

LAND TENURE in ZAMBIA

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Abstract

Land registration and cadastral systems exist in great variety. This paper describes the rich history of Zambian land tenure systems and discusses the present land tenure system. Zambia has a dual land tenure system: customary tenure and formal title registration. In the customary system the chiefs regulate the allocation of the land. They rule with the consent of their people. This system is considered insecure according to western standards but works for the indigenous people. The copper industry made the country wealthy and the formal land registration worked. The copper market collapsed and as a result the formal land tenure system failed due to complex procedures and a lack of competent personnel. The defects need to be fixed in order to benefit from the formal land tenure system.

Introduction

The Republic of Zambia, known as Northern Rhodesia prior to 1964, is located in the middle of Southern Africa. Zambia's area is 752,610 square kilometers, which is slightly larger than the state of Texas. The country has 9.5 million inhabitants, of which 2 million are living in the capital Lusaka. English is the official language but around 70 indigenous languages are also spoken (Director of Central Intelligence, 1998).

Zambia is a sovereign democratic republic since achieving independence in 1964. In that year it started a multi-party system constitution. This system transformed into a "one" party participatory democracy in 1972 (Burdette, 1988, p66-70). In 1991, Zambia turned away from this socialist system to a market-oriented multi-party democracy. The people of Zambia elect their President once every five years. Zambia is one of the few countries in Africa with very little tribal animosity and the existence of more than 70 tribes has proved less of a political problem than in many other African states (Zambia National Tourist Board, 1999).

The legal system consists of British law, inherited from the colonial period but developed independently after 1964, and customary law. Local courts are the lowest judicial bodies in Zambia's legal hierarchy. Their jurisdiction pertains to civil disputes under customary law, including such issues as marital and property claims. Appeals lie with subordinate courts, from which they may be advanced to the high court, and then the Supreme Court. Local courts are supervised by a presiding justice, who in some courts sits with a number of court justices (Tranberg Hansen, 1996, p123).

Copper is the country's most important natural resource (Director of Central Intelligence, 1998). From the early fifties to the late seventies the copper industry flourished. The wealth that came with the expansion of copper made it possible to establish free (primary school) education for everyone, brought western technology and helped to found the University of Zambia in 1966. In the late seventies the expansion of the copper industry came to a halt and the economy never fully recovered. The nation's wealth is still largely dependent on returns from this single source.

Zambia receives help from the United Nations Development Program, the World Bank/ IDA, the European Union, World Health Organization (WHO), UNICEF, several bilateral donors and USAID. Those programs focus mainly on the promotion of business development, effective family planning, HIV/AIDS prevention and the mitigation of seasonal stresses of basic food supply (USAID, 1999). The land registration and cadastral sector does not currently obtain any support from these international donors.

The history of Zambia's land is a rich one. It has been influenced by chieftains, by British settlers during the colonial period, the creation of a new nation from 1930 until 1964 and the independence of Zambia in 1964. Over the years changes in governments, political, or cultural systems led to changes or modifications in land administration (Mulolwa, 1998). In the context of

a politically stable country, with a legal system still based on British law, the past and present land tenure systems are described and discussed.

History of Land

In pre-colonial society, people were linked to land through their membership in groups. The right to claim land came with citizenship in a village; a membership could be given, and presumably denied, by a headman (Bates, 1976, p255). Group standing meant access to land and consequently villagers' concern was social relationships rather than property rights (Bates, 1976). Links to persons through whom land was acquired and by whom it could be used were crucial, not rights to land as such (Chanock, 1985, p46). As control over land became an important source of wealth, it became the subject of specific rights. People began to resort over control, sale, lease and boundary disputes. Natives asserted individual ownership rights in land (Chanock, 1985, p231).

