



Zambia's New Customary Tenure Relations and Implications for Women and Policy

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New customary tenure relations that transcend the dualism between statutory and idealised customary systems as officially reflected in land policies are emerging in Zambia. What is driving this process? What are the new features? Who are the winners and the losers? What are the wider benefits and challenges that can inform policy? These questions are usually answered in broad-brush strokes from a [gender-blind perspective](#) drawing from the [evolutionary theory of land rights](#) whose central tenet is that under pressure land rights evolve towards rising individualisation which will lead to titling and all the benefits associated with it. In January 2021, we tried to get deeper insights through an empirical study of Nyimba district, with a focus on women living on customary land, who are usually socially excluded.

It was evident from the Nyimba study that multiple pressures from above and from below leading to a high rise in demand for customary land are contributing to changes in tenure relations. First, was the growing population from 70,299 (35,545 females and 34,754 males) in 2000 to 102,834 (52,098 females and 50,736 males) in 2020. Second, was the expansion of the urbanisation space, which is leading to a rising demand in land for housing. This is because the local authority had to acquire customary land and convert it to state land for urbanisation. [Zambia's Lands Act \(1995\)](#) allows for the conversion of customary tenure to state leasehold tenure. In 2000, there were only 1,119 people living in the urban zone in Nyimba and the number increased to 16,276 in 2020. Consequently, there was a housing backlog of 5,636 which was projected to increase to 14,617 in a decade. The local authority had already zoned 3,000 residential parcels on acquired customary land. The major player in actualising 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. Third, was the conversion of customary land to game ranches to attract tourists for game viewing, trophy hunting, photos, etc. We recorded seven game ranches. However, as a respondent observed, "the district will continue to record an increase in the number of game ranch prospectors, pushing more pressure on human livelihood and demand for land". Fourth, was the threat of dispossession for private mining accumulation. Approximately 50 mining prospectors had obtained prospecting licences for mineral explorations since 2012. Fifth, was the continued marginalisation of women in ownership of customary land and their eviction in the event of family disputes, divorce or death of a spouse, leading to increased conflict.

Civil society organisations (CSOs), in particular the Zambia Land Alliance (ZLA) and Western donor agencies responded to these pressures through introducing a voluntary programme to register customary land rights through the customary land-holding certificate (CLHC). The

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CLHC was not in the statutory law but it allowed for surveying of boundaries, documentation and registration of customary land with the Chief. The process of acquiring the certificate in Nyimba was as follows:

- a. An individual land rights holder voluntarily gets a CLHC application form from the Chief or his designates at a cost of K50/USD2.75.
- b. 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.
- c. Where there are no disputes, the village head and the LAC consult neighbours to verify the boundaries. The neighbours have to approve, in order for the process to proceed.
- d. Land sizes are estimated with the help of para-surveyors, when available.
- e. Once the neighbours have verified, the Chief will grant authorisation.
- f. The applicant then pays the fees for the CLHC, which differ according to the land size as tabulated below.
- g. The CLHC will be recorded on the computer stored at the Chief’s palace.

Table 1: Cost of acquiring 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

The question that follows is, who are the winners and who are the losers? A significant number of women could now register customary land in their own names. According to Simbeye, the ZLA Nyimba district coordinator, “From January 2019 to January 2021, 3,500 people had acquired certificates. Out of these, 1,700 are women”. This translates to 48.6%, which is a significant change in a patriarchal society where, according to Chief Nduka, who is in charge of Nyimba, women were “considered as part of the field”. However, the majority of the women who acquired land were married. For example, in Kaliwe ward, 100% of the women who had CLHCs were married. The married women wanted freedom from patriarchy and to avoid eviction in the case of 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, elaborated: “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 other cases, married women looked for separate cropping fields and registered them in their own

names, as they accused men of “personalising family property”. Widows and divorcees with harsh experiences took advantage of the process. One of the widows said, “when my husband died, family members grabbed the farm from me. I looked for a new field and bought a certificate. Now if I marry again, I cannot be chased because the certificate is in my name”. We asked her whether patriarchal practices would not trump her land rights? She was confident to say that, “the certificate has more power than culture”. Some women no longer feared patriarchal backlash because they received civic education on gender equality from CSOs. In addition, Chief Ndake was committed to the promotion of women’s rights and he had a full-time secretariat stationed at the palace that dealt swiftly with gender-based violence (GBV). We are inclined to share [Jocelyn Alexander](#)’s assertion that chiefs, even historically, have never been a homogeneous lot. Perhaps not all chiefs are “decentralised despots” as [Mahmood Mamdani](#) might want us to believe.

