

ZAMBIA'S CUSTOMARY LANDHOLDING CERTIFICATE AND TENURE OPTIONS FOR WOMEN

POLICY BRIEF 59

Authors: Authors: Phillan Zamchiya and Chilombo Musa¹

FEBRUARY 2023

This policy brief reports findings from a study undertaken by researchers at the Institute for Poverty, Land and Agrarian Studies (PLAAS) and Zambia Land Alliance (ZLA) investigating how the Customary Landholding Certificate (CLHC) is affecting women's tenure relations and their livelihoods in Zambia. The research was conducted in two villages in Nyimba District, Eastern Province between 2020 and 2022. The study reached 92 respondents through in-depth interviews and focus group discussions. In addition, the researchers conducted a survey of 100 households across the two villages.

KEY MESSAGES

1. Social conflicts over land boundaries have reduced, at least in the short term.
2. Perceptions of security of tenure have improved for women who acquired the certificate.
3. Women's participation in land administration at the local level has increased, but the Chief still wields the ultimate decision-making power.
4. A significant number of married women have registered residential and farm land in their own names, but most husbands still assume control over the land.
5. Single women without children were the most marginalised in the land registration process.
6. There is a rise of informal customary land markets that exclude poor and vulnerable women.
7. Concentration of land among the few elites who acquire land for speculative purposes.
8. Deepening processes of social exclusion through skewed agrarian support to land certificate holders by the state and civil society.
9. The land registration process does not provide for the documentation of common property resources and multiple claims to land.
10. There is no direct correlation between land certification and access to credit, increased agricultural productivity, and investments.
11. Land remains a collective good for many.
12. The majority of female respondents (75%) prefer to live under customary tenure systems but with more democratic and gender-equal land administration institutions.

¹ Phillan Zamchiya is a Senior Researcher at the Institute for Poverty, Land and Agrarian Studies (PLAAS) at the University of the Western Cape and he serves on the editorial advisory board of Oxford Development Studies. Chilombo Musa is a PhD candidate at the University of Cambridge. Both authors would like to thank Zambia Land Alliance (ZLA) for the partnership during fieldwork. However, the authors are responsible for all the views expressed in this brief.

CONTEXT

Zambia has two broad processes of formalisation of property rights in land, for people who live under customary tenure. The first is an official process enshrined in section 8 of the 1995 Lands Act (Republic of Zambia 1995) that provides for the conversion of customary land to state land through leasehold titles not exceeding 99 years. The second, which is a focus of this policy brief, is neither recognised by the 1995 Lands Act nor the Zambia National Lands Policy (Republic of Zambia 2021). It involves the surveying of boundaries, registration and issuance of documents called customary landholding certificates to individuals by the traditional leaders working with civil society organisations (CSOs) and western donors. Other scholars argue that this signifies a departure from the mainstream private titling agenda (see Green and Norberg 2018). We posit 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 but this time through gradual, cheap, subtle, and less conflictual ways that do not immediately upset the underlying structures of power (Platteau 1996). The envisaged benefits remain that documenting land rights will improve tenure security, provide incentives for investment, reduce social conflict, improve agricultural productivity, improve access to credit facilities, deepen democracy, replace patriarchal systems of land governance, as well as enhance women's access to land. The land certificates are often used as a proxy for women's land tenure security. It is within this context that this policy brief outlines the implications of formalisation for women's land rights and some policy recommendations.



A woman holding a CLHC in her field. Date 23-01-2021. Picture Credit: Phillan Zamchiya