British colonists brought the western concept of registration of individual property rights to Zambia. In 1911 the King of the United Kingdom gave power to administer the country to the British South African Company (BSA Co.), a company that was exploring for minerals. BSA Co. believed that the declaration of a protectorate and a granting of land concessions were sufficient sources of title. The company was empowered to apportion land to natives for their occupation. To the settlers, land was given on freehold or leasehold, and such holdings were registered. However, natives were not allowed to obtain title. This is attributed to the strong belief that under African traditions individuals did not own land (Mvunga, 1980).

In 1924 the British Colonial Authority formally took over the administration. The introduction of *Crown land* and *Native Reserves* by Council-in-Order in 1928 cleared the uncertainty about which land was in the Crown. Crown Land was for the occupation of the white settlers only. British and statutory law applied to those areas. The Governor of Northern Rhodesia granted freeholds or leaseholds in this land. Leaseholds were granted for 99 years and in agricultural lands for 999 years.

The Native Reserves were designated for the exclusive use of Africans. Customary law applied to those areas. Non-natives were allowed to hold land in reserves for not more than five years.

In 1947 a new term of land was implemented in the law: *Trust Land*. This land was carved out of the Crown land and meant for the occupation of indigenous people. The difference between Trust Land and Native Reserves is that the duration of a non-native interest was 99 years in Trust Land. In Trust Land non-natives could be granted land if this was seen to be in the interest of both races. Alienation of land in Reserves and Trust Land required the consent of the native authority (Mvunga, 1980).

The colonial government ensured that the most valuable land (both farming and minerals) was made available to settler farmers, and although a large proportion of these settlers left when Zambia gained its independence in 1964, most of the best farm land remained in the hands of the whites (Bingham, 1993).

Until 1970 the western province of Barotseland (see figure 1) had a special status. It was the exclusive domain of the Lozi king and his people. The BSA Co. overestimated the power of the king in the beginning of the colonial period. They thought that the grant of land concession from the Lozi king was a sufficient source of title. The 1926 Native Reserves Commission decided that this was a case of *Nemo dat quod non habet* (no one can give away what one does not have). In 1970, however, the Amendment to the constitution of Zambia allowed uniformity in the land tenure system. The Lozi area was put formally on par with Reserves and Trust land elsewhere in the country (Mvunga, 1980, p38).

The 1972 socialist government changed in 1975 the land policy radically in the Land (Conversion of Titles) Act. The Act vested, among other provisions, (1) all land in Zambia in the President, (2) converted freehold into statutory leasehold for a term of years not exceeding 100 years, (3) nationalized vacant land and undeveloped plots, and (4) forbade the subdivision and sublease of land without the President's consent. Private ownership of land ceased to exist and all land was declared to have no value. Since all land had no value, it ceased to be a saleable and mortgageable commodity. Real estate agents were therefore ordered to close down (Bingham, 1993). Resentment of land ownership was further expressed by the Land (Conversion of Titles) Amendment Act 1985, which prohibited non-Zambians from acquiring land without the written

