice of law reserved for men, but laws were made, interpreted and enforced by men and for men (Drachman 1998, Brockman 2001, Mossman 2006). Yet, over the last 40 years, we have witnessed such profound gender-related and social-economic changes that we are urged to consider the increasing importance of women's role in transforming legal practice and legal culture (Schultz and Shaw 2003, 2013, Bartolomei 2014, Schultz *et al*. 2024). However, women lawyers and judges often face discriminatory situations both in and out of court and are not always able to make their voices and those of the women they defend heard. The ongoing discussion of this topic indicates that the goal of achieving genuine equality has not yet been reached.

Feminist legal theory has generated a lively debate on the need for legal regulation to improve women's position in society by focusing not only on forms of social behaviour which are discriminatory and unfavourable to women, but also on discrimination brough about by existing legislation (Crenshaw 1989, 2017, Baer 2001, Bartow 2009, Cain 2013, Levit and Verchick 2015).

An exemplary case is represented by African women jurists who strongly demand a close examination of the lack of equality, freedom and humanity caused by the enduring discrimination of traditional and customary laws and practices, especially regarding the denial of land rights to women (see Bartolomei 2020, p. 274ff). As land is still the primary source of wealth and livelihood in Zambia (Chitonge *et al*. 2024), addressing the issue of injustices in land distribution suffered by women and girls is certainly significant.

Since their independence, some African states have been confronted with the simultaneous application of different systems of law, namely those of European origin, Islamic law and the multiple varieties of African customary laws. This plurality of regulatory systems endures. Therefore, customary laws continue to regulate the behaviour of social actors and the lives of many people, especially women. Customary laws and practices, in fact, are rooted in kinship relationships and are particularly concerned with women's status and roles.

My contribution focuses on the current role of existing customary laws in Zambia, both in challenging state law and in delaying women's empowerment and emancipation. This is due to the centrality of the gender question and its impact on the cultural relativism debate within human rights (Lenzerini 2014, Abadeer 2015, Lakatos 2018, Msuya 2019).

When talking about these issues, the lens of legal pluralism can be useful. At the same time, an anthropological approach can help to understand the cultural reasons why law is ineffective or biased according to western human rights' standards.

In any situation of legal pluralism, tensions arise between co-existing normative systems. Here, the focus will be on the clashes arising from the contrast between Western-derived and traditional, non-Western normative systems, which have been the focus of the literature on legal pluralism produced by legal anthropologists, so much so that some authors speak of "afropluralisme juridique" (Renucci 2021). These clashes between customary laws and official, state legal system are among the most dynamic aspects of current legal pluralism in Zambia.

This article will address these issues by presenting a case study centred in the work of the *Women and Law in Southern Africa-Zambia* (WLSA-Zambia), an NGO which fights strenuously and successfully against discrimination, inequalities, gender violence, real and symbolic femicide in its country. As many other women's association which play an important role on gender issues in Africa,[1] WSLA-Zambia members are women lawyers, judges, notaries and academics who highlight the significant legal, social and political problems brought about by gender inequalities in accessing land and devote themselves and their professional skills to promoting women's empowerment.

By presenting individual experiences and different viewpoints gathered in the field, I attempt to draw light on how Zambian women jurists seek to identify the ways in which the current legal pluralism jeopardises women and delays their empowerment and emancipation.

Adopting a wealth of qualitative methodologies such as life stories, participant observations and ethnographic interviews, my research work was carried out during the months of July and August 2011. Nonetheless, I have since then maintained regular contact with ZAWLA members and closely monitor their activities, involvement and influence on social and legal change.

Though very aware of the complexity and diversity of professional expertise and experience, I decided to interview thirty female jurists from WSLA-Zambia who were chosen based on their representativeness as women, as jurists, and as activists. The choice of topics covered and my considerations on them come both from suggestions from the existing literature on the subject and, more importantly, from field experience, i.e., participant observation – including at some judicial processes, documents collected from customary court trials, and the results of interviews from WSLA members and of other twenty-five interviews and twenty life stories from women considered as privileged witnesses to the extent that they have been discriminated against by customary law. To illustrate my discussion and highlight the most relevant issues which emerged during the research I will use some excerpts from my interviews, but only those given to WLSA members.

In the first paragraph I will briefly discuss legal pluralism as an interpretive model and its application to the traditional, colonial and even current Zambian legal systems. Then I will try to offer an overview of customary law in Zambia, its characteristics and the fact that its application is formally subject to a rejection clause. The third paragraph focuses on the question of gender inequalities in accessing land, a topic which has always been and still is a major issue in Africa and stresses how the rules contained in state law and

[1] For example, the TAWLA (Tanzania Women Lawyers Association) or the AJS (*Association des Juristes sénégalaises*) (N'Diaye 2011).

customary laws are mutually incompatible and create problems of discrimination, inequality and inefficiency (Namubiru-Mwaura 2014, Fao 2018, Veit 2020, Sone 2021, Ho *et al*. 2023). The fourth section describes the NGO WSLA-Zambia, its main goals and the crucial legal and social role played by its members, women jurists who fight strenuously for women's rights, particularly land rights.

2. Zambian legal pluralism in brief

2.1. A glimpse on current global pluralism

Any reflection which uses legal pluralism as an interpretative model takes into account the existence of a multiplicity of regulatory regimes and the ways in which they interact, as well as the strategies which social actors use to relate to them, manage them and profit from them (Grillo *et al*. 2009). The coexistence of different legal systems has long been described through the paradigm of legal pluralism. Since Bronislaw Malinowski's (1926/2017) pioneering work, literature on the subject has been abundant and, with various additions and innovations, continues to be widely used as an elective analytical model for understanding the way in which judicial systems are assessed. Its adoption makes it possible to overcome a technical, instrumental and ideological view of the law, understood as a necessarily written production originated by a state. It also favours a semantic broadening of the concept of law, linked to the cultural variability typical of anthropological discourse. The anthropological concept of legal pluralism (and law) disregards and goes beyond official/unofficial, formal/informal and similar dichotomies; rather, it takes into consideration the "internal" cultural point of view of social actors. In this sense, the overriding question is to ask which norms are considered binding, by whom and why (Pospisil 1971, Moore 1973, 1978, 2005, Santos 1987, Chiba 1989, Bartolomei 2020, pp. 294-295, Griffiths 2006).

Legal pluralism is undoubtedly a widespread historical condition, but the current phase of global legal pluralism is characterised by the coexistence of a multiplicity of interdependent regulatory systems at various levels: local, national, international and transnational (Berman 2009, 2012, Michaels 2009). These different legal regimes are governed by equally different and often irreconcilable cultural and value logics, which feed inevitable situations of conflict (Tamanaha 2008), as well as legal and social inequality and exclusion (Likosky 2002). This is also due to the fact that there is no authority, no common legal principle or body of rules to appeal to in order to settle possible conflicts (Berman 2012). Even in situations of so-called inter-legality, i.e., the hybridisation of different legal instances which may give rise to new regulatory regimes (Hoekema 2014, 2017) often engendering exchanges, clashes and confrontations between individuals, groups and legal systems which are in highly asymmetrical positions. Dealing with a plurality of legal instances without reproducing or perpetuating unfair and discriminatory situations for individuals and groups is made much harder by the difficulty in identifying either which legal regime applies to their situation or to the conflicting parties in their respective legal positions (Tamanaha 2008, p. 375).

2.2. Legal pluralism in Zambia e the emergence of customary law

Legal pluralism is a key feature of traditional African legal systems. Therefore, colonial regies dealt with traditional legal pluralism and even after their independence, African

states have had to deal with the simultaneous application of different systems of law, namely those of European origin (be they British, French or Belgian), Islamic law and the multiple varieties of African customary laws. The current legal pluralism in Zambia sees the co-existence of different legal systems: post-colonial English statutory law, customary law and a variety of bodies of rules and practices generated by the Church, local communities and old chieftainship (traditional or living customary laws).

Before colonisation, traditional laws were the only system used in Zambia. Unwritten and passed on orally from generation to generation, it emanated from the practices and customs of people and encompassed constant patterns of behaviour within a particular social community or ethnic group, established by long-standing use and considered the same way as binding law.

> At the time, a multiplicity of customs and traditions coexisted in the various ethnic and tribal communities and groups which, depending on the social organisation, power relations or political and legal hierarchies considered, sometimes complemented each other or coexisted in juxtaposition and sometimes clashed and prevailed. (F.S., WSLA lawyer)

In traditional contexts, in fact, rules were not treated as binding laws, but rather as flexible norms, which could be negotiated in the course of resolving disputes and managed on the basis of membership within a group (Tamanaha 2008, p. 384).

During colonisation, the British introduced a dual legal system: English law was applied in the areas directly affected by their rule and to Africans who were closely connected to these areas and had to observe it; while traditional law was mainly used for the native population under British supervision. The colonial regime recognised traditional rules, especially in the area of personal law, from the outset. Article 14 of the Royal Charter of Incorporation[2] provided that the customs and laws of the class, tribe or nation to which the parties belonged should be carefully taken into account in the administration of justice towards native peoples. The colonial administration also created a judicial system characterised by the juxtaposition of colonial courts and so-called "native courts" which enforced customary law (Benton 2002, Mommsen and De Moor 1992).

