

The Challenges of Customary Land Tenure in Zambia

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SUMMARY

Current concern with the land question derives from the accumulated experience of economic development. Land is believed to be a prerequisite to economic growth as most people depend primarily on the land and agriculture for their existence. Land is directly linked with both their economic and social interests.

The paper discusses tenure in customary lands of Zambia in view of its importance to the development of both customary and state land. It has looked at the inadequacies of the current land policy as regards customary land and also its bearing on sustainable land management and indeed general improvement of livelihood in these areas.

The paper argues that without effective tenure policies in administering land, sustainable development in these areas is threatened. To this effect, the issue of boundaries in customary communities has also been discussed as a way of territorial integrity and land management in customary land. The need for cadastral surveys is becoming more apparent with the rise in population and demand for market based activities in rural land. Without clearly defined systems of administration and demarcation of boundaries, customary Zambia is prone to more land conflicts hindering socio-economic progress.

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1. INTRODUCTION

Land is a primary resource that men and women in Zambia depend on for their livelihood. From generations to generations, land has been hailed as the greatest resource and indeed the backbone of wealth in many African communities, whether urban or rural. Land is the focal point of economic growth poverty eradication and the general improvement of livelihoods.

To the investor, land has been the basis of wealth; to the farmer, a basis of production and down to the ordinary man, a source of pride. Mulenga (2005) observed that that “land is a primary resource that men and women in Zambia depend on for their livelihood. She further asserts that land is a source of food, shelter, social status and power.

The land question in Africa centers on the type of land holding. It has been argued that customary Tenure in Africa is a recipe for underdevelopment, and thus a major cause of the regions untold levels of rural poverty (Ngombe et al, 2006). In recent years, land market reforms have been carried out in countries as diverse as Brazil, Cote d’Ivoire, Uganda, Malawi and Zambia (Brown, 2002). The quest for land reform involves raising the living standards of huge proportions of the world’s population, currently estimated at 6 billion, of which many are in developing countries (UN Habitat, 2003). The great majority live in rural areas thus it is a matter of necessity that overall development must include rural development (Ngombe et al, 2006).

Many countries of the world, especially developing countries in Africa have experienced severe problems related land administrations under their current tenure systems. The most prevalent ones include Environmental degradation, landlessness, squatting, inadequate public revenue and rural poverty (Kambenja,1997). Many African governments and international donors have attributed the problems of rural poverty, poor agricultural output and low levels of economic development to the persistence of farming systems based on customary tenure (Quan, 2000).

It has been argued that Africa can only develop if the traditional tenure consisting of about 90% of African land resources is integrated into leasehold tenure system founded on principles of individualization (Kambenja, 1997). Central to this argument is the achievement of Millenium Development Goals in rural areas where the majority of the poor people live.

Dorner(1972) has described land tenure as “embodying those legal, contractual or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land”. This therefore follows that Land Tenure is an institution that

regulates human behavior in a particular society. Use is predominantly up to the needs of each community and each society develops its own cultural attitude towards its land.

The malaise of dichotomised tenure has been the source of Zambia's tenure disputes (Chinene,1998).

2. LAND TENURE IN CUSTOMARY LAND

Approximately 94% of the country is officially designated as customary Area. It is occupied by 73 tribes, headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs (Chileshe, 2005).

Usually, tenure under customary lands does not allow for exclusive rights in land. No single person can claim to own land as the whole land belongs to the community. Land is deemed as belonging to members of the community for their own use (Republic of Zambia,1995). It is a valuable heritage for the whole community. Communal lands in most of the African countries including Zambia have sprung from a concept of ancestral trust committed to the living for their own interest and for the interest of the unborn. This is embedded in a common West African dictum which says:

I conceive of land to as belonging to a vast family of whom many are dead, a few are living and countless are still unborn. People holding land are thus doing so in trust for ancestors and for those who are not yet born and also the community as a whole.

