



Caught in the Clash amid Customs and Market: A Case of the Poor and Marginalized Rural Population's Access to Land in Zambia

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ABSTRACT. The paper is a case study analyzing the effects of the Zambian Lands Act of 1995. The problem area centers on the question as to why the market-based land reform of 1995 in Zambia has not, despite its purpose, improved the access to land for the poor and marginalized rural population. The ability to acquire land titles in Zambia highly depends on (i) access to knowledge, (ii) legal access, (iii) access through social identity, and (iv) access to authority. The findings of this paper reveal a reality in which mostly Zambian elites, chiefs, and foreign investors benefit from the prevalent power structures gaining exclusive control over land. Additionally, problems such as complicated and costly bureaucratic procedures as well as civil status, traditional hierarchies, and corruptive behavior weaken the poor and marginalized rural population's access to land. The paper concludes that the Zambian market-based land reform in 1995 has not benefited the poor and marginalized rural population's access to land, but has intensified inequalities.

Introduction

Land is one of the most fundamental resources in any society as a basis for human survival. This is particularly the case in Africa where land remains the single most important asset in securing livelihoods for the poor and marginalized rural population. Despite land's pivotal role in human survival, it is often unequally distributed and the poor and marginalized rural population in Africa struggles to gain access to land and security of tenure. With increasing population growth and threats from climate changes adding to existing problems of land infertility, water scarcity, and desertification (Hassan, Scholes, and Ash 2005: 836), there is an urgent need for a response to address the issue of land.

There is a common consensus on the development agenda claiming that sustainable growth and development in Africa depend largely on the manner in which land resources are secured,

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used and managed (EU Working Group on Land issues 2011: 6; Janneh 2006). This consensus sees land reforms as a means to achieve both growth and poverty alleviation (Mwangi and Patrick 2006: 1; World Bank 2003a: 1-2). Land reforms have been carried out in Africa since the Second World War, but the approaches have differed over time. Prior to the 1980s, land reforms were dominated by a belief in redistribution. Subsequently, developing countries, in order to redress inequalities and stimulate small-scale agriculture and self-sufficiency, redistributed land from large-scale landowners to landless and poorer peasants. Since the 1980s, land reforms have, however, been characterized by a neo-liberal, market-based approach. Here it is argued that formal titling and a lightly regulated market for land will increase the efficiency of land distribution and boost agrarian productivity. Furthermore, it is argued that recognition of property rights can reduce poverty and enhance capital accumulation in developing countries (Brown 2005: 79-80). Yet, one problem remains, new reforms, which seek to modernize the customary systems, may, contrary to the objective, consolidate the inequalities because "... even progressive land policies and the availability of necessary tools for pro-poor land registration can become vehicles of the powerful for their own advantage" (Anseeuw and Alden 2010: xii).

Zambia is a peculiar example of a developing country trying to reform its land system. In 1964, when Zambia became independent, it was the richest country in sub-Saharan Africa, twenty years later, prior to the land reform, it was one of the poorest (World Bank 2001) and even today it ranks as one of the poorest countries on the Human Development Index (UNDP 2008: 27). Despite being a relatively stable state spared from both external and internal conflicts (van Loenen 1999: 1), Zambia has not been able to make a land reform that benefits its mainly rural population, where approximately 80% live in extreme poverty unable to afford buying the land they live on (Adams and Palmer 2007: 63).¹

In 1995, the Zambian government introduced a new market-based land reform, highly inspired by the neo-liberal paradigm and as part of conditionalities from the World Bank (Simutanyi 1996: 826). The reform consolidated Zambia's dual tenure system consisting of state and customary land. It is estimated that 94% of the land area in Zambia is customary land.² Nonetheless, as a consequence of the land reform, it became possible for people living on customary land to convert it to state land and hereby gain formal titling. The problem remains that the Zambian government so far has been unsuccessful in providing a supportive policy environment for devolved communal area land and natural resource proprietorship and management (Metcalf and Kepe 2008b: 241). There are many examples of increased insecurity of land tenure for the poor and marginalized rural population (Bupe 2010; Hansungule, Feeney, and Palmer 1998: 44; Mutangadura 2007: 179) and also many examples of people being evicted from their land (Brown 2005: 92; Jesuit Centre for Theological Reflection 2005: 33; Mpundu 2006; MS-Zambia 2009c: 1; Palmer 1997: 285). A 64-year-old woman and her children were beaten and evicted from their land. Afterwards she explained the consequence:

[H]unger entered our home and it has never left. We cannot even grow enough food to feed our children because of not having enough land. (cited in Machina 2002: 7)

This indicates that the high expectations for the land reform and its ability to fight poverty and create equity have not been met, and that land has not been equally distributed. On this backdrop, the paper aims at critically examining the 1995 land reform in Zambia in order to identify why, despite its purpose, it has not improved the poor and marginalized rural population's access to land (see Chileshe 2005: 254; Metcalf 2005: 6). This will be done through an assessment of whether shortcomings of a specific reform and institutional settings prevent the implementation of reform. To examine this, Ribot and Peluso's theory of access (2003) is applied. Access theory breaks with the more traditional theories on land rights by defining access as *the ability to derive benefits from things* instead of merely looking at access in a juridical sense as *the right to benefit from things*. While other frameworks applied on the

subject of land rights tend to focus solely on legal mechanisms, this framework also puts emphasis on extra-legal mechanisms such as access to *knowledge*, access through *social identity*, and access to *authority*. Access theory divides social actions into the concepts of *access control* and *access maintenance*. Access control refers to the ability to mediate others' access, while maintenance of access refers to the need to expand resources or powers in order to keep access to a particular resource open. This means that actors in a subordinate position transfer certain benefits to the ones controlling them, and thereby intend to gain benefits for themselves. In this way, an array of mechanisms of control and maintenance of access can change according to the value of a resource or the means of access. Both are fundamental for actors in relation to appropriation, management, or use of a resource.

