

Conference on Land Policy in Africa (CLPA-2017)

The Africa We Want: Achieving socioeconomic transformation through inclusive and equitable access to land by the youth.

Addis Ababa, Ethiopia, 14 to 17 November 2017

Type of submission: Conference papers or Roundtable and Dialogue Sessions

Conference theme: Human rights and food security/ Women's land rights and gender equality

Sub theme: Strengthening land governance and administrative institutions both at the local and national levels including the adoption of technology and innovations for securing land rights under different tenure regimes

Title: How communities can play a role in securing Customary land tenure in Zambia

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Full paper: 3993 words

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I intend to present the product at the November 2017 Conference on Land Policy in person.

Abstract

Community land and natural resources lie at the heart of social, political, and economic life in much of rural Africa. Most community land is held by communities under customary tenure arrangements. While the Zambian government recognizes community land and acknowledges customary tenure, it has not yet established strong legislation needed to secure customary tenure and effectively supported communities in their efforts to protect their lands. As a consequence, many communities continue to lose their land or access to critical natural resources, undermining local livelihoods and triggering conflicts. Traditionally, rights held on customary land have not been documented beyond outdated colonial-era chieftdom maps. Both government and traditional authorities have expressed interest in documenting land and resource rights in these customary areas to support tenure security, and reduce conflicts within communities and even with outside stakeholders.

Documenting rights is within the mandate of chiefs' role as the administrators of customary land, and as a result, civil society organizations have been assisting chiefs in developing customary land certificates (CLC). This paper examines property rights regimes and the different roles played by stakeholders in documenting customary land rights. It also gives a comparison of state tenure based rights and customary tenure based rights. The insights from the case studies and an analysis of institution costs provide a tentative framework for understanding the role of the rural communities and that of the state in the governance and administration of customary land.

Study objectives were formulated on the basis of establishing which mix of rights and definition of characteristics desirable, and who should have the rights, including the objectives of management of the different land uses, the level of technology being used in documenting customary rights, the benefits generated from the land resource, history, and the institutional environment. This paper reviews the relative merits of private, community, and state-based rights and then uses case studies to compare regimes which are being disrupted by the recent global land rush on rural communities under the guise of large scale land investments phenomena sweeping across the Global South. The strength of a targeted country's legal system, the extent of enforcement and the ease for investing countries in navigating its land tenure system also help determine which places are preferentially targeted¹.

The paper also explores the conditions for enduring community rights, well-defined geographical boundaries for the resource, rules of access and withdrawal that are accepted by the community, tailored to the resource and institutions, monitoring and enforcement of rules with graduated sanctions against transgressors, resolution mechanisms for disputes among members, participation of communities in changes to collective rules, and recognition by outside authorities of the collective right. The paper hypothesizes that maps composed of easily recognizable information about land use issues affecting the welfare of rural communities and their natural resources would facilitate technically improved land use decisions and tenure security within the communities.

This paper presents results of a study conducted in 2015, by the Zambia Land Alliance entitled 'The role of communities in securing Customary land tenure in Zambia', which examines through a social survey, purposive sampled ten (10) communities in five districts of Zambia which are piloting and practising participatory land use planning and customary land certification.

The study revealed that potential weakness of any property rights regime is its inability to adapt to changes in the resource and institutional environment. If community land rights are to be successful, collective rules governing the resource must be able to adapt to shocks, changes in technology, encroachment by outsiders and changes in the value of the flow of benefits. If community rights can adjust to these changes but if their rights are not supported by the state, encroachment by outsiders will undermine their effectiveness.

Findings also revealed that community custom designed maps produced by Geographical Information System (GIS) technology were used by traditional leaders to explain and build consensus at community level on ways to resolve land conflicts. Results also demonstrated the pragmatic and cost-effective value of training local communities to participate in the collection of GIS data as a way of making maps more locally acceptable and better focused on relevant issues and needs.

Conclusion drawn from the findings are that in this transition from the old to the new, or from African to more Western values, communal customs are losing appeal as urban based interests seek legal reforms to privatize and commercialize land and other natural resources through large scale land investments. Thus, the urgent need to protect customary land tenure security for rural communities. This paper shares experiences of the community driven mapping and enumerations processes highlighting challenges in learning to use information and communication technology.

