Traditional Landholding Certificates in Zambia: Preventing or Reinforcing Commodification and Inequality?

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The formalisation of customary land rights in Africa, as an alternative to their privatisation, is gaining increasing attention from scholars and policy makers. In this article, we use findings from Petauke district in eastern Zambia to discuss the impact of such reforms, where so-called traditional landholding certificates were implemented by the Petauke District Land Alliance in 2010. Based on interviews with farmers, chiefs and the Alliance, we argue that the certificates have reinforced, rather than reversed, both commodification of land and increased inequality of access to land. The main reason is that the certificates provide chiefs and lineage seniors with an efficient tool to further impose institutionally induced scarcity, thereby failing to provide already vulnerable groups with more secure rights to land.

Keywords: customary land; inequality; land reform; land certificates; Zambia

Introduction

‘All land is now marketed; all land has value, all land. […] Suddenly chiefs started to get allowances’.1 This quotation refers to the developments in customary areas in eastern Zambia in recent decades. It signifies both the increased commodification of land and the fact that chiefs are beneficiaries of this process. Partly as a response to these practices, so-called traditional landholding certificates (TLHC) have recently been introduced in the area. The aim of the certificates is to strengthen customary land rights in the context of increasing population pressure and conflicts over land, and hence provide a more equal alternative to fully fledged privatisation of land rights. This strategy of certifying customary land rights is not unique to Zambia. Other countries, including Ethiopia, Uganda, Tanzania and Botswana, to a name but a few, have all experienced various forms of certifying customary land rights. The results have been mixed, concerning both participation rates and outcomes.2

The question is whether the certificates have successfully managed to provide a more equitable alternative to commodification. It is too early to come to any definitive conclusions, and previous research on other cases provides no straightforward answer. The aim of this article is to discuss the outcome of certifying customary land rights in a specific project in eastern...

1 Interview with PDLA, Petauke, 13 March 2014. All interviews for this article were conducted Milja Norberg. To preserve their anonymity, we have chosen to identify interviewees only rarely.
2 D. Fitzpatrick, ‘“Best Practice” Option for the Legal Recognition of Customary Tenure’, Development and Change, 36, 3 (2005), pp. 449–75; K. Deininger, D. Ayalew Ali, S. Holden and J. Zevenbergen, ‘Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries’, World Development, 36, 10 (2008), pp. 1786–1812.
Zambia. We tentatively argue that there are signs of the certificates reinforcing, rather than reversing, the existing processes of change. In that regard, the certificates may have a limited impact on security and equal access to land. Our primary interest is not to identify sustainable future policy alternatives but to use this example of the introduction of TLHCs to give a deeper understanding of the mechanisms of security and inequality of land rights in rural Africa.

In the decades after independence, customary tenure systems were discouraged in many African countries on the grounds that clearly defined individual property rights, and hence security, could ensure productivity and agricultural investment. Consequently, a number of land-titling programmes were implemented in various parts of Africa, but the results were, at best, mixed and, in most cases, the programmes failed to achieve their expected goals. Instead of safeguarding customary rights for rural communities, the titling programmes decreased security for large sections of the local populations, while concentrating land in the hands of the elite. The critique of land titling stimulated the emergence of an alternative approach, sometimes referred to as the ‘third road’. Proponents of the third road argue that legal recognition and formalisation of existing customary rights is a much more socially acceptable and cost-effective way of providing the rural poor in sub-Saharan Africa with secure access to land. More importantly, and in contrast to privatisation, such reforms are claimed to result in a more equitable distribution of land. The argument depends on a fundamental assumption: that customary land rights provide fairly equitable systems, in which the right to land is distributed without the involvement of monetary transactions.

In this article, we take issue with this underlying assumption. Our main concern is that proponents of the ‘third road’ fail to situate land tenure in a proper economic context. We argue that there are signs of the third road reinforcing existing processes of land commodification by increasing the power of the chiefs to regulate access to land and, at the same time, giving senior members of the lineages increased control over the productive resources within a family.