However, not all married women benefitted, as this depended on the degree of patriarchy in families. The listing of one person as the landholder on the certificate negatively affected some married women who still lived under strong patriarchal families. In some of these cases, the husband would simply put someone else’s name, preferably a son, brother or uncle, as the next-of-kin on the CLHC. This disadvantaged the women in the case of divorce or death of the husband. Nevertheless, single women without children were the lowest category of beneficiary on the certificate because the society largely considers them as having user rights within the family and in extreme cases as ‘part of family property’. Single women could apply for the CLHC but they had to get consent from the family.

As Rebecca articulated:

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.

Despite the marital status, some vulnerable and poor women with inadequate access to information knew little about the process and in many cases 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 in female-headed households](#).

Despite the changes in tenure relations, the majority of women still gained access to land through social and kinship ties. In many cases 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 that covered common resources where they collectively accessed natural resources such as firewood, medicinal plants and wood for charcoal, grass for thatching their houses, water sources and grazing lands 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. On the other hand, customs were not static, as we encountered fewer cases of widows without the CLHC being evicted by family members. However, one cannot over-romanticise social relations, as gendered power relations and patriarchy remained real, to some extent. Within this context, where the documented and undocumented systems co-existed, we now explore wider benefits and challenges.

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

For those women who acquired the CLHC, was it a one-generation benefit? It seemed that women could bequeath land by stating the next-of-kin on the CLHC – most women preferred to register their daughters and sisters as their next of kin. They believed that the girl child was more responsible than the boy child, in that the latter was likely to exclude other children after being married. Security of tenure for married women with certificates in the event of the death of the husband was also said to have increased, as certification encouraged inheritance by the spouse in line with ‘modern’ laws. Even when divorced, women who had the CLHC in their names, felt that they could go to court and win their cases. There is a test case in Zambia where a married woman who had the CLHC registered in her name won the right, at the magistrate’s court, to continue owning the land after she had a dispute with her husband. However, it is important to note that ownership based on the certificate, does not always transform the power relations over who controls the land. As Ivanda Ndlhovu 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.

Most respondents acknowledged that conflicts over boundaries had reduced after the introduction of the CLHC. The Chief’s palace used to be overwhelmed with cases over boundary disputes, especially during the rainy season, with 70% of the cases being reported by women. Mary Banda explained:

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, in some cases, documentation did not prevent contestation by those with prior claims based on ancestral claims, kinship and in cases, of returnees. Some returnees made claims to land they used before migration, though someone had registered it under the CLHC and this generated local conflict. Another dimension we observed, as articulated by Ndhlovu, was that,

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.”

There was a strong belief from some respondents that land belonged to current and future family members; hence, it could not be registered in an individual’s name. So, while conflicts had reduced in Nyimba, the future remained uncertain.

On the other hand, the CLHC catalysed the growth of land sales, especially near the urban areas and the Great East Road. Some elites – mainly men – acquired the CLHC in order to sell the land at a higher price. A respondent highlighted the gendered dimension to the market: “As

women, we cannot sell the land, we care about the family and the children”. Chief Ndake explained the new phenomenon. He said,

... 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, 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.

Nevertheless, there were social mechanisms to reduce losses, from those who bought and sold the land. Chief Ndake explained that, “on humanitarian grounds, we cannot repossess the land; we give a penalty to the buyer and seller”. The Chief complained that villagers were getting into clandestine deals with village heads, selling and buying land. Some respondents confessed that they sell the land, even though it is illegal. Phiri confirmed that, “there are a lot of people looking for land. We do not just give it to them for free. We know that is not allowed, but we sell the land”. We also recorded a number of land rentals in the area, by residents and outsiders with monetised transactions. Land prices in the area were increasing and making land unaffordable to the poor.

Who was buying and renting the land? The first group of buyers included young men with kinship rights in the area, but who were looking for a field of their own to start a family amidst rising demand for land and limited access through traditional social relations. This was prevalent because the median age for the district was 16 years. A second group consisted of mostly migrants, that is, those who were flocking to settle in Nyimba because of urbanisation. As [Colin and Woodhouse](#) have argued, such migrants, in the absence of any customary land rights, usually resort to informal land markets to buy or rent land. The third were a group of returnees, that is, those who returned home after years of seeking greener pastures elsewhere. The fourth group comprised of workers formally employed in the new sectors of the urban economy who used their salaries to buy or rent land. This trend was not new but it had intensified and the CLHC gave people an impression of officialdom to the land transactions. It also provided a safer option to remedy, in the event of a dispute.

