



Changing Customary Land Tenure Regimes in Zambia

Implications for Women's Land Rights

WORKING PAPER 65

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Changing Customary Land Tenure Regimes in Zambia: Implications for Women's Land Rights

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ABSTRACT

This paper argues that the formalisation of customary land through a rural certification programme in Nyimba District, Zambia, has triggered the establishment of a new tenure regime that transcends the dualism between Western legal forms of private property and idealised customary systems. Within this agrarian transition, the number of social conflicts over land boundaries have fallen, at least in the short term; women's perceptions of tenure security have improved; and women's participation in land administration at the local level has increased. In addition, a significant number of married women have registered residential land and farmland in their own names. However, the transition has also produced a number of negative impacts. Multiple land claims by women have been dismissed. Men have continued to dominate power relations in the district. Certification has not necessarily led to greater access to credit, improved agricultural productivity, or a rise in investment. Informal land markets have become more expensive with certification producing a veneer of legitimacy for buying and selling customary land, even though such transactions remain, strictly speaking, illegal. On the other hand, agrarian support has been skewed to the benefit of wealthier, better-connected, and dominant women with land-holding certificates and to the detriment of less-powerful women. Accordingly, many of the envisaged benefits of formalisation through an evolutionary approach to land tenure rights have not been realised. The argument developed by this paper is based on original field data obtained through quantitative household surveys, in-depth interviews and focus group discussions.

KEYWORDS: customary land, formalisation, customary land-holding certificates, Zambia

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ABBREVIATIONS AND ACRONYMS

CLHC	Customary Land-holding Certificate
ILRG	Integrated Land and Resource Governance
LAC	Land Allocation Committee
MAST	Mobile Approaches to Secure Tenure
SPSS	Statistical Package for the Social Sciences
USAID	United States Agency for International Development
ZLA	Zambia Land Alliance

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INTRODUCTION

Recently, there has been a great drive towards registration of rights in land for people who live under customary tenure in sub-Saharan Africa. Estimates show that 78% of land on the continent as a whole is held under customary tenure (Wily, 2017). In sub-Saharan Africa, these estimates rise to 90% (Chimhowu, 2019; Wily, 2017). The term “customary tenure” has been used to refer to a set of unwritten, traditional, and socially acceptable rules about how to use and allocate land and natural resources. In much of the literature, customary tenure is depicted as being synonymous with communal landholding, which is a form of collective ownership of land (Otsuka et al., 2000). In reality, most African tenure systems include individual rights for residential, arable land and collectively held rights for forest and grazing land (Cousins, 2021). The land is usually governed under the authority of traditional leaders, families, or clans. Free-market economists and a number of African feminist

lawyers have argued that land rights are insecure under the customary system because landowners in this system have no rights to exclude others and their land is vulnerable to arbitrary expropriation (Deininger, 2003). Such insecurity contrasts with the relative security of control over land provided by statutory tenure, which is based on written legal rules and the provision of proof of land ownership in the form of title deeds, state leaseholds, and land registration certificates. Proponents of statutory tenure believe that the introduction of private property rights ensures tenure security (Roth et al., 1995); improves the functioning of land sales and rental markets (Deininger & Feder, 2001); provides incentives for investment (Besley, 1995; de Soto, 2000; Galiani & Schargrotsky, 2010); improves agricultural productivity and efficiency (Anderson & Lueck, 1992); facilitates access to credit facilities (Deininger, 2003); deepens democracy (Atuahene, 2005); and improves women's land rights (Deininger et al., 2008). It is important to highlight that formalisation of property rights in this article refers to surveying of boundaries, registration, and documentation of customary land rights even by non-state actors (Dick & Mwangi 2008). Other scholars see this as a "third approach" as a result of the critique towards land titling and hence signifying a departure from the mainstream private titling agenda (Green & Norberg, 2018). We argue that this approach remains embedded in evolutionary models of land tenure rights whose central logic is a drive towards Western forms of individualised private property ownership (Plateau, 1996; Yngstrom, 2002) but this time through gradual, cheap, subtle, and less conflictual ways that do not immediately upset the underlying structures of power.

The narrow view of how the evolution of land rights may take place proposed by this conceptualisation ignores the broader context of property relations in many places and the social consequences of the imposition of formalisation for different categories of landholders, especially women, who are the focus of this paper. Indeed, there is a growing body of literature showing that customary land rights are highly secure in the context of local social arrangements (Chitonge, 2022; Galiani & Schargrotsky, 2010; Hall et al., 2012); and discrediting the assumption that customary land is only held in communal ways, thus discouraging individual investments in this land. Research into patterns of access to, and control over, land in customary areas has indicated a number of nested interests, which include individual property rights to specific pieces of land (Chimhowu, 2019; Chitonge, 2022; Meinzen-Dick & Mwangi, 2009; Udry, 2011). Some studies have also shown that investments induce tenure security, which contrasts with the widely held view that tenure security induces investment. It has further been argued that the benefits of private property rights in sub-Saharan Africa have been overestimated (Plateau, 1996) and that the introduction of such rights can even harm the beneficiaries (Feder et al., 1988). Meanwhile, community ownership of land allows for its redistribution among community members and thus provides a social safety net and a hedge against landlessness (Deininger & Feder, 2001).