We base our discussion on primary data from Petauke district in Zambia collected in early 2014. TLHCs were established by the Petauke District Land Alliance (PDLA) in 2010 as a reaction to severe conflicts over land in the district. According to the Alliance, a survey showed Petauke to be one of the districts most likely to experience increased land conflicts in the near future. In line with Sitko and Jayne, we claim that there are reasons to believe that the value

3 P. Peters, ‘Challenges in Land Tenure and Land Reform in Africa: An Anthropological Perspective’, Center for International Development at Harvard University, Working Paper no. 141 (2007).
4 See, for instance, D.A. Atwood, ‘Land Registration in Africa: The Impact on Agricultural Production’, World Development, 18, 5 (1990), pp. 659–71; J. Ensminger, ‘Changing Property Rights: Reconciling Formal and Informal Rights to Land in Africa’, in J.N. Drobak and J.V.C. Nye (eds), The Frontiers of the New Institutional Economics (San Diego, Academic Press, 1997), pp. 165–96; J.P. Platteau, ‘The Gradual Erosion of the Social Security Function of Customary Land Tenure Arrangements in Lineage-Based Societies’, United Nations University/World Institute for Development Economics Research (Insurance Against Poverty Project), Discussion Paper no. 26 (2002); P. Peters, ‘Inequality and Social Conflict over Land in Africa’, Journal of Agrarian Change, 4, 3 (2004), pp. 269–314; P. Peters, ‘Conflicts over Land and Threats to Customary Tenure in Africa’, African Affairs, 112, 449 (2013), pp. 543–62; E. Green, ‘State-Led Agricultural Intensification and Rural Labour Relations: The Case of the Lilongwe Land Development Programme in Malawi, 1968–1981’, International Review of Social History, 55, 3 (2010), pp. 413–46.
5 C. Toulmin and J. Quan (eds), Evolving Land Rights, Policy and Tenure in Africa (London, Department for International Development (DfID)/ International Institute for Environment and Development (IIED)/Natural Resources Institute (NRI), 2000); L. Alden Wily, Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa (London, IIED, 2003); A. Hoekema, ‘If Not Private Property, Then What? Legalising Extra-Legal Rural Land Tenure via a Third Road’, in J.M. Otto and A. Hoekema (eds), Fair Land Governance: How to Legalise Land Rights for Rural Development (Leiden, Leiden University Press, 2012), pp. 135–80.
6 Interview with PDLA, Petauke, 10 February 2014.
of land in Zambia has increased in recent years as a consequence of increased population pressure. This has not yet made land a scarce resource in the physical sense of the term, but it has enabled chiefs to impose more strictly institutionally induced scarcity by demanding cash transfers from farmers in exchange for cultivation rights, creating a commodification of land. The TLHC has facilitated these processes. Meanwhile, certificates fix relations to land over time, and it therefore becomes crucial for members of the family to be recognised as dependants in the contract. This gives the certificate holder and/or the senior members of the lineage increased capacity to control the productive resources of family members while making already vulnerable groups even more exposed.

Our findings indicate, on a more general level, that policies introduced from above, to correct undesirable imbalances created by local economic and political changes, have been of limited success. As Africa’s historical legacy of land abundance is slowly eroding, so is the sustainability of fair and equal customary land rights.

Security, Factor Endowments and Power Relations

Do customary lands provide a fairly equitable and secure system of land allocation? The question has been debated intensely over the years. There are scholars who regard tenure regimes in Africa as a resilient alternative to market forces. They emphasise the social inclusiveness of customary land tenure regimes, referring to rights to land as derived from membership of a social unit rather than subject to exclusive individual ownership. A fundamental problem with this literature is the tendency not to distinguish between de facto and de jure property rights.

There is limited empirical support for the proposition that customary rights in practice provide a resilient, social inclusive and fairly stable property rights system. On the contrary, scholars have identified processes of commodification and individualisation of customary rights in post-colonial Africa. In similar fashion, studies of the post-colonial period reveal that power, conflict and inequality have been significant and increased over time within prevailing customary property institutions. How can we explain the trends towards increased conflicts and inequality?