Now we turn to one of the prominent arguments by [proponents of formalisation, that it increases agricultural productivity and investments](#). Based on our data, most households indicated that there was no change in terms of production activities, yields and investments directly related to the acquisition of the CLHC. We found no evidence of the CLHC being used to apply for loans from the banks, although some beneficiaries had plans to do so. However, given that these were low-income households living below the poverty datum line, the CLHC was not likely to be a sufficient condition. A few claimed that their production had increased because they could now cultivate in what were once contested areas. Otherwise, the dominant narrative was that the biggest benefit of certification was security of tenure and that production could increase in the context of state support.

As Margret Mwanza, a CLHC holder, explained:

The certificate will only help me to provide security from conflicts. 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.

Rather, we observed that the CLHC is leading to unintended increased local inequalities. In some cases where there was an increase in production, it was not because of the certificate per

se, but because those with the certificate were getting preferential farming support. The ZLA district coordinator clearly enunciated that,

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

The government Department of Water in Nyimba made it clear to us that no one could apply for the drilling of a borehole on their farm without proof of ownership and that the CLHC had become handy. Some agricultural officers tasked with distributing inputs under the state's Farm Input Subsidy Program (FISP) were also said to be asking for the CLHC as proof of land ownership in order to allocate inputs. This is potentially leading to institutionalised [processes of exclusion, deepening social differentiation and local discontent](#).

The way in which the CLHC was being administered also partly led to the erosion of traditional and patriarchal norms of governance dominated by the Chief and appointed village heads. Emerging in this environment, is a hybrid of traditional leaders and the LAC. This situation was loathed by most village heads who saw this as a direct threat to their power and control over land. However, the Chief preferred this hybrid model. He believed that the LAC's broadened decision-making over land, was more participatory and reduced opportunities for corruption by village heads and provided space for women to participate. When we visited the Chief's palace, we found women actively participating in the LAC and drowning the voices of men. Another new feature was that the traditional courts were increasingly using the CLHC in adjudicating land disputes. On the other hand, the computerised documentation of the CLHC was introducing setting new systems of land administration. This required a new set of paid technocrats. However, at the time of our visit to the palace, the person who managed the data system was not at work due to financial problems, the para-surveys who initially helped with estimating boundaries were no longer at work and the para-legals who helped with the drafting of the CLHC had left. The Chief complained of high costs of maintaining the local registry without the help of the ZLA, donors and the government. The locally planned solution was to increase the cost of acquiring the certificate, therefore further excluding the poor. It was evident that the modern computerised registration system with its recurrent costs of maintaining and updating the registry was not sustainable in the absence of financial support from the ZLA, donors or the government.

What then is the way forward? There were different views from different people with different interests as elaborated next.

- a) The majority of women land rights holders with or without the CLHC preferred to live under customary, compared to statutory tenure. [This contradicts some African feminist lawyers advocating for individual titling as a solution](#). The major reason was that customary land was cheaper, as they did not have to pay rates and that it supported a diverse range of land-based livelihoods. The Chief and village heads also did not want the conversion of customary tenure to state tenure to retain authority and power over land. There was therefore an unusual alliance between women and traditional leaders.
- b) CSOs like the ZLA preferred statutory recognition of the CLHC in ways that would make it compulsory and uniform throughout Zambia. The problem is how to codify nested and multiple competing claims to land without risking simplification of tenure systems. In addition, while such an intervention might protect some women, it will exclude others and also lead to legibility of customary land to the market.

- c) There were contradictions within the state. Some government officials saw the CLHC as a stepping-stone towards fully-fledged titling. This is in line with the World Bank's view that supporting local processes to graduate towards titling is less costly and generates minimum conflict. On the other hand, others advocated for the abandonment of the CLHC and adoption of a full titling programme, characterised by the conversion of customary land to state leasehold tenure, as being more secure for women.

We hope that by providing empirics from the ground, as we have observed them so far, we have enriched ongoing debate in Zambia and Africa on whether or how formalisation can secure land rights for women living on customary land.

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