Galiani and Schargrotsky (2010) found that although land titling in Buenos Aires in Argentina led to increased household investments, smaller households, and better educational outcomes for poor deprived families, this was as a result of long-term investment in the built environment and human capital rather than any increased access to credit. Brasselle et al. (2002) found that formalisation of land rights did not stimulate investment. In a study that these authors conducted in Burkina Faso, they found that the absence of a formal credit and land-sale market was preventing landowners from being able to use land as collateral. Similarly, evidence from Lima in Peru has shown that formalisation does not in itself improve access to credit (Calderón, 2004). Meanwhile, Whitehead and Tsikata (2003) argue against the position adopted by a number of African feminist lawyers who advocated for the statutory registration of land rights on the grounds that this would enhance women's tenure security. Whitehead and Tsikata argued that the growth of land markets does not depend on the establishment of formalised property rights. By contrast, Chimhowu and Woodhouse (2005) argue that land markets can, in fact, "strengthen women's rights to control land and afford more protection against dispossession under customary tenure" (p. 361). According to Chigbu (2019), women seem to have the least access to land in societies that practice customary communal land tenure or joint ownership of property (p. 41).

Simplified approaches to dealing with women's land rights tend to assume that women are a homogeneous group (Chigbu et al., 2019; Chiweshe et al., 2015), which ignores the socially differentiated ways in which they experience land tenure. In their study of women in Goromonzi in East Mashonaland, Zimbabwe, Chigbu et al. (2019) identified ten factors differentiating the nature of women's land access and their tenure security. These included: economic status; marital status; type of land; health status; education status; life cycle stage; inheritance regime; spatial location or habitation; socio-political status; and migrant status. In the three countries they studied – Ghana, Nigeria, and Zimbabwe – Chigbu et al. (2019) found that women used their economic power to negotiate access to land, including in relation to possessing or using it, and to contest threats to their tenure security. Meanwhile, women with poor access to economic resources, such as married women who depended on their husbands, lacked the requisite information about land transactions to take significant action. Chigbu et al. (2019) also found that women's tenure security related to the nature of the regime governing the land in question, as well as the function of the land. In the case of customary land, those women who had acquired such land through inheritance or family lineage or through allocation by a traditional leader tended to have stronger tenure rights than those who had acquired the land in the open market. Interestingly, the authors also found that in the case of large-scale land-based investments (LSLBI) for agricultural purposes, women enjoyed greater tenure security in relation to their rights of access to land for building rather than in relation to their rights of access to land for agriculture.

Notwithstanding these many scholarly caveats concerning the benefits that may accrue from formalising rights to customary land, policy makers, civil society, and donors across the continent have continued to promote the pursuit of individualised land rights. Between 1990 and 2017 there were 32 new land laws enacted across sub-Saharan Africa, many of which envisaged a process of registering rights on customary lands. Wily (2017) argues that in 30 out of 47 African countries tenure reforms had brought better protection of rights through formalisation. However, a recent Prindex (2020) survey indicates that nearly 50% of women in sub-Saharan Africa still fear losing their land in the event of divorce or the death of a spouse (p. 21). Against this background, a key question remains unanswered: How is the formalisation of customary land rights affecting tenure relations for women?

Given the contested nature of formalisation outcomes, this article seeks to enrich the debate by presenting the findings of a field-based study undertaken in Nyimba District in Zambia's Eastern Province. The area has been the site of a rural certification programme, which has triggered a new tenure regime that may be seen as transcending the dualism between Western legal forms of private property and customary systems. Within this agrarian transition, social conflicts over land boundaries have reduced, at least in the short term; women's perceptions of tenure security have improved; more married women have registered land in their own names; and women's participation in land administration at the local level has increased. However, the research also identified a number of significant risks offsetting these benefits. It found that the new regime had: produced new processes of social exclusion through the denial of many of the land claims made by women; skewed power relations in favour of men; failed to establish a link between certification and access to credit, increased agricultural productivity and greater investment; encouraged the rise of expensive informal land markets, as the process of registering customary land had boosted the perception that it may readily be bought and sold; concentrated land among a few elites; and biased agrarian support to wealthier, better-connected and dominant women who had acquired land-holding certificates, to the detriment of poorer, less-powerful and less-well-connected individuals.

This paper is organised into five broad but interrelated sections. First, it seeks to provide the national context through a focused debate on the dual land tenure system in Zambia and how this allows for the formalisation of customary land. Second, it describes how the field data for this research project was collected and analysed using both qualitative and quantitative methods. Third, it introduces the case study undertaken in Nyimba District, unpacking how residents there can acquire customary land-holding certificates. Fourth, the paper presents the empirical findings of the study in Nyimba District, which include findings on: an emerging hybrid system of land governance; socially differentiated

benefits; conflicts over boundaries in the short- and long-term; the rise of informal customary land markets; the link (or lack of connection) between certification and gaining access to credit, improving agricultural productivity, and fostering investment; and perceptions of land tenure security. Fifth, the paper broadens its analysis to show how formalisation has reconfigured land tenure relations in ways that neither reflect individualised Western forms of property rights nor a particular ideal form of unregistered customary tenure.

Zambia's land tenure system

Zambia has a dual land tenure system comprising state and customary land. All land in Zambia, including customary land, is vested in the President, who holds it in perpetuity for, and on behalf of, the people of Zambia. The Zambian government estimates that, at independence in 1964, 94% of the country's 752,614 square kilometres was governed by custom, while 6% was held by the state (Republic of Zambia, 2021). State land is administered by the Commissioner of Lands whose office is situated in the Ministry of Lands. In 2016, a Lands Commission was established under the Constitution of Zambia, No. 2, to administer, manage, and alienate land on behalf of the President. Customary tenure is recognised by the Constitution and the 1995 Lands Act.

