

## Contestation, confusion and corruption: Market-based land reform in Zambia

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This paper explores the politics of ‘customary’ land tenure, land reform, and traditional leaders in Zambia. In Zambia, as elsewhere in Southern Africa, the government at the behest of donors has implemented market-based tenure reform legislation. This legislation aims to improve the security of land tenure and to promote development through investment. The paper shows how complex, indeterminate, and contentious this tenure reform has been on the ground – particularly in relation to the 94 per cent of Zambian land that is held in ‘customary’ tenure. It explores the ways in which local, national, and even international elites have been able to secure private title to ‘customary’ lands. In so doing, the paper demonstrates the malleability of tenure reform. The paper also highlights the changing roles of traditional leaders and provides insights into the character of the Zambian state and its administration—particularly at a local level.

Land reform has long been at the heart of efforts to promote rural development. From the end of the Second World War, through decolonisation and into the early 1980s, the dominant approach to land reform was redistributive: In an effort to redress past inequalities and to stimulate small-holder agriculture and self-sufficiency, many developing countries sought to redistribute land from big landowners to poorer peasants and the landless. From the 1980s on, however, market-based approaches to land reform have been dominant. Proponents of land market reforms argue that formal titling and an unregulated market for land increases the efficiency of land distribution and boosts agrarian productivity. They argue that the recognition of property rights will reduce poverty and boost capital accumulation in developing countries. With formal titles in hand, the poor will be able to mortgage their property and thereby unlock their hidden capital assets.<sup>1</sup>

In recent years, land market reforms have been carried out in countries as diverse as Brazil, the Philippines, Syria, Côte d’Ivoire, Uganda, Malawi and Zambia. This paper examines the implementation and impact of market-based land reforms in one of these countries: Zambia. In 1995 the Zambian government, at the behest of donors,

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<sup>1</sup> The most prominent advocate of market based land reform is Hernando de Soto, whose book, *The Mystery of Capital*, published in 2000, has had a significant influence in policy circles.

implemented land reform legislation with the aim of stimulating investment and agricultural productivity. This paper explores how these land market reforms have played out on the ground, particularly in relation to the 94 per cent of Zambian land that is held in ‘customary’ tenure. In particular this paper asks: How has market-based land reform fared in terms of its stated objectives of increasing tenure security for small-holders? Has the administration of land become more or less efficient and equitable following the implementation of the 1995 Land Act? Have pre-existing tensions between customary governance and formal state administration been reduced or exacerbated by the Land Act?

There is little reliable quantitative data on how land ownership in Zambia has changed since land market reform was introduced. There are also few systematic assessments of the impact of the land reform at a local level.<sup>2</sup> To gain an understanding of land administration at the central level and to place the Land Act in its historical and political context, therefore, this study began in Lusaka with interviews of government officials, current and former politicians, academics, land lawyers, surveyors, members of the donor community and civil society activists. These interviews, along with primary and secondary sources such as contemporary and archival newspaper articles, case studies compiled by the Zambia Land Alliance and other civil society organisations, and published and unpublished field studies highlighted a number of ‘hot spots’ where conflicts over the conversion of customary to leasehold tenure were particularly virulent. Field trips were made to 7 of these ‘hot spots’ in Lusaka, Southern, Central and Northern Provinces to gather specific case studies and to gain an understanding of the specific social, political and economic context in which contestation over land was taking place. In each fieldsite we<sup>3</sup> carried out structured and semi-structured interviews with district-level officials, chiefs, headmen, local and outside investors, those embroiled in land disputes, small holders of titled land and customary rights holders. These interviews were

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<sup>2</sup> The Zambia Land Alliance has been instrumental in documenting the abuses and failures of the Land Act. The Catholic Commission for Justice and Peace has carried out a cursory, but insightful survey of the impact of the land reform on poor people’s livelihoods (Muyakwa et al. 2003) while Oxfam has carried a set of studies on land insecurity in the Copperbelt (Hansungule and Feeney 1998 and Palmer 2001).

<sup>3</sup> Bennett Siamwiza of the University of Zambia and Chris SingeleIngele of Women for Change made significant fieldwork contributions to this study. Thanks is also owed to those who took the time to speak with me, especially officials within the Ministry of Lands; chiefs, headmen, and villagers in various fieldsites; and Henry Machina of the Zambian Land Alliance. Martin Adams, Craig Jeffery, Miles Lamar and Marja Spierenburg as well as the participants at conferences in Amsterdam and Durban provided insightful comments on earlier drafts.

supported by direct observation and participatory research methods. Research was conducted during 2002 and 2003.

The paper is broken into three sections. The first part outlines the administration of land in Zambia from the colonial regime through the market-based land reform of 1995. The second section explores the impact of land market reform on customary lands. It demonstrates that the conversion of customary to leasehold land tenure has led to social and economic exclusion, elite capture, displacement, intra-community conflict, and the enclosure of common pool resources. The third section explores the administrative weaknesses and political forces that have influenced the allocation of land in Zambia.



Figure 1 Map of Zambia showing fieldsites

## Land administration in Zambia

Land tenure in Zambia, as in much of Africa, is of two types: communal and private titled. This distinction is not just tenurial, it is also social, political and economic. Titled land is owned, bought and sold by individuals who possess registered leasehold title. It is administered by the central government (the Ministry of Lands) using common law and is subject to taxation. Private tenure is concentrated in and near Zambia's cities,

along the railway line between Livingstone and the Congo border, in the mining areas of the Copperbelt, and in certain productive farming areas. Customary lands, on the other hand, may be indirectly held, but the allocation and use of these lands (to a greater or lesser extent) are administered by chiefs and headmen on behalf of 'tribal communities'. On customary land, titles do not exist, land taxes are not paid, and transfer and use are governed by 'customary' law. The vast majority of land in Zambia (94 percent) is classified as customary (Roth 1995; Zulu 1993). The most valuable and productive land, however, is held as private tenure (Figure 2).

This division between customary and private titled land has its origins in the colonial era and has been perpetuated by the post-colonial state. To understand the current system of land administration in general and the conflicts and inequalities arising from the 1995 Land Act in particular, it is crucial to explore the legacy of Zambia's colonial and post-colonial history.

