



### Innovations for securing tenure rights on customary lands through traditional authorities: experiences from Chamuka Chiefdom, Zambia

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Land Governance in an Interconnected World

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### Abstract

Ensuring secure access to land is a key element of protecting the human rights of rural populations that depend on agriculture for their livelihoods. Insecurity of land tenure and property rights is a precipitating, if not primary, cause of contemporary global poverty and inequality. In most developing nations, women's rights to land and property are very limited and often depend on their marital status.

This paper is an attempt to show how best to recognize and protect the land rights of the rural poor, including women, living on customary lands. It is founded upon the current practice by many governments in Africa that are passing laws that elevate existing customary land claims of the rural populations into nations' formal legal frameworks thus making customary land rights equal in weight and validity to documented land claims. The paper describes the efficacy of the Social Tenure Domain Model, a pro-poor participatory land documentation tool which was successfully implemented in Chamuka Chiefdom, Zambia.

**Key Words:** Land Tenure, Innovations in land rights recognition, Customary land, Continuum of Land Rights





### BACKGROUND AND JUSTIFICATION

Over the past decade, there has been a hoard of well-publicized literature by the United Nations and the World Bank that the eradication of poverty and hunger, and the sustainable use of resources, depend in large measure on how indigenous people access land and other natural resources. The livelihoods of many, particularly the rural poor including women, are largely dependent on secure and adequate access to these resources. Weak land governance institutions are unable and often unwilling to tackle issues such as women's access to and control over land, which remains discriminatory throughout much of Africa. In most developing nations, women's rights to land and property are very limited and often depend on their marital status. Fewer women than men have command over the use of arable land; they have limited land use rights, and in some cases no control at all over production and management decisions. Given that land plays an important role in the livelihoods of the majority of people in developing countries, food security and poverty reduction cannot be achieved unless issues of access to land, security of tenure and the capacity to use land productively and in a sustainable manner are addressed.

Most of Zambia's rural landmass is managed by traditional authorities through an informal and undocumented land administration system, while the statutory system is largely absent in rural areas. Rural communities that depend on agriculture on the customary lands are threatened by increased demands for land from urban elite and foreign investors; the situation is aggravated by a lack of documentation on land rights in most customary areas. The issue of how best to increase the land tenure security of the poor and protect the land holdings of rural communities has been brought to the fore in Africa due to increasing land scarcity caused by population growth, environmental degradation, changing climate conditions, and violent conflict. This scarcity is being exacerbated by wealthy nations and private investors who are increasingly seeking to acquire large tracts of land in Africa for agro-industrial enterprises, forestry and mineral exploitation, among other uses.

Following the passage of the Lands Act 1995 and the repealing of 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 land laws, the government has been developing a new National Land policy with clear guidelines for land management and administration. After independence, there were fragmented policy pronouncements by different governments. At present, land administration is still fragmented between the chiefs, the Ministry of Lands and local governments. This not only creates challenges for land administration, but it also loses the country's much needed tax and non-tax revenues. The unregistered land





and lack of credible land records also stifles the growth of mortgage financing and collateral-based lending, which are key to financial sector growth.

Zambia has a dual land tenure system namely; leasehold or statutory tenure and customary tenure type with the latter said to be accounting for approximately 94% of all land (Brown 2005; Mudenda 2006; Chileshe and Shamaoma 2014). However, the situation has drastically changed since independence due to accelerated conversions from customary to statutory land. These figures have not been updated since the early 1970s and therefore fail to account for any title conversions from customary tenure to statutory tenure.