The adoption of such jurisdictional dualism and the creation or recognition of informal or "customary" courts run by local leaders, whilst appearing to guarantee the respect of indigenous rights, represents one of the main mechanisms of legal acculturation. Faced with the passive resistance of the local population, which continued to use extremely different normative principles and rules linked to ancestral myths and supernatural beliefs and, therefore, difficult to understand and often secretly preserved in the collective memory of chiefs and "elders", the colonial power sought to standardise the different normative traditions through their rational classification by means of judicial precedents. In order to make traditional practices clearer, more precise and easier to enforce, a sort of drafting of African customs thus began, using forms of interpretation and "domestication" which, by applying Western legal categories and concepts, inevitably emptied them of their value, meaning and effectiveness (Tamanaha 2008, p. 383).

[2] A charter is a document giving colonies the legal right to exist. British West India Company, 30 Oct. 1846.

> This process has favoured the emergence of the so-called customary laws which, contrary to what many scholars may think, do not correspond to ancient legal traditions, but precisely to a reinterpretation of them. (R.W., WSLA law historian)

Reliance on modern law as an instrument of institutional modernisation and, therefore, of economic and social development, led the colonial administration to use it to carry out concomitant, often contradictory processes of deconstruction and reconstruction of local rules and legal traditions. Despite the label "customary laws", they were in fact not customs or traditions at all, but rather selective interpretations or even inventions operated by colonial powers together with sophisticated local elites who created customary laws in order to promote their own interests or agendas (Snyder 1981, Tamanaha 2008, pp. 383-384). The local authorities facilitated the British in using European administrative techniques and procedures to manage the colonies. As happened everywhere else in Africa, in fact, European penetration and exploitation in Zambia has been facilitated by the essential cooperation of local actors (Solivetti 1993).[3] Not only did the colonial settlers impose their own laws, which they considered superior to traditional rights, but British colonial policy also implemented control of population, resources and various social spheres through the "indirect rule".

2.3. The nation-building process and state law

Meanwhile, the introduction of new types of economic and legal relationships and new types of knowledge associated with schooling and writing fostered the emergence of new elites who became the architects of decolonisation. During the nation-building process this emerging economic-political upper class attempted to establish new legal rules for the creation of innovative systems of governance using western standards more than before (Renucci 2021). A single legal system of reference sought to ensure that Zambia, as an autonomous and independent post-colonial state, was able to exercise symbolic hegemony over native people, in order to ensure political stability and economic and social development (Cheeseman and Fisher 2021). The enduring effects of the colonial legacy were and are still quite clear, in a strong and centralised bureaucratic autocracy, ethnic divisions exacerbated by divide-and-rule tactics and local authoritarianism supported by state government (Young 1994, Robinson 2014, Wu 2024). As the colonial powers outlined the territorial boundaries of African states without considering the pre-existing patterns of ethnic identity, everywhere national unity was hard to achieve. The resistance of many ethnic groups to observing state law forced the central government to accept and recognise the persistence of a multiplicity of customary laws, at least as many as there are ethnic groups in the state's territory. In fact, even today, the customary law systems consist of the customary laws of each of Zambia's 73 ethnic groups,[4] and the Zambian post-colonial state acknowledges customary rules and practices in connection with personal status, property, traditional authority, marriage, divorce, inheritance and other family-related issues. Despite their officially limited application, customary laws and institutions continue to play a

[3] In 1888, for example, the British South Africa Company obtained mineral rights from the *Litunga* (king) of the Lozi people.

[4] https://en.wikipedia.org/wiki/Zambia

significant role in the lives of large segments of the population in Zambia, especially in remote rural areas, shantytowns and slums.

> Contrary to the state legal system, the customary laws are more entrenched, play a greater role in managing the hybridity and fluidity of groups and individuals, and can be powerful and resistant to change. The official state legal system, by contrast, is fairly compact and organic, with less entrenched legal institutions, not well-trained legal professionals and a shallower official legal tradition. (T.X., WSLA law historian)

Additionally, it is important to consider the difference between rule-based systems of justice, with winners and losers, and consensual systems of conflict resolution geared towards a satisfactory solution, and the invocation of human rights standards, often by NGOs, in order to challenge state laws or actions, customary laws or cultural practices (Merry 1997, 2017, Corradi 2013).

> Clashes are evident in the recognition or otherwise of a clear division between public and private, in the context of criminal law (as in cases of supernatural or religious offences), in the opposition between capitalist economic practices and communal land ownership, the treatment of women, and many other family-related issues. (J.G., WSLA lawyer)

These potential conflicts generate uncertainty, jeopardise or hazard individuals and groups in society for whom customary laws and institutions are the only available means of conflict resolution.

2.4. The current judiciary system

The current judiciary system in Zambia includes Superior Courts and Lower Courts[5]. At the lowest level of the hierarchy are the local courts, which are in charge of settling disputes in matters of customary laws. They are the successors of the native courts which the British set up everywhere in Colonial Africa to administer justice to Africans. The system of native courts originally existed in parallel with the system of English style colonial courts. After independence, in 1966, the Local Courts Act abolished the native courts system and replaced it with the local courts system. The current organisation of local courts is established by Article 120 (1) of Act No. 2 of the 2016 Amended Zambian Constitution. The local courts in Zambia are not courts of record, but according to Sub Article (2) of Act No. 2 of 2016 Amended Constitution, they will progressively become courts of record. They are established according to grades A and B, are present throughout the country and administer customary laws with a national character in terms of jurisdiction, as opposed to the multiplicity of territorial jurisdiction of chiefdoms[6]. These local courts have adopted the forms and styles of state courts and their judgements can be appealed through the rest of the court system. Furthermore, the use of a customary adjudication mechanism does not preclude the complainant/defendant from accessing the formal justice system. However, the official court specifically recognises the difficulty of establishing customary law, given the relative unreliability of sources of customary law and the fact that there may be conflicting versions of customary laws presented as evidence in appeals.

[5] See: https://judiciaryzambia.com/introduction/

[6] Section 5 (1) of the Local Courts Act, Chapter 29 of the Laws of Zambia. See: https://judiciaryzambia.com/introduction/

In each situation of legal pluralism, tensions which arise among coexisting normative systems can be amplified because people are often sincerely committed to the norms, purposes or identity of the system. A common strategy to neutralise competing systems is to incorporate them explicitly through their recognition and insertion in a hierarchy which accords the official legal system final say (Tamanaha 2008, p. 404). In this regard, it is worth noting that the application of customary laws is formally subjected to a rejection clause.

3. An overview of customary law in Zambia

3.1. A complex definition

There is no single agreed definition of a customary law according to lawyers, jurists, legal sociologists, anthropologists and others social scholars. The fact that both terms, "custom" and "law" can have different meanings for different people in different contexts and that ideas and concepts about them are affected by changes in legal theories, jurisprudence and anthropology is a fact which confirms and emphasises the complexity and difficulty of an ultimate definition (Bennett 2019).

Generally speaking, customary laws can be defined as a set of rules based on the traditions, customs and norms of a local community. A legal custom derives from general, uniform, unwritten and constant patterns of behaviour within a particular social setting, established in long-standing use and considered in the same way as a binding law. Customary laws – also called consuetudinary or unofficial laws – exist where a certain legal practice is observed and the relevant actors consider it to be an opinion of law or necessity (opinio juris). A claim can be carried out in defence of "what has always been done and accepted by law". It is applied in many countries around the world, often in conjunction with civil, common, and religious legal systems. The content and features of customary law regimes vary by country or region and may evolve over time, in keeping with changes in local customs.

The term can also be applied to areas of international law. In this case, "customary international law" has a more precise and technical meaning in the context of rules regulating relations between different nations, referring to those aspects of international law which are based on custom or practice between nation states, such as certain rules which have been almost universally accepted as the correct basis for action; for example, laws against piracy or slavery (Baker 2010).

As we all know, scientific discussion about the definition of customary laws is still lively and plentiful (White 1965, Burke 1976, p. 108, Roberts 1984, Hund 1998, Griffiths 2006, Onyango 2013, Jere 2022). I think, however, that the African concept of customary laws is rather different from both Western and international concepts. It concerns the laws, practices and customs of native peoples and local communities but, even if the idea of prescription is always present, African customary law usually arises from local people and was then transformed by the settlers' – the colonial settlers' – interpretation and classification of local old traditional rules (Bartolomei 2001). As mentioned above, the colonial powers investigated native laws and customs in order to codify criminal and civil law and thus use traditional leaders and traditional ceremonies to support their own legitimacy and to exercise greater and more effective control over the local

population. Customary law, as it emerged in the colonial period, was not the expression of an authentic community tradition, but rather a tool forged by colonial powers and local authorities to create and/or maintain hierarchies and the structure of power and, in so doing, defend their interests in the face of new challenges. Therefore, it was a system used to enforce the elders' claim to control labour, property and the marriages of the young, the power of husbands over wives and property owners over domestic slaves. Central to this process was the struggle for control over peasant labour, rural production and land rights (Chanock 1985). Unfortunately, rarely were the natives used as a source of information about their own culture and the codification of indigenous custom was done using Western legal concepts and procedures, combining a plurality of rules and prescriptions into what was later called "native customary law". Consequently, there are many different types of customary laws, each based on the beliefs, values, practices and needs of the people they serve, each of which has its own distinct rules and customs (Jere 2022, p. 26).