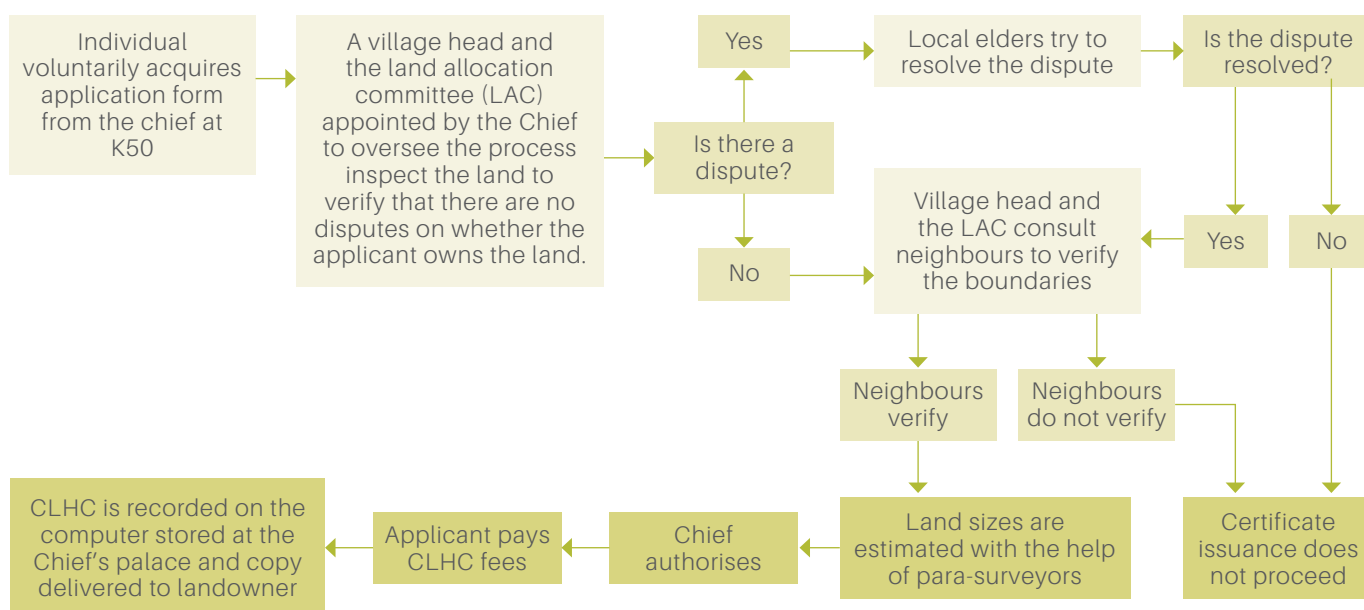
THE PROCESS OF ACQUIRING CLHCS

The issuance of the Customary Landholding Certificates started in 2015 in Nyimba district. It is driven by traditional leaders, CSOs, in particular Zambia Land Alliance (ZLA) and Western donor agencies. The process of acquiring the certificate in Nyimba is as follows:

- i. An individual land rights holder voluntarily receives a CLHC application form from the Chief or his designates at a cost of K 50/USD 2.75.
- ii. A village head and the land allocation committee (LAC) appointed by the Chief to oversee the process inspect the land to verify that there are no disputes on whether the applicant owns the land. In the event of disputes, local elders try to resolve the dispute. If the resolution of the dispute fails, the process does not proceed.
- iii. Where there are no disputes, the village head and the LAC consult neighbours to verify the boundaries. The neighbours have to approve before the process proceeds.
- iv. Land sizes are estimated with the help of para-surveyors when they are available.
- v. Once the neighbours verify, the Chief authorises.
- vi. The applicant then pays the fees for the CLHC, which differ according to the land size, as tabulated below.
- vii. The CLHC is recorded in the computer stored at the Chief's palace.

This process is diagrammatically represented below.

Figure 1: Process of acquiring a CLHC in Nyimba



Source: Zamchiya and Musa (forthcoming)

Below is a summary of the cost of acquiring the CLHC.

RANGE OF HECTARES	ZAMBIAN KWACHA	USD
Below 1	100	5.51
1-5	150	8.26
6-10	200	11.01
11-15	250	13.77
16-20	300	16.52

Source: Author calculations based on field data.

The CLHC does not provide for registration of rights to common property resources, such as gaining access to natural resources like firewood, medicinal plants, charcoal, grass for thatching, water sources,

and grazing lands. As Cousins (2021) argues, common property resources are often ignored in land tenure reform programmes.