Based on the principles of materialist history (not to be confused with historical materialism), we claim that de facto property rights are, in the longer run, fundamentally shaped by the factor

7 N. Sitko and T.S. Jayne, ‘The Rising Class of Emergent Farmers: An Effective Model for Achieving Agricultural Growth and Poverty Reduction in Africa?’, Indaba Agricultural Policy Research Institute, Working Paper no. 69 (2012), pp. 9–10.
8 ‘Dependants’ is the term used by the PDLA for people who are not certificate holders but have been granted inheritance rights by having their name written on the certificate.
9 B. Cousins, ‘More than Socially Embedded: The Distinctive Character of “Communal Tenure” Regimes in South Africa and its Implications for Land Policy’, Journal of Agrarian Change, 7, 3 (2007), pp. 281–315; M.S. Freudenberger, The Future of Customary Tenure, USAID, Property Rights and Resource Governance Briefing Paper no. 8 (2011).
10 P. Woodhouse, ‘African Enclosures: A Default Mode of Development’, World Development, 31, 10 (2003), pp.1705–20; Peters, ‘Challenges in Land Tenure’.
11 See, for instance, J. P. Platteau, ‘The Evolutionary Theory of Land Rights as Applied to sub-Saharan Africa: A Critical Assessment’, Development and Change, 27, 1 (1996), pp. 29–86; J.P. Platteau, ‘Land Tenure, Economic Growth and Poverty in sub-Saharan Africa’, in Toulmin and Quan (eds), Evolving Land Rights, pp. 1–29; P. Peters, ‘Inequality and Social Conflict over Land in Africa’, Journal of Agrarian Change, 4, 3 (2004), pp. 269–314; A. Chimhovu and P. Woodhouse, ‘Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in sub-Saharan Africa’, Journal of Agrarian Change, 6, 3 (2006), pp. 346–71.
endowments. Mathieu, Zongo and Paré; Peters; and Chimhowu and Woodhouse all argue that there is a positive correlation between population growth and commodification of land in Africa. Historically, land in Africa has long been considered relatively abundant. As long as land is available for all, there will be limited incentive to impose private property rights, as these would increase enforcement costs without any significant gains for those in possession of land. Under such conditions, customary land rights are both a relatively efficient and equal system of governing property rights in land. Increased population pressure is, however, slowly transforming Africa from a continent marked by abundance of land to one of land scarcity. Even in Zambia, which has often been portrayed as a country where land is abundant, even by African standards, there are signs that land is becoming a scarce resource. This alters the foundation upon which customary land tenure regimes rest.

Land can be scarce in not only physical but also institutional terms. Institutionally induced scarcity is brought about when an individual or group of individuals use their power to regulate access to land among the population in a given geographical unit. Such regulations are far easier to uphold as population densities increase, but do not require physical scarcity, as the economic history of parts of Africa and Latin America clearly shows. What is required is an elite that possesses the economic and/or political power to regulate access. Gradual reduction in land per capita – caused by population growth – both gives incentives and enables people with the political and/or economic means to enforce institutionally induced scarcity. It is from this perspective that we should understand processes of commodification and increased land conflicts in Africa.

Increased population densities do not automatically lead to privatisation of land rights, as assumed in both neo-classical and Marxist economics. The reason is that property rights are embedded in a wider set of institutions, which tend to develop slowly and take many different paths, depending on social and political conflicts and negotiations. In the Africanist literature, this line of thinking is most clearly expressed when the focus is on local practices of land use and land distribution. This literature argues that population pressure stimulates the development

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12 D. North and R.P. Thomas, *The Rise of the Western World: A New Economic History* (Cambridge, Cambridge University Press, 1973); M.M. Postan and J. Hatcher, ‘Population and Class Relations in Feudal Society’, in T.H. Aston and C.H.E. Philpin (eds), *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre—Industrial Europe* (Cambridge, Cambridge University Press, 1977), pp. 64–78; S. Berry, ‘Debating the Land Question’, *Comparative Studies in Society and History*, 44, 4 (2002), pp. 638–68; G. Austin, ‘Resources, Techniques, and Strategies South of the Sahara: Revising the Factor Endowments Perspective on African Economic Development, 1500–2000’, *Economic History Review*, 61, 3 (2008), pp. 587–624.

13 P. Mathieu, M. Zongo and L. Paré, ‘Monetary Land Transactions in Western Burkina Faso: Commoditytisation, Papers and Ambiguities’, in T.A. Benjaminsen and C. Lund (eds), *Securing Land Rights in Africa* (London, Frank Cass, 2003); Peters, ‘Inequality and Social Conflict’; Chimhowu and Woodhouse, ‘Customary vs Private’.