The actual management and administration of customary land is undertaken by 288 chiefs across the country. There is no standardised customary land management system. The beliefs, norms, culture, and values of a particular community determine the administrative actions taken by that community. Customary law is varied and depends on the practices of particular ethnic groups. Chiefs allocate land, often working closely with headmen or *indunas*. The traditional leaders derive their institutional power and authority over land from social, cultural, and historical ties to it (Chitonge, 2022). In this respect, it should not be assumed that local traditional leaders derive their power to govern land from ancestral and traditional structures, or that the state has ceded its power to traditional leaders because it has no capacity to govern land in rural areas. As Chitonge (2022) argues, the traditional leaders' power to rule over customary land derives from a complex mixture of traditional and modern democratic values and norms. At the same time, there has been significant contestation over the control of customary land. For example, chiefs opposed the establishment of a land commission to administer customary land, which was proposed by the national government in 2017, arguing that their positions would be threatened if they were stripped of their power to allocate and control land. Traditional leaders further argued that there is a need for clarity in relation to the term "traditional leaders" so that land allocation processes do not fall into the "wrong hands". As a result, a land policy introduced in 2021 states that "chiefs" would administer traditional land, thus excluding other traditional leaders such as headmen from also being involved in the allocation of land.

Meanwhile, the 1995 Lands Act provides for the conversion of customary land into land that may be leased, although for no longer than 99 years at a time. Consent for the conversion of customary land and the establishment of such a leasehold arrangement must be obtained from the local chief. Once the conversion has been permitted and a certificate of title has been issued, statutory fees become due. Upon expiration of the lease, the land does not revert to customary governance, but rather to the state. In other words, the conversion to leasehold removes the land from the custody of traditional authority in perpetuity. As a result, the proportion of customary land has diminished over the years. The extent of this loss remains uncertain, since a proposed land audit to ascertain this has yet to be undertaken. The Draft Land Policy of 2015 estimated state land at 10% of the total, and customary land at 90% (Republic of Zambia, 2017). However, Sitko et al. (2015) estimate that the decline in the proportion of customary land has been greater than these numbers imply. They claim that the leasehold conversions have led to a 40% decline in land under customary governance since independence, with such land now comprising only about 54% of the total, while state land comprises 46% of the total. Chiefs argued that not only has the conversion of land undermined their authority, as they lose control over this resource, it has had the effect of bringing what was customary land onto the

open market, at which point it acquires market value and is lost to communal use and ownership (Roth et al., 1995).

Customary land-holding certificates in Zambia

The documentation of customary land in Zambia is not a new phenomenon introduced at the behest of international and civil society organisations (CSOs). Traditional land administration systems were already involved in maintaining registers of land-rights holders, which included details such as the names of all the members of the household and the location of the land in question. However, the introduction of a customary land-holding certificate (CLHC) altered this land registration system by individualising tenure, even though the certificates themselves do not actually confer leasehold tenure rights. CLHCs have promoted individualisation of tenure by registering only the name of the head of the household in question, who in many cases is a man, even in matrilineal societies. Just as the administration of customary land has not been standardised across Zambia due to the diversity of cultural systems across the country, so also the process for issuing CLHCs has not been standardised. In some chiefdoms, international organisations such as the United States Agency for International Development (USAID) support the CLHC issuance process using technologies such as mobile approaches to secure tenure (MAST), a model that uses mobile devices to map, record, and document land and resource rights (USAID, n.d.). The CLHCs issued using this model include information such as the names and photographs of occupants; the uses to which the land is being put; and the basis of the claim (USAID, n.d.). The USAID Integrated Land and Resource Governance (ILRG) programme has reported that more than 50,000 rights have been documented in this way in partnership with organisations such as the Petauke District Land Alliance and the Chipata District Land Alliance (Bessa & Malasha, 2020). In other chiefdoms, such as that of Chief Ndake in Nyimba District, the documentation process has been less technologically intensive. Para-surveyors have been trained to capture the extent and boundaries of the land in question. Details such as the name of the landholder and their next of kin and beneficiaries are registered by the landholder. There is a process of verification of ownership and the extent of the land. The details are entered in a Word document on a computer at the Chief's palace and the certificate is issued thereafter. Between January 2019 and January 2021, 3,500 people had acquired CLHCs in Nyimba district through this process (Zamchiya et al., 2021). Against this background, the CLHCs make no provision for joint ownership, although they allow the certificate holder to register a next of kin.

Research materials and methods

The data for this research were collected in two phases from two wards, Kaliwe and Vizimumba, in Nyimba District. The researchers undertook the first phase of the research in 2020 and it involved in-depth interviews with eight women and two focus-group discussions comprising twelve women each. The research team conducted key-informant interviews with seven officials from government departments and five from the local Land Allocation Committee (LAC). In addition, the researchers held a community meeting attended by 37 women and 11 men. A total of 92 respondents were reached during this first phase. Using a thematic approach, the research team collected qualitative data to reveal emerging themes relating to the formalisation of customary land and its implications for women's tenure security and livelihoods. The researchers undertook a second phase of research in October 2021, involving the administration of 100 questionnaires to women in Nyimba. The research

team analysed the survey data using descriptive SPSS (statistical package for the social sciences) software.

Process of acquiring customary land-holding certificates in Nyimba

The issuance of CLHCs started in 2015 in Nyimba District. These certificates, which were ostensibly introduced to contribute towards enhanced security of tenure on customary land, show the name of the person, often a head of household, occupying the parcel of land; the size of the land; and the names of any dependants who reside on the tract. An LAC constituted by the local Chief and comprising female and male village heads helps to issue the certificates.