COMMODIFICATION OF CUSTOMARY LAND

Emerging is a new hybrid form of land administration composed of traditional leaders and the LAC, appointed by the Chief. Almost half of the LAC members were women. The primary responsibility of the LAC is to oversee the process and management of the CLHC. The LAC's broadened decision-making over land was more participatory and reduced opportunities for corruption by village heads and provided more space for women to participate in

land governance. However, there was tension with village heads who did not support the LAC because it eroded their power and authority over land. On the other end, the computerised system to register the CLHCs was not sustainable in the absence of financial support from donors or government. The technocrats, paralegals, and para-surveyors had left due to financial problems.

WHO BENEFITTED AMONG THE WOMEN?

A significant number of women could now register customary land in their own names, which is a new social phenomenon. From our survey, 53% of women who hold certificates hold it in their name. Within this matrix, 71.7% of the women owning a certificate were monogamously married, and hence the, largest number of beneficiaries. The biggest losers were single women, especially those without children. Single women without children were only allowed to access land through their families, primarily male members of a household, such as a father or an uncle. Young women were also excluded

as only 13% of the beneficiaries were aged between 18 and 35 years. In addition, 78.3% of certificate holders had acquired at least primary education. On the other hand, women without formal education and adequate access to information knew little about the process. In many cases, the poor women could not afford the CLHC, putting the programme beyond the reach of many, especially in a country where 83% of the population in rural areas live below the poverty line with extreme poverty highest among female-headed households.

'OWNERSHIP' DOES NOT TRANSFORM POWER RELATIONS

Although some women, especially married women, can register CLHCs in their name, the power to control land does not always transfer to the woman. Only 20% of women CLHC holders consider themselves as primary landholders. The rest indicated that their husband or family were primary landholders. 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."

In other cases, the social dynamics created by this shift in the rights to 'own' land caused resentment from men and strained marital relations.

REDUCTION OF LAND CONFLICTS OVER BOUNDARIES

From our survey, a whopping 85% of respondents opined that the conflicts were decreasing; 10% said the conflicts were increasing; 3.3% had no opinion; whereas about 1.7% maintained that the situation was still the same. The Chief's palace used to be overwhelmed with cases over boundary disputes with 70% of the cases reported by women. However, the reduction of social conflicts might be in its early stages, due to three dynamics. In the first instance, in

some cases, documentation did not prevent contestation by those with prior claims based on ancestral claims, especially in cases of returnees. A second dimension is potential inheritance conflict with the next generation. As Ndhlovu above articulated, "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

total of 9.1% of our respondents who held certificates had already experienced conflict related to land inheritance among relatives. The third dynamic is related to conflict with new settlers. Customary tenure systems have always been flexible enough to allow newcomers to settle. However, with the rigid boundaries being put in place, it is becoming more

difficult for new settlers. From our survey, 9.1% of certificate holders had already had conflicts over land boundaries with new settlers. So, while conflicts had reduced in Nyimba, it is early days to pronounce on the nature of future conflict and conflict resolution in the long term.

WOMEN FEEL TENURE SECURE BUT FEAR IMPENDING THREATS

Three-quarters of CLHC holders (75%) said they felt secure on the land. Married women with certificates thought they were more secure in the event of their husband's death or divorce. However, 20% of CLHC holders still feared losing their land to the government; more than half felt threatened by private businesses (53.3%); 6.7% cited disputes with family; 6.7% identified traditional leaders as a threat; and 13.3% named a range of other potential threats to their

tenure security. CLHC holders considered common property resources to be the most insecure. Out of the surveyed households, 29% feared losing their access to forests; a similar 29% expressed concerns about their future access to rivers; 21% lamented that they will lose land for ancestral graves; and 21% bemoaned their potential loss of access to grazing land.

THE ELUSIVE LINK BETWEEN CERTIFICATION AND CREDIT, PRODUCTIVITY, AND INVESTMENTS

Only 2% of the beneficiaries had taken a loan using the certificate as collateral through micro-financial institutions. Given that these were low-income households whose members were living below the poverty datum line, the CLHC was not likely to be a sufficient condition for obtaining loans from commercial banks. The Zambian law is silent on the use of customary land as collateral. However, all the commercial banks we approached in Nyimba said they only recognise state-issued title deeds as proof of land ownership.

