

## **SHOULD ALL LAND BE UNDER LEASE HELD? A LOOK AT THE THREAT OF LEASE HELD TENURE ON CUSTOMARY TENURE.**

**By Chasu Longwe**

There has been a growing emphasis on the importance of lease held tenure and the benefits it offers to a country's economic growth and development. However, while lease held tenure comes with many social and economic benefits, the impact of land conversion on customary tenure should also be looked at. Research findings showed that in most cases, land conversions led to tenure problems such as displacements, socio-economic exclusion, land disputes, community disquiet, and enclosures of common pool resources such as forests, wetlands and water<sup>1</sup>

To start with, the issue of displacements can be said to be the premier of the problems that result from land conversion. In as much as security is one of the key benefits that lease held tenure offers; and is the reason why lease held is widely advocated for, the insecurity that land conversion places on local inhabitants is also an area of concern. The establishment of land security for the purchaser of the land, does not factor in the land insecurity that is imposed on the former inhabitants of that land. This insecurity is based on the fact that in most cases, investors who purchase land are quick to 'chase' away the former inhabitants of that land. This results into land insecurity and leaves the local occupants displaced, in most cases, having no place of resettlement. The problem of displacement also arises because former occupants cannot afford to buy land of their own. What results here is unplanned settlements. In some cases, families have settled around unsafe areas such as near railways just to have a land of their own.

Besides facing land insecurity, displaced families are also at risk of facing economic insecurity. This is attributed to the fact that for most traditional rural settlers, the land on which they had occupied on was most likely used as a source of income through farming. Although they might have farmed at a subsistence level, the rural farmers had still been able to feed themselves and even earned some income to support their livelihood attained from farm sales. Now, with land conversion, what does this mean for rural farmers? Just as local occupants are not given a place of resettlement after an investor has purchased land that they had previously occupied, no compensation or alternative source of income is offered to these former occupants.

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<sup>1</sup> Mushingi, A and Mulenga, A.S, Threats of Statutory Tenure on Customary Land in Zambia, Evidence from Chamuka Chiefdom in Chisamba District, African Journal on Land Policy and Geospatial Sciences, Vol.3, Special.2 (2020)

These problems become often a contributor to food insecurity, restricted livelihood opportunities, and therefore to poverty. An example of this was seen in Kenya where statutory registration weakened women's access to land impacting their access to income through farming.<sup>2</sup>

As for the social impact of land conversion, conveyance takes away the influence and control of chiefs. Land is an asset on which chiefs use to exercise their influence and domination on, over their people residing in their chiefdom. By allowing investors to acquire private property rights on customary land, traditional leaders lose control not just of land but also of rural communities<sup>3</sup>. The conversion of land from customary to lease held means that occupants of the land are no longer subjected to the rules of the chiefdom. Some rules may include regulations on the use of land. Other rules would be on the contributions to be made to the chiefdom, however regular. However, once land is conveyed, owners are in no subjection to make these contributions. This means that chiefs lose out from local support as upon converting land from customary tenure to statutory tenure, it cannot be taken back to its original tenure ever again<sup>4</sup>. Moreover, because land is a source of prestige and an asset that can be passed on from generation to generation, local occupiers stand to lose a potential inheritance they could leave for their children.

Other threats of land conversion is the increased risk of deforestation. Even though it has been argued that tenure conversion promotes investment that creates economic growth and leads to the sustainable use of land<sup>5</sup>. The term 'sustainable' use of land is a bit ambiguous in this context. Once investors have acquired legal ownership of land, the judgement on the usage of the land falls into the hands of individuals who may not always have the best interest of the environment. For those who may wish to use their land for residential or commercial purposes, what this entails is the clearing of land which means cutting down of trees. Deforestation negatively impacts climate change as the cutting down of trees does not guarantee reforestation. Because of this, the natural forest reserves of the land are also negatively impacted.

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<sup>2</sup> Adams, M, et al, Land Tenure and Economic Development in Rural South Africa: Constraints and Opportunities, Overseas Development Institute (1999)

<sup>3</sup> Mushingi, A and Mulenga, A.S, Threats of Statutory Tenure on Customary Land in Zambia, Evidence from Chamuka Chiefdom in Chisamba District, African Journal on Land Policy and Geospatial Sciences, Vol.3, Special.2 (2020)

<sup>4</sup> Tucker, T. K, Contemporary Challenges of Customary Land Administration in Zambia. Unpublished Master Thesis. Dalhousie University, Halifax, Nova Scotia, Canada (2014)

<sup>5</sup> Adams, M, et al, Land Tenure and Economic Development in Rural South Africa: Constraints and Opportunities, Overseas Development Institute (1999)

With the growing concerns about the impact of land conversion on customary land, in the recent past, tenure conversion has been questioned and reassessed in some sub-Saharan African countries. Some researchers and organisations (for example, Oakland Institute, 2011b; Chu et al., 2015; Human Rights Watch, 2017) have shown that tenure conversion in Africa has not served the intended objectives and has instead led to land displacements, land disputes and social inequalities. To protect customary land rights, international organisations such as Global Land Tool Network and UN- Habitat are promoting the use of innovative measures such as Fit-for Purpose and Social Tenure Domain Model to enable land documentation.<sup>6</sup> These measures are a conceptual answer to the difficulties or challenges created by the failure of tenure conversion done under the conventional land administration.<sup>7</sup>

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<sup>6</sup> Mushingi, A and Mulenga, A.S, Threats of Statutory Tenure on Customary Land in Zambia, Evidence from Chamuka Chiefdom in Chisamba District, African Journal on Land Policy and Geospatial Sciences, Vol.3, Special.2 (2020)

<sup>7</sup> Mushingi, A and Mulenga, A.S, Threats of Statutory Tenure on Customary Land in Zambia, Evidence from Chamuka Chiefdom in Chisamba District, African Journal on Land Policy and Geospatial Sciences, Vol.3, Special.2 (2020)