The drive to register customary land rights through CLHCs was supported by CSOs, in particular the Zambia Land Alliance (ZLA), and Western donors. In order to acquire a CLHC in Nyimba District a number of steps had to be taken:

1. The individual land-rights holder acquires a CLHC application form from the Chief or his designates at a cost of K50/USD2.75.
2. A village head and the LAC overseeing the process inspect the land in question to verify that there are no ownership disputes. If there are, local elders try to resolve them. If such resolution fails, the process does not proceed.
3. The village head and the LAC consult neighbours to verify the boundaries of the land in question. The neighbours' approval is required for the process to proceed.
4. Para-surveyors, where available, help with the estimation of land sizes.
5. Once the ownership and extent of the land have been verified, the Chief issues his approval.
6. The applicant then pays the fees for the CLHC, which differ according to the size of the land question (see Table 1 below).
7. The CLHC is recorded on a computer, which is held at the Chief's palace.

Table 1: Cost of acquiring a customary land-holding certificate

Hectares	Zambian Kwacha	USD*
Less than 1	100	5.51
1–5	150	8.26
6–10	200	11.01
11–15	250	13.77
16–20	300	16.52

* Based on an exchange rate of 1:18.15

The process of acquiring a certificate is detailed in Figure 1 below.

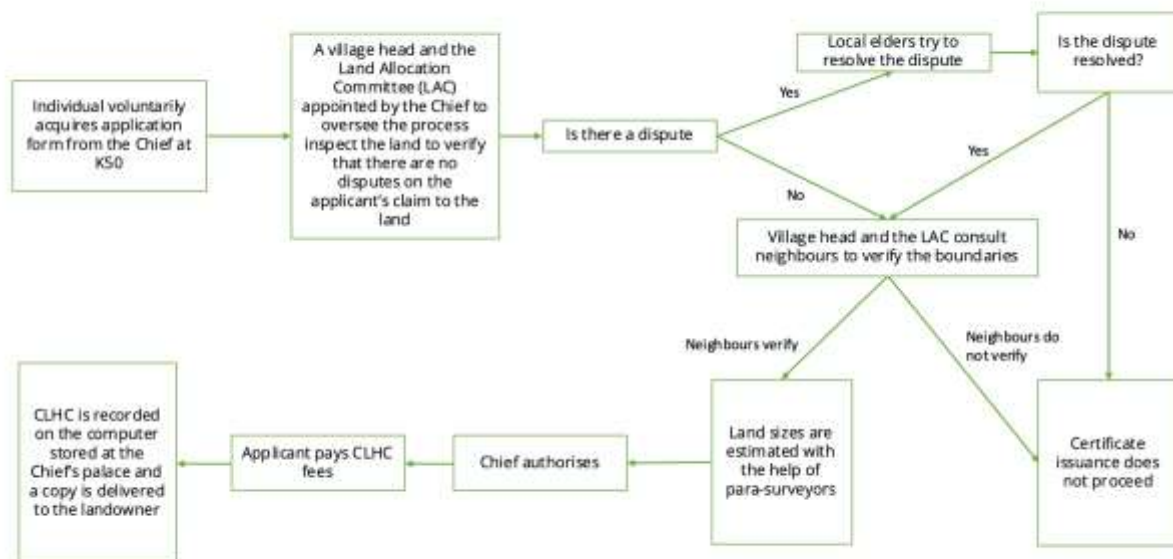


Figure 1: Process of acquiring a CLHC in Nyimba

As Cousins (2021) argues, most African customary tenure systems include governance provisions for residential, arable, and common-property resources, although the latter are often ignored in land tenure reform programmes. In this regard, the CLHCs fail to provide for rights of access to common-property resources such as firewood, wood for charcoal production, medicinal plants, grass for thatching, water, and grazing land.

Research findings

An emerging system of hybrid governance

Formalists argue that the process of registering property rights in customary land can deepen democracy and improve land administration systems (see Atuahene, 2005). In this context, the system for administering CLHCs which was introduced in Nyimba District was clearly leading to the erosion of traditional and patriarchal norms of governance dominated by the Chief and appointed village heads. In the place of these traditional leaders, a new hybrid group of land administrators, comprising both traditional leaders and LAC members, was emerging. In this regard, the new tenure regime transcended the dualism between Western legal forms of titled private property and customary systems under which land use and access was quite unregistered and undocumented. The new regime was loathed by most village heads who saw it as a direct threat to their power and authority over land. However, the Chief preferred the new hybrid model. He believed that the LAC broadened decision-making over land; was more participatory; and reduced opportunities for corruption by village heads, while providing more space for women to participate. During one visit to the Chief's palace, the researchers found women actively participating in the LAC and making themselves heard over the voices of the men. It was also found that the traditional courts were increasingly using CLHCs in adjudicating land disputes.

However, notwithstanding the apparently democratic nature of the LAC, it was found that the new system for certification could also be seen as reinforcing the Chief's power. The Chief appointed LAC

members and, to an extent, they served at his pleasure. In addition, the sovereign power to authorise or deny the issuance of certificates rested with the Chief.

Meanwhile, the computerised documentation required to issue CLHCs entailed the establishment of a new system of land administration, which was quite costly in terms of human resources and maintenance – and, in the case of Nyimba District, difficult to entrench. When researchers visited the Chief's palace, the technocrat who had been appointed to manage the computerised land rights register for the new system was not at work due to lack of funds. In addition, the para-surveyors who had been employed to assess and check land boundaries were no longer at work; and the para-legals who had helped to draft the CLHCs had left. The Chief complained of the high cost of maintaining the local registry in the absence of financial support from the ZLA, donors, and the government. In seeking to address this problem, the Chief proposed that the cost of acquiring the certificates could be raised, which would have the effect of further marginalising poor people from the system. At the same time, it was clear that the continuous costs of updating and maintaining the computerised registry were unsustainable in the absence of external financial support.