There was no direct correlation between investments and the certification programme. Paradoxically, significant investments on the land seem a likely consequence of continued insecurity among the certificate holders rather than investments as a result of security. Only 0.1% of respondents said they made

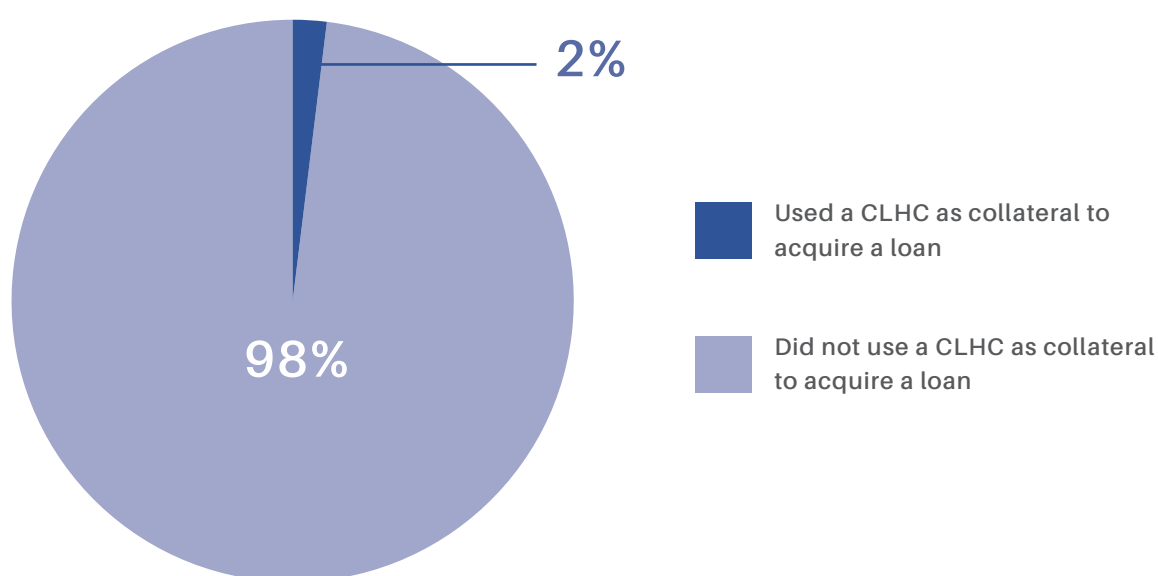
improvements because of the security as a result of the certificate. Otherwise, most improvements were made: to secure the land (60.7%); to source money (7.1%); and to clearly mark boundaries (7.1%). A quarter of the beneficiaries (25%) had made plans to make investments well before acquiring the certificate. The improvements made by respondents after obtaining the certificate, included houses (78.7%); trees (10.6%); fencing (3.6%); and other initiatives, such as acquiring new farming equipment (7.1%). Interestingly, what this data shows, is that it seems people still continue to invest as a way to legitimate their stay and ensure security of tenure, demonstrating that the certificate is not a sufficient condition for people to feel secure.

There was no evidence to conclusively support the effects of rural land registration on agricultural

production. However, in some cases where there was an increase in production; it was not because of the certificate per se, but because CLHC holders received preferential farming support from both CSOs and government in the form of subsidy programmes and boreholes. The ZLA district coordinator elaborated: “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.” This is potentially leading to institutionalised processes of exclusion and deepening social differentiation.

Distribution of beneficiaries acquiring a loan using CLHC as collateral



Source: Authors' survey data

THE RISE OF INFORMAL CUSTOMARY LAND MARKETS

The CLHC catalysed the growth of customary land sales characterised by high land prices out of reach of many vulnerable women. Some urban elites, salaried local workers, migrants, and the local big shots – mainly men – acquired land for speculative purposes. This resulted in a new land question of elite concentration. Chief Ndake explained the new phenomenon:

“In 2017, there was a rush to acquire the customary land certificate in villages that surround the CBD. We were shocked. Was it fear of the

local council? But once they got the certificate [at about K 150], they went and looked for a customer. So, they were selling these pieces of land for residential purposes. The prices ranged from K 5,000 to K 15,000.”