### ***Colonial land administration***

In most of British Africa, colonial authorities drew a political and tenurial distinction between areas of white settlement and resource wealth, and 'tribal' areas. In *Citizen and Subject*, Mahmood Mamdani (1996) focuses on this dichotomy. He argues that the colonial state was 'bifurcated' not only spatially but also politically. On the one hand rural African 'subjects' were governed by chiefs and custom and lived on spatially distinct communal lands. On the other hand, 'citizens' (whites and other urban dwellers) were governed by modern civil law and owned or rented private property.

Mamdani's dichotomy aptly applies to the policy pursued in Northern Rhodesia (later Zambia). The colonial authorities demarcated as crown lands those areas most appropriate for European settlement and all land known to contain mineral resources. Land was held as freehold or leasehold and its use and conveyance was governed by common law. Settlers and resident Africans living in these areas were directly administered by the colonial governor and a legislative council under British law.

The colonial authorities divided the remainder of Northern Rhodesia into two other tenure categories: native reserves and trusts. Native reserves were carved out on the edges of white farming areas to provide a home for the sixty thousand indigenous people who had been displaced by the demarcation of crown lands and to provide a ready supply of labour (Roberts 1976: 183). In 1947, the colonial government established

a new category of customary land: native trusts. Trusts were created from unutilised crown land and the large swathes of land that had been uncategorised by the demarcation of crown lands and reserves. These trusts, encompassing 57 percent of the colony, were set aside for ‘the use or common benefit direct or indirect of the “natives”’ (Government of Northern Rhodesia 1947). Restrictions were placed on alienating reserve and trust lands to Europeans or other non-indigenous people. In reserves, five-year renewable ‘rights of occupancy’ could be granted to ‘non-natives’ at the behest of the chief and the central government. In trusts, the governor could grant Europeans and other non-indigenous people ‘rights of occupancy’ for a period of 99 years. These lands, however, could not be converted to crown land and remained under customary tenure.

A critical element of the British system of indirect rule was the recognition and codification of ‘customary’ communal land tenure within tribal areas. In drafting land policy, most administrators assumed that African land tenure systems were characterised by communal, not individual, rights to land. Colonial administrators tended to assume that vacant land was the communal property of tribes and that chiefs held administrative authority over these lands (Colson 1971; Ranger 1983; Chanock 1985). The colonial regime therefore granted chiefs a great deal of control over the use and allocation of land and natural resources in their domains, and treated customary land tenure and judicial processes as a fixed in precedent and practice.

### ***Land tenure under the Kaunda regime***

In the two and a half decades that followed independence in 1964, Zambian land tenure policy was characterised by economic socialism and nationalism. In the early years of the Kaunda regime, all crown lands were renamed state lands and vested in the President rather than the British sovereign. The Kaunda regime maintained the distinction between state lands and trust and reserve lands. In customary areas, the government maintained many aspects of indirect rule and explicitly recognised the role of chiefs in allocating trust and reserve lands. The government, however, took a very direct role in the administration of state lands. In 1969, the Zambian constitution was amended to allow the acquisition of undeveloped and unutilised lands by the state, particularly those lands held by absentee landowners. In 1975, the state abolished freehold tenure and converted it to statutory leasehold (*The Land (Conversion of Titles) Act* 1975). Through this legislation, the state suppressed the market for land and instead sought to administer directly all leasehold land transfers. Land was deemed to have no

intrinsic value and only improvements on land (such as buildings or agricultural infrastructure) could be bought and sold. In 1985, legislation was passed that restricted the alienation of land to foreigners, with the exception of presidentially certified investors and charitable organisations.

### ***The 1995 Land Act***

The current phase of land reforms in Zambia dates from the election of the Movement for Multiparty Democracy (MMD) government in 1991. The MMD sought to break with Kaunda's socialist policies and to instigate wide-ranging market reforms. A market-based land policy was deemed to be an essential component of these reforms as the MMD's election manifesto highlights:

The MMD shall institutionalise a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private ownership of land [...]. To this end, the MMD government will [...] bring a more efficient and equitable system of tenure conversion and land allocation in customary lands; land adjudication legislation will be enacted and coordinated in such a way that confidence shall be restored in land investors[...] the MMD shall attach economic value to undeveloped land [and] promote regular issuance of title deeds to productive land owners in both rural and urban areas. (MMD 1991)

Land market reform was not only an electoral pledge, it was also one of the key conditionalities that the Zambian government was required to meet in order to restructure its international debt. As a result, donors played a significant role in ensuring that land administration in Zambia was liberalised. In mid 1993 at the behest of the World Bank and IMF and with funding from USAID, the MMD government convened a National Conference on Land Policy and Legal Reform. In 1995, the Land Act was passed by parliament following two years of ill-tempered and divisive national debate that pitted the newly established government against most Zambian civil society organisations, church groups and traditional leaders.<sup>4</sup>

What were the key provisions of the 1995 Land Act? First, the Act significantly strengthened the property rights of title holders on state land. Although the Act did not reintroduce freehold tenure, it considerably bolstered leaseholders' rights. By repealing the 1975 *Land (Conversion of Titles) Act*, the 1995 Act made it possible for land *per se*—not

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<sup>4</sup> When the government first proposed the Land Act, it proved so contentious that consultative and promotional meetings had to be abandoned due to protest and, in several cases, violence. Lack of support for the Act extended to the National Assembly where the government, despite its clear majority in the house, was only able to secure passage of the bill by threatening to expel any rebel MPs from the MMD. The provisions of the Land Act and the un-democratic manner in which it was drafted and passed into law, has led to continued and widespread animosity to the Act by many civil society organisations, opposition politicians and many traditional leaders.

just improvements on land—to be bought and sold. Land remained vested in the President, but the 1995 Act made it much more difficult for the state to repossess undeveloped land. Moreover, the bureaucratic hurdles to acquiring and transferring titles (such as presidential consent for all land transactions) were reduced to mere formalities.

A second aspect of the Land Act was that it eased restrictions on land ownership by foreigners. The Act made it possible for approved foreign investors, foreigners who are Zambian residents, or foreigners who have received personal presidential consent to acquire title to land.