(Nigerian herder)(Lane, 1998:1)

It is the duty of traditional rulers to ensure that every member capable of owning land is allocated land. The issue of access, as in state land, is tied to capability. However, being capable is entirely up to the discretion of the chief. This has often led to dissatisfaction among the members of the community, the most vulnerable groups being women, youths and the disabled. (Zambia land Alliance, 2005: 15).

2.1 Women's Rights to Land under Customary Law.

Kariuki(2006) argues that the problems with land and women range from tenure disputes, unsuitable land legislation, land administration, land grabbing and invasions. Nsemiwe(2006) asserts that in Zambia, customary practices such as inheritance systems contribute to the inequality of land distribution. cultural beliefs have not ceased to sideline women in terms of access to land although several attempts have been made to sensitize communities on the importance of ownership of land by women. Laws on customary inheritance have been a major determining factor to accessing land by women. The Zambian land legislation has formally recognised the importance of land ownership by women and has allocated 30% of stateland for women (GRZ,1995). However, customary law remains silent on the matter. This has had adverse effects on the development of rural areas especially with the advent of HIV/AIDS.

2.2 Investors' Access to Land

Amidst this cry for access to land by the vulnerable groups in the community, there has been an overwhelming demand for land in customary areas by both local and foreign investors. The perception of the Zambian government has been that in order to develop, there is need to open up customary land for foreign investors (Zambia Land Alliance,2005).

Investors are able to access land in customary lands through written consent from the chief to hold land under leasehold system. Planning authorities are required to draw site plans for the areas and the committee interviews the applicant. Upon success, the council secretary recommends the allocation of the unnumbered plot to the ministry of lands. Once the procedure is complete, the plot immediately changes from customary to state land. It is worth noting at this point that under the current land tenure system, there is no provision for land that has been converted to state land to be reconverted to customary land (GRZ, 1996).

The current demand for land in Zambia calls for the conversion of customary land to state land to meet future land requirements (Kapijimpanga, 2002:1). There is every reason to fear that that with this high demand for customary land, the local people will have problems in accessing their own land. It is becoming more apparent that without stern and effective allocation systems in customary lands, access to land by the locals is threatened.

2.3 Security of Tenure

The major argument on customary tenure has been security in land holding. The World Bank (2003) argues that customary tenure encumbers commercialization; it is insecure, lacks certainty and frustrates rural land markets. This has led to the call for land tenure reform, attempting to replace customary tenure with a modern secure tenure. Land tenure security is often associated with Land titling and land registration. Secure individual tenure, and a free land market, has been promoted in the belief that they will lead to higher levels of agriculture investment and productivity and thus provide a firm basis for national growth and development (Quan, 2000). Smith (1999) defines title as the degree of control, use and enjoyment that are recognized and protected by law. It has been argued that lack of title in customary lands brings about insecurity because rights are not recognized and protected by law. It is such arguments that led to the implementation of the 1995 Land Act in Zambia. The chiefs and the local people however object to this notion because for them, communal resources act as an important social safety net and people have equal access to the resources that nature has provided (Chinene et al, 1998).

The debate on security of tenure in customary land has continued to date without conclusive evidence that customary areas hinder the development of markets and lessen the ability of rural development to take place (Brown, 2002).

3. CONFLICTS IN CUSTOMARY TENURE

3.1 Conflicts between Customary and Private Rights

There is widespread argument that Africa can only develop if the traditional tenure, consisting of about 90% of Africa's land resources, is integrated into the leasehold tenure system, which is founded on principles of individualization (Brown, 2002).

The conversion of customary land to state land has created conflicts in many rural areas of Zambia. Following the implementation of the Land Act 1995, the government failed to pass any statutory instruments- the rules and procedures that govern the administration of land (Adams, 2003). It has been observed in areas converted for tourism purposes, under the premise of market based land reform, that local people have lost full access common pool resources upon which they have depended for their livelihood (Southern Guardian, 2005). For example, some villagers in rural areas have found themselves squatters overnight after their land was converted to private land by investors.