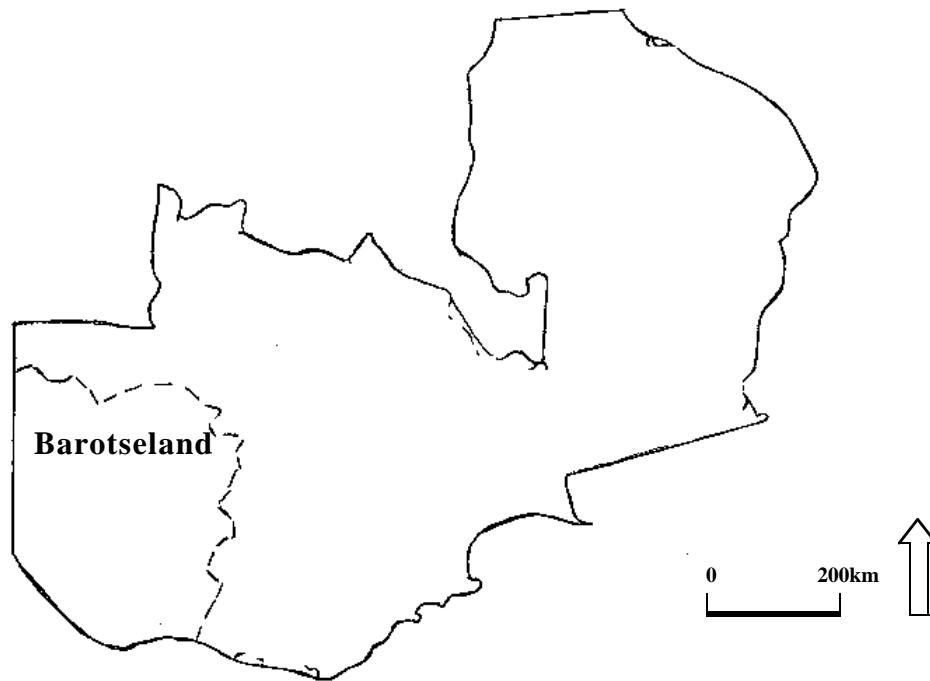


Figure 1: Map of Zambia indicating Barotseland

permission of the President. It is not surprising that Zambia was unable to attract foreign investors in agriculture (Bingham, 1993).

The in 1991 established market-oriented government saw the need for land tenure reform to increase private sector development, and generate private and foreign investment. This led to the passage of the Lands Act 1995. The Lands Act 1995 repealed the Land (Conversion of Titles) Act of 1975, the Zambia (State lands and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964 and other previous land laws. The Act is the base of the current land tenure system.

Land Tenure in 1999

The establishment of the Lands Act, 1995 did not change the land tenure system significantly. All land of Zambia is still vested in the President (Lands Act, 1995 Part II section 3.1) and land in a customary area, held under customary tenure before the commencement of the Lands Act 1995, continues to be so held and recognized (Lands Act, 1995, Part II section 7).

The Lands Act, 1995 established a Land Development Fund and introduced the Lands Tribunal. The Tribunal is on the same level as the High court and intended to settle all land-related cases. All cases, including conflicts in customary areas, involving land are supposed to be handled by the Lands Tribunal. The fund is meant to encourage land development through provision of funds for services in newly opened up areas (Mulolwa, 1998). Though all land is vested in the President, the actual power of control is delegated to the Commissioner of Lands (Mulolwa, 1998).

The Zambian land tenure system remains to consist of two systems: customary rights applying to the old Reserve and Trust land, now referred to as customary land, and statutory tenure applying to State (was Crown) land. Because of the significant differences between them, customary tenure and statutory tenure are described and discussed separately.

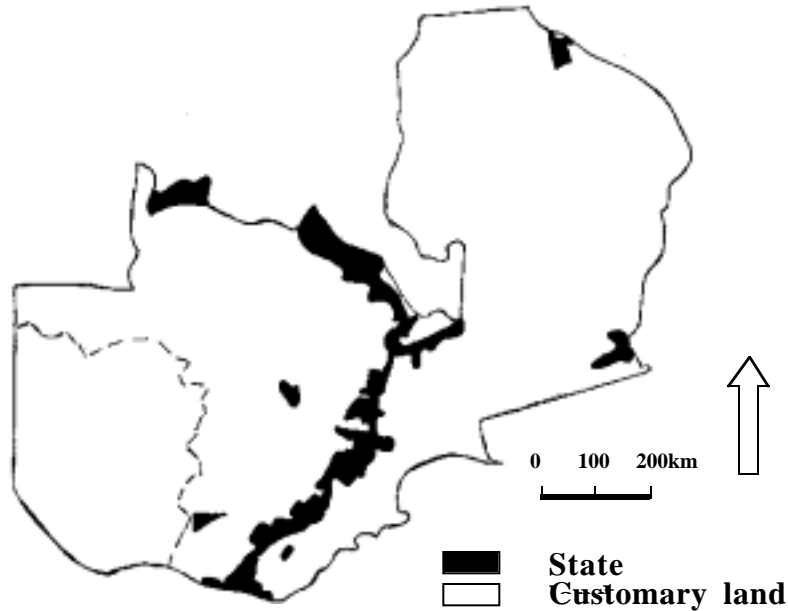


Figure 2: Map of Zambia showing State land and Customary land

Map of Zambia showing Trust Land and Crown Land and Map of Zambia showing Native Reserves are both within Mvunga 1980.