Key words: *Customary tenure, Statutory tenure, Tenure security, community participation, customary land, land governance, customary land certificates, Geographical Information System, Village land Committee, Para surveyors*

1. Anseeuw, W., Boche, M., Breu, T., Giger, M., Lay, J. and Messerli, P. Transnational Land Deals for Agriculture in the Global South: Report based on the LandMatrix Database. Hamburg: *The LandMatrix Partnership*; 2012

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1.0 Introduction/ Background

Land tenure security is a critical precondition for any humanitarian economic development yet ironically, billions of people globally suffer from lack of tenure security due to lack of documentation of their land rights. Zambia has a total land mass of 753,000 km² with customary land estimated to be ninety four percent (94%) and statutory land to be six percent (6%)². This data although outdated is the only current official cited data, until the planned land audit is completed. Zambia is facing challenges in linking customary governance to broader statutory governance processes. In the *Zambian Lands Act of 1995*, customary tenure is not expressly defined but it provides for the recognition of customary tenure as a form of landholding in the country.

1.1 Customary Tenure in Zambia

Customary Tenure is an indigenous form of land ownership which is governed by unwritten/undocumented traditional rules and is administered by traditional leaders based on their respective tribal customs and traditions. Customary land access is depended on ethnic, kinship, community membership controlled by the Chief. Under customary law, the land is held by individuals, families, clans, or communities from generation to generation in perpetuity. Active occupation or use of a piece of land is the main evidence of ownership or an existing interest in the land. Customary tenure applies to individual plots, forest land, common land within a village, and communal grazing land.

Customary land is occupied by 73 tribes headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs.³ Formerly Reserves and Trust Lands are now referred to as customary land and their system of landholding is known as customary tenure. Tenure therefore, refers to control, or the way in which people hold, individually or collectively, rights to land and all or part of the natural resources upon it.⁴ Customary land tenure systems traditionally provided high levels of tenure security for its tenants but their unwritten/undocumented slow adaptations to dynamic economic and legal reforms including outdated processes abused by elites and state representatives has led to serious deterioration and weakened the system's ability to cope with these dynamic social, economic and political changes.

1.2 Statutory Tenure

Statutory tenure commonly referred to as State land in Zambia is governed by written law, the *1995 Lands Act*, which is administered by government institutions. Statutory tenure entails formal registration of land ownership as provided for in the *Lands and Deeds Registry Act of 1994*. Land ownership under the statutory tenure system in Zambia is built on leasehold entitlements to the land which offers exclusive rights such as the ability to sell, manage, rent to others, use as collateral for a loan and to exclude trespassers as well as the right to compensation in case of expropriation. Most urban areas, mining areas and protected areas tends to be state land which has been privatized through leaseholds titles.

1.3 Conversion of customary land to leasehold Title

The conversion of customary land to leaseholds titles requires approval of the chief and any individual whose interests will be affected by the conversion. In some cases these leaseholds have resulted in needed investment in rural areas and created opportunities for local employment, contract farming, development of infrastructure and social services. However, the conversion of statutory land back to customary land is not catered for.

The *Zambian government* is currently implementing a *National Land Titling Programme (NLTP)* to ensure that all occupied or utilized land is titled. But even where tenure formalization was desirable in principle, the cost of conventional approaches, range from US\$ 20 to US\$60 per land parcel for first time adjudication alone in what were considered successful projects⁵ and much larger than this in Africa⁶, could undermine outreach and sustainability of the most desirable programs⁷. Taking into consideration these costs involved and needed technical expertise for the NLTP, it appears to be a paradigmatic example of a naive top down approach that will end up as a white elephant because of prescribing solutions⁸ based on abstract reasoning rather than recognition of ground realities and locally grown solutions⁸

² Ministerial statement in Parliament, 4th August, 1987 Government printers, Lusaka.

³ Ministerial statement in Parliament, 4th August, 1987 Government printers, Lusaka.

⁴ L. Rihoy, *Natural Resources Tenure in Africa: Policy Brief*. IUCN, Harare, 1998

⁵ Burns, T. A. 2007. "Land Administration: Indicators of success and future challenges." Agriculture & Rural Development Department. Washington: World Bank

⁶ Jacoby, H. and B. Minten. 2007. "Is land titling in Sub-Saharan Africa cost effective? Evidence from Madagascar." World Bank Economic Review 21 (3): 461-85.