> The term 'customary law' does not refer to a single common system accepted in the whole country but to laws regulating the rights, liabilities and duties of the different ethnic groups. (E.S., WSLA law historian)

As mentioned above:

> Customary laws differ from place to place and ethnic group to ethnic group, and even from time to time within a single area as leaders change. They are administered at the local level in accordance with tradition and dispute resolution mechanisms. (T.X., WSLA law historian)

3.2. The customary justice system

The customary justice system does not emphasise rules for the delivery of justice, such as fairness, nor does it endeavor to emphasise the rule of law (Jere 2022, p. 25). It provides punishments and remedies for transgressions. Contrary to what one might think, the customary justice system also distinguishes between crimes and civil wrongs: crimes are unlawful acts which contravene the fundamental beliefs of the community, whereas civil wrongs are directed against the individual.

> This distinction may vary from one community to another but, in general, crimes against the person – such as murder, assault and sexual offences, and crimes against property – such as theft – are still considered criminal offences. (P.M, WSLA judge)

In the past, the courts of chiefs and leaders constituted the customary criminal justice system. These dispute resolution structures predate the colonial period. During the colonial period, there was a gradual transformation in the character of customary criminal law, for example by prohibiting the execution of witches, a practice considered repugnant to natural justice and good conscience (Chirayat *et al*. 2007).

After independence, the Constitution introduced the concept of the independence of the judiciary. As I have already pointed out, the official judicial system at its lower level also includes local courts. These consult with the most venerable members of the various communities and ethnic groups and administer customary laws throughout the nation, as they are present in both urban and remote areas of the country.[7] To ensure greater

[7] See: https://judiciaryzambia.com/local-courts/

access to justice, there are many local courts, as many as all higher courts put together. In fact, most citizens prefer these courts, as they are less difficult to litigate than other state courts, which inevitably require the assistance of a lawyer. These courts administer customary laws with a national character in terms of jurisdiction, as opposed to the multitude of traditional informal courts not recognized by state law, administered by local chiefs who apply different ancestral traditions according to the various community or ethnic group they belong to. Such traditional courts have never been integrated into the state system, but in fact continue to operate in parallel with the centrally administered court system (Jere 2022, p. 27).

This means that customary laws may be implemented by national judiciaries but are also still applied through traditional courts rooted in family and community structures, which resolve disputes at the local or regional levels.

> Although traditional courts are not officially recognised as part of the judicial system, they still continue to operate at village and community levels in various forms, including councils of elders, clan or family courts and village associations. (K.N., WSLA judge)

This is particularly the case in the poorest and most remote rural areas of the country, where state infrastructure is absent, knowledge of official law is lacking and official justice costs are unaffordable (Jere 2022, p. 42). A further problem is that officials serving in local courts do not have sufficient knowledge of customary laws.

> Their appointments are mainly based on academic qualifications and, although they are selected out of the community members who are most familiar with the traditions, customs and culture of a particular area, they are not guardians of old customs and traditions as are chiefs and the councils of 'wise elders'. (R.W., WSLA law historian)

3.3. Official customary laws vs living customary laws

Consequently, scholars maintain that there is a system of state customary laws and many of popular customary laws or, rather, a system of official customary laws and many of living customary laws. The former is recognised by the state through legislation or judicial precedents and refers to formalised African customs which serve as precedents in court matters and are sometimes recorded in textbooks. Historically, this system is associated with the classifications and reorganisations implemented during the colonial period and its rules often denote a rather static form of customary laws often filtered through a Western perspective (Jere 2022, p. 19). The latter encompasses customs which emerge from relatively widespread daily social practices, are passed on orally from generation to generation and enforced by local traditional court (Hund 1998). It is not written down and rarely requires reference to broad generalisations or abstractions or to carefully constructed analogies from the past. It is mostly characterised by its remarkable plasticity and pluralism. As a flexible, rather dynamic and adaptable system of rules, living customary laws are potentially more responsive to social change, including the changing power relations between men and women (Jere 2022, p. 38). Despite efforts to reform or replace them by legislation, living customary laws continue to be alive and active, are central to the very identity of local peoples and traditional communities and define the rights, obligations and responsibilities of members in relation to important aspects of their life, culture and worldview. They may concern the use of and access to

natural resources, rights and obligations relating to land, inheritance and property, the conduct of spiritual life, the preservation of cultural heritage and knowledge systems, and so forth (Jere 2022, p. 15). Thus, many scholars have long called for more empirical research to achieve a better understanding of living customary laws and their impact on both people's daily lives and state law, but also to re-assess consuetudinary law systems as a vehicle to provide equal access to justice for the poor (Kane *et al.* 2005).

3.4. The rejection clause and the constitutional treatment of customary laws

A clear problem stressed by all the female lawyers interviewed is how to resolve conflicts when customary practices clash with legal provisions. In this regard, it is essential to mention the Section 12(1)(a) of the Local Courts Act (1966) which states that: "Local Courts shall administer the African customary law applicable to any matter before it insofar as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law" (Jere 2022, p. 36). The so-called "repugnancy clause" is an institution which, on the one hand, seeks to allow customary laws to adapt to the values prevailing in Zambian society; on the other hand, it officially declares the primacy of state law as it replaces customary laws where the two are in conflict.[8] Apart from the fact that a particular custom must first be formally challenged in court in order to be declared repugnant, both provisions of the repugnancy clause are considerably vague and ambiguous: there is no definition of natural justice or morality, nor are criteria specified for defining the extent to which written laws must be contradicted.

> Although the repugnancy clause exists to reconcile customary and statutory laws, it is rarely, if ever, invoked and is completely ineffective in promoting justice and reducing gender discrimination. (P.M, WSLA judge)

The dilemma is aggravated by unclear guidelines over which system of morality, whether the African or English one, is to be used in the application of this clause.[9] Not to mention the lack of training in the implementation of this clause among magistrates of local courts[10] and the consideration of the clause as an instrument of colonial origin.[11]

A fundamental purpose of the repugnancy doctrine is to require courts to abide by the two fundamental principles of natural justice, namely: *nemo judex in causa sua* (i.e. no one shall be a judge in their own lawsuits) *and audi alteram partem* (i.e. no one shall be condemned unheard). In their original form, customary law rules do not recognise the modern concept of division or separation of powers. Native/customary courts are at times chaired by chiefs and elders in the community. In the traditional sense, however, they are at the same time the givers, interpreters and executors of the laws. In this context,

[8] An extensive literature has been published on the repugnancy clause and its effects on customary laws. See Ndulo 2011, Amaechi and Mildner 2013.

[9] The Local Courts Act, Chapter 29 of the Laws of Zambia.

[10] Even in The Local Courts Handbook, a guide provided to LCMs as a training tool, there are no examples clarifying when the repugnance clause should be used for 'natural justice or morality' (Amaechi and Mildner 2013).

[11] It has been regarded as 'a white man's means of looking down on African customs and tradition' which will 'westernise' their own traditions. See Zambia Law Development Commission (ZLDC) 2006.

> It is not unusual for the same people to act in different capacities at the same time, something that the modern concept of justice does not entertain. (P.H. WSLA law professor)

Modern concepts of presumption of innocence, burden of proof and proof beyond reasonable doubt are equally not well grounded in customary administration of justice.

The Zambian Constitution was extensively amended in 2016.[12] Article 7(d) states that any aspect of a customary law which is contrary to the Constitution is simply invalidated. The provisions recognising customary laws as a source of law, however, do not specify what kind of customary law they refer to (official and/or living). Therefore, as is clear from their judgments, Zambian courts do not understand the distinction between living customary laws and "official" customary laws (Himonga and Diallo 2017, Jere 2022, p. 39). Furthermore, official legislation does not clarify the relationship between customary laws and other constitutional provisions, including the Bill of Rights, which protects the right to culture, to equality and non-discrimination, and the right to dignity.[13] Interestingly, the fact that the possibility of implementing the principle of the self-determination of peoples is completely disregarded (Cheelo *et al*. 2022), poses serious problems of compatibility with other constitutional provisions and the Bill of Rights (Jere 2022, pp. 41-44).

In this way, it has left gaps which have fuelled much debate and conflict between statutory and customary laws. The uncertainty surrounding the recognition of customary laws in the Constitution reveals a certain levity towards a legal system which regulates the lives of millions of Zambians and affects the rights of these people in relevant areas of their lives, including natural resources – particularly land rights – marriage and access to justice (Cheelo *et al*. 2022, Himonga and Banda 2022).

3.5. Customary law and human rights

Respect of human rights is a huge question in legal pluralism studies (Tobin 2014). As WSLA lawyers repeatedly emphasized during interviews, conversations and meeting, even in Zambia the relationship between the application of customary laws and the legal protection of human rights is a rather controversial issue. According to the official state approach, only the laws of Western origin, known as Common Law, are capable of promoting and protecting human rights (Cheelo *et al*. 2022) and Zambia is a well-known signatory of numerous major United Nations human-rights treaties.[14] Still, most efforts to address gender violence and discrimination emanate not from the government but from NGOs and other civil society groups.