Customary land tenure is the least secure type of tenure because it is largely undocumented, i.e., there are no tenure documents which are issued to beneficiaries thus making inhabitants of customary land susceptible to forced displacements, and frequent land disputes among individual villagers, headpersons and even chiefs pertaining to boundaries. Statutory land is deemed by many local people and investors to be more secure than customary tenure (Veit, 2018). Women and girls suffer disproportionately from the short comings of customary land holdings due to the cultural and patriarchal nature of land administration in customary areas which has historically eroded women's rights to access, use and control land under customary land tenure. This threat is further compounded by the enactment of the 1995 Land Act that provides for the conversion of customary land to state land with private leasehold interests, which has seen at least ten per cent (10%) of customary land being converted to state land. This is mostly for investment purposes. The process of converting customary land into private leasehold involves recognizing customary rules/laws and obtaining the approval of the chief after which the government officially registers the leasehold tenure. The law however does not provide clarity on whether converted land remains customary land under the authority of traditional leaders. In practice, land once converted into private leaseholds is moved to the Land Commissioner registry and becomes State land. Stemming from this grim reality, it is of paramount importance that land governance is strengthened from the bottom-up, in order to secure tenure rights which gives impetus to the realization of human rights.

This paper describes the efficacy of the Social Tenure Domain Model, a pro-poor participatory land documentation tool developed by UN-Habitat through the Global Land Tool Network (GLTN) which was successfully implemented in Chamuka Chiefdom in partnership with People's Process on Housing and Poverty in Zambia and the Zambia Homeless and Poor People's Federation.



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### INTRODUCTION

The Social Tenure Domain Model (STDM) was piloted in Chamuka Chiefdom, Chisamba district in 2016, by People's Process on Housing and Poverty in Zambia and its grassroots alliance partner the Zambia Homeless and Poor People's Federation through the support of the Global Land Tools Network of the UN-Habitat. This undertaking is an off-shoot of another similar project in Mungule chiefdom, Chibombo District in the periphery of Lusaka which commenced in 2015 spearheaded by Huairou Commission and her local partners; People's Process on Housing and Poverty in Zambia, Zambia Homeless Poor Peoples Federation (PPHPZ/ZHPPF), and Katuba Women Association. Other partners included the Chieftainess Mungule, Mungule Ward Council, Village Headmen and Women and local community members.

The Land and GLTN Unit, located within the Urban Legislation, Land and Governance (ULLG) Branch of the UN-Habitat, has the mandate to develop, test and disseminate pro-poor and gender responsive approaches in regard to land, innovative residential tenures, affordable land management and/administration systems, and land related legal and regulatory/legal frameworks and tools. GLTN understands land as having a rich diversity and expands this understanding by embracing the extremities that exist between tenure arrangements. In this context, GLTN and partners promote the "continuum of land rights", a concept that makes it possible to recognize, record and administer a variety of appropriate and legitimate land tenure forms to achieve security of tenure for all (Du Plessis, Augustinus, Barry, et. al 2016).

The STDM tool is a pro-poor, gender responsive, participatory and affordable land information system for capturing person/s to land relationships cognizant of the continuum of land rights. The STDM tool and process complements the community enumeration process which allow grassroots communities to have a more substantial role in the administration of customary land in a respectful manner with their traditional authorities that include the chief, palace committees and the village headpersons. STDM supports all forms of land rights and claims; formal, intermediate and non-formal land tenure forms (Augustinus et. al. 2006).





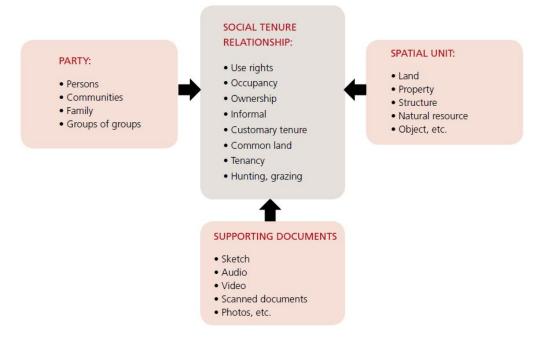


Figure 1: Schematic of the Social Tenure Domain Model

STDM is developed from an understanding that conventional global approach to land systems cannot meet the needs of the majority of people living with insecure tenure which have largely failed to supply information necessary for sustainable livelihoods both in cities and rural areas alike. Land rights, (access and use), for people living on customary lands are in most cases not integrated into a conventional land administration system. STDM therefore offers a different approach and ensures that 'realities" on the ground in terms of the tenure relationships are captured and recognized.