⁷ Bruce, J. W. and A. Knox. 2009. "Structures and Stratagems: Making Decentralization of Authority over Land in Africa Cost-Effective." World Development 37 (8): 1360-9

⁸ Bromley, D. W. 2008. "Formalising property relations in hte developing world: The wrong prescription for the wrong malady." Land Use Policy forthcoming.

1.4 Land administration and management

Land administration and management is key to land governance and critical factor to land tenure security issues. It evolves dynamically over time with many countries often inheriting ineffective and unresponsive legal and policy frameworks from their former colonial masters which weaken community customary land rights.

Communal customs are losing appeal as urban based interests seek legal re- forms to privatize and commercialize natural resources. Models supporting such reforms are often transplanted from abroad with foreign based experts who tend to promote export oriented production and capital wealth as opposed to village based subsistence oriented development⁹. It is unlikely that these models will embrace community based approaches since there is lack of appreciation of African customs and their models.

1.5 Justification

In Zambia, challenges in land governance revolve around institutional mandates and lack of a land policy because there are numerous institutions with overlapping mandates on the administration and management of land without clear and detailed guidelines of operations that should be provided by a land policy. This plurality leads to inefficiency in land governance as related agencies lack coordination, award overlapping land tenure acts. People should always be the focal point of any land administration and management system, focusing on their relationship to the land, their context and their community. Systems should also recognize the plurality of land tenure forms, from formal to informal.

There several factors that are promoting insecurity of tenure under customary such as lack of documentation (registers, diagrams and dimensions of plots, Customary Land Certificates) of boundaries and allocated land by traditional leaders since customary land systems are not documented or written down. There is also inadequate policy, guidelines and legal protection on customary land resulting in lack of transparency in land allocation by some traditional leaders with little or no participation of their subjects. While customary land management systems may differ from chiefdom to chiefdom, issues of transparency and accountability in decision making around land allocation, management and conflict resolution, are common¹⁰.

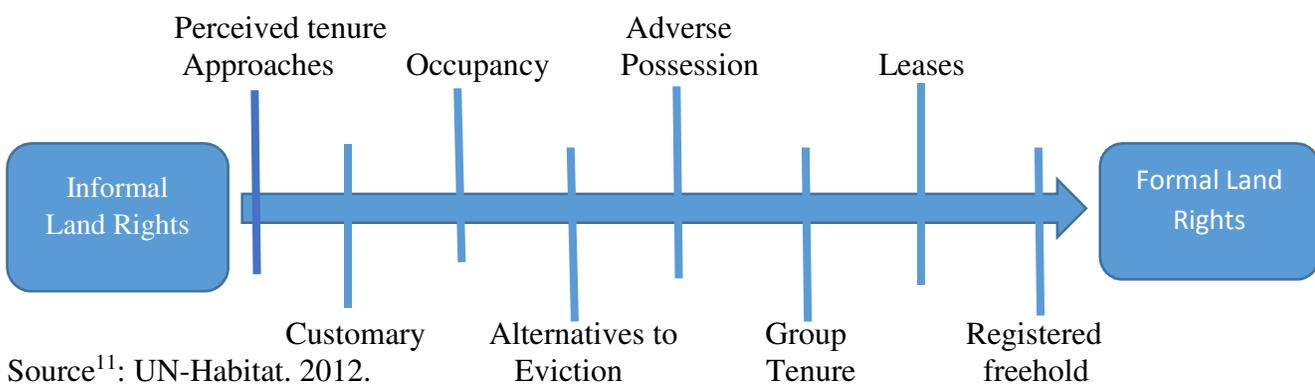
2.0 Methodology

2.1 Conceptual frame work

The participatory land use planning and tenure model is based on the continuum of land rights, an inclusive, pro-poor and gender responsive approach incorporating tenure rights that are documented as well as undocumented from individuals and groups. This range of rights generally cannot be described relative to a parcel. It is about a plurality of tenure systems, which is according to the Global Land Tool Network (GLTN) the Continuum is described as follows¹¹.

“We can view rights to land as lying on a continuum. At one end are formal land rights, where the owner is an individual, who holds a set of registered rights to a parcel of land that are enshrined in law: the parcel is delineated on a map held in a record office; the owner has the right to occupy the land, build on it (subject to approvals), sell it, rent it out, transfer it to his or her heirs, and prevent other people from coming on to it. At the informal end of the continuum are informal rights: a group of individuals (such as a clan) may have traditional rights to use a piece of land. The boundaries of the land may not be clearly marked on the ground or on a map, and there may be no official paperwork certifying who owns or has what rights to the land.”