Third, the 1995 Land Act created a Lands Tribunal to protect leaseholders and customary rights holders from abuse and to ease congestion within the High Court. The Tribunal's broad mandate is to 'inquire into and make awards and decisions relating to land' (GRZ 1995: Part IV, Section 22). The Tribunal was intended to be informal, low-cost and mobile so as to be accessible to rural and low income Zambians.

Fourth, the Act made both cosmetic and substantive changes to the administration of customary land tenure. The categories of reserve and trust lands were amalgamated into a new category: 'customary areas'. The Act explicitly recognised existing rights to land in customary areas. The Act, however, made it easier for both outside investors and indigenous Zambians living on customary lands to acquire private title to customary land.<sup>5</sup> Under the provisions of the Act, investors (whether foreign or domestic) can convert land in customary areas to leasehold if the investor's proposed use of the land is deemed to be of 'community' or national interest. The Land Act also made it easier for indigenous Zambian to acquire private title to their lands. The 1995 Act outlined the procedures through which 'any person who holds land under customary tenure' could convert their landholdings to leasehold tenure (GRZ 1995: Part II, Section 8). The justification for this provision, according to the government, is that customary land tenure is 'insecure' and has 'severe limitations' compared to leasehold tenure (GRZ 2000: 1). By converting their customary holdings to leasehold, the government argues, villagers will be able to use their land as collateral to secure credit to invest in farms and businesses.

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<sup>5</sup> This is not to say that it was impossible to gain title to customary land during the Kaunda era. Throughout the 1970s and early 1980s, well connected individuals were able to alienate trust and reserve lands. In 1985, partially to reassure chiefs about these conversions, procedures for alienating land were set out in a cabinet circular (Land Circular No. 1). According to this circular, individuals could only acquire

Although the 1995 Act ostensibly recognises and protects customary land rights, the Act is designed to permanently diminish the amount of land held under communal tenure and to open up more land for investment. Once a villager or investor is granted a leasehold title for a piece of land, it ceases to be customary land and becomes state, essentially private, land. Customary rights are extinguished and the land cannot be reconverted back to customary tenure.

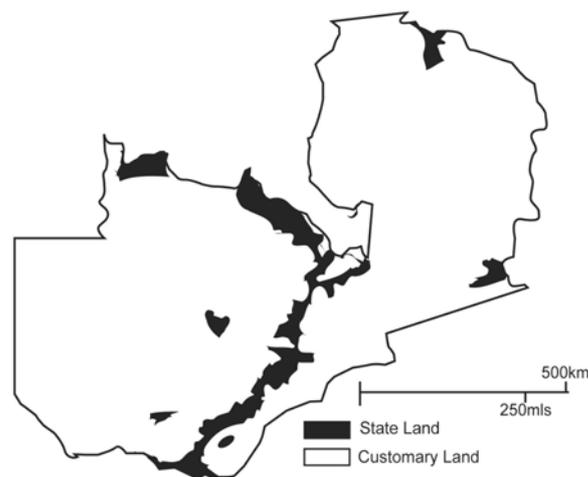


Figure 2 Distribution of customary and state lands in Zambia (adapted from van Loenen 1999)

## **The impact of Land market reform at the village level**

How has the 1995 Land Act played out on the ground? Who has the Act benefited and who has it marginalised? How has land market reform been shaped by local- and national-level political processes? To answer these questions, this section provides a picture of how land market reform has been implemented at the village level.

### ***The extent of conversions***

The Ministry of Lands has not maintained adequate records of the number of title conversions it has approved over the years. It is therefore difficult to assess accurately the number of conversions that have taken place since 1985 when procedures for title

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title deeds to customary lands if they had permission of the local chief, the district council and the president. This circular also set an upper limit for these conversions of 250 hectares.

conversion were regularised and especially since the implementation of the Land Act in 1995. It is possible, however, to gauge the rough trend of conversions. According to officials at the Ministry of Lands, the number of conversions rose gradually in the late 1980s and early 1990s. Following the Land Act, conversions increased rapidly until they levelled off in the late 1990s at around two thousand per year—the maximum number that the limited capacity of the Ministry of Lands could process annually.

Lack of official data also makes it difficult to accurately assess the areal extent of title conversions. The official figures state that only 6 percent of Zambia's land (4.5 million hectares) is held as state leasehold. This statistic, however, has not been updated since the early 1970s and therefore fails to account for any title conversions that have taken place since then. While officials within the Ministry of Lands still use the 6 percent figure, they confess that it is likely to be as high as 10 percent.

Conversion of customary land has taken place throughout Zambia. There are, however, several hot spots for privatisation. Title conversions have been concentrated in peri-urban areas and in those parts of Zambia where commercial agriculture and tourism have the most potential. In particular, the greatest number of titles has been issued in rural districts surrounding Lusaka and the cities of the Copperbelt and in the vicinity of prime tourist destinations (Livingston and Victoria Falls, South Luangwa National Park and Lower Zambezi National Park). There are title conversions in other, less commercially vibrant, parts of the country, although in these cases, local or domestic elites rather than foreign investors usually acquire the land. Some parts of Zambia have been largely untouched by privatisation. For instance, according the officials at the Ministry of Lands, there have been few, if any, title conversions in Western Province in part due to the tight, hierarchical control over land and resource use that the Lozi Paramount Chief, the Litunga, exercises. Did you find this out during your research, or do you have other sources?

### ***Conversions for elites***

There are no countrywide statistics disaggregating by income those who have acquired title. A look at the allocation of leases in several chieftaincies, however, provides a snapshot of the economically skewed character of titling in Zambia. Take the chieftaincies of Mwemba and Sinazongwe along Lake Kariba. According to district officials and local surveyors, there have been several dozen title conversions in these areas during the past decade. Of the titles issued, eight have been acquired by outside

(white and ethnic Indian) investors for commercial fishing, tourism, crocodile farming, or game ranching. Successful local shopkeepers, retired civil servants, district-level officials, and the chiefs' family members have acquired the remainder of the titles. No poor or even middling households have secured leasehold land. The converted plots range in size from 150 to several thousand hectares, but most are near the legal limit of 250 hectares.