The Times of Zambia on 22nd August 2002 carried a story headlined "Displaced in my own country?" It is the story of the people of Kasembele village who woke up one morning and found themselves as squatters. From 1920, the people of Kasembele village have lived on this land, planted over 320 mango and guava trees, which they used as a medium of exchange with people who cultivate their maize. This had been their livelihood until Thomas Edward Roberts came and ordered the villagers to vacate, claiming he had bought the farm.

46 Native families were given marching orders claiming they were illegal squatters. Out of desperation, some families left the village after being compensated with K 1 Million each (approximately US\$340) to begin new livelihood. The results were women and children sleeping at the nearest graveyard (Times of Zambia, 2002).

Land conflicts such as those in Kasembele Village are occurring all over Zambia, highlighting increasing tensions between customary and private land rights. These conflicts have been sharpened by the process of economic reform, including the liberalization of land markets, which has seen wealthy Zambians and foreign investors buying up land previously held under customary tenancy by the rural poor. Simwanza (2006) asserts by stating that:

It is common knowledge that any investor invests first to serve his interests before serving your interest. In fact what we are experiencing is a situation where investors are using cheap labour and our land, first and foremost to maximize profits which is later externalized. They would rather grow flowers than food for the starving Zambians. If the major intention is to develop, why then should they invest in areas where there is existing development, why not invade bare land? Simwanza (2006)

3.2 Conflicts in Land Allocation

The 1995 land Act vests all land in the president to hold in trusts for the the people of Zambia (GRZ, 1995). The same act recognises that customary land is under the administration of the

chiefs or traditional rulers. This Act in itself has brought problems in the allocation of land. Commenting on the Draft land policy, Chieftainess Nkomesha Mukamambo 11 of the Tonga asserted that traditional rulers were losing land. She added that with the current system, it was more like the President versus the chiefs in land allocation. At the MS Zambia Annual meeting 2003 draft policy review by Pelum Association of Zambia, Chiefs brought out an interesting example of how unclear land allocation system is in Zambia. They gave an example of Nanga area in Mwanachingwala chiefdom where the chief gave consent to an investor to develop. Having failed to develop, the land was repossessed and advertised by the commissioner of lands instead of going back to the chief (Pelum, Draft land Policy review, 2003). For the villagers, this will lead to scarcity of land and natural resources as usually large tracts of land are allocated for conversion to outsiders, especially the poor who benefit from the so-called secondary rights (access to natural resources), as it is one of the few ways to get food and necessary items to live.

So far, no records exist to indicate how much of customary land has been converted to leasehold (Muchima, 2006). Although the act explicitly recognizes and protects customary land rights, an unstated but crucial assumption underlying the act is that overtime the conversion of customary to leasehold tenure will open up more land for investment and diminish the amount of land held under customary tenure. Most Zambians are also at a disadvantage when it comes to protecting their land rights because their territorial boundaries are in abstract form.

3.3 The Boundary Conflict in Zambia

In situations where land for settlement and agriculture is in abundance in comparison to the population, land boundaries are not an issue. However, with the current exponential rise in population, it is becoming clear that these current methods are getting more obsolete thus it is necessary to have clear boundaries. Without this, conflicts are likely to arise.

Zambia's boundary problem can be categorized into three major conflicts

1. International boundary disputes
2. Urban- Customary Dispute
3. Chiefdom Dispute

3.3.1 International Dispute

Zambia has had several boundary disputes with her neighbors (Zambia Land Alliance, 2005). This had tended to affect livelihoods in rural areas as most of these areas are in customary land. This also leads to insecurity of tenure since the villagers are often not sure whether they are actually on the Zambian side or not. The current dispute between Malawi and Zambia has created anxiety on the local people, as many do not know exactly which country they belong to. Outdated maps bear the testimony of boundaries between the two territories. Consequently, the two governments have resolved to make new boundary lines through allocation of families (Times of Zambia, 2005).