Socially differentiated benefits

In assessing the impacts of the CLHC registration regime it was important to ascertain who had benefitted and who had lost under the new hybrid system, and whether and how it had produced gender equality in the distribution of land. In this regard, it was found that, in Nyimba District, a significant number of women were now able to register customary land in their own names, which represented a new social phenomenon. In part, this change stemmed from how the campaign to issue CLHCs had been deliberately aimed at ensuring that women in Nyimba District registered land in their names. Nyimba District Land Alliance coordinator, Elias Simbeye noted that women accounted for 1,700 of the 3,500 people who had acquired certificates in 2019 and 2020. The survey conducted for this study in Kaliwe and Vizimumba wards found that 53% of the women who held certificates, held them in their own names. A total of 71.7% of the monogamously married women who were surveyed owned a certificate, making this group the main beneficiaries among the women surveyed. Most of the married women who had acquired the certificate said that they wanted freedom from patriarchy and wanted to avoid eviction in the case of the death of a husband. As one of the women explained:

The problem is: if my husband dies, I lose my farm. The relatives of the husband will chase me away with the children. This is common practice in the area. That is why I decided to get the certificate.

Margret Mwanza, a married woman, said: “Since I have got the right to own the land, the husband has the right to leave me or to stay, as long as we are living in peace”.

In addition, a number of the married women who were surveyed had tried to ensure that the land rights consequent on the acquisition of a CLHC did not die with them and were bequeathed to others, including the next generation. To this end, women listed their sisters and children, in particular their daughters, as next of kin on CLHCs. In general, they preferred to list daughters and sisters in this capacity on the grounds that they considered girls and women to be more responsible than boys and men, who were thought to be likely to exclude the rest of their immediate family from the land rights once they married. The new social dynamics created by the expression of such preferences for the transfer of land caused resentment among men, many of whom preferred that their sons be registered as next of kin.

There were also a number of cases in which married women, fearful that their husbands were “personalising family property”, sought to gain control of a particular patch of the family's farmland by registering it under their own names. In this respect, civic education of gender equality, which had been provided in the area by CSOs seemed to have empowered married women, so that they were

prepared to register land in their own names, having overcome their fear of a patriarchal backlash, which could take the form of gender-based violence (GBV).

Meanwhile, Chief Ndake appeared committed to the promotion of women's rights. For example, a full-time secretariat had been established at the palace to address and respond to incidents of GBV as a matter of urgency. In this regard, the assertion made by Alexander (2018) that chiefs have never constituted a homogeneous group may be taken as indicating that Mamdani (1996) was not entirely accurate in appearing to be categorising chiefs as decentralised despots.

Although many married women seemed to have derived clear benefits from the introduction of CLHCs, not all married women benefitted from the registration process, the implementation of which was shaped by the degree of patriarchy in any given family. So, for example, the obligation to list only one person as the landholder on the certificate negatively affected many married women in patriarchal households. The husband on his own would be registered as the landholder, while sons, brothers, and uncles would be listed as the next of kin, exacerbating the vulnerability of the wives in the case of divorce or the husband's death. In this regard, marrying and staying married represented an important route to economic security among the women surveyed – and also represented a path to acquiring one's own CLHC.

Furthermore, it should be noted that the registration of land by married women in their own names, while clearly on the increase following the introduction of CLHCs, did not necessarily lead to them assuming control over the land in question. In many cases, husbands, as the heads of households, still assumed control over the land. In this respect, the research found that only 20% of the married women who held certificates in their own names considered themselves to be the primary landholders. The other wives indicated that their husbands or other family members were the primary landholders. In other words, ownership, as this was expressed through the name on the certificate, was not necessarily reflected in the actual power relations on the ground, governing who controlled the land; and it did not necessarily lead to a transformation of these relations. As Ivanda Ndhlovu explained:

Just because I have land, it does not mean that I have power over my husband. I am submissive. The "law" says that he is head of the household. From the start, I was told by my parents that the husband is the head of the household. He still makes decisions on what we do on the land. My duty as a wife is to follow.

One of the starkest findings from the research was the extent to which there was differentiation in the registration of customary land among women along the lines of age, marital status, and educational background. Single women without children were the least likely to be able to acquire a certificate, as a result of discriminatory cultural norms and practices, rather than as a result of the nature of the actual formalisation process. Single women, who are expected to leave the family land once they are married, tend to be considered "transient" in rural cultures in places like Nyimba District. Against this background, single women seeking to apply for a certificate were first required to obtain consent from their family. The researchers did not find a single case where such consent was granted. Rebecca, a single woman, explained:

The family gives me land to farm. However, when I wanted to go and acquire the certificate, the family elders said, "No." They said: "The land belongs to the family. You are not the only beneficiary. If you die, who is going to own the land?" I complained to my uncle, but he was in agreement that the land belongs to the family.

Perhaps unsurprisingly in this context, relatively few young women held CLHCs.

The kind of challenges faced by single women in this regard also limit the rights to land that may be granted to widowed and divorced women. Single women are considered part of the property on their family's land and thus have no ownership rights. When a woman gets married, she leaves that land to join her husband on his land where, once again, she is only granted usufruct rights so that she can work the land for her family's livelihood. When her husband dies, she is expected to return to the family land from which she came, where, once again, she must negotiate access to land. Similarly, if

she divorces, she is expected to leave her husband's land and return to the family land from which she came. For this reason, most single, divorced, and widowed women do not own the land for which they can acquire certificates.