Based on these reflections, the paper seeks to provide a nuanced answer to the following research question: *Why, despite its purpose, has the market-based land reform of 1995 in Zambia not improved the poor and marginalized rural population's access to land?*

Access to Knowledge

The frameworks of resource access, which have enabled and disabled the poor and marginalized rural population (PMRP), were constructed in historical processes. That is to say, the historical production of categories of knowledge has produced the frameworks present after the Lands Act in 1995 benefiting foreign investors and local elites (Ribot and Peluso 2003: 168-9).

The colonial powers constructed a rural elite and used it to “create political structures for governing rural populations” by using a *fits all* frame for understanding and organizing the rural population (Boone 2007: 561). They interpreted the population as being organized in stable and coherent *intelligible units* comparable to *tribes* that could be used to practice indirect rule (Moore 1994: 24). This can be considered a faulty understanding as the different tribal areas had different approaches to land distribution (Brown 2005: 84; Sitko 2010: 44; van Loenen 1999: 2). This was a production of knowledge that informed the discourse guiding colonial and post-colonial rule of Zambia, which made it possible to implement indirect rules so that first the colonial administration and later the shifting governments as well as local elites have been able to benefit from the distribution of land.

In the case of the Tonga people, the colonial administration was able to pick and choose chiefs and headmen, institutions the Tonga people regarded as *purely arbitrary* creations by European officials, and made them submit to their desires by force (Sitko 2010: 41). Dixon-Fyle (1977: 582) recounts that uncooperative chiefs were summoned at the District Office and “whipped...or detained until they submitted.” The creation of new elites produced new knowledge about the governance of Zambia that was highly influential in how land was redistributed during the colonial administration and also during post-independence because traditional leaders were empowered to control the access to land for the PMRP. By creating the institution of chiefdom and thereafter disciplining the chiefs into adhering to the colonial system of knowledge, the chiefs were given status and authority that enabled them to control the PMRP's access to land. Thereby the chiefs utilized the “few opportunities and many constraints” presented to them (Gordon 2001: 318-9). The chiefs were acknowledged by the colonial rulers and thereby gained authority as a form of expert status which gave them the ability to manipulate “the categories of resource access and use” (Ribot and Peluso 2003: 169). For the PMRP, this meant that they were constrained from controlling land and had to maintain access to land through the chiefs. The PMRP's ability to derive benefits from land was therefore dependent on arbitrary decisions made by the chiefs. The shifting rulers of Zambia were able to use the British governance structure to promote national integration and

to consolidate their power and thus reproduce the knowledge of how Zambia should be governed (Boone 2007: 561).

The dominant discourse regarding land is the market approach advocated by the neo-liberal discourse with the World Bank as the most prominent actor (Manji 2006: 152). This approach stresses the need for evolving away from customary tenure in favor of individual property rights (Deininger and Binswanger 1999: 248; Smith 2003: 211). It is assumed that when the population's density increases or when valuable natural resources are discovered, there will be an increased demand for 'secure' land rights in a modern property rights system (World Bank 2003a: 9-10). If the state provides society with land titling at the right time, modern (Western) property rights will evolve naturally with significant results for the society, economic growth, efficient resource allocation, social peace and stability, and positive effects on government budget (Platteau 1996: 35; Whitehead and Tsikata 2003: 67) and thereby benefit the whole society. A fundamental trust is thereby placed in the market to create growth and prosperity for everyone. This is outspoken in the following statement from the former director of Britain's Institute of Economic Affairs.

What Africa needs is capitalism - and its first cousin - the rule of law ... Capitalism has a nobility. It lifts us all from primitive conditions. Free markets could free Africa. (Institute of Economic Affairs 2004, June 14)

Zambia was required to reform its land policy as a conditionality of the Structural Adjustment Program in order to receive loans (Kahler 1992: 89). This was based on the knowledge embedded in the discourse on land reform so that Zambia, according to an internal review from the World Bank, could have an "accelerating implementation of the land market reform" (World Bank 2003b: 38). This knowledge about how Zambia should manage its land has had a profound effect on the distribution and access to land. The Zambian government initially opposed World Bank reform initiatives. As a consequence, the World Bank effectively cut off Zambia from loans and bilateral donors, creating public unrest and food riots (Ihonvbere 1996: 87; Machina 2010; Rakner 2003: 61; Simutanyi 1996: 827-828). The World Bank's ability to dominate local policy arenas in Africa is done by "setting the agenda and then loaning only to those that follow the agenda" (Greenberg and Bonti-Ankomah 1997).

The PMRP has been disadvantaged because the framework of resource access has shaped a governance structure which has decreased their ability to maintain access to the land by systematically favoring those with access to capital and knowledge. The elites have the upper hand in such a system and are able to maintain a status quo where they are able to profit, whereas the PMRP is lacking the knowledge and resources to take advantage of the few opportunities now present (Mbinji 2006: 34-35; Metcalfe and Kepe 2008a: 14; Mellefolkeligt Samvirke [MS] 2009: 26, 33; MS-Zambia 2009a, 2009b, 2009c, 2009e; Sitko 2009: 40).

Legal Access

The PMRP is subject to arbitrary land administration which causes problems for the maintenance of its access to land because of subsequent dependence on personal preferences of unaccountable chiefs. This is due to the broad framework of the 1995 Lands Act (hereafter, Act) which allows for individual interpretations based on ethnic traditions subsequently resulting in a non-uniform process, no accountability, and little transparency (MS 2009: 12-13).