The same pattern is revealed in other chieftaincies surveyed. In Chief Shakambeshi's area to the west of Lusaka, around fifteen title deeds have been issued during the past five years. One of these leases was for a 10,000 hectare sugar cane plantation and refinery. The other leases have been for retired civil servants, investors from Lusaka and several successful local farmers. In Chief Mukonchi's area near Kapiri Mposhi, all but a few of the more than twenty title deeds issued in the past five years, have been granted to wealthy Lusaka and Copperbelt residents. The same skewed pattern of leasehold conversion is found in the chieftaincies near Lusaka, Lower Zambezi National Park (Chiawa) and Victoria Falls (Livingstone).<sup>6</sup>

One of the primary aims of the 1995 Land Act was to promote foreign investment, and the Act made it far easier for non-Zambians to acquire land than it had been under the Kaunda regime. In recent years, therefore, there has been a significant increase in the amount of land in Zambia owned by foreigners. Exact figures are difficult to acquire, but according to the Zambia Investment Centre, 240 investment certificates have been issued to large-scale commercial farmers from 1995 until December 2002. Many investors, however, do not pass through the Investments Centre (they may go directly to State House or to chiefs) the actual number of foreign farmers is likely much higher. The Ministry of Agriculture for instance, reports that over the past several years, more than 130 Zimbabweans have purchased farms in Zambia. Although these figures are revealing of the overall number of foreign investors in the agricultural sector, they are not disaggregated according to whether these investors are farming converted or long-standing leasehold lands. What is apparent, however, is that most of the largest leasehold conversions in Zambia have been made to accommodate investors.

Why is it that only Zambian elites and foreign investors, and not small-scale commercial or subsistence farmers, have secured title to land? One obvious reason is that

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<sup>6</sup> There are strong incentives for wealthier (mostly urban) Zambians to invest in land and to seek the conversion of customary to state leasehold tenure. In an economy characterised by high inflation, fluctuating exchange rates and low interest rates, land is one of the only good investments that can be made.

few rural villagers are aware of the Land Act and that conversion is a possibility. As will be described below, many chiefs and local government officials are only partially aware of the technicalities of land administration in Zambia. It is hardly surprising, therefore, that subsistence farmers would also be ill informed about land policy.

Even if villagers were fully informed of government procedures and wished to gain title to their lands, most could not afford to do so. The transaction costs of converting customary to leasehold title are too high for most villagers. To acquire an initial 14 year lease, applicants must not only secure the permission of the chief and district council, they must also hire a surveyor to draw a sketch map of the land and pay a lease charge—outlays which are at least 500,000 kwacha (about \$100) and often amount to much more. In addition there are significant travel costs involved in securing a lease: a claimant must travel repeatedly to the district headquarters and the Ministry of Lands offices in Lusaka or Ndola. For someone living outside of Lusaka or the Copperbelt, these cost can quickly spiral into the millions of kwacha. These costs are even greater if the landowner wants to convert his or her 14 year provisional lease to a full 99 year lease. For this, a rigorous boundary survey is required—something that can cost millions of kwacha in fees and transportation depending on how far the survey team has to travel from Lusaka. Lastly, once the land is converted a lessee must pay an annual ground rent to the Ministry of Lands. While urban businessmen, civil servants, politicians, and foreign investors can afford these costs, they are far too high for most rural Zambians, whose annual income averages less than \$300.

Most Zambians are also at a disadvantage when it comes to protecting their land rights. As was mentioned above, the Lands Tribunal was initially conceived of as an accessible, affordable and efficient way to resolve conflicts over land. One of the Tribunal's primary mandates was to provide poorer, non-titled individuals with a fair and accessible venue in which they could protect their customary rights to land. In practice, however, the Tribunal has been ineffective, inaccessible and costly. Few Zambians know that the Tribunal exists or what it does. Despite its mobile ambitions, the Tribunal seldom travels beyond Lusaka due to budgetary constraints and the preferences of its members. Those pursuing claims must therefore incur the costs of travelling to the capital city and supporting themselves while there. Since its inception, the Tribunal has also become increasingly formalised—so formal in fact that it is now difficult to

distinguish its procedures from those of the high court (to which it was intended to provide a more approachable and efficient alternative).<sup>7</sup>

Due to its formality and costliness, the sorts of cases that the Tribunal entertains are much different than those it was originally designed to tackle. Rather than dealing with land disputes throughout Zambia, most of its cases are from Lusaka. Rather than resolving conflicts arising from the conversion of customary to state land, most of the Tribunal's time is consumed with inheritance disputes and appeals to decisions taken by the Commissioner of Lands. Furthermore, the Tribunal is currently over-burdened and under-funded: it has a backlog of cases of more than two years and is chronically understaffed.

### ***Land speculation***

The titling of customary lands has led to widespread land speculation. Investors pay nothing for the customary lands they convert—barring registration and survey costs and the 'facilitation payments' that are often given to chiefs. These costs, though often prohibitive for communal farmers, are only a small portion of the market value of the land. Some Zambians and foreigners have sought to profit from the discrepancy between the market value of titled land and the low cost of acquiring it. As middlemen they have been able to acquire land for next to nothing, then sell it on at significant profit. This speculation has occurred widely on agricultural land, but is perhaps most common in tourist areas. In Mfue next to South Luangwa National Park, there are several notorious cases in which South African investors have acquired land at no cost from Chief Nkanya only to sell it on to a safari operator for tens and in some cases hundreds of thousands of dollars. In one case, Chief Nkanya granted a long-resident safari guide ten hectares along the Luangwa River. Shortly afterwards the safari guide sold the land for \$70,000. In another case, a South African investor was able to acquire even more land from the chief. Once he had the title, the investor returned to Johannesburg where he sold the title for \$200,000. In both cases, the chief was led to believe that these particular individuals were investing for the long term and thought that he was granting them the use, but not the ownership, of these lands.

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<sup>7</sup> Initially, it was envisioned that claimants would be able to pursue their cases through the Tribunal without any legal representation. The Land Act states: 'the Tribunal shall not be bound by the rules of evidence applied in civil matters' (GRZ 1995: Part IV, Section 23(5)). In practice, however, the Tribunal's chairman will not permit a case to be reviewed unless the affidavits and forms are professionally drafted.