Educational background and poverty represented other significant factors in relation to access to CLHCs in Nyimba District. A total of 78.3% of certificate holders had at least primary education. Meanwhile, poor, vulnerable individuals with relatively little formal education knew little about the registration process and, in many cases, could not, in any case, afford the fees being charged. In this regard, in a country where 83% of the population in rural areas live below the poverty line, with extreme poverty highest among female-headed households, the CLHC programme is beyond the reach of many women.

Conflicts over boundaries in the short- and long-term

Respondents in the study noted a marked reduction in social conflict over land boundaries following the introduction of CLHCs, at least in the short term. A total of 85% of respondents in the study conducted in Nyimba District said that conflicts over land had decreased; 10% said conflicts had increased; 3.3% had no opinion and 1.7% said there had been no significant change. Previously, it was reported, the Chief's palace had been overwhelmed with boundary dispute claims, especially during the rainy season. It was noted that 70% of the cases had been reported by women. Against this background, Mary Banda described how she had acquired a CLHC as a way of addressing conflicts:

When it was the farming season, there was an increase in conflicts over the field boundaries. People made new claims to the boundaries almost every rainy season. So, I decided to get a certificate to insulate myself from persistent conflicts over field boundaries.

However, notwithstanding the apparent reduction of conflict in the short term, the researchers identified a number of outstanding factors that may give rise to conflict in the longer term.

In some cases, CLHC documentation did not prevent contestation between the present registered owners and others with prior, ancestral claims to the land who may have left the area for some years in search of greener pastures before coming back home and demanding the return of the land that they had previously used.

The new registration system was also seen as failing to address, and, in some cases, even exacerbating contestation relating to the inheritance of land. Once again, Ndhlovu said:

In the absence of parents, children are fighting over who registers the certificate. If one child wants to get a certificate, the children fight. They say: "You want to get our land. The land belongs to the family."

A number of respondents expressed the belief that since the land belonged to current and future family members, it could not be registered in a particular individual's name. A total of 9.1% of respondents who held certificates reported having already experienced conflict related to land inheritance among relatives.

New settlement represented a third dynamic potentially giving rise to conflict. Customary tenure systems have previously generally been flexible enough to allow newcomers to settle. However, with the rigid boundaries established under the new registration system, it has become increasingly difficult for new settlers. The survey found that 9.1% of certificate holders had already had conflicts over land boundaries with new settlers.

The rise of informal customary land markets

Vernacular land markets are historically commonplace in most of rural Africa (Chimhowu & Woodhouse, 2005). However, the research in Nyimba District found that the formalisation processes had accelerated the commodification of customary land. Green and Norberg (2018) observed a similar trend in their study of traditional land-holding certificates in Zambia. In Nyimba, the introduction of CLHCs was found to have led to an increasing number of customary-land sales, especially near local urban areas and the Great East Road, which runs through the district. Some elites – mainly men – had acquired CLHCs in order to sell the land at a profit. Land prices in the area were rising, making land unaffordable for the poor. Chief Ndake explained the new phenomenon:

In 2017, there was a rush to acquire the customary land certificate in villages that surround the central business district. We were shocked. Was it fear of the local council? But once they got the certificate, they went and looked for a customer. So, they were selling these pieces of land for residential purposes. The prices ranged from K5,000 to K15,000.

The Chief complained that villagers were collaborating with village heads and striking clandestine deals to sell and buy land. Some respondents admitted that they had sold land even though it was illegal. One respondent said: “There’s a lot of people looking for land. We do not just give them for free. We know that is not allowed but we sell the land.” It was further found that there was a gendered dimension to the market in land. For example, one woman respondent said: “As women, we cannot sell the land; we care about the family and the children”.

Those buying and renting the land generally fell into a number of distinct groups:

- Young men with kinship rights in the area, looking for a field of their own to start a family amid rising demand for land and limited access to land through traditional social relations. This comprised quite a large group in the district, which has a median age of 16.
- Migrants flocking to settle in Nyimba as a result of urbanisation. Migrants, in the absence of any customary land rights, usually resort to informal land markets to buy or rent land.
- Returnees
- Workers formally employed in new sectors of the urban economy who used their salaries to buy or rent land.

The issuance of CLHCs lent a veneer of officialdom to customary-land transactions that otherwise could be regarded as clearly illegal. They also offered the possibility of remedy in the event of dispute. In this regard, there were several social mechanisms already in place to mitigate the losses that may befall those who buy and sell customary land. Chief Ndake explained: “On humanitarian grounds, we cannot repossess the land, [rather] we give a penalty to the buyer and seller”. The researchers found that common knowledge of this approach to customary-land sales was likely, albeit inadvertently, to be encouraging such sales.

The link between certification, access to credit, productivity, and investment levels

The proponents of formalisation have argued that it leads to greater access to credit from banks, increased agricultural productivity, and a rise in investment in the rural agrarian economy (see, for example, de Soto, 2000).

The research in Nyimba Province found no evidence of CLHCs being used to apply for loans from banks. Zambian law is silent on the use of customary land as collateral. However, all the managers of the commercial banks in Nyimba who were surveyed for this research said their institutions only

recognised state-issued title deeds as proof of land ownership. The study found that only 1.7% of the respondents had taken out a loan using the certificate as collateral, in which cases the loan was issued by micro-financial institutions. Some certificate holders still had plans to acquire loans using the certificate as surety. However, given that these were low-income households living below the poverty line, their CLHCs would be unlikely to provide sufficient surety for obtaining loans from commercial banks (see Cousins, 2021). The findings from this study support the view that inability to access credit in the context of the non-individualisation of customary land cannot be attributed to a lack of documentation or a need for registration. Rather, it points to an inadequate financial system that is not modelled on existing structures but mirrors the credit facilities provided in the formal sector. In the absence of context-specific credit systems, the provision of documentation through the CLHC process was clearly failing to offer increased access to credit, even though this was one of the key objectives in establishing the scheme.