### Implementation of the STDM in Chamuka

The intervention in Chamuka Chiefdom aimed to implement the STDM to achieve the following:

i. Bring visibility to the capacity of rural women, working in partnership with traditional leaders to map customary land rights;





- ii. Map the tenure relations of both men and women to land, differentiating between the dimensions of who has access, use and control of land in order to nuance discussions about women's land rights and create an evidence base for the degree to which women are (dis)empowered;
- iii. Create an evidence base for the degree to which women are (dis)empowered vis-a-vis their land rights;
- iv. Strengthen the land rights of villagers living under customary land regimes by recording and recognizing their land rights through production of maps that show occupancy;
- v. Produce certificates of occupancy that can be validated by both traditional leaders and local authorities for the recognition of land rights for people living on customary lands.

### Methodological Approach

It is estimated that in most developing countries (and Zambia is no exception) that the national government and responsible line ministries and stakeholders fail to account for over 70 per cent of land which is usually not covered by any formal land registration and information systems. According to the World Bank 2017 Doing Business Report, Zambia ranks 145th in the world (out of 190) on "registering property" and only scores a 7.5 out of 30 on the "quality of land administration index". There is no electronic database for checking encumbrances (mortgages, liens, etc.), cadastral information, and maps of land plots in major cities are not computerized. The case for customary lands is even worse because it is more often considered as "informal" emanating from the long-standing conflicts between customary and statutory land administration systems.

The failure of responsible authorities in the Global South to have up to date land records for the citizenry often stems from their technical and financial incapability that is further compounded by their pursuit to maintain rigid and expensive standards for land administration. To narrow the huge gap between registered and not registered land, STDM provides a relatively inexpensive approach rooted in the efficacy of community driven approaches that ultimately strengthen land governance from the national right down to the grassroots level. STDM is a socio-technical innovation for enabling action and provides land administration professions and the government with a practical way to solve land administration and management problems by putting principles, policies and legislation into effect that in turn identify and solve some of the key blockages to the delivery of security of tenure for the poor and marginalized. In the case of Chamuka chiefdom, the following steps were taken which have made a significant impact in guaranteeing security of tenure among households in Bulemu Village.





### Step 1: Establishing rapport with Chamuka Palace

As alluded to earlier, traditional authorities have come from a long history of being undermined in land administration and yet they yield so much power and play an imperative role in national development as custodians of tradition and culture in Zambia. It therefore follows that our most essential entry point was to approach His Royal Highness Chief Chamuka and his Palace Committee to explain the importance of implementing STDM as a participatory land information tool capable of providing a digital database of all households in Bulemu village, the spatial extent of the village itself as well as the spatial extent of the land occupied by their subjects. Upon the request of Chief Chamuka -who had picked interest of the STDM tool and process while its implementation was ongoing in the neighbouring Mungule chiefdom-, the STDM steering committee organized a consultative workshop with five (5) other chiefs from the Lenje Establishment as well as officials from the Ministry of Lands and the district council to unbundle coherent messaging about the STDM tool and process, and most importantly, to develop the first ever customary certificate in the Chiefdom.

Bringing together the traditional authorities and government officials and local communities opened up progressive dialogue and legitimized the STDM process in Chamuka Chiefdom. It also provided a participatory platform for communities and traditional authorities to freely discuss land and related issues affecting the resident villagers. In these dialogues, it was collectively observed that there is a huge gap in customary land administration because of the level of undocumented land rights of inhabitants that makes them susceptible to displacement as well as prolonged boundary disputes which are often carried forward from one generation to the other. The Lenje chiefs subsequently signed a declaration of their commitment to safeguard the land rights of all their subjects through customary land certification that is a major product of the STDM process.





### STDM DECLARATION

We Chiefs of the Lenje Royal Establishment, have met today the 20th May 2016 at Ibis Gardens in Chibombo District to discuss customary land administration and securing land rights especially for women residing in our respective chiefdoms.