3.3.2 Urban- Customary Dispute

The pressure on urban districts to provide land for the urban population exerts pressure on the customary areas bordering the districts (Kapijimpanga, 2002). In a recent case in chongwe district, the chief has complained of encroachment by the district into their land. The chief has since demanded for clear demarcation between his area and the district to avoid further encroachments (Time of Zambia, 2005).

Commenting on the draft land constitution, the Zambia land Alliance observed that Government and district councils continued to trespass into traditional land because of unclear boundaries between state land and customary land. Such a dispute has tended to hinder development especially in peri-urban areas, as they tend to argue more on the boundary than on development (Zambia Land Alliance, 2005). Outdated maps bear the testimony of boundaries between the two territories.

3.3.3 Chieftdom Dispute

It has been observed that boundaries between chiefdoms were also unclear and that maps were either not available or outdated.

Common identifying marks as regards boundaries in customary land include streams, hills, large trees or footpaths. These have often helped in demarcating or identifying boundaries between chiefdoms. With this in mind, it is easy to encroach in customary land. (Zambia Land Alliance 2005:19).

Market based reform in Zambia calls for a clear definition of boundaries. Disputes have arisen where a chief allocates land to an investor in an area that belongs to another chiefdom. In his address at the house of Chiefs, the republican president Levy P. Mwanawasa S.C stated that:

I am aware that the issue of unclear and unmarked chiefs boundaries has led to a number of conflicts between villages and chiefdoms. I am also aware that some chiefdoms are overlapping on others leading to situations where some chiefs are giving out land which does not belong to them. To resolve this problem, I am directing the minister of lands to ensure that boundaries between chiefdoms are clearly marked. This will curtail disputes and enable people in this areas to live in peace and concentrate on development”

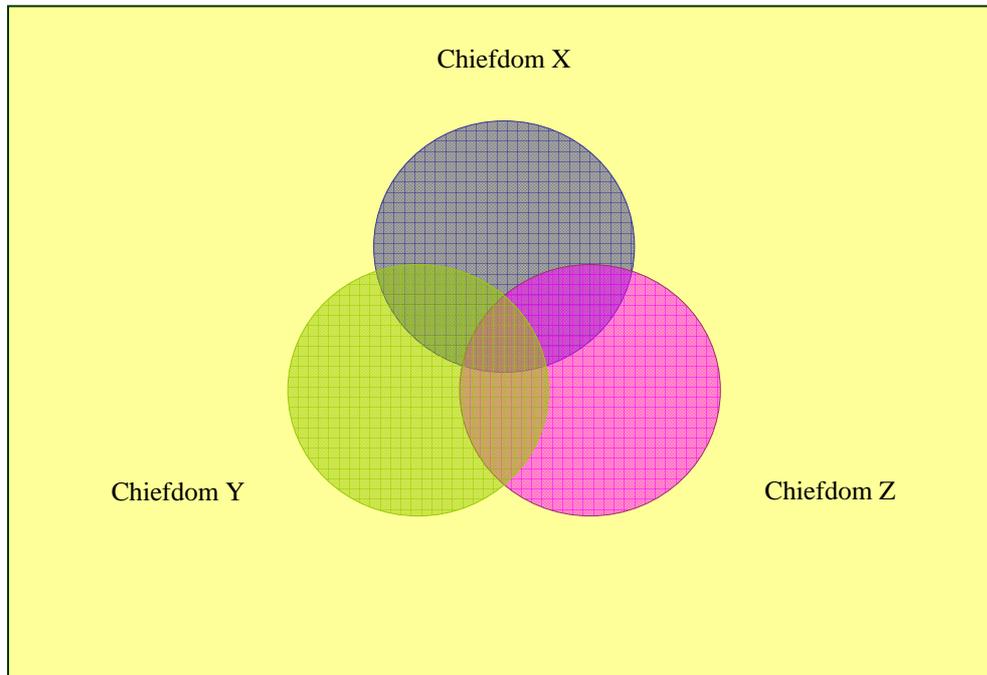
(Republic of Zambia, 2006)

The boundary problem has been in existence for a long time now and promises such as the one above have been made. It is hoped that the Government will fulfill this promise. Dealing with the legacy of boundary definitions, it is undeniable that there is an urgent need to demarcate areas with boundary marks. However, the resources for this great task are not available.