> Although the government has made progress in reforming statutory laws by removing overtly discriminatory prescription, discrimination against women continues under customary laws in particular, as it is enforced in the Local Courts Act (legitimised by statutory laws). (J.G., WSLA lawyer)

While both the Constitution and all other legal provisions enshrine the principle of gender equality and the penal code prohibits all forms of discrimination, sexual violence

[12] Constitution of Zambia (Amendment), 2016-Act No. 2.pmd.
[13] See: https://www.pmrczambia.com/wp-content/uploads/2016/07/Bill-of-Rights-Analysis-2016.pdf
[14] (CRC)1992; (CEDAW)1985; (ICESCR) 1984; (ICCPR) 1984; (SADC) 1997; (CAT) 1998 and so forth.

and gender abuse, the actual situation is still very different from the statements of principle.[15] Despite the fact that the *UN Handbook for Legislation on Violence against Women* (2012) recommends that "Where there are conflicts between customary and/or religious laws and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards" (p. 13), bias against the victims, endemic problems of the criminal justice system, and other shortcomings in customary laws, often lead to a failure to investigate, prosecute and punish these offenses.

> Furthermore, women are often regarded as 'legal minors' (without legal capacity), regardless of their age and even incapable of representing themselves. (I.K., WSLA lawyer)

As a result, victims have little recourse to the justice system, while perpetrators face little disincentive to repeating their abuse (Jere 2022, p. 50).

The conflict between customary and statutory law is strongly evident in the question of inheritance and land tenure. Inheritance has been governed by both customary and statutory laws and is further complicated by different traditions among Zambia's ethnic groups. The Intestate Succession Act (n. 5 1989), which covers those who die without leaving a will, aims to protect the surviving spouse, children and other descendants and to guarantee them protection against the illegal appropriation of assets by relatives. Unfortunately, in most ethnic groups tradition still dictates that the family of a deceased man retains all inheritance rights (Banda 2004). Thus, as also confirmed by information gathered in the field, widows may be deprived of all marital property and sometimes even of their children. As a result, girls and women are at particular risk of being disinherited following the death of their fathers or husbands and, in general, of having their human rights violated. Land rights are therefore human rights, as a result, any practice which allows women's land rights to depend on the will of their male relatives is discriminatory (United Nations Charter 1945). The Charter also recognises the need for changes in cultures to ensure that women have uninhibited access to land, secure land rights and the power to make their own decisions.

Unfortunately,

> Whereas customary laws provide a flexible and accessible way for disputes to be resolved at the community level, they also reinforce prevailing hierarchies and encourage discrimination against women. Since the chiefs who dispense such laws are always older and wealthier men, interpretations and adaptations of customary laws are often highly patriarchal and unfavourable to women. (P.H., WSLA law professor)

Nevertheless, since living customary laws are generally perceived by local populations as culturally more authentic, accessible and useful than externally imposed colonial legal systems, paradoxically, their forced suppression could itself constitute a violation of human rights. This means that the courts will have to measure customary law rules which treat people unequally against the right of people to use their customary laws and cultures. The challenge could be to regulate the content and application of customary

[15] See, for example, the Juvenile Act of 1956 and the Penal Code Act Chapter 87 of the Laws of Zambia, especially Section 46 and 132.

laws so as to provide better protection and promotion of human rights in local communities (Jere 2022, p. 41).

4. Gender inequalities in accessing land

4.1. Land ownership in Zambia

Since the dawn of colonial times, African peoples have always suffered from the systematic appropriation of their beliefs and systems of thought, territories and resources. To this end, the various dominant groups – colonial settlers, post-colonial elites, nation-state bureaucracies, emissaries of multinational corporations and so on – have used authoritarian cultural practices and positivist legal instruments: laws, codes and judgments. Within this general scenario, the system of land alienation in Zambia has not received adequate attention and even after independence in 1964 there has been no clear legislation to govern the procedure of land tenure, administration and alienation. Unfortunately, the marginalisation of women's land rights has been and still is a historical problem (Sone 2021).

> Currently, we witness a lack of co-ordination among statutes, rules, institutions, Ministries and Departments, which makes land identification, planning, surveying and title registration extremely difficult. (G.O., WSLA lawyer)

Land ownership in Zambia is regulated by two legal systems: state and customary.[16] The state owns the land and can lease it through the signing of a formal contract which, once registered, constitutes a suitable title (Lands Act No. 20,1995). The reform introduced by the Lands Act provides guidelines for the transfer of customary land use to modern tenancy systems, thus facilitating the transition from the customary system to the state system by formalising a title but does not attempt to regulate land allocations or administrative systems (Sitko and Chamberlin 2016, p. 3).

Formally, state law recognises equal rights to men and women in land tenure, in practice state law is rarely applied where customary laws are codified and still widespread. Traditionally, in fact, large portions of land in Zambia and other parts of Africa fall under customary law tenure (Zambian House of Chiefs 2009, Zambian Development Agency 2014).

> Customary land provides communal sources of livelihood, such as food supplies, and meets the cultural and spiritual needs of millions of people living in rural and increasingly near-urban areas under flexible methods of landholding and transfer of rights of use. (C.Y., WLSA law historian)

These rights transfer from one family to another and from one generation to another. The issue of customary land rights is particularly important for communities living under customary land tenure, in the light of state legislation and policies which enable the massive privatisation of land in favour of mining companies and other large investors (Okoth-Ogendo 1986, Jere 2022 p. 30).

[16] *Understanding Property Ownership Rights in Zambia*; see: https://generisonline.com/understanding-property-ownership-rights-in-zambia/

Women contribute 70 per cent of Africa's food production (Odey *et al*. 2022),[17] with rural women playing a key role in this activity and, as smallholder farmers, using land primarily for family and community benefits, while often lacking reliable access to it. In this way, they are sentenced to poverty, violence and unfairness (Chitonge *et al.* 2024).

Although the 1991 Constitution (amended in 1998), the Intestate Succession Law (1989), the Lands Act (No. 20,1995) and the National Gender Policy (2000), as well as all the other more recent legislative provisions, sanction the principle of equality in the allocation of land resources, in practice women cannot access them, especially in rural and more remote areas of the country. Here – as also confirmed by information gathered in the field – traditional social arrangements persist which discriminate against women: each family prefers to assign land to sons – future heads of families – rather than to daughters (because they will marry and leave their parental home).

The National Gender Policy sets out to achieve gender equality in land rights, stipulating that 30 per cent of state land should be allocated to women. Despite the government's approval of the Strategic Action Plan in 2004 to render these provisions operational, they have not been implemented (Chitonge *et al.* 2024).

4.2. Land alienation and customary tenure

The system of land alienation has continued to be based on and influenced by the forms of tenure introduced during colonial rule which are no longer adequate to the country's current needs: population growth, urbanisation, modernisation and economic development, implementation of human rights and the principles of gender equality and non-discrimination.

Customary tenure permits the continued administration of land in accordance with local customs. The law acknowledges ethnic groups as de facto custodians (rather than owners) of the land and customary tenure as a form of land ownership.

> Although land allocation practices vary between traditional authority systems, the common principle of granting usufruct rights to local residents and prohibiting individual alienation is shared by all traditional regulatory systems. (Z.P., WSLA law professor)

In this context, the land is managed by local chiefs who allocate it to communities, more or less extended families and, on rare occasions, to individuals, in accordance with customary, traditional or personal laws. In fact, the 1995 Zambian Land Act still empowers local chiefs to allocate land to their subjects (Art. 7). In practice, this means that they grant the right to occupy and use the land and can impose conditions on certain uses, e.g. prohibiting cultivation of the land or preventing animals from grazing in certain areas.[18] While all state land is registered, there are no titles to customary tenure, as the rules governing the relevant systems are passed orally from generation to generation and vary among different ethnic groups. Girls are often forced to marry precisely to prevent the family property from being lost. But marital status does not guarantee possession of the land:

[17] See: https://www.foodfortransformation.org/full-article/africas-agriculture-female.html
[18] See: https://judiciariesworldwide.fjc.gov/customary-law

> Married women can receive part of the family land, but only in use – for the purpose of cultivation of subsistence products – and provided that they respect the limits imposed by parents and other relatives of their husbands', who agree to it. (Y.K., WLSA lawyer)

As is also evident by information gathered in the field, some social groups admit that daughters can inherit the land, but only if they are unmarried and in compliance with strict conditions imposed by fathers, brothers or uncles. In addition, they can always be stripped of land already received without prior notice: both in the case of marriage and if the clan chief or the local authorities decide to assign it to other family members. In matrilineal ethnic groups, women are accorded greater respect and are permitted to use the land.

> However, in both matrilineal and patrilineal systems of property and status transmission, women are effectively excluded from any form of land tenure. In fact, they are only able to access land through their husbands, in-laws or families of origin. (R.W., WSLA law historian)

In numerous ethnic communities, women are prohibited from acquiring landed property or inheriting from their husbands. Consequently, widows can continue to use land assigned to their husbands only in cases of levirate. In the past, women never contested this type of social organisation, also because the strong bonds of cooperation and solidarity prevented them from being seriously in need (Roy *et al.* 2022). According to traditional laws, for instance, widows are supposed to be supported by their children and/or their husbands' families. Unfortunately, with the increasing dissolution of community family relations, it is becoming increasingly common for relatives of the deceased or other members of the village to take away all the husbands' assets from widows, including parcels of land.

> A widow is thus left without any legal protection and cannot even ask for help from her family of origin, regardless of whether she brought a dowry (which by now has been acquired by her husband), or if her husband and his relatives had paid the so-called 'bride price', an exchange with which all ties are severed. (J.H. lawyer, WLSA vice president)

As a matter of fact, current implementation of customary laws very often denies widows their inheritance and limits the rights of daughters. In fact, as I have already pointed out, in most ethnic groups tradition still dictates that the family of a deceased man retain all inheritance rights. Upon the death of her husband, a widow may be deprived of all marital property, especially land.