One product of land speculation is that, since the implementation of the Land Act, the amount of absentee land ownership in rural Zambia has increased significantly. Unlike previous Zambian land legislation, which required land owners to begin developing their lands within 18 months of acquisition, the 1995 Act does not penalise those who fail to develop their land. As a result there is an incentive for outsiders to acquire as much land as possible, but little incentive to encourage them to develop it. As one observer writes: 'Ironically, proponents of the Act argued that by giving land a value and opening an official (as opposed to unofficial) market in land, it would encourage greater security, greater investment in land and greater productivity. But in practice the Act is a charter for absentee landowners' (Palmer 2001: 9).

### *Displacement*

Leasehold conversions have displaced many villagers. The 1995 Land Act offers some legal protection to sitting tenants on customary lands. The Act states that land should not be alienated 'without consulting any other person or body whose interest might be affected by the grant' (Part II section 4(c)). This proviso, however, is seldom adhered to, especially if the chief or district council is either unaware of the interests of existing inhabitants or is unwilling to protect these interests over those of investors. Once land has been converted, moreover, the Land Act strongly defends the exclusive property rights of title-holders. In particular, the Act criminalises the occupation of vacant titled land and threatens occupants with eviction, no matter how long they have been living on the land.<sup>8</sup> The Lands Tribunal, as was mentioned above, offers little practical recourse from such displacement.

Many long-term occupants of converted land have been forced to resettle or have found themselves transformed into 'squatters' overnight. There are cases throughout Zambia in which chiefs and councils have granted approval for local and outside investors to acquire already-occupied land. In some cases this is an oversight: the chief has simply failed to consult on the ground before offering assent. In Chief Mwemba's area along Lake Kariba, for instance, four households have been served with eviction notices for lands that they have farmed for decades because the chief failed to check with

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<sup>8</sup> '(1) Any person shall not without lawful authority occupy or continue to occupy vacant land.' And '(2) Any person who occupies land in contravention of subsection (1) is liable to be evicted' (GRZ 1995: Part II, Section 9).

his headmen to determine if the land was occupied before signing the conversion request.

In other cases, chiefs and government officials have allocated land, knowing full well that it was already occupied. This is often the case with large-scale commercial investments in which it is believed the economic benefits will outweigh any human cost of relocation or when authorities have an economic or political stake in the project.

In Chief Mukonchi's area near Kapiri Mposhi, for instance, the chief, the district secretary, and the Office of the President have all given their assent to the demarcation of a large tobacco farm. This farm—a Zimbabwean and British joint venture, the Mulingushi Agricultural Development Corporation (or MADCO) —plans to invest 27 million dollars in the development of 33,000 hectares of land. In mid 2002, the chief met with representatives from MADCO to discuss their plans for the area. The chief approved the plan and endorsed the conversion of 26,000 hectares of customary land to leasehold title.

Nearly 2000 people in five villages inhabit the land on which the farm is to be built. In February 2003, a group of district officials representing MADCO visited these potentially displaced villagers. The representatives told the villagers that the project had been given approval by their chief, the Ministry of Lands, the District and Provincial Administrators, and the President. They explained that those living on the MADCO land had two choices: they could remain in the area and be offered jobs on the farm or they could move and receive compensation for their dwellings.<sup>9</sup> Villagers were given three weeks to make up their minds.

### ***Enclosures***

When a place is for grazing cattle and used by all the villagers, how then can one person come and get title for it? Where will the other people take their animals to graze especially if rich green grass is available on only one location in the village? Maybe for people in town it is OK to have title to their land but in villages, because of communal ownership of some scarce resources it will be very difficult.

—Elderly woman, Hamapande village, Monze District, Zambia (from Muyakawa et al. 2003: 4.2.2)

Common pool resources contribute to the livelihoods of most rural Zambians. Villagers draw their water from rivers or village wells, graze their livestock on communal

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<sup>9</sup> Since customary land has no market value, the compensation offered was only for the value of the structures on the land. In most cases the amount of compensation was expected to be between 500,000 and 1,000,000 Kwacha (\$100 to 200).

pastures, cut firewood and building materials from common forests and catch fish on shared rivers and lakes.<sup>10</sup> These common pool resources not only provide villagers with crucial livelihood inputs, they provide them with a safety net in times of stress. During times of drought and crop failure, wild foods become a crucial component of household diets. Access to river water and riparian grazing is essential in dry times. For instance, in southern Zambia, where rains are often late and meagre, the Zambezi River and its banks provide villagers with their only reliable source of year-round water and grazing.

As land is converted from customary to state tenure, local rights to common pool resources are being eroded and commons are being enclosed. Nowhere is this more apparent than along Zamiba's major rivers, where both commercial farmers and tour operators have been setting up operations in recent years. During the past decade, much of the agricultural investment in Zambia has flowed to riparian areas where farmers can more easily irrigate their crops. At the same time, a growing number of safari lodges have been built on the banks of the Zambezi and Luangwa Rivers. In 1996, for instance, there were only three investors with title to land in the Chiawa chieftaincy, on the outskirts of Lower Zambezi National Park. By 1999, 19 more tour operators held title (Bond 1998: 148). These lodges, owned primarily by white Zambians or foreign investors, are built on riverside locations where scenery and wildlife viewing are at their best. Both farmers and lodge owners generally fence or patrol their land and seldom recognise previously held use rights.

Along the shores of Lake Kariba, near Victoria Falls (Livingstone) and next to South Luangwa and Lower Zambezi National Parks, villagers complain that they are losing access to riparian resources. The growth of tourism and the number of lodges in the Victoria Falls area, for instance has led to the enclosure of more and more riverfront property in this particularly arid part of Zambia. As a result, some villagers now have a difficult time accessing the river to collect drinking water, to graze and water their animals, to fish or to gather thatching grass. As one villager reported to researchers from the Catholic Commission for Justice and Peace:

We used to go to the river to pick reeds for mats and even fish but now we are not allowed to go there. Our children will be thieves because they will have no livelihood or skills to survive. Even though cattle are permitted to drink water at the river the Zambia Wildlife Authority ZAWA confiscates them because the guards are paid by these same investors who own lodges to beat and

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<sup>10</sup> This is not to say that these resources are efficiently or fairly managed; some are and some are not. They may be open access resources in the sense that there are no restrictions on who can utilise them, or they may be common property resources in that there is a delimited user group.

harass villagers. If they catch you with fish on the road they will beat you up. And yet you are not even at the river but on the road. If it means paying we should also have the opportunity to pay for some rights. (Muyakawa et al. 2003: 4.2.2)

Planning restrictions exist that ostensibly prevent title holders from owning the riverbank itself. These easements, however, are seldom enforced and lodge owners generally claim not only the riverbank but also much of the river. As a result, they prevent locals from using the riverbank for fishing, grazing or cutting reeds. Some lodge owners also prevent locals from fishing too close to the lodges for fear that they will ‘spoil the guests’ views’.