Customary tenure

Customary tenure covers 93% of the Zambian area (Angus-Leppan, 1994, p294). The recognition of customary tenure does not bring about the registration of ownership rights, but only the protection of use and occupancy rights. Customary land is controlled by the chiefs and their headmen but act with the consent of their people.

One key aspect of traditional tenure is free access to land by all members of a community. In customary areas in Zambia individual ownership, concurrent interests, and communal interests are recognized. Individual ownership means that the landholder or occupant has more rights and interests in the land than any other person. The individual owns the land for as long as he wishes. Concurrent interests occur where persons, other than the landholder, can go onto someone's land and use it for their own purposes. Communal interests involve the use of certain tracts of land, which are not individually owned.

The role of the chief in most of Zambia is as regulator of the acquisition and use of land but there are important variations in the 73 tribes between the distribution of the "interests of control" and "interests of benefit". Acquisition in land is possible through the following ways: clearing of virgin bush, as a gift, sale of (improvements on the) land, transfer of land in exchange for goods, transfer of land in exchange of services and marriage (Mvunga, 1982, pp. 33-41). A stranger to the area needs the chief's permission to settle in the area before acquiring a piece of land. Similarly a chief can prohibit an individual from cultivating in a grazing area (Mulolwa, 1999). The President of Zambia, however, may alienate any land in the customary area if he takes the local customary law on land tenure into consideration and if he consults the chief and the local authority in the area in which the land to be alienated is situated (Lands Act 1995 Part II section 3.4a and b). The President can thus over-rule the decision of the chief.

Conflicts of interests in land do not have a formal procedure. If a conflict arises over land, it will generally be resolved by a village chief with the help of a group of elders. If this fails recourse is then to the Lands Tribunal (Mulolwa, 1999). However, land disputes between customary owners are quite rare.

The security of these rights might be based on the state of mind of the chief, or a concrete fact. The chiefs rely on village heads. Each village has a sub-chief or a village headman. The

villages are normally small and the villagers know who has which rights (Mulolwa, 1999). The customary system has defects in the security of rights. When the chief dies or changes his opinion, there is always a possibility that an unwanted person may be evicted. But, as noted before, the chief rules with the consent of his or her people. Incidentally, the chief provides a letter as proof of ownership (Roth, 1995, p161). A United Nations Economic Survey of Zambia in 1964 (cited in Mvunga, 1982, p17) observed: "The security of tenure provided under tribal customary laws is almost equivalent to the security provided under freehold. Any individual who establishes residence in a village can acquire customary rights over the land, although nobody can lay a claim to land over which another individual has established rights. The rights are permanent unless they are extinguished by abandonment or death." Others (Eddington, 1993, p48, Roth, 1994, p13, Roth, 1995, p159, and Mulolwa, 1999) confirm more recently in similar wording the existence of secure property rights land in the customary tenure system which allows access to formal credit, facilitated by the State (Roth, 1995, p170). (Un)Fortunately the informal form of security of rights does not satisfy western companies enough to invest in the land.

It seems inevitable that customary rights will eventually be replaced by statutory control of all private land. Roth (1995, p 29) mentions that ties between the urban population and the chiefs have weakened considerably with time. The colonization and State nationalization of land have undermined the chiefs' role in the customary tenure system. The experiences in Zambia, however, do not support the theory that titling brings better care of the land. More prosperous farmers in customary areas may fence their properties, and even go to the trouble of obtaining title, with the objective not to restrict their own activities, but to exclude their neighbors' cattle (Bingham, 1993).