> In the past, this was a way of protecting and caring for a widow and her children seen as a responsibility, not a benefit. (C.Y., WSLA law historian)

Over time, people began to relinquish responsibility for widows and children and seek only to inherit property (Jere 2022, p. 55).

> Today property grabbing by relatives of a deceased man continues to be rampant, particularly when local customary courts have jurisdiction, and ignore, misinterpret and totally misapply the provisions of statutory law. (T.M., WSLA lawyer)

Actually, the current practice of "property grabbing" stems from a manipulation of customary laws, which assumes a husband's sole ownership of matrimonial property and passes such ownership to a male relative – if possible, a brother – of the deceased who is then supposed to take on the responsibility for his widow and children.

4.3. The management of state-owned land

The Commissioner of Lands is responsible for the management of state-owned land on behalf of the President of the Republic (Constitution of Zambia, (Amendment), 2016-Act No 2, Art. 233). However,

> Those in power today prefer to lease the land to large investors, especially foreigners. (F.L., lawyer, WLSA)

For example:

> Over the past decades, the Zambia Development Authority, through its Land Bank Program, has alienated millions of hectares of former customary land to create new commercial agricultural blocks, plantations, mines, or for other commercial or industrial purpose. (J.H. lawyer, WLSA vice president)

The stated aim of this process was to attract domestic and foreign investment in commercial agriculture and industry (Zambian Development Agency, 2014). But the fact that the government has become a large landowner raises significant concerns about conflict of interests and abuse of authority in the allocation of this land (German *et al.* 2013, Sitko and Chamberlin 2016). Moreover, rental contracts are always underwritten by men: husbands, fathers, and brothers. Current economic modernisation and

> [t]he intensive exploitation of land, including by foreign investors, has led to the progressive replacement of crops for domestic or commercial use with big plantations or monocultures (managed and exploited by men. (R.W., WLSA law historian)

This has made fertile land more valuable and increased competition for its control. Such pressures, together with changes in family structures and clan relations, have eroded traditional social safeguards which ensured access by women. In the land sector, in fact, the processes of modernisation and globalisation have paradoxically worsened the condition of the poorest women.

Despite population growth, Zambia has a low population density.[19] Therefore, there is still plenty of land available for agricultural purposes, but Government prohibits cultivation in some areas, for example in national parks, or use ambiguous or competing regulatory frameworks, such as in forest reserves and game management areas. Customary laws, as we have seen, adopt opportunistic and discriminatory criteria, especially towards women. Consequently, the alleged scarcity of arable land, which relegates rural populations to small areas of land, is linked to unfairness, authoritarian practices and the illegal exploitation of resources. Rather than reflecting a process of land acquisition by local farmers, the process of title conversion (land titling) sees other social actors as key players: the upper class working in state bureaucratic apparatuses, urban citizens, often from the public sector, and large foreign investors. All of these social actors have greater knowledge of land conversion procedures and bureaucratic formalities than small local farmers; have considerable economic means and, overall, greater social capital which allows them to negotiate easily with traditional local authorities.

Therefore:

[19] *Zambia: Population density*, see: https://www.theglobaleconomy.com/Zambia/population_density

> Because customary land administration systems do not explicitly allow market-based land transactions, they often push these markets through clandestine channels. (K.Z., lawyer, WLSA president)

In this way, the market for land rents and sales disproportionately favours the wealthiest and most powerful classes, to the exclusion of the most marginalised and needy families, thus negating some of the benefits in terms of efficiency, economic development and welfare which might otherwise accrue from wise management of the land market.

5. The NGO Women and Law in Southern Africa – Zambia

5.1. Vision, goals and commitment

Women and Law in Southern Africa (WSLA)-Zambia is part of a larger non-governmental organisation, with offices in six other southern African countries. It is also a member of many coalitions and networks.[20] The organisation was set up in 1989 by female academics from Southern African universities to promote the recognition of women's rights and develop effective methodologies for reclaiming them.[21] The Association employs a multifaceted approach, encompassing a range of political and social strategies, with the objective of securing legal reforms which will advance the cause of women's emancipation. Its members are engaged in the pursuit of a more just and egalitarian society, free from all forms of discrimination and founded upon the recognition of human rights. Their main thematic areas of intervention are: Gender Justice and Equality, Legal Rights Education and Capacity Building, Legal Aid Support Services.[22]

> According to our vision – 'a society where there is equality for all' – our mission is to work towards the socio-economic, political and legal advancement of women, girls and children. (K.Z., lawyer, WSLA president)

By tackling the many legal, cultural and social obstacles which limit women's lives and the achievement of their full potential, women jurists demonstrate their intention to protect, promote and implement women's rights and wellbeing. In December 2023, for example, WLSA-Zambia and the Network on Ending Child Marriage in Zambia (NECMZ), with support from Save the Children under the SIDA CSO Programme (2022-2026), held a meeting for children in the Ng'ombe compound to raise awareness of the dangers and effects of child marriage and teen pregnancy.[23]

> Our goal is always a call to action to ensure the full implementation of the Maputo Protocol (2003), which remains one of the most progressive treaties on women's rights. (Z.P., WSLA law professor)

Although the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, because it originated in Maputo, Mozambique, was signed more than twenty years ago, the situation of African women has not reached

[20] https://wlsazim.co.zw/
[21] https://www.soawr.org/soawr-members/women-and-law-southern-africa-wlsa-zambia/
[22] To find out about WLSA-Zambia activities and provisions of the Law, see: https://wlsazim.co.zw/; https://www.facebook.com/WLSAZambia/?checkpoint_src=anyinfo@wlsa.co.zm
[23] https://www.facebook.com/WLSAZambia/posts/on-23rd-december-2023-wlsa-zambia-and-the-network-on-ending-child-marriage-in-za/750768347091973/

the desired and sanctioned standards. Therefore, WLSA's work combines action with research by questioning and challenging the law, campaigning for law and policy changes, educating women about their rights, providing legal advice and raising awareness among communities and gender leadership during the research. Its members engage in action-oriented research[24] in the socio-legal field, focusing on justice and gender equality, legal aid and advocacy, legal rights education and capacity building.

Given the importance of issues concerning inheritance and its consequences in terms of the recognition of women's fundamental land rights, respect of the principles of equality and non-discrimination, and women's empowerment, WLSA-Zambia carried out a research project on this topic called "Inheritance in Zambia: Law and Practice". Through fieldwork and in-depth interviews, they sought to explore the impact of state inheritance laws on traditional inheritance practices. Unfortunately, the results – which have been published (WSLA-Zambia 1997) – confirmed the persistence of illegal and discriminatory practices, which violate human rights. As also revealed in interviews with three politicians who do not want their names published, this research project had a decisive impact on government policies and was taken into account for reforms that were introduced subsequently. Undeniably, when WSLA begins a project, often the constitutional or legislative reform process is not yet underway, but its members have the legitimacy and competence to promote and/or integrate it.

5.2. The struggle to change the inheritance system and family laws

Zambian Constitution recognises two types of marriage: statutory and customary. While some urban Zambians are married by civil ceremony regulated by the Marriage Act,[25] which establishes non-discriminatory rules for the division of property and inheritance, most rural and urban Zambians are still married according to customary laws. As is also evident from the documents collected and information gathered in the field, a woman married under customary laws is exposed to serious injustice and discrimination compared to a woman married under statutory laws. This happen not only in cases of widowhood, as I have already explained, but also in cases of divorce: there are no legal provisions to protect the property rights of wives in the event of customary divorce (Ojogbo and Edu 2022). Namely, the official law in Zambia does not protect women in customary marriages, e.g. the Matrimonial Causes Act No. 20 of 2007, whose mandate is to provide for the settlement of property between the parties in a marriage in the event of its dissolution or annulment, does not consider the parties as married under customary laws, especially in the event of a dissolution of this marriage. Section 3 of the Act, in fact, excludes customary marriages (Mubanga 2020). Accordingly, the determination of the rights of people who did not marry in a civil ceremony is under the jurisdiction of local courts.

To dismantle this archaic system of oppression and exploitation and to accelerate women's empowerment, the jurists associated with WLSA stress the importance of critically examining the role of the law in African societies and fight for access to decision-making power and for adequate legal reforms. Their decisive role in the

[24] By "action-oriented research" they mean research which is intended to inform and influence action being taken to improve the socio-legal situation of women, girl and children.
[25] Juvenile Act of 1956 and its amendments, Chapter 53 of the Laws of Zambia.

elaboration and launch of the 2021-2026 multi-year Strategic Plan for law development is undeniable (Siachitoba 2021). They work to ensure that action is taken at the legislative level and fight for effective changes to the inheritance system and family laws, which deprive women of parental authority and penalise them in the event of divorce or widowhood.[26] Nevertheless, their primary objective is the acknowledgement of women's land rights.

5.3. The struggle for the acknowledgement of women's land rights

Customary regulatory systems generally characterise land ownership in collective terms (i.e. not as held by a single person or group of people) and subdivide property rights in various ways (use of resources, rather than ownership of the land itself), not allowing land to be bought and sold. Furthermore, the identity of families, clans and villages is often tied to the land. Capitalist economic practices, by contrast, require the ability to buy and sell land, which is a valuable economic asset, especially as collateral for loans. Western banking requirements often do not easily recognise collective property or community use rights.