Having spent the whole day sharing ideas, thoughts and best practices, we as delegates affirm the following:

- 1) Securing land rights for our subjects through customary land certification
- To support the issuance of customary occupancy certificates in Mungule Chiefdom and later scale up STDM to other Lenje Chiefs.
- 3) To work in close collaboration with the Ministry of Lands and Natural Resources, Ministry of Chiefs and Traditional Affairs, as well as support NGOs such as People's Process on Housing and Poverty in Zambia, to undertake participatory mapping of chiefdom boundaries, village boundaries, and individual plot boundaries in a bid to eliminate boundary disputes and fostering peace, tranquility, and tenure security in the chiefdoms

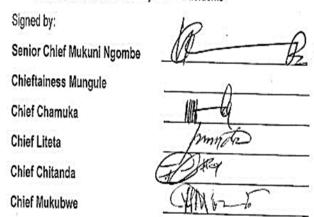


Figure 2: STDM Declaration signed by Chiefs of the Lenje Royal Establishment

### **Step 2: Community mobilization**

STDM is all about securing the land rights of people, and in our context, the epicenter of the intervention was to secure the land rights of the poor and marginalized grassroots communities. To this end, extensive community mobilizations were undertaken in order to enlighten the community on the STDM tool and to identify indigenous community volunteers who would participate in the data collection process. What is unique about the community mobilization process is that it created a safe space for traditional authorities (the chief, palace committee and headpersons) and their subjects to openly discuss the challenges they were





experiencing with regards to land. The salient challenges that were brought to the fore include contingent boundary disputes between villages; boundary disputes among neighboring subjects; and disinheritance and displacements among women (especially widows) and orphans. Through this safe haven for dialogue, it is particularly worth noting that women who are often shy in discussing land matters due to historical traditional practices were given an opportunity to voice out their concerns and be heard by the traditional authorities.

### Step 3: Training and data collection

As a result of the rigorous community mobilizations, 30 (12 women; 18 men) community volunteers were identified and trained on the STDM tool. The data collectors spent approximately three (3) days in a training session on STDM before going to the field. The training was typically divided into 3 categories namely:

- a) Questionnaire administration this is essentially a socio-economic survey to gather information that includes but not limited to the village history, population, availability and functionality of basic services, and access and ownership of land in the respective village.
- b) GPS and mapping community volunteers were trained in the use of handheld GPS's to collect spatial data such as village boundaries, land uses, and basic services. Prior to producing digitized maps, the community had to produce their own hand drawn maps that were then juxtaposed to the digitized maps so that the communities could have a clear visual sense of the digital manipulation of the GPS mapping processes.
- c) Data entry and analysis This involved the incorporation of data generated using participatory enumeration questionnaires and the maps coordinates gathered using the handheld GPS's, into the STDM software. A digital database was created from which reports on the social tenure relationship in village were produced.

A normal day for the data collectors would begin at 6:00 AM and end at 1:30 PM. In the field, the data collectors and mappers moved with an officer from PPHPZ and a leader of the federation of Zambia. Household data was collected from the household head available; either man or woman and the land was measured in the presence of the neighbours. Boundary measurements had to be agreed upon by all neighbouring parties. Disputes/ disagreements would be settled on the spot and in most occasions, this was reached amicably. The uniqueness of the data collection process in Chamuka is that it was driven by enthusiastic and indigenous community participants who were trainable and who carried out the data collection and analysis process in a very competent manner.







Photo 1: Trained community participants in Bulemu village

### **Step 4: Community validation**

Once the data had been collected and analyzed, feedback sessions were held with the communities and traditional authorities in order to validate the authenticity of the data. Where gaps were identified, the data collection team went back into the field to make corrections until all the stakeholders were in agreement with the final products.

The most outstanding issue that was experienced during the exercise in Bulemu village were the village boundary disputes among all the neighboring villages namely Kaputula, Shipunga, Kafungalubala and Musumali villages. For instance, there were deep-seated village boundary disputes with the headperson Bulemu, headperson Kaputula, headperson Kafungalubala, and headperson Shipunga. It therefore took an intensive consultative dialogue with guidance from the Chief and the Palace Committee to amicably resolve the boundary disputes with the affected headpersons and subjects. The STDM intervention in Bulemu





village subsequently became a tool for dispute resolution and reconciliation that has brought about peace and tranquility in this regard.