Figure 1: Continuum of land rights



Source¹¹: UN-Habitat. 2012.

⁹ Wright, R. M. 1993. Conservation and development. Pages 183-192 in D. M. Lewis and N. Carter, editors. Voices from Africa: local perspectives on conservation. World Wildlife Fund Publications, Washington, D.C., USA

¹⁰ Zambia Tenure & Climate Change Scoping Report – Opportunities for Land Tenure and Agroforestry Intervention

¹¹ United Nations Human Settlements Programme (UN-Habitat). (2012). Handling Land: Innovative tools for land governance and secure tenure. Nairobi: Author

Land tenure security of many rural communities in developing countries relies on different varied forms of tenure systems which are not necessarily registered freehold. The Continuum shows that tenure systems can take various forms, so no one particular form should be considered as the ultimate or preferred form of land rights tenure system for different communities. Legal innovations providing a basis for more flexible recognition of a continuum of rights have now been widely adopted throughout Africa¹².

Community-based approaches have the advantage that traditional administrative systems are already in place in communities for engagement and building upon with relatively little start-up capital required. In other words the workforce, leaders, teachers, communicators, meeting facilities, and so forth are all present for the community to participate in resource management. Chiefs were engaged to provide dispute resolution, issue customary land certificates and ensure safe custody of master village land registers. The Chiefs receive requests for land and issue rules/bylaws then approve land for woodlots/agricultural activities and oversee implementation and enforcement of land governance rules and regulation including participating in customary land policy development sessions.

2.2 Project sites.

This paper looks at generally Participatory Land Use Practices (PLUP) of projects piloted in Chipata, Gwembe, Monze, Petauke, Nyimba and Solwezi districts within chiefdoms areas of Maguya, Mkanda, Mshawa, Mnukwa, Manungu, Moomba and Ndeke.

2.3 Implementation

After declaration of an area as subject to adjudication, Zambia land Alliance (ZLA) held meeting workshops with chiefs to validate chiefdom and village boundaries through providing a series of trainings on land certification and administration. The trainings also included each of the steps (information, demarcation and adjudication, objections and corrections, certification) of the certification process prior to carrying out the activity.

Within the communities, outreach stakeholder sensitization meetings were conducted first on land laws and rights, the right to ownership of customary land certificates in-order to sensitize smallholder farmers on securing their basic resource and land rights for improved economic livelihoods opportunities.

Then locally trained community facilitators and Para surveyors, were used to engage small holder farmers at household levels in mapping parcels of land using hand held GPS machines. This required physical inspection and inquiry with neighbors to ensure that there are no other ownership claims. They conducted land demarcation in the field to identify parcel boundaries in the presence of land owners and all adjoining neighbors, mark them on an aerial photo to create a graphical record for undisputed parcels then issue a claim receipt that is signed by all adjoining neighbors. Information from this receipt, in particular the names of all persons, including women and minors, with a claim or interest on the property, is then transferred to a registry book, digitized, and displayed publicly. If no objections are raised within a period of public display of at least 2 weeks, the information is formally registered, creating the precondition for award of a formal certificate upon payment of a nominal fee.

Fig 2: Community member showing her certificate



Chiefs and their respective indunas and village headpersons were engaged to develop, strengthen, and implement improved systems for customary land governance in the district by establishment of Village Land Committees (VLCs) in the chiefdoms to carry out land administration functions, land management functions and roles in certification. Chiefs and headpersons planned the actual work to be done with regards to issuance of customary land certificates and developing chiefdom land registries of all small-holder farmers issued with land certificates. Chiefs designed the customary land certificates according to each Chiefdom preference and the ZLA facilitated the printing and delivery of certificates.

This grassroots approach to data flow that is linked to GIS applications for identifying land use mapping and resource management needs by communities is referred to as "bottom-up" research. Since community facilitators and Para surveyors reside within the communities, they provide culturally acceptable way of transmitting information and knowledge to peer groups and community leaders. During training, they are taught to relate their field observations to geographic locations

¹² Alden Wily, L., 2003, Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa, Land Tenure and Resource Access Series, Drylands Programme, IIED, London

by way of maps with geographic features that help locate positions, referred to as base maps which serve as templates for creating the necessary layers of map information used in helping build a computer based GIS for that communal area. A geographical information system (GIS), based on ARC/INFO software(ESRI 1990) , was applied and tested as an appropriate technology based on the initial map information digitized from 1:250 000 survey maps available through the government survey department.