As mentioned above, customary laws exclude women from any land tenure and many land disputes are still governed by customary laws. Since the chiefs who dispense such laws and settle disputes at the community level are always older and wealthier men, they tend to strengthen the prevailing hierarchies rooted in socio-cultural and juridical structures of an archaic and patriarchal type which maintain female subordination (Veit 2020). What is more, in the transition to modernisation, men took advantage of the breaking of traditional ties and the loss of authority of the elderly to discriminate against, and exploit, the poorest and weakest sections of the female population. This mainly depends on the arbitrary application of various unwritten customary laws, as well as on a patriarchal drift of male domination (Marshall 1984). In these cases of intersecting and overlapping of legal pluralism, the status of women is still decidedly subordinate and compromised by the persistence of socio-cultural systems with patriarchal connotation.

We should also add, as a major outcome of my research, that women do not have great opportunities to claim their rights or even to access state justice, because they do not understand its rules and procedures, especially due to a lack of education and legal acculturation. Important factors which affect individuals and groups in the strategic choices they make in situations of legal pluralism are the geographic and cultural "distance" and other barriers (information, expense and delay) which exist in connection with each system. To access legal professionals and invoke official legal systems, in fact, requires information, social, cultural and economic resources and many women are poorly educated or even illiterate and have no financial resources to access state justice (Amaechi and Mildner 2013). Obstacles can sometimes be overcome with the help of supporting NGOs, but even individuals or groups with the necessary resources may still choose to bypass the official legal system because it is too costly, unreliable or unfair (inefficient, corrupt or biased). Not to mention the collation of numerous documents and the undertaking of lengthy and intricate bureaucratic procedures. Strategic choices are also influenced by the social or cultural proximity of a given system (or distance from

[26] For an overview of the historical development of Zambian laws pertaining to women's property rights after divorce, see Mubanga 2020.

it): the more foreign or inscrutable a regulatory system appears, the less comprehensible and predictable it is, the less supportive it may appear and, consequently, the less likely an individual or group is to invoke it. To reduce the impact of such circumstances,

> We educate women about their legal rights, providing legal advice, questioning and challenging the law.[27] Furthermore, we offer assistance and strive to provide education in this area. (T.K., WLSA lawyer)

Other unfavourable situations include:

> Lack of clear legal awareness about one's rights, fear of retaliation and violence by a husband or his family, male resistance to changing their behaviour, bureaucratic delays, widespread corruption and lack of trust in public officials. (F.K., WLSA lawyer)

Zambian women jurists are fighting hard and have also tabled several parliamentary questions to prevent lower courts from adjudicating in these issues. They continue to work tirelessly to raise legal and cultural awareness and frequently offer free legal aid and training courses to paralegals and civil society in general, so that legal information is available at the grassroots level. To mention just one example, in October 2023, WLSA-Zambia offered a paralegal training course in the Luangwa District to introduce the law on succession and its application, the relevant provisions and applications on intestate succession, the relevant provisions and applications on wills and administration of testate estate, what happens to a person's real or personal property and the liabilities left behind after his or her death. Another course was devoted to knowledge of the laws relating to land administration and housing: the rights of the landowner, requirements for tenancy, institutions and competent courts.[28] All these activities aim to increase access to and readability of legal information and reduce costs (Banda and Hinfelaar 2022).

5.4. The positive effects of WLSA-Zambia strategic activism

As already mentioned, the presence of legal pluralism can promote or generate clashes over and through the law. According to Lauren Benton (2002), indigenous peoples often demonstrate a remarkable awareness of the differences in rules and processes between the various coexisting legal systems and also a strategic understanding of how to tap into these differences, invoking from time to time the system most useful for their contingency purposes and thus pitting one system against the other according to their own needs. From the point of view of a legal authority seeking to consolidate its dominance, legal pluralism is a flaw to be corrected. From the perspective of individuals or groups subjected to legal pluralism, it can be a source of uncertainty, but it also creates the possibility of alternative legal regimes. However, not everyone has the possibility to use the different legal possibilities available to them strategically, as this requires knowledge, skills and abilities which only individuals belonging to the upper classes possess, certainly not the poorest and most marginalised women.

As emerged through my fieldwork, WSLA Zambia lawyers know that co-existing normative systems make competing claims to authority and that each has a certain

[27] See https://www.facebook.com/WLSAZambia. Post 17 August 2023 on mobile legal clinics in many villages in the country.
[28] https://www.facebook.com/WLSAZambia/posts/on-21rd-october-2023

capacity to exert power within a social arena. They are also aware of the inconsistency of each other's substantive norms and processes. As a result, as privileged social actors, they actively exploit situations of legal pluralism to promote group and individual goals. As trained, competent and committed professionals, they can engage in defending or expanding their legal system of reference against others. Their efforts to defend the value and integrity of the socio-legal system to which they belong – in this case the official legal system – are linked not only to their genuine commitment to and belief in the system, but also to the fact that their interests, identity, status and livelihood are tied to it. Precisely because they are women, WSLA members themselves experience discrimination twice, both inside and outside the courtroom and the various institutions and power structures to which they belong.

> In the beginning, the first women lawyers registered with WSLA had to fight hard against prejudices in society and it was mainly our male colleagues, lawyers and judges, who tried to delegitimise us as professionals and belittle our work. (Y.K., WSLA lawyer)

Gender bias and discrimination also run the formal judicial system and are still present even in the behaviours of those who profess to be modern, use Western-style categories and principles and claim to be emancipated and broad-minded. As a result, WSLA members strategically resort to official legal norms, the human rights paradigm and the NGOs which support them, in order to escape or fight against both oppressive customary normative systems and persistent forms of gender inequality and discrimination.

Thanks to the activism of these women jurists and various NGOs many local chiefs are beginning to realise the unfairness of such selective and arbitrary land distribution and sometimes agree to grant the use of land to single women, women's groups and, in particular, widows.

As well as being valuable, the work carried out by WLSA members is very interesting from an anthropological point of view, as they manage to reconcile two different and, in some respects, opposing cultural traits in a strategic and syncretic manner. In fact, in their work for economic and social emancipation and the promotion of human rights, African women jurists use the categories developed by the feminist critique of law: fairness of treatment; recognition of gender differences; the domination/subordination dichotomy; anti-essentialism and contextualisation. These categories, as well as the official law – i.e. the state and international legal systems – which women lawyers use, are undoubtedly Western in character and therefore related to the "archetype of submission".[29] In this archetype the dichotomous model typical of Aristotelian logic prevails, in addition to a hierarchical view of the relationships between the various social instances and between genders, as well as between the law and other systems of social control. At the same time, however, female lawyers belong to a socio-cultural system that, despite progressive modernisation, is still structured according to the "archetype of differentiation". This is based on the principles of cooperation, collaboration and solidarity which characterise the community model of social organization but is characterised especially by the pre-eminence of the principle of complementarity of roles and functions, not only in terms of the various systems of social control – the law is only

[29] See the Theory of Archetypes by M. Alliot (1983), later developed by C. Eberhard (1997) in Bartolomei (2020, Cap. I, par. 1.3).

one and not always the most important of them – but also in terms of the relationship between genders. Contrary to what one might think, in many traditional cultures, especially those organised on the basis of the principle of marilinearity, women are recognised as having a very important symbolic and political role, which has gradually diminished with the processes of modernisation.

Precisely because they are convinced that a radical change in perspective is indispensable and that the problem of a balanced relationship between genders is cultural, before being legal, all the female lawyers interviewed consider it essential to explore and practise new ways of incorporating human rights awareness and knowledge into people's everyday lives.

6. Concluding remarks

Studying legal pluralism as a social phenomenon means trying to understand how, in a given context, different regulatory systems exist and interact with each other and how various social actors relate to, cope with or strategically respond to legally plural situations. Legal pluralism exists whenever social actors identify more than one source of "law" within a social arena (Tamanaha 2008, p. 396). It is certainly very difficult to define the characteristics of today's legal pluralism, and the often ambiguous and contradictory role played by contemporary law, given its persistent inability to harmonise different legal instances and to adequately implement fundamental human rights, understood both as discourse and as transnational practice (Merry 2017). If we agree in considering legal pluralism as a fact, where we find a multitude of coexisting, competing and overlapping legal systems at many levels and in many contexts (Tamanaha 2008, p. 389), clashes between customary laws and the official state legal system are among the most dynamic aspects of current legal pluralism in Zambia.

In Zambia there are widespread forms of personal law, traditional practices and hybrid regulatory systems of a customary nature resulting from the mixture of different legal instances. This study has attempted to provide an overview of the interesting, controversial and complex topics of land ownership. In fact, although most land laws are gender-neutral, there are gaps in the principles and practices of these laws, and customary rather than statutory laws dominate in practice, thus undermining women's land rights (Himonga and Banda 2022). Since land control is fundamental to improving the welfare of each individual citizen, regardless of social status, gender or ethnic origin and of society as a whole, existing laws should be properly implemented to avoid any form of discrimination and ensure an efficient, effective, transparent, democratic and equitable way for the socio-economic development of the Zambian people and the country (Sichone 2010).