The Act has made customary land interesting for foreign and domestic investors, as it made it possible for them to convert the land into statutory tenure and hereby gain property rights. Accordingly, land should not be alienated "without consulting any other person or body whose interest might be affected by the grant" (Government of the Republic of Zambia [GRZ] 1995: Part II, section 4c). This, however, is seldom respected because the chiefs are often

unaware that the land is already inhabited or are persuaded by promises of personal gains or economic investments (Hansungule 2001: 25). Contrary to previous practice, where chiefs did not have the exclusive right to allocate land, the Act has installed the chiefs as the sole persons with decision-making powers to grant permissions to convert customary land into statutory land. By doing so, statutory law empowers the individual chiefs and not the institutions of the chieftaincy. Hence, the power relations between the chiefs and the PMRP have been changed to the benefit of the chiefs, who have now gained exclusive power to control the PMRP's access to land. This has tempted some chiefs into approving local and foreign investors to acquire already occupied land. The Act strongly guarantees the exclusive property rights of title-holders since it is almost impossible to reverse the process. Consequently, the people living on the land are being forced to resettle or are transformed into 'squatters' overnight (Jesuit Centre for Theological Reflection 2005: 33; Mpundu 2006; MS-Zambia 2009c: 1; Palmer 1997: 285). Hence, small-scale farmers experience a shortage of land which is related to large commercial farmers buying the land, leaving the PMRP as tenants of land owned by landlords or left them with infertile and insufficient land.

A Lands Tribunal was created under the auspices of the Act intended to be an alternative dispute resolution mechanism providing a mobile (not with a fixed headquarter), speedy, low cost, flexible and efficient means of settling disputes over land. Hereby, it provides poorer, non-titled individuals with a cheap and quick venue where they could protect their customary rights to land. However, only a few are aware of its existence and many of the people facing evictions, are desperately poor and unable to pay for lawyers to argue their case for them (Zambia Land Alliance [ZLA] 2005: 2). Furthermore, the Tribunal has become more formalized, and now resembles the courts that it was intended to be as an alternative. Here, the character of cases, which the Tribunal processes, has changed and it now mostly deals with urban matters (Brown 2005: 91). If the Tribunal was working as intended, it would have provided valuable means for the PMRP to secure their access to land. Unfortunately, this has not been the case so far.

The Act made it legally possible for anyone to convert customary land into statutory leaseholds, but the PMRP has made use of the possibility to secure title to land only to a limited degree (Brown 2005: 88). There seems to be five reasons for this. First, the PMRP is still not sufficiently aware of the possibility of converting land (MS-Zambia 2009c: 1). Second, there is a language barrier for the PMRP as the formal language in Zambia is English and therefore all information is given verbally in English, which is problematic as most of the people only speak local languages (Vind Andersen 2009). Third, the process is too complicated and with unaffordable transaction costs for the PMRP. The PMRP struggles to cover these expenses, whereas foreign investors and Zambian elites easily cover these costs (Brown 2005: 90; Central Statistical Office 2006; MS-Zambia 2009c: 1; van Loenen 1999: 6). Therefore, the discrepancy between the market value of the title and the relatively low costs for acquiring it has resulted in speculations on land. People with money can buy land cheaply and resell it with significant profit (Metcalf and Kepe 2008b: 249; Brown 2005: 92). Fourth, chiefs pose a lot of resistance against conversions of customary land, as they feel that they are losing their power when the land is converted. Additionally, if someone interested in acquiring a title is granted an audience with the chief, the applicant is expected to pay the chief respects in the form of money or goods (e.g., goat or chicken), thus making a permission too expensive for many members of the PMRP (MS-Zambia 2009b: 2, 2009c: 1). And fifth, the applicant is burdened with significant travel costs as it is necessary to travel to the district headquarters and the Ministry of Land's office in either Lusaka or Ndola.

These different obstacles constrain the PMRP's maintenance of access to land, as they cannot use the possibility to convert land. Therefore, their land remains under the insecure customary tenure.

Access through Social Identity

The social status of chiefs is not something they have gained through power of resources (material wealth) but through heritage (Sitko 2010: 41; van Binsbergen 1995: 17). Chiefs earn their income from subsistence farming and limited allowance from the GRZ. However, their authority to decide on the conversion of titles is a potentially large source of revenue because of the honorarium they get when people request land conversions and other customary approvals (Brown 2005: 98; MS 2009: 32). The PMRP has to maintain access to land through the chiefs by paying respects to the chief—a cost that they cannot afford. Hence, they do not succeed because it is too expensive to maintain access to the chief or because they have not acted in accordance with the chief's principles.

Next in the hierarchy are the village headmen, who have social power due to their status as respected members of the community. The headmen also play an important role in Zambian land matters and they can, through their social status, gain access to control land at the expense of the PMRP. The methods of choosing headmen vary depending on customary traditions (van Binsbergen 1995: 17; Panos 2005: 45). In most cases the tradition of election of headmen itself leads to marginalization of those who do not have membership in the clans and those who are not senior male members. This also means that the headmen are not accountable to the other community members because they are not responsible for electing him and have no means of replacing him. As such, it affects the PMRP's access to land because the allocation and use of customary land are administered, to a greater or lesser extent, by the headmen (Sitko 2010: 41). However, even though headmen rank high in the hierarchy, some of them are maintaining access through the chiefs and they do not solely control land matters. The chiefs' social statuses enable them to control headmen and the PMRP by dismissing the headmen (if they do not agree with their decisions), and by ignoring the PMRP's wishes.

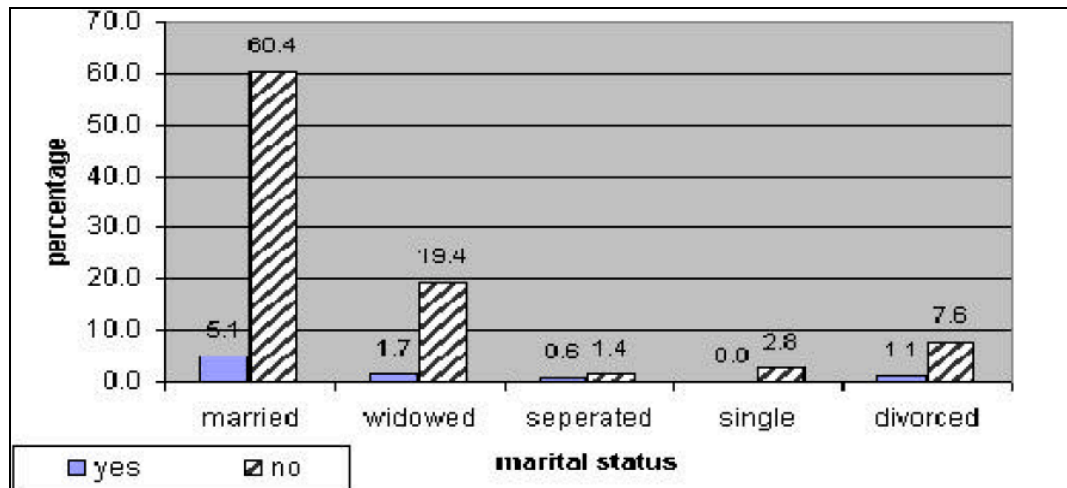
The social groups at the bottom of the hierarchy, in tribal communities, are poor rural people, landless peasants, elderly, youth, and women—especially widows, singles, and divorced. Because of the position of these groups, their social identity is also contributing to the hindrance of their access to and control over land (Anseeuw and Alden 2010: 61-62, 65; Brown 2005: 88; Sitko 2010: 48; ZLA 2008: 14).

