Between Customary and Statutory Tenure

Understanding Large-scale Land Acquisitions in Zambia

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Introduction

- Questions for the local governance panel: How do the state and customary authorities confront land acquisitions? What is their formal room for manoeuvre and how do they use or enlarge it? Can they play a role to balance competing interests of (potential) development and protection?

- To answer them, we need to understand how large-scale land acquisitions unfold in Zambia. Process shapes distributive outcome!

- Theoretical framework: Legal pluralism (de Sousa Santos 2002), land politics (Lund 2008)

- Methods: Comparative legal analysis & ethnographic fieldwork (interviews and focus group discussions)
FDI in Agriculture: Data and Trends in Zambia

- Agriculture: 20% GDP & 70% employment
- Limitations of existing datasets (UNCTAD, FDIMarkets)
- Since 2004: Significant increase in FDI in agriculture
- South-South flow: South Africa, Zimbabwe, and India among key investors
Land Tenure in Zambia: An Overview

- Dual tenure system: Customary and state land
- Customary land: Officially 94% of land. Community and private use. Managed locally by chiefs. Held under customary tenure
- State land: Officially 6% of land. Private use. Managed centrally by Commissioner of Lands. Held under statutory tenure (leasehold title)
- However: Conversion from customary to state land possible - basically, formalization of title (Lands Act 1995)
- Lack of updated data on ratio of customary and state land
- When customary land converted, «no consideration shall be paid» (Lands Act 1995)
Acquiring Land for Large-scale Investments: How?

- Acquire title on existing state land
- But: State land «almost exhausted, so we need to take land from chiefs for large investments» (Ministry of Agriculture officer, interview)
- Therefore: Foreign investors can apply for conversion of customary land
  - Register at Zambia Development Agency (ZDA)
  - Identify land suitable for investment
  - Negotiate conversion with chief and district authorities
Negotiating Land at the Local Level 1/2

- Investors (with ZDA/district authorities/middlemen) negotiate with chief first: Payments and written agreements
- Chief issues «letter of consent» where declares that:
  - Land is not in use
  - Community has been consulted
RE: OFFER OF LAND

Dear Madam,

Please refer to your letter dated 28/05/2012 in which you applied for the above captioned to the extent of 1000Ha for the purpose of game ranching.

I am pleased to inform you that your application has received favourable consideration and the land will be given to you officially upon fulfillment of all financial and other obligations which go with the offer. Further let me remind you that you will also have to meet all requirements as regards the laws of the Republic of Zambia in that regard.

Meanwhile, all investors who bring developmental projects to the Chiefdom are cordially welcome, especially those who show seriousness in their proposed undertakings.

I hope to hear from you once again.

Yours faithfully,

[Signature]

CC: File
FORM III

(Regulation 3)

APPROVAL OF THE CHIEF OF AN APPLICATION FOR THE CONVERSION OF
CUSTOMARY TENURE INTO LEASEHOLD TENURE

1. .......................................................... Chief of ...........................................
   (Village) confirm and certify that:
   
   1. I have caused the right to the use and occupation of ..........................................
      (property number) by ..........................................................
      The applicant to be investigated and the investigation has revealed that the
      applicant or his family has for the last ........................................years
      been in occupation of the land described in the plan to which plan I have
      appended my signature.

   2. I am not aware of any other right(s), personal or communal, to the use and
      occupation of the land or any other part of the land, except that these rights have
      always been enjoyed by the community and shall not affect the right of the
      applicant to the use and occupation of the land.

   3. I have caused the consultation to be made with members of the community.

   4. As a result of the consultation and the information made available to me I
      hereby give/refuse my approval for the said land to be converted into leasehold
      tenure.

Signed: ........................................ Date: ..................................................
Negotiating Land at the Local Level 2/2

- District Council reviews project and application for conversion (interviews and site visits?)
- Committee approval
- Full Council approval
- Documents transmitted to Lusaka. Commissioner of Lands approves (more than 1,000 hectares: Presidential approval). Takes time!
- Community reactions: If mobilized, compensation and more dialogue with investor
Discussion of the Findings

- Customary land perceived as cheap commodity by investors, who benefit from increased potential to generate profit
- But: officially customary land is not a commodity
- Powerful local actors benefit from what in practice is a sale of customary land: exchange of benefits documented, written agreements reported
- Communities lose out because of a de facto privatization of commons
- Is there such a thing as «unoccupied» or «unused» land?
- Community consultations not effective: Displacement problems, lack of compensation…
Thoughts for (a More Theoretical and Critical) Discussion

- What do we mean by rural development? And, more importantly, by development?

- Are we not recreating colonial patterns by insisting on «regulating» land deals? Parallel with the birth of international law to regulate and legitimize colonial project.

- Ultimately, the idea that law is a «magic charm» or a «scape goat» (Von Benda Beckmann 1983) is based on liberal normative assumptions, which are rarely challenged. Why?