As we know, international treaties and declarations provide for the principle of self-determination (Tobin 2014). Maintaining customary laws can be crucial for the continuing vitality of the intellectual, cultural and spiritual life and heritage of indigenous peoples and local communities, who have also called for various forms of respect for and recognition of customary laws beyond the scope of their own communities, for example, in claims over land and natural resources. Yet, customary legal systems often represent a critical element of the self-determination of native peoples. Running in parallel with state legislation, they create an obstacle for the

advancement of gender equality and women's rights, especially in terms of human rights.

As my findings try to show, notably thanks to the efforts of WLSA members, the issue of women's land rights is increasingly emerging as a human rights issue. Through their struggle to promote their compliance and raise awareness among politicians, administrators, judges and the entire population, WSLA jurists exercise significant legal and political power at the national level and are reshaping the role of legal profession in African countries.

Therefore, although judges have started to make decisions which respect the principle of equality,[30] there is still a long way to go in this respect. As the interviews and narratives collected for this project show, the law often fails to protect women and patriarchy often persists even in contemporary societies and, despite statements of principle, legal and judicial systems still fail to adequately protect women rights and ensure gender equality.

Nonetheless, in their attempt to spread awareness about legal rights among women and children, Zambian women jurists transform themselves, their working space and the wider society to which they belong. Women's access to the legal profession has in fact affected legal scholarship and jurisprudence. Hence, women begin to have a greater role in development, politics, law and the third sector and these changes have an impact upon the broader economic, social and political development of the country in question – Zambia – and also worldwide.

References

Abadeer, A.S.Z., 2015. Cultural relativism and gender-discriminating norms. *In*: A.S.Z. Abadeer, *Norms and gender discrimination in the Arab world* [online]. New York: Palgrave Macmillan, 53–70. Available at: https://doi.org/10.1057/9781137395283_3

Alliot, M., 1983. L'anthropologie juridique et le droit des manuels. *Archiv für Rechts und Sozialphilosophie*, no. 24, 71–81.

Amaechi, P., and Mildner, E. 2013. The dormant clause: How the failure of the repugnancy clause has allowed for discrimination against women in Zambia. *Southern African Journal of Policy and Development* [online], 1(1), Article 7. Available at: https://scholarship.law.cornell.edu/sajpd/vol1/iss1/7

Baer, J.A., 2001. *Our Lives Before the Law: Constructing a Feminist Jurisprudence* [online]. Princeton University Press. Available at: https://doi.org/10.1515/9781400823338

Baker, R.B., 2010. Customary International Law in the 21st Century: Old Challenges and New Debates. *European Journal of International Law* [online], 21(1), 173–204. Available at: https://doi.org/10.1093/ejil/chq015

Banda, M.M., 2004. *The effectiveness of the Zambia intestate succession Act No.5 of 1989 and the laws of inheritance in Zambia under a dual legal system: A critical appraisal* [online]. Thesis (PhD), University of Zambia. Available at: http://dspace.unza.zm/handle/123456789/2676

[30] See for example the ruling in *Mmusi v. Ramantele* 2012.

Banda, T., and Hinfelaar, M., 2022. Information inequity: Access to legal information in Zambia and Southern Africa. *In*: C. Cheelo, M. Hinfelaar and M. Ndulo, eds., *Inequality in Zambia* [online]. London: Routledge, 250–263. Available at: https://doi.org/10.4324/9781003241027-15

Bartolomei, M.R., 2001. *Giustizia tradizionale e mutamento sociale. Il processo tradizionale Abron nella Costa d'Avorio*. Milan: Giuffrè.

Bartolomei, M.R., 2014. Legal Cultures in Transition: The Role of Italian Jurist Women. *In*: E. Schandevyl, ed., *Women in law and Lawmaking in Nineteenth and Twentieth–Century Europe*. Farnham: Ashgate.

Bartolomei, M.R., 2020. *Suggestioni postmoderne. Percorsi insoliti di antropologia giuridica*. Rome: Aracne.

Bartow, A., 2009. Legal Theory Lexicon 061: Feminist legal Theory [blog post]. *Legal Theory Lexicon* [online]. Available at: https://lsolum.typepad.com/legal_theory_lexicon/2006/11/legal_theory_le.html.

Bennett, T.W., 2019. Comparative Law and African Customary Law. *In:* M. Reimann and R. Zimmermann, eds., *The Oxford Handbook of Comparative Law* [online]. Oxford University Press, 652–680. Available at: https://doi.org/10.1093/oxfordhb/9780198810230.013.20

Benton, L., 2002. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* [online]. Cambridge University Press. Available at: https://doi.org/10.1017/CBO9780511512117

Berman, P.S., 2009. The new Legal Pluralism. *Annual Review of Law and Social Science* [online], 5(1), 225–242. Available at: https://doi.org/10.1146/annurev.lawsocsci.093008.131539

Berman, P.S., 2012. *Global Legal Pluralism: A Jurisprudence of Law beyond Borders* [online]. New York: Cambridge University Press. Available at: https://doi.org/10.1017/CBO9781139028615

Brockman, J., 2001. *Gender in the Legal Profession: Fitting or Breaking the Mould*. Vancouver: UBC Press.

Burke, J., 1976. *Osborn's Concise Law Dictionary*. London: Sweet and Maxwell.

Cain, P.A., 2013. Feminist Jurisprudence: Grounding the Theories. *Berkeley Journal of Gender, Law & Justice*, 4(2), 191–214.

Chanock, M., 1985. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia.* Cambridge University Press.

Cheelo, C., Hinfelaar, M., and Ndulo, M., eds., 2022. *Inequality in Zambia* [online]. London: Routledge. Available at: https://doi.org/10.4324/9781003241027

Cheeseman, N., and Fisher, J., 2021. *Authoritarian Africa: Repression, resistance, and the power of ideas.* Oxford University Press.

Chiba, M., 1989. *Legal Pluralism*. Tokyo University Press.

Chirayat, L., Sage, C., and Woolcock, M., 2007. *Customary law and policy reform: engaging with plurality of justice system* [online]. Washington, DC: World Bank. Available at: https://hdl.handle.net/10986/9075

Chitonge H., *et al*., eds., 2024. *The Oxford Handbook of the Zambian Economy* [online]. Oxford University Press. Available at: https://doi.org/10.1093/oxfordhb/9780192864222.001.0001

Corradi, G., 2013. Advancing human rights in legally plural Africa: the role of development actors in the justice sector. *Afrika focus* [online], 26(1), 89-98. Available at: https://doi.org/10.1163/2031356X-02601007

Crenshaw, K., 1989. Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum*, 1989(1), 139–167.

Crenshaw, K., 2017. *On Intersectionality: Essential Writings*. New York: The New Press.

Drachman, V., 1988. *Sisters in Law: Women Lawyers in Modern American History*, Cambridge MA: Harvard University Press.

Eberhard, C., 1997. *Common Humanities and Human community. Towards a Dianthropological Praxis of Human Rights* [online]. Master thesis in legal theory, University of London. Available at: http://www.dhdi.free.fr/recherches/droithomme/memoires/ebermemoir2.htm

Food and Agriculture Organization of the United Nations (FAO), 2018. *The gender gap in land rights* [online]. Available at: http://www.fao.org/3/i8796en/I8796EN.pdf

German, L., Schoneveld, G., and Mwangi, E., 2013. Contemporary Processes of Large-Scale Land Acquisition in Sub-Saharan Africa: Legal Deficiency or Elite Capture of the Rule of Law? *Word Development* [online], vol. 48, 1–18. Available at: https://doi.org/10.1016/j.worlddev.2013.03.006

Griffiths, A., 2006. Customary Law in a Transnational World: Legal Pluralism Revisited. *In*: R.A. Benton, ed., *Conversing with the Ancestors: Concepts and Institutions in Polynesian Customary Law.* Hamilton: University of Waikato.

Grillo, R., *et al*., eds., 2009. *Legal Practice and Cultural Diversity*. London: Routledge.

Himonga, C., and Banda, T., 2022. Customary law in Zambia's new constitutional dispensation: A tale of lost opportunities. *In*: C. Cheelo, M. Hinfelaar and M. Ndulo, eds., *Inequality in Zambia* [online]. London: Routledge, 233–249. Available at: https://doi.org/10.4324/9781003241027-14

Himonga, C., and Diallo, F., 2017. *Dissolution of customary marriage in the South African legal pluralism context. (Second Integration Report: What are the Interactions between Indigenous and State Legal Systems and How are Such Interactions Managed?)*. Report.

Ho, S., Tanyag, M., and Scalise, E., 2023. Women's land rights gendered epistemic tensions, and the need for a feminist approach to land administration. *Land Use Policy* [online], 132(1–2), 106841. Available at: https://doi.org/10.1016/j.landusepol.2023.106841

Hoekema, A.J., 2014. Legal Pluralism: Conflicting Legal Commitments without a Neutral Arbiter. *Jura Gentium*. vol. 11, 61–103.

Hoekema, A.J., 2017. The Conundrum of Cross– Cultural Understanding in The Practice of Law. *The Journal of Legal Pluralism and Unofficial Law* [online], 49(1), 67–84. Available at: https://doi.org/10.1080/07329113.2017.1310446

Hund, J., 1998. Customary Law Is What People Say It Is—HLA Hart's Contribution to Legal Anthropology. *ARSP: Archiv für Rechts- und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy*, 84(3), 420–433.