### ***Conflict and resistance***

Land conversions have spawned a great deal of intra-community conflict and resistance. The commodification of customary land is transforming social and political relations between chiefs and villagers, between villagers and one another and between locals and outsiders.

In most of the fieldsites we visited, villagers engaged in ‘everyday forms of resistance’ (Scott 1985) against those who have acquired private title to communal land. In particular, villagers have cut fences surrounding privatised lands, released livestock on enclosed fields, destroyed or sabotaged commercial farm machinery and irrigation systems, and bewitched private land owners.<sup>11</sup>

In recent years, there have been a number of prominent cases in which pro-development chiefs and their subjects have collided over the titling of land. In the Chiawa area described above, for instance, Chieftainess Chiawa has had a series of run-ins with her subjects about her pro-development stance. The Chieftainess has been an outspoken proponent of outside investment in her area. She even appeared in a television advertisement promoting the virtues of the 1995 Land Act, using tourist and agricultural developments in Chiawa as her backdrop (Bond 1998:147).<sup>12</sup> The number of leasehold conversions the chieftainess has sanctioned has polarised her chieftaincy. The Chieftainess’s ‘positive attitude to private investors (particularly tour operators) and to wildlife conservation [...] has undermined her support locally,’ writes one observer. ‘There are complicated accusations and counteraccusations surrounding her interest in

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<sup>11</sup> See Brown and Siamwiza (2002) for more a detailed account of resistance to land conversion in Southern Province.

<sup>12</sup> The Chieftainess has since distanced herself from the advertisement and has more recently taken a more sceptical view of land market reform in Zambia (Bond 1998: 197).

promoting tourism. She is accused by some local people, including key personalities and leaders, of having hidden personal interests at heart and of failing to listen to the community's point of view' (Bond 1998: 143-44).

A more volatile conflict between a chief and his subjects has developed in Mbeza along the Kafue River. Mbeza's chief, Bright Nalubamba, has been pushing for a section of the fertile floodplain, known as the Kafue flats, to be developed as an irrigated rice farm. With the backing of Italian investors, the chief hopes to transform the local economy from subsistence agro-pastoralism to one based on private commercial farming. The opposition to the Mbeza Integrated Project has, however, been impassioned and organised. Although no one will be displaced by the proposed project, opponents stress that their traditional pastoralist livelihoods and way of life will be disrupted. The Ila people of Mbeza are first and foremost pastoralists. The Kafue flats and the higher ground surrounding the flats, provide Ila herders with their best grazing in both the dry and wet seasons. To challenge the chief, opponents of the project formed a committee, the Indigenous People's Rights Committee (IPRC). The conflict between the chief and the IPRC has escalated over the past several years to the point of open confrontation. On the 21<sup>st</sup> of September 2002, a gathering of 700 local residents including 36 headmen gathered to protest the irrigation scheme and to call for the suspension of Chief Nalubamba. As a result of this opposition, the project has been put on hold. The antagonism between the chief and many of his subjects, however, remains. In November of 2002, the chief obtained a court order blocking members of the IPRC from making statements to the effect that he had sold their land to foreign investors. In April 2003 the chief dismissed five headmen in retaliation for their continued vocal opposition to the project. As of mid-2003 the situation remained tense with several court cases pending and police posted in the area to prevent the two sides from fighting.

### **The (mal)administration of land**

Any system in which a valuable and scarce good is administratively allocated for free is prone to corruption. This is the case in Zambia, where customary land does not have a market value until it is converted to leasehold. As gatekeepers to this valuable—yet virtually free—resource, chiefs, district-level officers, and bureaucrats at the Ministry of Lands are in a position to exploit their strategic position within a 'soft system'. Lack of complete information at each level of the system exacerbates the problem. At all levels of land administration, administrators can bend or ignore the rules governing the

conversion of customary land to leasehold. This section briefly explores the three levels of land administration in Zambia—the chiefdom, the district, and the central government. It highlights the weaknesses in the system that create opportunities for officials at each of these levels to use their position to their advantage.

### ***Chiefs***

The government of Zambia grants chiefs the legal authority to oversee customary lands and to protect their community's culture and general welfare. The *de facto* role of chiefs in local governance and the administration of land, however, is often much greater than their *de jure* responsibilities. In practice, chiefs (with the assistance of advisors and headmen) grant occupancy and use rights to customary land and oversee the transfer of it between subjects. They regulate common pool resources (for instance, the opening and closing of grazing areas or the cutting of thatching grass or trees), and adjudicate a wide range of land-related disputes. Chiefs are also often the only point of contact between state officials, donors and rural communities.

The 1995 Land Act simultaneously threatens chiefly authority and provides chiefs with economic and political opportunities. The Act gives chiefs the legal power to approve requests for tenure conversions which sometimes enriches individual chiefs. It threatens chiefs in that the Land Act has the potential to promote conversions to the extent that chiefs lose their physical domain.