Zambia's women are lacking access to land because they depend on men's acceptance of their access to land (Byrne 1994: 14; Eckman 2007: 18; Social Institutions and Gender Index 2009: 2). Until recently not much attention has been paid to women's access to land in Zambia (MS-Zambia 2009h: 5), but after the Act the focus on women has increased. Gender has become an important issue in Zambia, due to the different roles men and women play in both households and the market (Eckman 2007: 1). Women are not controlling the households (and thereby neither the land). This is especially a problem in times of food shortage, where conflicts over resources tend to increase women's vulnerability (Byrne 1994: 16). Furthermore, the Act's market-based principle deteriorates women's situation because many rural households cannot afford a title deed, which thus means that women have to travel longer distances to pick up wood fuel for cooking and other domestic duties (Machina 2010). This can be seen as "a clear sexual division of labour by task in agricultural work and in the household" (Chileshe 2005: 312). Consequently, women are suffering the most because of their low status as those responsible for domestic duties.

Title deeds in Zambia are usually registered in the man's name. Consequently, the "joint customary land rights of a wife, which she enjoyed prior to conversion of tenure, are lost" (Chileshe 2005: 342). It is important to note that acquiring statutory land requires capital, and women's access to, and control over, both capital and market is low. Furthermore, statistics shows that men earn twice as much as women (UNDP 2008: 39). Converting land from customary to statutory land can therefore be argued to induce a negative impact for the poorest women, who lack access to capital and credit (Spichiger 2008: 2; ZLA and Dan Church Aid

2005: 6). Loans are vital for Zambian women, and those who cannot get help have to rely on informal credit alternatives where “the rates are usurious” (Social Institutions and Gender Index 2006: 2). Power relations between men and women have therefore changed to the worse for women due to the unequal access to capital and finance—i.e., both factors that the market-oriented Act has made fundamental to land acquisition.

Figure 1: Possession of Title Deeds for Women



Source: ZLA and Dan Church Aid 2005

Civil status plays a significant role in women’s ability to access land. This is indicated in Figure 1 which shows that women of all civil statuses face difficulties in acquiring title deeds and in securing their access to land. Sixteen per cent (16%) of all marriages in Zambia are polygamous (Social Institutions and Gender Index 2006: 1). This aspect has great influence because “women in polygamous marriages have no land. They only work in the husbands’ fields as labourers” (ZLA and Dan Church Aid 2005: 18). Their ability to maintain access to land resources is therefore highly affected by polygamy, and this gives men the ability to control women’s access to land.

Women in village communities usually maintain access, to land through men, which could either be their father, brother, or husband (ZLA and Dan Church Aid 2005: 22; Social Institutions and Gender Index 2006: 2; Spichiger 2008: 1; World Bank 2004: 20). Notably, Figure 2 shows that women’s acquirement of land through their husbands only makes up 7.8%, which could be connected to husbands’ perception of their wives where “women are often perceived as property belonging to someone and therefore cannot own property themselves” (Office of the High Commissioner for Human Rights 2008: 2). This statement indicates that there is a cultural aspect to why women are lacking access to land and only can maintain access through men. This is further underlined in the following quote:

[W]omen’s access to land and security of tenure is dependent on maintaining good relationships with the men in control of land. This in turn reinforces women’s dependence on men and diminishes their ability to make independent land-based livelihood choices. (Ellis 2000: 157)

The GRZ has recognized this problem and has made an Inheritance Act to provide women with a share of their deceased husband’s possessions. The customary traditions are, however, still disadvantageous for women because household property is regarded as belonging to the husband—hence, promoting the practice of property grabbing by other family members (World Bank 2004: 3).

Figure 2: Women's Land Acquisition

Inherited the land	25.3%
Given by headman	24.7%
Given by the father	23.0%
Given by the uncle or brother	11.8%
Given by the husband	7.8%
Given by the mother	7.4%
Based on 648 households	100%

Source: ZLA and Dan Church Aid 2005

Traditional customs have established hierarchical relationships in the households where men have more opportunities than women and retain discretionary powers to control resources. The tribal system has in many ways constrained women's acquisition of land (MS-Zambia 2009d: 1). The chiefs are generally obstructing women's access to land, and even female chiefs are preventing women from accessing land due to the status and the position of marginalized women (MS 2009: 13). This is caused by the deeply rooted perception of women as being subservient to men. In some cases, the position of women has become even worse due to the Lands Act of 1995 which requires capital in order to secure access to state land. While the Act may not explicitly favor men in legal terms, women are in an inferior position in comparison to men regarding marital status, inheritance, and access to capital. These factors have severe consequences for women's appropriation and maintenance of land. Appropriation becomes a problem because the Act has institutionally turned land into a commodity and thereby marginalizing those that were already in an inferior position, particularly women. Marital power relations are prohibiting women from maintaining access to land because of the husband's identity being perceived as a higher social status.