The certification programme also appeared to have failed to promote greater investment in land among the CLHC holders. Indeed, it seemed that such investment on the land – as had taken place – was mainly driven by a sense of continued insecurity among the certificate holders rather than any assurance of security derived from the CLHCs. After obtaining the certificates, the CLHC holders embarked on a range of improvement investments: 78.7% in their houses; 10.6% in trees; 3.6% in fencing; and 7.1% in other items, including new farming equipment. In the majority of cases (60.7%) the improvements were made to secure the land. In 7.1% of cases the aim was to clearly mark boundaries; and in a further 7.1% of cases, the goal was to source finance. Only in 0.1% of cases were the improvements made in response to a greater sense of security derived from having acquired a CLHC. In fact, 25% of respondents had already made plans to invest in their landholdings well before the opportunity to acquire a certificate arose. In this regard, the data show that the acquisition of a certificate was not, on its own, sufficient to make people feel secure enough to invest. Rather, it seems that the local residents were continuing to invest as a way of legitimating their stay and ensuring security of tenure. In this context, Sjaastad and Bromley's (1996, p.10) view resonates:

One way to establish claims to land ... is to invest in land. To the extent that the investment represents a visible commitment to the long-term productivity of the land, continued use of the land is implied, and the common assertion that tenure security is necessary to promote investment may in many cases be reversed; investment is necessary to obtain security. Investments in ... buildings, or other fixed structures may provide a litigant in a land dispute with an unassailable case. Thus, although insecurity of tenure is a disincentive to invest, it is paradoxically often also an incentive, because investment will itself increase security.

In a similar vein, the research found no evidence directly linking agricultural productivity to the acquisition of CLHCs. A few households claimed that their production had increased because they could now cultivate in what were once contested areas. Otherwise, the dominant story was that the certification programme could not be linked to increased production. As Margret Mwanza, a CLHC holder, explained:

The certificate will only help me to reduce conflicts over boundaries. It cannot help me to have [a] bumper harvest. But state-subsidised fertiliser will help me to have a bumper harvest. If government can also help us with markets because some traders short-change us ...

In other words, the solution is not located in the number of certificates but in the amount and extent of public investment in agricultural production.

Meanwhile, it was observed that the introduction of CLHCs had led to an unintended rise in inequality at the local level. In some cases, preferential farming support was provided to those who had acquired a certificate, helping them to produce more but also leading to increased inequity in local agricultural production. The provision of such preferential support was confirmed by the ZLA district coordinator:

We train those farmers with customary certificates to utilise their land. We work with donors to help them enhance food security and adopt smart agriculture practices. We target and prioritise those with certificates and encourage them to invest.

In a similar vein, the government Department of Water in the district said that proof of ownership, which could be provided by presenting a CLHC, was required for applications to drill boreholes on their farms. Some agricultural officers tasked with distributing inputs under the state's Farm Input Subsidy Programme (FISP) were also allegedly asking for CLHCs as proof of land ownership in order to allocate inputs. Such actions and responses may lead to processes of exclusion being increasingly institutionalised, deepening social differentiation and local discontent (see Peters, 2004).

Perceptions of land tenure security

Perceptions of security of tenure have improved for those who acquired the certificate despite some structural constraints. They felt they had more secure tenure compared to those without the CLHC. The council secretary for Nyimba District said that if “one does not have a certificate, we consider the land vacant when we do developmental projects”.

A total of 75% of respondents said they felt secure on the land. In particular, married women with certificates said they felt more secure in their land rights in the case of the death of a husband now that they held a CLHC. The perception was that certification was promoting the idea of inheritance by the spouse in line with “modern” laws. Even divorced women felt they could go to court and win land rights if they held a CLHC in their name. The role of CLHCs in promoting women's land rights was recently tested in a case before a Zambian magistrate's court in which it was found that a married woman who had acquired a CLHC in her name should continue owning the land despite a subsequent dispute with her husband.

Meanwhile, however, about 25% of the respondents reported feelings of tenure insecurity. Of this group, 20% feared losing land to the government; 53.3% feared losing land to private businesses; 6.7% to disputes with the family; a further 6.7% to traditional leaders and 13.3% named a range of other potential threats to their tenure security. In this context, common-property resources, which are an important aspect of customary tenure systems, were considered to be the most insecure. Out of the surveyed households, 29% thought that they would lose access to forests; 29% thought they would lose access to rivers; 21% thought that they would lose land for graves; and 21% thought they could lose access to grazing land.

Notwithstanding the potential benefits brought by the certification programme in terms of tenure security, the fears of losing land that were expressed were not that far-fetched in the context of:

- The spread of urbanised space, which is leading to a rising demand for land for housing and placing pressure on local authorities to acquire customary land and convert it to state land to be used for housing. In 2000, only 1,119 were living in the urban zone in Nyimba Province; by 2020, that number had increased to 16,276. Consequently, there was a housing backlog of 5,636 which was projected to increase to 14,617 within a decade. The local authority had already zoned 3,000 residential parcels on acquired customary land. The major player in implementing the proposed housing development project was the Zambia National Building Society (ZNBS) bank, which had completed 493 houses; followed by the Ministry of Works and Supply with 30 houses; and the Ministry of Local Government with four.
- The conversion of customary land to game ranches to attract tourists for game-viewing and trophy-hunting. The authorities identified seven game ranches in the district. However, as one respondent observed, “The district will continue to record an increase in the number of game ranch prospectors, putting more pressure on human livelihoods and demand for land”.