However, professional land surveyors could not believe that community members who have not been academically trained on land surveying could reliably map and depict land parcels in their communities. Their main concern was on accuracy achieved by use of hand held GPS machines. Then after discussions with explanations of the concept “Fit for Purpose” land administration designed to meet the needs of the people and their relationship to land to support tenure security, the mist was cleared. The Representatives from Surveyor General’s office, department of Agriculture, Local Council Authorities, Ministry of Chiefs and Traditional Affairs and the President’s office visited the chiefdoms to gain insight on the implementation of this participatory land use planning and mapping process. The process entails the technical process of surveying with hand held GPS linking the land size parcels data with families information captured through Para surveyors and community facilitators. This followed by the social aspect of validating the captured data thereby confirming accuracy of the data resulting in insurance of a Customary Land Certificate to the household by the chief.

All certification process information is kept at the chief's administrative office and accessible to the community and government departments who provide technical assistance to the analysis and interpretation of the data.

3.0 Discussions of Results

Customary land certificates will lead to significant decrease in land evictions and displacements, strengthen, and eventually ensure the consistent application of law as it relates to customary land. This brings about the question of legality of the customary certificate before a court of law. Can it be presented as a legal document to prove ownership like the leasehold title? This is still a subject of debate but however one case has been recorded in Monze, Zambia where a widow won a case in court on ownership wrangle with the in-laws after she produced a customary land certificate in which she was named as joint owner with the late husband.

Results offered a growing set of achievements in land use planning by local community leaders in support of the hypothesis that maps composed of easily recognizable information about land use issues affecting the welfare of local residents and their natural resources would facilitate communal societies to make technically improved land use decisions with broad-based support within the community.

Results also demonstrated the pragmatic and cost effective value of training local residents to participate in the collection of GIS data as a way of making maps more locally acceptable and better focused on relevant issues and needs. There is now growing appreciation of the community local knowledge by government authorities resulting in increased flexibility allowing communities to use existing laws to proactively strengthen their ability to protect, document, and steward their customary and indigenous lands. As communities empower themselves to use these laws to document and secure their land rights, they also strengthen their own local mechanisms to govern their lands equitably and sustainably, and to advocate for their own interests into the future. The process of community involvement in doing so strengthened the knowledge and confidence among community leaders to deal with land use problems themselves for promoting their own interests in private sector partnerships.

There were some potential limitations and pitfalls of the certificates such as concern that Customary certificates may be perceived as leasehold titles so messages were developed and disseminated to clarify that certificates are not title, and cannot be transferred or sold and even these conditions printed at the back of the certificate. Access to certificates for youth, women, and disadvantaged groups was also a concern and by encouraging certification at individual and household level, improved access among these groups. Furthermore, joint titling and documentation of the rights was promoted amongst families indicating names of spouses and next of kin.

4.0 Conclusion

According to the Zambian Land Act of 1995, it recognizes customary land and legally empowers Chiefs to administer customary land. So this paper argues that customary land certificates should be legally accepted before a court of law since they have been issued by a legally recognized administrator of customary land. Overall, it is important that whatever path the Government takes and whatever route civil society and communities adopt, they should all meet at the same confluence and cross the river with the vision of preserving, protecting and strengthening the customary land rights in order to boost investment on customary areas for improved socio economic welfare of indigenous communities.

To date, in Zambia, the actual total number of customary land certificates that have been issued out in various chiefdoms with support from various civil society organizations, is not known but the figure is on the rise each new day. Additionally priceless community labour hours and huge sums of money have been used to support this initiative

by several international partners, which would be a shame if it all this goes to waste by lack of formal recognition of these customary land certificates by the state.

On a cautionary note, it is acknowledged that analysis was based on a relatively small pilot sample of few chiefdoms whose cultural norms and practices may not necessarily be fully representative of the situation in other chiefdoms. Nevertheless, the findings are broadly indicative and applicable to the current situation and challenges faced by indigenous people on communal lands globally without formal recognition or documentation of their land rights.