Access to Authority

The market-based land reform is not only an attempt to open up the country for investment and private ownership. Due to the assumption that customary land tenure is insecure (GRZ 2000: 1), the reform also aims at improving the conditions for acquiring private title deeds. However, instead of favoring the PMRP, access to authority has become bounded to informal claims (e.g., providing gifts to please the chief). The prevailing situation, where transfer from customary into statutory land or leaseholds can only be undertaken with the approval of a chief (GRZ 1995), gives incentives to local leaders to take advantage of their power and enrich themselves personally. This makes accessibility to authority more difficult for the PMRP (MS-Zambia 2009c: 1).

Chiefs exert both direct and indirect forms of access control due to their authority in the decision-making process of who gets what, when, and how. It makes chiefs accountable only to themselves and thereby unaccountable to their constituents (Ribot 2001: 14). Corrupt behavior of leaders creates tension within the social community. By favoring personal interests, rather than acting on behalf of the common welfare of the village, chiefs might risk conflicts and resistance among their people (Bond 1998: 143-4).

Nevertheless, chiefs lose parts of their physical domain by approving land titles since leaseholds cannot be reconverted into customary land. This procedure is affecting the chiefs'

sphere of influence and shifts authority to another level. Being aware of this setback of their power, many traditional leaders opposed the Lands Act of 1995. In addition, chiefs claimed that they had not been adequately consulted when the Act was reviewed in 2002 and 2006 (ZLA 2007: 1-3; Mukanga 2007). Such conflicts not only reveal a struggle for power between two levels of authority (the state and the local unit) but these also give evidence for contradictory procedures and maladministration in the country.

In Zambia, the President-dominated government maintains and increases its strong position on land related issues. The President's powerful role in the distribution of land, as well as the Ministry of Land's responsibility to approve all land transfers, generates power relations imbalance between national officials and local representatives and thus makes access to authority even more difficult for the PMRP. Foreign investors and wealthy individuals, who are often ignorant and uncaring of the interests of the PMRP, deal and transact directly with state administrators. It enables them to avoid the formal procedure of acquiring land titles and bypass the local chiefs' authority. The PMRP, however, finds itself in a disadvantageous situation for not being able to compete with the rich and powerful in approaching the authorities.

Zambian elites particularly benefit from the informal way of securing titles (MS 2009: 12, 14), as well as from the control and allocation of land (Adams and Palmer 2007: 64). Thus, access to authority is highly dependent on privileged access and personal relations to institutions and individuals in a web of powers, which also correlates with the claimants' economic ability to gain advantageous information. The PMRP lacks such determinants to access authority. Institutions and procedures to promote and protect the interests of customary landholders (e.g., the Lands Tribunal) lack effective policy measures and "are often banal and stand little serious chance of ever being implemented" (Adams and Palmer 2007: 65).

The power struggle described above and the particular characteristics of maladministration (such as shortage in personnel capacity, absence of binding regulations, and vulnerability to corruption) create a situation of confusion at user level not only for the PMRP but also among authorities. One question permanently recurs: whom to approach when claiming access to authority and how? Consequently, the PMRP's ability to maintain access to land is threatened, as access to authority, which is an important means of maintaining access to land, becomes even more difficult to grasp.

Despite intentions to improve the ability to benefit from resources, the Lands Act of 1995 widened the gap between the local communities and the state as well as the poor and the rich. It contributes to a shift in power relations and reinforces the gap between different social groups and institutions. This, in effect, makes it more difficult for the PMRP to gain access to, as well as, approach authority in order to benefit from resources. The Act itself has not contributed to changing this situation.

The dual tenure system after the 1995 Lands Act reinforces economic and social exclusion, rather than creating opportunities for the PMRP to ensure their rights to land. Local and national authorities fight over accumulation and legitimacy of their power which, in turn, is transforming existing structures. In effect, local chiefs—who are traditionally given a great deal of authority and control—have in some ways benefited from the Act, but have in other ways been losing their power to national officials and the Zambian elites who closely interact with foreign investors. In the struggle for power over land within the context of a corrupt policy arena in Zambia, which lacks transparency and accountability (Metcalf and Kepe 2008a: 114), the PMRP is in a position unable to appropriate access to authority, while their ability to benefit from land has worsened.

Conclusion

At a time when market-based land reforms are being implemented throughout the whole of sub-Saharan Africa with development partners—especially with the World Bank that promotes secure private land tenure as precondition to structural adjustment packages—it is essential to reach a deeper understanding of the social and political processes that shape land reforms affecting the population. With this in mind, this article has explored the legal and extra-legal processes at play in Zambia in order to understand why the 1995 Lands Act has not lived up to its promise of attaining security of tenure for the poor and marginalized rural population. In this connection, the article has shed light on how the government's market-based approach to land has affected the poor and marginalized rural population's ability to appropriate, control, and maintain their access to land. The market-based land reform has benefited local elites and foreign investors, but not the poor and marginalized population. Four main reasons can be identified for the distortion of benefits.

Firstly, some of the latent and often unnoticed factors in Zambia are the interventions from the former colonial administration and the neo-liberal discourse that have created the structures by which the poor and marginalized rural population has found themselves in. Being subjected to these influences has been disadvantageous to the poor and marginalized rural population because it has created power structures that favor those with superior knowledge of language, capital, and better access to the bureaucracy. Here, prevailing power relations that work in favor of the Zambian elites, chiefs, and foreign investors were consolidated. Hence, market-based reform, no matter how well intended it might be, was already constrained by the profound influence of the historical experience. Since the reform made no changes on the prevailing colonial historical structures and was even reinforced by neo-liberalism, it was not able to improve the poor and marginalized rural population's ability to access land.

Two lessons can be drawn from this. First, the outcome of any policy—particularly, a policy as disputed and fundamental to development as land reform—is profoundly influenced by historical experiences and the character of local politics. And second, unequal access to land in Zambia can be, to a certain extent, traced back to the influence of donors and colonial administrators.