With the call for sustainable land management, there is need for clear boundary definitions that will aid in the operations of sound land management systems.

Unclear boundaries often lead to uncertainties of resource management as they often leave loopholes which they call ‘no mans land’. These so called “no mans land” are prone to what Hardin(1968) termed as the Tragedy of the commons.

Figure 1 Intersecting boundaries in chiefdoms



Source: Mudenda(2006)

The intersections in chiefdoms X, Y and Z are the areas prone to the tragedy of the commons.

The boundary problem stems from the fact that the land surveying profession lacks financial capacity to carry out efficient cadastral surveys all over the country. Existing records of maps are outdated while areas such as customary land generally rely on imaginary maps.

4. REFLECTIONS

The future of Africa lies in determined efforts to shape Africa the way it should be. Shaping Africa requires an in-depth analysis of the problems it faces and solving them the African way. The question on customary tenure is one that needs a sincere answer from a sincere perspective. Much has been said about its defects and the need to replace it with modern tenure, but ultimately, the future of customary land in Zambia should be shaped by the 80% of Zambians who live in abject poverty. While the people in rural areas appreciate that rural development is cardinal for the reduction of poverty, policies that are aimed at introducing title to land are not appreciated because it contradicts with their principle beliefs. Despite the

constraints, customary land tenure has continued to survive because it is a product of the people's culture and values and is consistent with the African way of life.

This paper has discussed the current tenure existing in rural Zambia. From the information gathered, it is clear that customary tenure as it is may not adequately meet the current pressure that demand for land has created. The way in which this land is to be made available has a significant bearing on rural livelihood.

Conflicts are prone to occur in resources as valuable as land. At this point of the century we need not center on conflict resolution but Zero conflict. This is borrowed from the concept of Zero maintenance which advocates for "no maintenance" as against better ways of maintenance. We can avoid conflicts by ensuring that policies in place are sound and sustainable. As we promote sustainable land management, we are effectively talking about 'Conflict Free' land management. This can be achieved by making policies that will be suited to customary needs and realizing that customary land can positively contribute to the development of the country. Introducing a policy that cannot be embraced by the people affected is a recipe of conflict.

Customary Tenure in its simplicity has managed to bring us this far in terms of access and benefits. With the exponential rise in population, great challenges lie ahead in its sustenance. There is need to revisit the system and ensure that all gaps are sealed. Promoting customary tenure with greater access and security is a must if we are to see development in rural Zambia. Security of tenure should ensure that boundaries are defined and well maintained. General boundaries can be used to clarify the boundary problem in customary areas. This can be done through participatory mapping where the communities verify their boundary marks. Once this is done, aerial photography can be used to come up with maps.

As we promote rural development, natural resources need to be preserved. Community Based Natural Resource Management (CBNRM) Programmes should continue to enable communities to take care of their environment.

Customary tenure can provide vital livelihood security functions and have the capacity to evolve and meet new socio-economic needs of the community.

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BIOGRAPHICAL NOTES

The author is a 5th year female Land Economy student at the Copperbelt University in Zambia.

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Achievements: Awarded best young researcher for her paper “Land tenure, Access and Boundary Conflicts in Rural Zambia” at the Commonwealth Association for Surveyors and Land Economists (CASLE) conference in Bagamoyo, Tanzania, 2006.

Also received a joint CASLE Lecture prize best presentation by young researcher at the same conference

Career perspective: To ensure that rural livelihood in Zambia is improved and that sustainable development in rural areas will become a reality.

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