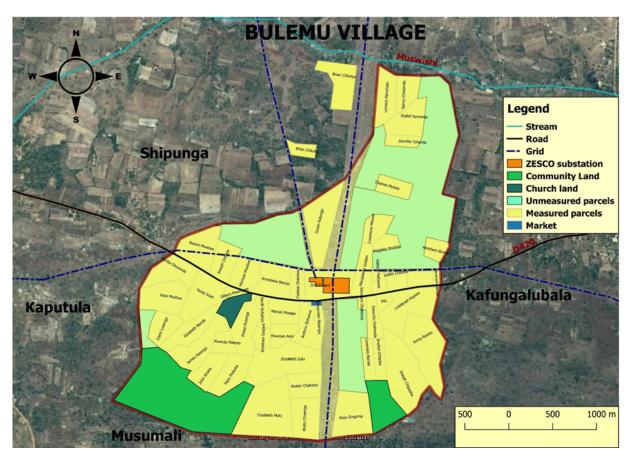


Figure 3: Bulemu village map produced by community volunteers

### **Step 5: Launch of Land Occupancy Certificates**

On 30th November 2016, Chief Chamuka inaugurated the issuance of 40, (17 women; 14 men; 7 jointly owned), certificates of customary land occupancy, the first of its kind not only in the chiefdom but also in Zambia using the STDM tool. The event was attended by dignitaries from the land sector in Zambia who included: the Permanent Secretary Ministry of Housing and Infrastructure Development; Chairperson of House of Chiefs; former Chisamba Member of Parliament and Headperson; Chisamba District Chairperson; Director Chiefs Affairs; Ministry of Chiefs and Traditional Affairs; Chisamba District Commissioner; and UN Habitat/GLTN technical officers. Community members from Bulemu Village also attended in large





numbers. The event was covered and aired by the national media, multiplying the traction effect of awareness for the STDM tool. During the event, the Chief stressed that the certificates will go a long way in helping to curb cases of land disputes, while at the same time being used to monitor land allocation by headmen. He also remarked that the whole process had aided in the auditing of land in the village, and that once it scaled up to cover the whole Chiefdom, it would provide base spatial and socioeconomic data for future infrastructural and services planning. As a way forward, the Chief appealed to the national government to come up with a new legislative framework that recognized customary land.

PPHPZ through the data collectors has geo-spatially enumerated 51 households in Shipunga, 84 households in Kaputula and 20 more households in Bulemu, (in addition to the 40 households enumerated in 2016 and were issued with certificates) who are awaiting the issuance of certificates. The area covered is as follows; Bulemu (520 ha), Shipunga (802ha) and Kaputula (1,134 ha).



Photo 2: H.R.H Chief Chamuka using demos to illustrate the issued certificates of land occupancy as well as the map generated using the STDM





The cost of acquiring the customary land certificate is USD 10. This amount as observed by His Royal Highness is affordable having been agreed upon by the locals themselves. The villagers pay this amount to the headman to cover transport charges and other logistical issues that might arise such as when the Chief Chamuka must travel to the village to settle boundary disagreements. Chief Chamuka lauds the STDM process and notes that if the community was to wait for land titling, it would take many years, most especially because Zambia has very few licensed surveyors to carry out such an exercise.

### **CONCLUSION**

The successful implementation of the STDM pilot project in Chamuka chiefdom provides a proof of concept on the efficacy of community driven initiatives in strengthening customary land governance. The case of STDM implementation in Bulemu provides a good example of communities having their de facto claim to land recognized and with this securing their future and that of their children. To demonstrate the efficacy of having well documented land rights, the Bulemu village subjects were able to preempt a potential forced land displacement from a prospecting Chinese firm that was exploring to set up a manganese processing plant in 2017. The community came together in solidarity and produced their village map and customary certificates to prove that they were the bona fide inhabitants of the land. The evidence base of the land in the village resulted in transparent negotiations between the Chinese firm, Chamuka Palace Committee, Headperson Bulemu and the subjects on a lucrative way forward to accommodate the economic development in the chiefdom. To this end, a few beneficiaries in the village were relocated based on a mutual understanding with a commensurate relocation package informed by a technical land valuation by independent firms.