Most Zambian chiefs are not much wealthier than their subjects: their income comes primarily from subsistence farming and a meagre government allowance. Their 'palaces' tend to be modest; rarely more than glorified huts. Chiefly authority over title conversions, however, is a potentially large source of revenue. When making any request to a chief, villagers and outsiders are expected to offer an honorarium—often a bag of sugar, maize meal, or a small amount of cash. In some cases involving requests for land conversions, however, this courtesy has mutated to the extent that recent 'facilitation' payments to secure a chief's letter of approval have included new palaces, vehicles, or cash. Several Southern Province chiefs, for instance, have acquired new four-wheel drive vehicles from investors in the past few years. In another example, the palace of one of the chieftainesses on the outskirts of Lusaka is currently being rebuilt courtesy of one of the new investors in her area. In several other cases, chiefs have been able to play investors off of one another in order to maximise their personal gain. Several years ago, a chief in one of the more popular safari destinations in Zambia instigated a bidding war

between two investors for a prime piece of riverfront property. By the end of the bidding, the chief had earned \$30,000. In another case a chief assigned title deeds to the same land to two investors and received payments of several thousand dollars from each.<sup>13</sup>

Despite the opportunity for personal gain, most Zambian chiefs worry that the Land Act is undermining their authority. Although the Act explicitly recognises customary tenure and the role of chiefs as administrators of this land, it also makes it easier for villagers to convert their customary holdings to leasehold (GRZ 1995: Part II, Sections 7 and 8). Once converted, customary rights are extinguished and these lands no longer remain under chiefly authority. Most chiefs therefore fear that gradually, over time, their authority will decline. As a chief from Northwestern Province complained to the Minister of Lands during a conference of traditional leaders in 2002:

We appreciate your effort to make land available to investors, which is important for development and food security. But we have serious concerns. *Chiefs are not chiefs without land.* When we look at the Lands Act we feel that chiefs don't own the land anymore because all land is vested in the President and the chiefs have become only the agents who help to process the land for investors.

Chiefs are caught on the horns of a dilemma. They believe that they must attract investment to their areas if they are going to show leadership, improve the lives of their subjects, and 'develop' their areas. But to attract this investment, chiefs must grant investors title deeds which, over time, will undercut their authority over land and their subjects.

Many chiefs feel betrayed by outsiders who acquire land title. Investors often promise that they will bring jobs, schools, clinics and other benefits to local communities if they are granted leases. In practice, however, investors seldom fulfil their promises once they are in possession of titles. As a chief from Northern Province stated at the same conference of traditional leaders mentioned above: 'They [investors] come softly softly when they want land. But once they have it, all respect [for the chief and for custom] is lost.'

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<sup>13</sup> Some chiefs have used title conversions for political as well as economic gain. In the case of the MADCO tobacco farm discussed above, one of the primary reasons that Chief Mukonchi has agreed to allocate land to the investors is to counter what he sees as a political challenge. Tonga people from Southern Province inhabit much of the land in the part of the chieftaincy for which MADCO seeks title. The chief sees these outsiders as a political threat. 'These people [the Tongas]' he declared, 'are acquiring land and even becoming headmen themselves. They no longer respect me [the chief][...] and are even trying to set up their own chieftaincy.' Chief Mukonchi is willing to alienate a substantial portion of his chieftaincy in order to counter this perceived political threat.

### *District councils*

The 1985 Administrative Circular delegated to district councils the authority to administer land within each of Zambia's 72 districts. This authority was reiterated in the 1995 Land Act. Under these arrangements each council is responsible for processing applications for leases of state land and for evaluating requests for the conversion of customary to state land. To recommend conversion, the council must ensure that the chief has been consulted, that a layout plan has been properly drawn, and that the land has been physically inspected to 'confirm that settlement and other persons' interests and rights have not been affected by the approval of the application' (GRZ 1985: section 4.D).

On paper, these procedures seem to protect the interests of customary land holders and limit the possibilities for administrative abuse. In practice, however, some council secretaries and council members have used their positions of authority to allocate lands to themselves and to local elites or investors. The problem is so out of hand that the Commissioner of Lands complained to me that '80 percent of the applications for land conversions are just council staff applying for land for themselves with which to speculate.' This is undoubtedly an overstatement, but it captures the degree of the problem.

The half-hearted and contradictory character of bureaucratic decentralisation in Zambia has created confusion, conflict, and corruption in the administration of land at the district level. District Councils have been delegated the authority to process applications for title, but there are no land offices in the intermediate provincial level and all substantive administrative functions remain centralised in Lusaka.<sup>14</sup> Moreover, the Ministry of Lands does not have the capacity to provide technical assistance or personnel to the districts. As a result, there is an unbridged gap between local and national administration of land. This creates an informational asymmetry in which, as the Commissioner of Lands declared, 'We [the Ministry of Lands] don't know what's going on the ground.' District officials have been able to use this informational asymmetry for their personal advantage.

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<sup>14</sup> Since the mid-1980s there have been unfulfilled calls to decentralise the functions of the Ministry of Lands to the provincial level but thus far these calls have been unheeded and unfinanced. For instance, the 1985 Administrative Circular, Number 1 states: 'Necessary plans to further decentralise the various aspects of land administration and alienation to the Provincial Headquarters have been made. These plans will be operational as soon as funds are available' (GRZ 1985: section 6). Similar promises were made during the drafting of the 1995 Land Act.

In a rather extreme example of this, the council secretary and several of his colleagues on the Mumbwa District Council (200 kilometres west of Lusaka) conspired to carve up 56,000 hectares of customary land. The council secretary approached Chief Kaindu with a proposal to establish a game ranch on a portion of customary land adjoining Kafue National Park. The secretary told the elderly chief that the creation of a game ranch would bring development and prosperity to the local communities and that the council had the people's best interests at heart. The chief gave his assent to the plans and approved a sketch plan for the demarcation of the ranch. He was unaware, however, that by acquiescing to the plans he was agreeing to the conversion of the land from customary to state tenure. Once the council secretary had the chief's letter and the approval of the district council, he travelled to the Ministry of Lands where the Commissioner of Lands certified the conversion and granted the District Council title to the land. Shortly after title was acquired, the Minister of Local Government vetoed the plans for the game ranch for being beyond the remit of a district council. Rather than return the land to its customary users, however, the council demarcated it into six farms ranging from 4000 to 15,000 hectares. In the early 1990s, the council secretary set about selling the land to investors. Two Afrikaners (Botha and Swanepoel) formed a partnership and purchased most of the land, again with the intention of creating a game ranch. Swanepoel died in 2001 and Botha sold the land on to a consortium of Lebanese and Saudi Arabian investors who are seeking to create a hunting reserve.<sup>15</sup>

### ***Ministry of Lands***

The conversion of customary to leasehold tenure is intended to be a bottom-up process. The applicant should first acquire permission from the chief and district council then move on to the Ministry of Lands for final approval. In practice, however, this process is often reversed and applicants start at the top, not the bottom of the administrative hierarchy. 'There are many examples of money talking' one highly placed official within the Ministry of Lands confided. 'People go directly to the top [to the Ministry of Lands or to State House] to get permission rather than going through the proper channels—the balancing is done somewhere very high up.'