Jere, M., 2022. *An Analysis of Article 7 of the Constitution on what Constitutes Customary Law that is Repugnant to the Constitution* [online]. Zambia Open University. Available at: https://www.academia.edu/97907839

Kane, M., *et al.*, 2005. *Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor* [online]. Paper presented at Arusha Conference "New Frontiers of Social Policy". 12-15 December. Available at: https://landwise-production.s3.us-west-2.amazonaws.com/2022/03/Kane_Reassessing-customary-law-systems-as-a-vehicle-for-providing-equitable-access-to-justice-for-the-poor_2005-1.pdf

Lakatos, I., 2018. Thoughts on Universalism versus Cultural Relativism, with Special Attention to Women's Rights. *Pécs Journal of International and European Law* [online], 1, 6-25. Available at: https://journals.lib.pte.hu/index.php/pjiel/article/view/6891

Lenzerini, F., 2014. *The Culturalization of Human Rights Law* [online]. Oxford University Press. Available at: https://doi.org/10.1093/acprof:oso/9780199664283.001.0001

Levit, N., and Verchick, R.M., 2015. *Feminist Legal Theory: A Primer*. New York University Press.

Likosky, M., ed., 2002. *Transnational Legal Processes: Globalisation and Power Disparities*. London: Butterworths.

Malinowski, B., 2017. *Crime and Custom in Savage Society* [online]. New York: Routledge. (Originally published in 1926). Available at: https://doi.org/10.4324/9780203794449

Marshall, S.E., 1984. Paradoxes of Change: Culture Crisis, Islamic Revival and the Reactivation of Patriarchy. *Journal of Asian and African Studies* [online], 19(1–2), 1–17. Available at: https://doi.org/10.1177/002190968401900101

Merry, S.E., 1997. Global Human Rights and Local Social Movements in a Legally Plural World. *Canadian Journal of Law and Society* [online], 12(2), 247–271. Available at: https://doi.org/10.1017/S0829320100005433

Merry, S.E., 2017. Foreword. *In:* M. Goodale, ed., *Anthropology and Law. A Critical Introduction*. New York University Press, ix–xii.

Michaels, R., 2009. Global Legal Pluralism. *Annual Review of Law and Social Science* [online], vol. 5, 243–262. Available at: https://doi.org/10.1146/annurev.lawsocsci.4.110707.172311

Mommsen, W.J., and De Moor, J., eds., 1992. *European Expansion and Law: The Encounter of European and Indigenous Law in 19th and 20th Century Africa and Asia*. New York: Berg.

Moore, S.F., 1973. Law and Social Change: The Semi–Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review* [online], 7(4), 719–746. Available at: https://doi.org/10.2307/3052967

Moore, S.F., 1978. *Law as a Process: An Anthropological Approach*. London: Routledge & Kegan Paul.

Moore, S.F., 2005. *Law and Anthropology: A Reader*. Malden: Blackwell.

Mossman, M.J., 2006. *The first Women Lawyers: A Comparative Study of Gender, law and the Legal Professions*. Oxford: Hart.

Msuya, N.H., 2019. Concept of Culture Relativism and Women's Rights in Sub-Saharan Africa. *Journal of Asian and African Studies* [online], 54(8), 1109–1279. Available at: https://doi.org/10.1177/0021909619863085

Mubanga, C.A., 2020. *Comparative Analysis on Women's Property Rights after Divorce: Statutory and Customary Law in Zambia*. Thesis (PhD). Cavendish University of Zambia.

N'Diaye, M., 2011. Le développement d'une mobilisation juridique dans le combat pour la cause des femmes: l'exemple de l'Association des juristes sénégalaises. *Politique africaine* [online], 124, 155-177. Available at: https://doi.org/10.3917/polaf.124.0155

Namubiru-Mwaura, E.M., 2014. *Land Tenure and Gender: Approaches and Challenges for Strengthening Rural Women's Land Rights* [online]. Washington, DC: World Bank. Available at:http://hdl.handle.net/10986/21033

Ndulo, M., 2011. African Customary Law, Customs, and Women's Rights. *Indiana Journal of Global Legal Studies* [online], 18(1), 87–120. Available at: https://doi.org/10.2979/indjglolegstu.18.1.87

Odey, G.O., *et al*., 2022. Women and food security in Africa: The double burden in addressing gender equality and environmental sustainability. Advances in Food Security and Sustainability [online], vol. 7, 35-59. Available at: https://doi.org/10.1016/bs.af2s.2022.07.001

Ojogbo, S.E., and Edu, O.K., 2022. Comparing maintenance and property rights in marriage under customary law and statutory law in Africa. *Oxford University Commonwealth Law Journal* [online], 22(2), 229-252. Available at: https://doi.org/10.1080/14729342.2022.2153508

Okoth-Ogendo, H.W.O., 1986. *The Perils of Land Tenure Reform: The Case of Kenya* [online]. Thesis (PhD). University of Nairobi. Available at: https://erepository.uonbi.ac.ke/handle/11295/35689

Onyango, P., 2013. *African Customary Law: An Introduction*. Nairobi: LawAfrica.

Pospisil, L., 1971. *The Anthropology of Law: A Comparative Theory*. New York: Harper & Row.

Renucci, F., 2021. *Les coutumes dans la fabrique des droits africains*. Paris: Dalloz.

Roberts, S., 1984. Introduction: Some notes on African Customary Law. *Journal of African Law* [online], 28(1-2), 1–5. Available at: https://doi.org/10.1017/S0021855300005180

Robinson, A.L., 2014. National versus Ethnic Identification in Africa: Modernization, Colonial Legacy, and the Origins of Territorial Nationalism. World Politics [online], 66(4), 709–746. Available at: https://doi.org/10.1017/S0043887114000239

Roy, K., Chirwa, M., and Thankian, K., 2022. Women and Land Tenure in Zambia: Legal and Customary Challenges for Women. *Archives of Current Research International* [online], 22(8), 60-70. Available at: https://doi.org/10.9734/acri/2022/v22i8548

Santos, B.S., 1987. Law: A Map of Misreading. Toward a Postmodern Conception of Law. *Journal of Law and Society*, 14(3), 279–302. Available at: https://doi.org/10.2307/1410186

Schultz, U., and Shaw, G., eds., 2003. *Women in the World's Legal Profession*. Oxford: Hart.

Schultz, U., and Shaw, G., eds., 2013. *Gender and Judging*. Oxford: Hart.

Schultz, U., Tabeth, M., and Sherr, A., 2024. *Women judges. Appointments, Career Chances and Barriers* [online]. London: Routledge. Available at: https://doi.org/10.4324/9781003465140

Siachitoba, I., 2021. *Zambia Law Development Commission Launches the Strategic Plan, Newsletter and Website* [online]. 6 April. Available at: https://www.zldc.org/download/zambia-law-development-commission-launches-the-strategic-plan-newsletter-and-website-2/

Sichone, F., 2010. *The system of Land alienation in Zambia: A critical analysis of the legal and Institutional Framework* [online]. Thesis (PhD). University of Zambia School. Available at: https://dspace.unza.zm/server/api/core/bitstreams/c669e1bc-9617-41f9-9440-183591340219/content

Sitko, N.J., and Chamberlin, J., 2016. The Geography of Zambia's Customary Land: Assessing the Prospects for Smallholder Development. *Land Use Policy* [online], vol. 55, 49–60. Available at: https://doi.org/10.1016/j.landusepol.2016.03.026

Snyder, F., 1981. Colonialism and Legal Form: The Creation of "Customary Law" in Senegal. *Journal of Legal Pluralism and Unofficial Law* [online], 13(19), 49–90. Available at: https://doi.org/10.1080/07329113.1981.10756258

Solivetti, L.M., 1993. *Società tradizionali e mutamento socio-economico*. NIS Roma.

Sone, P.M., 2021. Women, Land, and Law in Africa. *In*: O. Yacob-Haliso and T., Falola, eds., *The Palgrave Handbook of African Women's Studies* [online]. Camden: Palgrave, 1565–1581. Available at: https://doi.org/10.1007/978-3-030-28099-4_108

Tamanaha, B.Z., 2008. Understanding Legal Pluralism: Past to Present, Global to Local. *Sydney Law Review*, 30(3), 375–411.

Tobin, B., 2014. *Indigenous Peoples, Customary Law and Human Rights—Why Living Law Matters* [online]. New York: Routledge. Available at: https://doi.org/10.4324/9781315778792

Veit, P., 2020. Custom, Law and Women's Land Rights in Zambia. *Focus on land in Africa*.

White, C.M.N., 1965. African Customary Law: The Problem of Concept and Definition. *Journal of African Law* [online], 9(2), 86–89. Available at: https://doi.org/10.1017/S0021855300001091

WSLA-Zambia. 1997. *Inheritance in Zambia: Law and Practice*. Women and Law in Southern Africa Research Project, Lusaka, [between 1993 and 1997].

Wu, Y., 2024. *Colonial Legacy and Its Impact: Analysing Political Instability and Economic Underdevelopment in Post-colonial Africa* [online]. SHS Web of Conferences,193, 04016. Available at: https://doi.org/10.1051/shsconf/202419304016

Young, C., 1994. *The African Colonial State in Comparative Perspective*. New Haven: Yale University Press.

Zambia Law Development Commission (ZLDC), 2006. *Review of the Local Court System.* Lusaka.