Secondly, through the Act that vested exclusive powers to the chiefs, the customary tenure security of the poor and marginalized rural population has deteriorated because the law has swayed power relations in favor of the chiefs and thereby strengthened their control over land. The consequences of this are manifold as many chiefs are tempted by lucrative deals with personal gains to allocate land to investors even if the land is already inhabited and there appears to be no legal possibility for lodging an appeal. Hence, the poor and marginalized population's ability to maintain access to and derive benefits from land has diminished. There is, however, a possibility in the Act for attaining tenure security by converting the land to statutory leaseholds. Nonetheless, the poor and marginalized population does not have the necessary knowledge about this opportunity, and even those who are aware of the possibility cannot convert their land due to bureaucratic delays (red tape) and other costly procedures. This is also the case when applying for title deeds for statutory lands. Thus, the Act has not improved the poor and marginalized rural population's ability to appropriate land in either tenure systems.

In view of this, two lessons can be learned. First, the current customary system with the chiefs as the sole allocating authority is defective mainly because of the lack of accountability. And second, security of land tenure and livelihoods for the poor and marginalized rural population are unlikely to be purely realized through conversions of tenure and exercise of registered private property rights.

Thirdly, the structure of the customary traditions has consolidated the chiefs and headmen at the top of the hierarchy, whereas the poor and marginalized rural population at the bottom. Chiefs and headmen, who used their social status to promote personal gains and interests, hindered the government's aim for fair and effective land administration. Women are particularly the ones who suffer from the customary traditions despite the fact that they are supposedly on equal status as men according to Zambian law. Their access to land is influenced by laws, civil status, practices of succession, inheritance, traditional rules of divorce and separation, and access to capital. Uncertainties influence women's access to land as they depend on maintaining good relations with their husbands and other authority figures. These uncertainties stem from their subjection to customary institutions, norms, and values—all of which are, in practice, patriarchal. Marital relations are one of the biggest problems of women in asserting their right of access to land. In the event of separation caused by divorce or widowhood, a woman living in her husband's village is likely to lose her land rights.

A couple of important points can be made from this. First, land reforms are likely ineffective because of the cultural remnants of feudal power distributions. And second, better enforcement of women's rights to land and its inheritance can avoid burdening widows with conflicts over land and with the disempowering inability to access land.

Fourthly, the Act has widened the gap between the local communities and the state as well as the poor and marginalized rural population and the rich local and foreign elites. It has reinforced economic and social exclusion, rather than created opportunities for the poor and marginalized rural population to ensure their access to land. Parallel and competing authorities fight over accumulation and legitimacy of their power which, in turn, is transforming existing structures in the struggle for power over land, especially in the corrupt policy arena of Zambia that lacks transparency and accountability. Despite the intention to ease the poor and marginalized rural population's access to authority, the Act has not led to any improvements but it has, to a great extent, even worsened their ability to benefit from land. Maladministration within the institutional structure is not providing effective means for the poor and marginalized rural population to access land. Instead, it has created greater confusion, contestations, and uncertainties about procedures for land acquisition.

In this regard, the inferences are twofold. First, the struggle of authorities over power to control land leads to a situation where no state authority, locally or centrally, exists to represent the poor and marginalized rural population's interests on matters related to land access. And second, costly bureaucratic and complex procedures to have access to appropriate authorities erode the supposed effectiveness of land reforms.

In sum, some of the most important reasons why market-based approach to land in Zambia since 1995 has not given access to land for the poor and marginalized rural population are:

- [a] the power structures shaped by the colonial experience and reinforced by the neo-liberal reforms and discourse favoring the affluent;
- [b] increased tenure insecurity in customary areas accompanied by costly and bureaucratic procedures for acquiring both statutory and customary land;
- [c] customary traditions benefiting chiefs and headmen that place value on social status, including women's subordination to men in the social hierarchy; and
- [d] parallel and competing authorities in struggle for power over land results in maladministration and poor access to authorities.

In the final analysis, the Act has not benefited or effected the ability and access of the poor and marginalized rural population's to land. In fact, it has deepened tenure insecurity of people living in customary areas. This condition can prove catastrophic in a country with approximately 80% of its rural population living in extreme poverty who are dependent on land to survive and sustain their livelihoods and who are in constant risk of being evicted from their land. Indeed, there are high expectations and critical needs for the Zambian gov-

ernment to develop policies and actions that make land more accessible to the poor and marginalized rural population. Apparently and regrettably, these legitimate needs and expectations have not been met, thus far.

Notes

1. Zambia is a sparsely populated country where the rural population comprises 64% of the general population (CIA 2011).
2. These numbers are based on measurements from 1958 (Mukanga 2007) and may thus be inaccurate. Henry Machina estimates that “at least 40 percent of the total land area in Zambia already belongs to the state today” (Dalgas 2007). It is, however, not possible to verify how much of the land is respectively customary and state land.