- The threat of dispossession by private miners. Approximately 50 mining prospectors had obtained licences for mineral exploration from 2012.
- The continued marginalisation of women in the ownership of customary land and their eviction in the event of family disputes, divorce, or the death of a spouse, leading to some conflict.

The paradox: Land remains a collective good

Despite the individualisation of customary land through registration and formalisation processes in Nyimba District, land there continued to be seen, paradoxically, as belonging to a family or the community. The majority of people in the area still gained access to land through social and kinship ties. The traditional practice of sharing land was common. Even women with CLHCs said that they still shared land with their sisters, grandmothers, uncles, brothers, nieces, nephews, and cousins from extended families. They also shared areas providing common natural resources where they collectively accessed firewood, medicinal plants, wood for charcoal, grass for thatching their houses, water, and grazing land for their livestock. These collective, multiple, and overlapping socially recognised rights of access, use, and ownership meant that there was no outright individualisation of land rights, as is the case under Western forms of property rights.

Within this context, in which the documented and undocumented systems co-existed, the majority (75%) of women land-rights holders, with or without CLHCs, preferred to live under customary tenure, compared to statutory tenure (20% of respondents) or another form of tenure (5% of respondents). This contradicts the position held by a number of African feminist lawyers who advocate for individual titling as a solution to the insecurity of women's land rights on the continent (see, for example, Whitehead and Tsikata, 2003). The reasons for supporting the customary system in Nyimba included that it was cheaper to use customary land, since one did not have to pay rates for it; and that the common resources supported a diverse range of land-based livelihoods. However, the social relations under the customary land tenure system prevailing in Nyimba should not be romanticised, given the extent to which they continue to be shaped by gendered power relations and patriarchy. Nevertheless, for the respondents, an effective way of meeting local needs and addressing local inequities may be by responding to the deficiencies of the present system through the incremental adaptation of customary tenure from below, rather than through the imposition of formalisation from above.

Conclusion

This study has shown that the formalisation approach embedded in evolutionary models of land tenure rights (Platteau, 1996) can reduce the question of rural development to a numbers game – how many certificates have been issued – ignoring: the broader context of power and property relations, which are not gender-neutral; the territorial interests of the state and other traditional authorities; and the consequences for socially excluded groups, including women, who are differentiated in a number of important ways. Free-market economists and a number of African feminist lawyers believe that private property rights ensure tenure security (Roth et al., 1995); improve the functioning of land sales and rental markets (Deininger & Feder, 2001); provide incentives for investment (Besley, 1995; de Soto, 2000; Galiani & Schargrodsky, 2010); improve agricultural productivity and efficiency (Anderson & Lueck, 1992); facilitate access to credit facilities (Deininger, 2003); deepen democracy (Atuahene, 2005); and improve women's land rights (Deininger et al., 2008). However, such beliefs cannot be empirically substantiated in Nyimba District in Zambia.

At the same time, it is important to note that some positive benefits have been realised within this agrarian transition, albeit with a number of important caveats. These include:

- A reduction in social conflicts over land boundaries, as Mekonen et al. (2020) have observed elsewhere – although this reduction in conflicts may only be in the short term in Nyimba District because of the increasing number of new, multiple, and competing claims to land by returnees, new settlers, and family members.
- Improved perceptions of tenure security among certificate holders – although such security may prove fragile in the face of displacement from urbanisation, mining, and game ranch investments. In this regard, the land held under CLHCs can still be converted to state land through the free-market oriented Land Act of 1995.
- Greater participation from women in land administration at the local level, raising prospects for a deepening democracy, as Atuahene (2005) argues. Nevertheless, while the new hybrid land tenure regime allows women to participate in land administration committees, the reality is that local chiefs still wield significant sovereign power.
- Registration of land by married women in their own names, which may be deemed emancipatory (see Ali et al., 2014) – although power and property relations at the local level remain quite untransformed, with men generally considered the socially legitimate land-rights holders.

At the same time, the present study revealed a number of major social costs resulting from the efforts to formalise land tenure through CLHCs. These include:

- The production of new processes of social exclusion through the denial of many of the land claims made by women.
- The failure to establish a link between certification and access to credit, increased agricultural productivity, and greater investment.
- The rise of expensive informal land markets as the process of registering customary land boosted the perception that it may readily be bought and sold.
- The concentration of land among a few elites.
- Skewed agrarian support to wealthier, better-connected, and dominant women who have acquired land-holding certificates to the detriment of poorer, less-powerful and less-well-connected individuals.

Therefore, in general, there is insufficient empirical evidence to show that the benefits of CLHCs outweigh their social costs.

The observed impacts of the introduction of CLHCs in Nyimba District cannot be interpreted as an actualisation of the evolutionary theory of land tenure rights. The imposition of an externally-conceived scheme in this area has changed land relations, but the programme has still had to contend with the ways in which local social relations and a collective attachment to land continue to be expressed, creating a complex web of commoditisation and non-market operations. Accordingly, the rural certification programme in Nyimba District may be regarded as having triggered a new tenure regime that has transcended the dualism between individualised Western-legal forms of private property and idealised undocumented customary systems, while producing more risks than benefits for many local women.

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