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<sup>15</sup> Several years ago, the current Chief Kaindu (the chief who approved the conversion died) travelled to the Ministry of Lands in Lusaka to complain about the land concession. He believed that he had a constructive conversation with the Commissioner of Lands, but when he returned to Lusaka later in the year to 'chase up' the case, the file on the case had mysteriously gone missing. 'I suspected something,' the

Chiefs frequently complain that foreign investors and Zambian elites secure titles directly from the Ministry of Lands. ‘Now when an investor wants land he starts in Lusaka and not here,’ complained Southern Province’s Chief Mweemba. ‘They get the paper in Lusaka and then come and tell us what to do.’ His neighbour, Chief Sinazongwe, reinforced this opinion: ‘There is no respect for chiefs. When someone from outside wants land, they can bypass chiefs entirely and go to State House and get a title deed. They then show up with the deed in their hand and tell us what to do.’

There are also numerous instances in which government officials have acquired title deeds to large areas of customary land and then subdivided it for personal gain.<sup>16</sup> In the mid-1990s, for instance, an official within the Ministry of Lands secured title to several thousand hectares of customary land in Chief Mukonchi’s area near Kapiri Mposhi. In the ensuing years, he has sold off this land to outsiders, including the sale of 347 hectares for five million kwacha and a vehicle in 2002.

What makes the Ministry of Land so ‘soft’ and prone to manipulation by elites and bureaucrats? The most obvious reason is that the Ministry’s financial and human resources are inadequate. There are, for instance, only thirty chartered surveyors in Zambia, and the Ministry has only two global positioning systems (GPSs)—only one of which is currently working. As with other Zambian ministries, funding is inadequate and erratic. In 2002, for example, the Ministry of Finance allocated two hundred million kwacha (about \$44,500) to the operating expenses of the Lands Tribunal. Of this, only seventy million kwacha (about \$15,500) was dispersed, and this was late in the fiscal year.

This lack of capacity coupled with hierarchical decision-making (e.g. all leases must be approved by the Commissioner of Lands) has created bottlenecks and backlogs within the Ministry. In 1998, the backlog of land applications was estimated to be 30,000 (Subramanian 1998: 271)—a figure that Ministry officials concur has not declined in the years since. This backlog of applications has created a strong incentive for applicants to look for informal ways to expedite the registration process and jump the queue. In such circumstances, graft and corruption are all but inevitable.

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current chief explained, ‘when something like that goes missing you suspect that it has been taken on purpose.’

<sup>16</sup> This is a longstanding problem. A clause within the 1975 Land Act granted the state the powers to approve all land transfers resulted in an ‘increased pool of resources available to those with access to public office’ (Szeftel 1983: 17).

The effective and fair administration of land in Zambia is further hampered by the failure of the government to draft the regulations required to properly implement the 1995 Land Act. The Land Act is an enabling law that provides a broad framework for the administration of land. Following the implementation of the Land Act, the government failed to pass any statutory instruments—the rules and procedures that govern the everyday administration of land. This lack of regulations, has created confusion over due process among both local and central government officials. For strategically placed officials, however, such opacity can be an advantage. ‘The absence of prescribed regulations’ one observer writes, ‘hands too much discretionary power to the Commissioner for Lands and generates work for well-informed attorneys’ (Adams 2003: 94). In such circumstances, decisions over land claims are arbitrary and prone to manipulation. For those in gate keeping positions, opacity in the administration of land is a valuable resource.

## Conclusion

At a time when market-based land reforms are underway throughout Southern Africa, and policy makers and donors (influenced by de Soto 2000) are promoting secure private tenure as a precondition to economic development, it is crucial to understand the social and political processes that shape land reform on the ground.<sup>17</sup> With this in mind, this paper has explored the ways in which changes to Zambia’s land tenure policy have filtered down to the local level.

The Land Act sought to promote both outside investment and local land ownership. In practice, the Act led to some foreign investment in the Zambian agriculture and tourism sectors (though not nearly as much as anticipated). It also led to a significant increase in the number of conversions to leasehold. The paper shows, however, that the Act is generating economic and social exclusion in much of the country. The benefits of market-based land reform have accrued to local elites and outside investors—not to poor and middling villagers. In areas where the issuance of titles is widespread, longstanding economic, social and political relations are being transformed. The transfer of customary land to leasehold has led to the enclosure of

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<sup>17</sup> In a March 2004 land policy conference, the World Bank and IMF committed tens of millions of dollars to titling lands in Africa and throughout the developing world.

common pool resources. It has also, in some cases, generated significant intra-community strife as villagers, chiefs and outsiders have collided over title conversions.

The paper also provides insights into the character of the *Zambian* state and its administration—particularly at a local level. The administration of land has proved to be highly malleable; it is subject to perversion by local elites, traditional rulers, outside investors and local and central government officials. *De jure* institutions such as the Lands Tribunal are intended to prevent such abuse. In practice, however, these institutions are easily co-opted or ignored. The paper shows that this malleability stems partially from the state's limited human, financial and technological capacity. In addition, fair and effective land administration has also been hindered by the presence of parallel and competing authorities at a local level. Chiefs, headmen, district secretaries, district planning officers, district council members, MPs, district administrators and a range of provincial officials all have some (real, imagined or assumed) authority over the administration of land.

Are there lessons from the *Zambian* experience that might be relevant to other countries considering market based land reform? Three themes arising from this research are particularly pertinent. First, donors bear much of the responsibility for the inequitable, contentious and confused administration of land in *Zambia*. Tenure reform was a donor conditionality. Donors invested in sponsoring the conference and background research that led to the 1995 Land Act. Funding dried up, however, when it came to implementation, and there was little support for drafting the regulations necessary to improve the administration of land. Second, administrative capacity in most African countries is extremely weak. Policies that do not fully acknowledge and accommodate these limitations are bound to fail. Donors and government policy makers, in other words, should not assume that the existence of state administrative structures implies that these structures are functional or that they function uniformly across space. Third, the character of local politics and historical experience will have a profound influence on the outcomes of any policy, particularly a policy as contentious and as fundamental to development as land reform.

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