According to villagers who benefited from this intervention, boundary disputes between villagers which were rampant before the STDM enumeration and mapping processes are now a thing of the past. As revealed in community interviews conducted in November 2017, STDM allowed for the settling of boundary disputes on the spot because the land owners were present during the exercise.

"We had a very problematic past. There was a lot of uncertainty but with this STDM process, it is clear on what is yours. I now know where my land begins and where it stops.", Albert Banda 15.11 2017.



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There is also a heightened level of perceived tenure security among the locals because of the deepened knowledge about land and land rights which has been cultivated in Chamuka villages especially those whose information has been captured using the STDM tool and processes. Communities feel secure and protected against arbitrary evictions or dispossession of land.

"My certificate bears my name and names of my children and grandchildren. My land is mine until I go to the grave. I have laminated my certificate; I do not want rats to eat it!" Ms. Judith Chilufi, 15.11. 2017



Photo 3: Beneficiaries of the certificates of land occupancy in Bulemu village

Zambia is currently implementing the National Land Titling Program (NLTP) that acknowledges the need for pro-poor approaches to reduce the cost of land registration in the wake of limited financial and human





resources. The government has also been discussing options for promoting the documentation of customary land allocations through a National Land Policy (which currently awaits final validation) and a subsequent Customary Land Administration Bill. Through the STDM process, policy makers in land governance should consider adopting the idea of grassroots community para-surveyors whom despite their limitations in educational advancement are for the most part literate, which enables them to grasp concepts and produce quality data. It therefore follows that there is a need for some level of flexibility in policies and practice to accommodate community para surveyors because the unfortunate reality is that the government will be handicapped financially and technically for registered surveyors in reaching scale under the NLTP.

As alluded to in the foregoing, customary land is the least secure and yet has a greater coverage than state land because of its historic and traditional informal documentation format that has made it susceptible to manipulation by affluent land barons and opportunistic traditional authorities that have fueled avoidable land disputes and forced displacements of grassroots communities especially the poor. It is therefore imperative that land rights for all people residing in customary areas are safeguarded for current and future generations and the STDM process provides a low cost, participatory and transparent mechanism for producing certificates of customary land occupancy. Being an open source geo-spatial tool, the STDM provides for the direct access of data by the Chief, the Palace Committee, the headmen and the local communities. There is no need to seek a land expert to configure the software whenever need arises. The tool and process has empowered the local community and has proven to be community friendly in terms of learning and skills transfer. The community can also update this information with ease. In recent community visits, many of the data collectors expressed how they had improved their computer skills while conducting STDM activities. They are also reported having acquired invaluable knowledgeable on field dynamics even to train other people in other villages beyond Chamuka.

Over and beyond producing customary certificates, the STDM has proved to be an essential tool in providing a platform for traditional authorities and their subjects to come together for the common good. The implementation of this tool in the chiefdom has triggered a behavioral change that has respectfully redefined gender roles and the relationships between the traditional authorities and their subjects with regards to land governance. From the Chamuka experience, women played a pivotal role in voicing out the inequitable land ownership and the disproportionate suffering of women in the chiefdom. As a result, Chief Chamuka openly declared and directed all headpersons in the chiefdom to deliberately issue land to women in their respective villages. To demonstrate the Chief's commitment towards women empowerment, close



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to 40 percent of the customary certificates were issued to women who acquired outright ownership of the land. With such a positive stance by the Chief, it is anticipated that more women will be empowered with land and more subjects will be issued with customary certificates.





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### **Figures**

Figure 1: Schematic of the Social Tenure Domain Model

Figure 2: STDM Declaration signed by Chiefs of the Lenje

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Figure 3: Bulemu village map produced by community

volunteers



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<b>Photographs</b>
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Photo2: H.R.H Chief Chamuka using demos to illustrate the

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Photo3: Beneficiaries of the certificates of land occupancy

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