The transformation of customary rights into a leasehold is in Zambia a lengthy and difficult process, requiring a cadastral survey and approval of both the local authorities and the President (Bingham, 1993). After transformation it is uncertain whether the leaseholds on customary land remain subject to local customs and traditions. This also seems to be one of the reasons why some traditional rulers are opposed to the Lands Act, 1995 (Mulolwa, 1998).

Statutory tenure

The formal registration of land ownership is arranged in the Lands and Registry (Amendment) Act 1994. The Act applies only to land known as State land, about 7% of the total area of Zambia (Angus-Leppan, 1994, p294). The formal land registration system may be referred to as 'An improved registration of deeds' (Mulolwa, 1999). Once the President has given his consent to an application of ownership of land, a certificate of title, which is conclusive evidence of title (Mulolwa, 1998) is handed over. Registration does not cure defects in documents but the registered proprietor of a certificate of title is protected against ejection, or adverse possession.

"Every document purporting to grant, convey or transfer land, or any interest in land, or to be a lease or an agreement for lease or permit of occupation for a longer term than one year, or to create any charge upon land, whether by mortgage or otherwise, must be registered" (Lands and Registry (Amendment) Act 1994). Three types of registers are kept: the lands register, the common leasehold register and the miscellaneous register. The lands register contains documents relating to land other than customary land. The common leasehold register registers documents relating to common leasehold schemes. Any other document is registered in the miscellaneous register. The registration may be searched and examined by anyone and certified copies may be obtained if required upon payment of a prescribed fee. All leases are available in digital textual documents and maps of parts of Lusaka are available in digital format and are linked to the digital textual documents (Mulolwa, 1999).

The President may alienate State land to any Zambian and under detailed described circumstances to non-Zambians (see Lands Act, 1995 Part II section 3 (2) and section 3 (3)). It is illegal to acquire or transfer State land ownership without the consent President (Lands Act, 1995, Part II section 5 (1)). In order to obtain the President's consent one has to apply for an initial grant for acquiring or transferring State land. An applicant must pay consideration in money and ground rent for land alienated to him. If someone wants to transform his or her customary rights into a leasehold, he or she has first to obtain the chief's permission before applying for a leasehold grant with the President.

Anyone applying for a leasehold grant for land is required to make a plan of the area applied for. The plan has to be approved by the municipality. They determine whether the land is still open and unoccupied. Finally, the Minister of Lands gives the land a number, and then the applicant hires a licensed surveyor to survey the land. If the head of the Survey Department, the Surveyor General, approves the survey of the land then the lease for the land is given for 99 years. It is also possible to obtain a provisional lease of 14 years from the Ministry with only a sketch plan of the property. The provisional lease can be changed into a 99 years lease if the sketch plan is surveyed. This is only possible when one has been on the parcel for at least 6 years (Mulolwa, 1999).

Formal land registration is broadly recognized for its advantages over customary systems. However, several numbers indicate that formal land registration in Zambia is not functioning well. Although the demand for land has been on the increase (Mulolwa, 1998), the volume of formal land transactions is very small: 50 transactions per month for the whole country (Mulolwa, 1998). In 1991 the backlog of cadastral surveys was between 5 and 8 years (Shreeve and Moyo, 1991) and in 1993 the backlog of titles was 30,000 titles (Roth, 1994, p5). In 1998 these numbers have not been dropped (Mulolwa, 1998). The average time to process an application was 2-3 years in 1993 and about 3 months in 1998 (Mulolwa, 1998). Mvunga noted back in 1982 that the restricting factor for land transaction has been the unavailability of surveying facilities (Mvunga, 1982, p67).