References

- Adams, M. and R. Palmer (eds) (2007) *Independent review of land issues, Volume III: Southern and Eastern Africa*, accessed 21 May 2010, at http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_eastern_and_southern_africa_2006_07.pdf.
- Anseeuw, W. and C. Alden (2010) ‘Foreword’, in W. Anseeuw and C. Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change*, Cape Town: HRSC Press, pp. xi-xii.
- Bond, V. (1998) *Household capacity and ‘coping up’ in rural Zambia: Dealing with AIDS, other illness and adversity in Chiawa*, Hull: University of Hull.
- Boone, C. (2007) ‘Property and constitutional order: land tenure reform and the future of the African state’, in *African Affairs*, Vol. 106, No. 425, pp. 557-586.
- Brown, T. (2005) ‘Contestation, confusion and corruption: market based land reform in Zambia’, in S. Evers, M. Spierenburg, and H. Wels (eds) *Competing Jurisdictions: Settling land claims in Africa*, Leiden: Brill Academic Publishers, pp. 79-107.
- Bupe, F. (2010) ‘ZLA urges protection of customary land’, 17 February, accessed 3 June 2010, at http://www.postzambia.com/post-read_article.php?articleId=5959.
- Byrne, B. (1994) *Gender profile of Zambia*, Brighton: Institute of Development Studies.
- Central Statistical Office (2006) *Living Conditions: Poverty in Zambia (1991 – 2006)*, accessed 24 May 2010, at <http://www.zamstats.gov.zm/lcm.php#02>.
- Chileshe, R.A. (2005) *Land tenure and rural livelihoods in Zambia: Case Studies of Kamena and St. Joseph*, accessed 27 May 2010, at http://www.aec.msu.edu/fs2/zambia/resources/Chileshe_r_a_PhD_Thesis_Zambia_Customary_Land_issues.pdf.
- CIA (2011) ‘Zambia’, at <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html>.
- Cousins, B. (2010) ‘The politics of communal tenure reform: A South African case study’, in W. Anseeuw and C. Alden (eds) *The Struggle over Land in Africa: Conflicts, Politics & Change*, Cape Town: HRSC Press, pp. 55-70.
- Dalgas, B. (2007) ‘Long expected land policy on its way’, at <http://www.ms.dk/sw74472.asp>.
- Deininger, K. and H. Binswanger (1999) ‘The Evolution of the World Bank’s Land Policy: Principles, Experience, and Future Challenges’, in *The World Bank Research Observer*, Vol. 14, No. 2, pp. 247-276.
- Dixon-Fyle, M. (1977) ‘Agricultural improvement and political protest on the Tonga Plateau, Northern Rhodesia’, in *The Journal of African History*, Vol. 18, No. 4, pp. 579-596.
- Eckman, K. (2007) *Gender Mainstreaming in Forestry in Africa: Zambia*, Rome: Food and Agriculture Organization of the United Nations.
- Ellis, F. (2000) *Rural livelihoods and diversity in developing countries*, Oxford: Oxford University Press.
- EU Working Group on Land Issues (2011) ‘Access to Land and Other Natural Resources for Improving Rural People’s Livelihood’, accessed 24 July 2011, at http://capacity4dev.ec.europa.eu/sites/default/files/file/17/03/2011_-_1421/bs3-en.pdf.
- Gordon, D. (2001) ‘Owners of Land and Lunda Lords: Colonial Chiefs in the Borderlands of Northern Rhodesia and the Belgian Congo’, in *International Journal of African Historical Studies*, Vol. 34, No. 2, pp. 315-338.

- Greenberg, S. and S. Bonti-Ankomah (1997) 'The Menace of the Market: Land and Labour in Southern Africa' in *Southern Africa Report*, Vol. 12, No. 4, accessed 21 May 2010, at <http://www.africafiles.org/article.asp?ID=3830>.
- GRZ (1995) *The Lands Act of 1995*, Lusaka: Ministry of Lands.
- Hansungule, M. (2001) *The 1995 Land Act: An Obstacle or Instrument of Development?* Lusaka: ZLA.
- Hansungule, M., P. Feeney, and R. Palmer (2004) *Report on Land Tenure Insecurity on the Zambian Copperbelt*, Oxfam GB in Zambia, accessed 21 May 2010, at http://www.oxfam.org.uk/resources/learning/landrights/downloads/full1998_landtenureinsecurityreport.pdf.
- Hassan, R., R. Scholes, and N. Ash (eds) (2005) *Ecosystems and Human Well-Being: Current State and Trends*, Washington, DC: Island Press.
- Ihonvbere, J.O. (1996) *Economic Crisis, Civil Society, and Democratization: The Case of Zambia*, Trenton, NJ: Africa World Press, Inc.
- Institute of Economic Affairs (2004) 'Africa's plight will not end with aid', 14 June, accessed 21 May 2010, at <http://www.iea.org.uk/record.jsp?type=news&ID=203>.
- Janneh, A. (2006) 'Land policy in Africa: A framework of action to secure land rights, enhance productivity and secure livelihoods', 27 March, accessed 12 April 2010, at http://192.132.208.14/eca_resources/Speeches/Janneh/2006/032706_speech.htm.
- Jesuit Centre for Theological Reflection (2005) *Economic, Social and Cultural Rights in Zambia*, accessed 3 May 2010, at <http://www.jctr.org.zm/downloads/ParaReport.pdf>.
- Kahler, M. (1992) 'External influence, conditionality, and the politics of adjustment', in S. Haggard and R.R. Kaufman (eds) *The Politics of Economic Adjustment*, Princeton, NJ: Princeton University Press, pp. 89-136.
- Machina, H. (2002) *Women's Land Rights in Zambia: Policy Provisions, Legal Framework and Constraints*, Lusaka: ZLA.
- Machina, H. (2010) Interview by e-mail, 27 May.
- Manji, A. (2006) 'Legal paradigms in contemporary land reform', in *Commonwealth & Comparative Politics*, Vol. 44, No. 1, pp. 151-165.
- Mbinji, J. (2006) 'Getting Agreement on Land Tenure Reform: The Case of Zambia', in E. Mwangi (ed.) *Land Rights for African Development: From Knowledge to Action*, pp. 33-35, accessed 21 May 2010, at http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrieff_land.pdf.
- Metcalf, S. and T. Kepe (2008a) "'Your elephant on our land": the struggle to manage wildlife mobility on Zambian communal land in the Kavango-Zembezi transfrontier conservation area', in *The Journal of Environment & Development*, Vol. 17, No. 2, pp. 99-117.
- Metcalf, S. and T. Kepe (2008b) 'Dealing land in the midst of poverty: commercial access to communal land in Zambia', in *African and Asian Studies*, Vol. 7, Nos. 2-3, pp. 235-257.
- Metcalf, S. (2005) 'Landscape Conservation and Land Tenure in Zambia: Community Trusts in the Kazungula Heartland', accessed 27 May 2010, at http://www.awf.org/documents/Kazungula_Community_Land_Trusts.pdf.
- Moore, S.F. (1994) *Anthropology and Africa: Changing Perspectives on a Changing Scene*, Charlottesville, VA: University Press of Virginia.
- Mpundu, M. (2006) 'Zambian village takes on the sugar barons', 3 April, accessed 22 May 2010, at <http://www.panos.org.uk/?lid=19771>.
- MS (2009) *Land Rights Programme Review*, Kongens Lyngby: COWI A/S.
- MS-Zambia (2009a) *CDFa community*, MS Action Aid Zambia: Land Rights Programme Review. Unpublished.
- MS-Zambia (2009b) *Chongwe DFA*, MS Action Aid Zambia: Land Rights Programme Review. Unpublished.
- MS-Zambia (2009c) *Mansa DLA*, MS Action Aid Zambia: Land Rights Programme Review. Unpublished.
- MS-Zambia (2009d) *Nyimba DFA*, MS Action Aid Zambia: Land Rights Programme Review. Unpublished.
- MS-Zambia (2009e) *ZLA*, MS Action Aid Zambia: Land Rights Programme Review. Unpublished.
- Mukanga, C. (2007) 'Draft Land Policy, revisited....and now rejected...: Update', 7 October, accessed 18 May 2010, at <http://www.zambian-economist.com/2007/10/draft-land-policy-revisitedand-now.html>.
- Mutangadura, G. (2007) 'The incidence of land tenure insecurity in Southern Africa: Policy implications for sustainable development', in *Natural Resources Forum*, Vol. 31, No. 3, pp. 176-187.
- Mwangi, E. and E. Patrick (2006) 'Introduction', in E. Mwangi (ed.) *Land Rights for African Development: From Knowledge to Action*, pp. 33-35, accessed 21 May 2010, at http://www.capri.cgiar.org/wp/..%5Cpdf%5Cbrieff_land.pdf.
- Office of the High Commissioner for Human Rights (2008) 'Zambia - Overview of the current housing rights situation and related activities', accessed 21 May 2010, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/ZM/UNHABITAT_ZMB_UPR_S2_2008_Unit edNationsHABITAT_uprsubmission.pdf.