The Chief complained that villagers were getting into clandestine and illegal deals to sell and buy land with village heads. Some respondents confessed that they sell the land even though it is illegal. The new property system became a mechanism to redistribute land from the poor to the rich.

LAND REMAINS A COLLECTIVE GOOD FOR MANY

Despite concerted efforts at individualisation of tenure, many still viewed land as a collective good. Even women with CLHCs still shared land with their sisters, daughters, grandmothers, uncles, brothers, nieces, nephews, and cousins from extended families. They also shared the commons where they collectively accessed natural resources, such as firewood, medicinal plants, wood for charcoal, grass for thatching their houses, water sources, and grazing lands for their livestock. These collective, multiple,

and overlapping socially recognised group rights of access, use, and ownership meant there was no outright individualisation of land rights as reflected in the Western form of private property. This cannot be interpreted as an actualisation of the evolutionary theory of land tenure rights. An external force has alternated land relations, but it still contends with social relations and collective attachment to land, creating a complex web of commoditisation and non-market operations.

RECOMMENDATIONS

Relevant stakeholders namely the state, traditional leaders, civil society and donors should:

1. Afford more legal recognition and respect for customary land rights holders – both women and men – and their rights to use, access, control, own and transfer land.
2. Review the prevailing system of CLHC documentation that grants ‘ownership’ to one individual because it compromises other co-existing land rights.
3. Develop locally suitable dynamic, cheap and novel geospatial digital technologies that can record multiple, nested, and layered property rights in land and flexible customary land boundaries to reflect realities of social tenure and the continuum of rights on the ground. However, this should not lead to the invalidation of social tenure systems that are not registerable.
4. Record land rights under the proposed new system in a way that reflects residential and arable land rights as family property, inclusive of all family members with special protections for women in their differentiated nature.
5. Ensure that within families, women – in their differentiated nature – should have secure rights legally equivalent to those of men in ‘ownership’ of residential and arable land along with clearly defined access rights to natural resources held in common.
6. Vest common property resources in members of the community, including women and men, with built in protection mechanisms to ensure that smaller groups are not dispossessed of their rights.
7. Ensure that tenure reforms recognise common property resources, including cultivated, grazing, and common lands central to the livelihoods of most women living in rural areas.
8. Strengthen the capacity of women and men living on customary land to democratically choose the local land governance institutions which are appropriate to their circumstances.
9. Provide greater access to justice for women through effective, affordable, and accessible means in order to address land tenure conflicts.
10. Link customary land tenure reforms to public programmes that support agricultural production for smallholder producers – the majority of whom are women – in order to increase productivity.

REFERENCES

Cousins, Ben. *Review of Rights to land: A guide to tenure upgrading and restitution in South Africa*, edited by William Beinart, Peter Delius and Michelle Hay. Johannesburg: Jacana Media, 2017. 208 pp. ISBN 978 1 928232 48 3 (2021), 187–195.

Green, Erik, and Milja Norberg. Traditional landholding certificates in Zambia: Preventing or reinforcing commodification and inequality? *Journal of Southern African Studies* 44, no. 4 (2018): 613–628.

Platteau, Jean-Philippe. The evolutionary theory of land rights as applied to sub-Saharan Africa: A critical assessment. *Development and Change* 27, no. 1 (1996): 29–86.

Republic of Zambia. Lands Act, Chapter 184 of the Laws of Zambia (1995). Lusaka: Republic of Zambia.

Republic of Zambia. National Lands Policy (2021). Lusaka: Republic of Zambia.

ACKNOWLEDGMENTS

We would like to thank the Austrian Development Agency (ADA) for providing funding for fieldwork. However, the views expressed in this policy brief are entirely ours.



Institute for Poverty, Land and Agrarian Studies
School of Government
University of the Western Cape
Private Bag X17 Bellville 7535 Cape Town South Africa
Tel: +27 021 959 3733 Fax: +27 021 959 3732
www.plaas.org.za