Roth gave a more comprehensive explanation for the numbers mentioned above: "With the rigorous survey standards required for 99-year leaseholds, the many steps and procedures required by the leasehold process, the different levels of national and local bureaucracy involved, and one central registry to process applications, it is clearly understandable why there are long delays in processing leasehold applications" (Roth, 1995, p21). This also explains why many Zambians ignore the formal procedures and occupy and use land illegally (Angus-Leppan, 1994, p295). Roth's critics are still true for the present situation. Special concern is here given to the biggest bottleneck in the land registration process: the required surveying of land by a licensed surveyor.

One needs a diagram to obtain a lease of 99 years for a parcel. A diagram can be defined as a document containing geometrical, numerical and verbal representation of the parcel of land, the boundaries of which have been surveyed by a *licensed* surveyor and signed by him (Mponda, 1987, p5). If the head of the Survey Department, the Surveyor General, approves the survey of the land then the lease for the land is given for 99 years. This system worked well when the copper industry flourished. Because of money that came to Zambia, and the Survey Department, the country saw during this period a good number of British and South African land surveyors (Mponda, 1987). But in the late seventies the expansion of the copper industry came to a halt and the foreign surveyors left. One can imagine that the current 15 licensed surveyors for a country like Zambia not sufficient is. Besides the small amount of licensed surveyors, the surveyors have to survey (very accurate) fixed boundaries and are limited in the use of modern survey equipment. A theodolite and EDM (electromagnetic distance measuring) are used for the survey.

In the eighties selected cadastral projects used photogrammetric methods in rural areas. These methods appeared to have been cost-effective (Eddington, 1993, p76) but in fact were more expensive than traversing (Mponda, 1987, p 6) due to lack of funding from the Government of the Republic of Zambia (Eddington, 1993, p80). Although the Survey Department was very well equipped with photogrammetric instruments (Mponda, 1987) and potential existed to use photogrammetry in the future (Eddington, 1993, p76) photogrammetric methods have not been officially adopted for cadastral survey. Boersma (1998, p11), shows that photogrammetric methods are promising for the determination of cadastral boundaries in urban areas.

If the only restriction in the process is the number of land surveyors and the equipment they can use, why are there not more licenses provided and why is the old technology not replaced by modern techniques? The, in 1997 and 1998, vacant position of the Surveyor General (Mulolwa, 1999) is the most important explanation. The use of modern survey technology (photogrammetry, total stations and GPS) is only allowed after the express permission of the Surveyor General (Land Survey Act). The control of licensing is part of the Ministry of Lands; in the Surveying Control Board. This board, headed by the Surveyor General, meets irregularly (if at all) without providing new licenses.

Other reasons for the existence of the backlogs in cadastral surveys are: protectionistic attitudes of the licensed surveyors, the rigorous nature of checking in the Survey Department of the cadastral surveys and dense vegetation and other natural barriers in some parts of the country.

In a way to circumvent the requirement of a diagram to obtain a lease, the State merely grants an interest of fourteen years in either type of land until a survey in relation to a parcel of land has been carried out. A lease of fourteen years only needs a sketch plan. Because of the inaccuracy in the sketch plan and the backlog of cadastral surveys the occurrence of boundary disputes is very likely to occur. Further, this lease gives both the applicant and the government every fourteen years unnecessarily extra work.

The problems in surveying are one explanation of the barely functioning system, the location of most ministries is another. An applicant for an initial grant or transferring land has to visit different ministries to obtain necessary documents or approvals. The ministries and the Lands Tribunal are sited in Lusaka predominantly. The Ministry of Lands established centers in the provincial offices of the departments of Lands and Survey in an attempt to decentralize most of its functions. However, due to the size of the country, this level of decentralization is not sufficient to allow for effective access to most people. Without decentralization of the land registration offices, people do not understand the process and where to go to apply for a grant. If they do know, they'll travel for days to get one step further in the process. This is not stimulating the use of formal land registration. The World Bank, USAID and the Land Tenure Center in Wisconsin recommended in 1993 further decentralization of the Ministry of Lands (Roth, 1994, p3). This is impossible due to lack of capacity and limited resources.