- Palmer, R. (1997) *Contested Lands in Southern and Eastern Africa: A Literature Survey*, Oxford: Oxfam.
- Panos (2005) *“Our gods never helped us again...”: The Tonga people describe resettlement and its aftermath*, Lusaka: Panos Southern Africa.
- Platteau, J-P. (1996) ‘The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment’, in *Development and Change*, Vol. 27, No. 1, pp. 29-86.
- Rakner, L. (2003) *Political and Economic Liberalisation in Zambia, 1991-2001*, Stockholm: The Nordic Africa Institute.
- Ribot, J. (2001) ‘Local Actors, Powers and Accountability in African Decentralizations: A Review of Issues’, Paper Prepared for IDRC, Assessment of Social Policy Reforms Initiative, Washington, D.C.: World Resources Institute.
- Ribot, J.C. and N.L. Peluso (2003) ‘A theory of access’, in *Rural Sociology*, Vol. 68, No. 2, pp. 153–181.
- Simutanyi, N. (1996) ‘The politics of structural adjustment in Zambia’, in *Third World Quarterly*, Vol. 17, No. 4, pp. 825-839.
- Sitko, N.J. (2010) ‘Fractured Governance and Local Frictions: The Exclusionary Nature of a Clandestine Land Market in Southern Zambia’, in *Africa*, Vol. 80, No. 1, pp 36-55.
- Smith, R.E. (2003) ‘Land tenure reform in Africa: a shift to the defensive’, in *Progress in Development Studies*, Vol. 3, No. 3, pp 210-222.
- Social Institutions and Gender Index (2009) ‘Gender equality and social institutions in Zambia’, accessed 23 May 2010, at <http://genderindex.org/sites/default/files/pdfs/ZMB.pdf>.
- Spichiger, R. (2008) ‘Women’s land rights, access to land and perceptions on land tenure in Southern Africa: the case of Zambia,’ accessed 21 May 2010, at http://www.diis.dk/graphics/_IO_indsatsomraader/Fattigdom_og_naturresurser/Women’s%20land%20rights.pdf.
- UNDP (2008) *Human Development Indices*, accessed 23 May 2010, at http://hdr.undp.org/en/media/HDI_2008_EN_Tables.pdf.
- van Binsbergen, W. (1995) ‘Aspects of Democracy and Democratization in Zambia and Botswana: Exploring African Political Culture at the Grassroots’, in *Journal of Contemporary African Studies*, Vol. 13, No. 1, pp. 3-33.
- van Loenen, B. (1999) ‘Land tenure in Zambia’, accessed 21 May 2010, at <http://zla.websitedesign.co.zm/media/spatialmappingzambia.pdf>.
- Vind-Andersen, L. (2009) ‘Land titles are hard to come by’, 19 February, accessed 21 May 2010, at <http://www.ms.dk/sw117982.asp>.
- Whitehead, A. and D. Tsikata (2003) ‘Policy Discourses on Women’s Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary’, in *Journal of Agrarian Change*, Vol. 3, No. 1/2, pp. 67-112.
- World Bank (2001) ‘Turning an Economy Around: The Challenge in Zambia’, accessed 21 May 2010, at <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/A36CBD61030A2FE685256BD400652A6A?opendocument>.
- World Bank (2003a) *Land policies for growth and poverty reduction*, A World Bank Policy Research Report, Washington, DC: World Bank and Oxford University Press.
- World Bank (2003b) *Project Performance Assessment Report: Zambia*, Report No. 27053, Washington, DC: World Bank.
- World Bank (2004) *Zambia: Strategic Country Gender Assessment*, Washington, DC: World Bank.
- ZLA and Dan Church Aid (2005) *Baseline survey on women’s access to agricultural land in Zambia*, accessed 23 May 2010, at http://www.landcoalition.org/pdf/zla_women_Feb05.pdf.
- ZLA (2005) ‘The Role of the Lands Tribunal in Handling Land Disputes in General and Traditional Land in Particular’, Lusaka: ZLA.
- ZLA (2007) ‘Traditional Leaders Contribution to the Zambia Land Alliance’, Civil Society National Consultative Meeting on Land Policy, 21-22 August, in Cresta Golf View Hotel, Lusaka, accessed 8 May 2010, at http://zla.websitedesign.co.zm/media/zla_tradleaderscommentsdpl.pdf.
- ZLA (2008) *Land Policy Options for Development and Poverty Reduction: Civil Society Views for Pro-poor Land Policies and Laws in Zambia*, Lusaka: ZLA.