Besides the problems in the land transfer process, other problems related to land exist. Cadastral maps do not cover the whole country and are not regularly updated as plans or diagrams are approved and thus are useless for most purposes. Also the national geodetic control points do not cover the whole country. Most of the geodetic points in rural areas are not connected, so local systems are used. The Survey Services Section of the Survey Department responsible for the maintenance of the control points has been inactive for the past several years due to lack of personnel and funding (Mulolwa, 1999).

More problems are in the urban areas where the government releases land not fast enough. Due to the scarcity in land in Lusaka and other cities squatters arise because people are taking law into their own hands. This is an unplanned and unwanted development. However, many informal (illegal/squatter) compounds have been threatened by planning authorities with demolition, but have survived due to political pressure (Mulolwa, 1999).

Finally, the high rate of inflation in Zambia influences the land market and the number of land transfers. The inflation rate declined from 100% in 1994 (Angus-Leppan, 1994, p295) to 44% in 1996 (Director of Central Intelligence, 1998), to an estimated 20% in 1998 (Mulolwa, 1999), but as long as the inflation rate remains high, potential private investors are not likely to mortgage money.

The backlog in cadastral surveys can be overcome by hiring foreign surveyors and to use the pool of potential licensed surveyors of the Survey Department of the University of Zambia (B.Sc.). However, the problems in surveying and formal and registration are more structural and cannot be overcome "in one night". Solutions are in the use of modern technology, the attraction of competent personnel (technicians and leaders), competent equipment and the simplification of the procedures on surveying and land registration. The land registration sector needs funding to meet all the solutions. In order to obtain funding, the land registration sector needs a voice in the political arena. With a strong lobby in parliament, the importance of formal land registration will be politically recognized and more money, if available, will flow into the land registration sector. Money provides opportunities to decrease the backlog of cadastral surveys and to evaluate the land registration process in terms of transparency and accessibility. This must lead to an up-to-date system with transparent procedures and equal access. Such a system will give the country the advantages of formal land registration.

Conclusion

While Europeans, the dominant influence, imposed their own conception of law in Zambia, the local usage did have substantial impact on some aspects of the final tenure system. Various categories of land were influenced by many factors hinging on economic and political interests. Changing governments all influenced the land policy in Zambia. The President (or more general the government) greatly affects the formal land registration and titling process and has the power to affect the customary area.

By revisiting the two land tenure systems in Zambia, it seems that only the traditional customary system, covering more than 90% of the total area, is stable and does not encounter the problems the western title system is confronted with. The need for a formal land tenure system with fixed boundaries surveyed by a licensed surveyor, accurate cadastral maps and ownership on paper, seems not present in the customary areas of Zambia.

The formal system worked to a certain degree when the country had an income. The copper market collapsed and as a result the title system did and both never recovered completely. Many problems in surveying and land registration occur and can be solved if the formal land tenure sector obtains more financial recognition from the President. It is surprising to notice that the land registration sector does not receive support from international donors. Sufficient financial input is required to build further on the achievements established over the years.

The Lands Act, 1995 provides the possibility to transfer customary rights into formal rights. People with customary rights are given the chance to enjoy the advantages of the formal rights. Since the formal system is not transparent and for most people not easy to access these chances are not taken. In fact, the need for formalization of land rights is not present in customary areas. The rights are secure for the local people and only foreign investors insist on formal security to bring "welfare" to customary Zambia.

If foreign interests are considered to be necessary for the welfare of the country, the land policy has to change. A land market, according to western standards, can only exist with equal access to the land in a non-discriminatory way, with the same security of rights for everyone. With equality and transparency comes stability. Foreign businesses will invest in a country, that is a beacon of growth and stability (USAID, 1999), made possible by a stable and secure formal land tenure system for the whole country.

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