14 There are exceptions, but these prove the general rule of Africa historically being perceived as a land-abundant region. See, for instance, M. Widgren and E.G. Sutton, *Islands of Intensive Agriculture in Eastern Africa* (Oxford, James Currey, 2004); G. Austin, *Labour, Land and Capital in Ghana – From Slavery to Free Labour in Asante, 1807–1956* (Rochester, University of Rochester Press, 2005); E. Green, ‘Diversification or De-Agrarianization? Income Diversification, Labour and Processes of Agrarian Change in Southern and Northern Malawi, mid-1930s to mid-1950s’, *Agricultural History*, 82, 2 (2008), pp.164–92.

15 Peters, ‘Inequality and Social Conflict’; Austin, ‘Resources, Techniques, and Strategies’.

16 The aggregate population density of 17.6 people per square kilometre is still low. But the population is not evenly distributed, with roughly 35 per cent of the rural population living in areas exceeding 500 persons per square kilometre. Hence agricultural land may not be nearly as abundant as the aggregate figures seem to suggest. Sitko and Jayne, ‘The Rising Class’.

17 W.G. Clarence-Smith and F. Ruf, ‘Cocoa Pioneer Fronts: The Historical Determinants’, in W.G. Clarence-Smith (ed.), *Cocoa Pioneer Fronts Since 1800: The Role of Smallholders, Planters and Merchants* (London, Macmillan, 1996), pp. 1–22; K. Griffin, A.R. Khan and A. Ickowitz, ‘Poverty and Distribution of Land’, *Journal of Agrarian Change*, 2, 3 (2002), pp. 279–330.

18 Chimhowu and Woodhouse, ‘Customary vs Private’.

19 S. Berry, *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (Madison, University of Wisconsin Press, 1993), p.139.
of land markets that are embedded within a set of local power relations. To quote Mathieu et al., ‘[t]he changes in land transactions are … slow, quite dependent on local circumstances, contradictory, exclusionary (that is, there are winners and losers in the new transactions), complex and ambiguous’. In order to generalise the institutional context, we take our point of departure from Hastings Okoth-Ogendo’s conceptualisation of historical land rights in Africa as being attached to membership of a unit of production, namely the family. By ‘family’, we refer to the group of people who work and/or depend on demarcated pieces of land, such as husband, wife and children. The unit may be larger than a nuclear family, including children of a deceased relative, elders and so on. While relations of production are, to a large extent, an intra-family matter, allocation of factors of production (land) is regulated by the senior members of the lineage, consisting of multiple families of the same origin, which can be either matrilineal or patrilineal. Access to land requires that one engages in the productive and reproductive activities of the unit of production. One’s obligations are dependent on one’s status within the unit, which varies over time and space. Research on family relations in rural Zambia shows that the lineage plays a significant role in allowing farmers access to, or excluding them from, secure land.

Farmers cultivating land that has been inherited directly from their lineage tend to hold more secure rights to the land and be in a better position to negotiate terms of contracts than those who have accessed land through marriage. The significance of family networks in providing individuals with opportunities to negotiate access to land seems, however, to be diminishing, while conflicts over land within lineages are increasing. Some argue that the economic and demographic change erodes intra-familial social security functions, and land scarcity and increasing economic value develop exclusionary practices where decision-making within families becomes more individualistic. Peters claims that it has ‘increased in incidence and severity as land values rise, patterns of land acquisition become more commercialised, land becomes more concentrated, and disputes and litigation over competing rights proliferate’, and is deepening social differentiation on customary land. What role do chiefs play in such processes?

In much of the literature dealing with the post-colonial period, chiefs are defined not as an elite group but as representatives of the people. It is commonly assumed that the chieftaincy is a valuable link to development, with a role as the ‘fathers and mothers of the people’ symbolising community solidarity. The rationale for the ‘third road’ is ultimately dependent

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20 See, for instance, Chimhowu and Woodhouse, ‘Customary vs Private’; J.P. Colin and P. Woodhouse, ‘Interpreting Land Markets in Africa’, *Africa*, 80, 1 (2010), pp. 1–13.
21 Mathieu et al., ‘Monetary Land Transactions’, p. 126.
22 H.W.O. Okoth-Ogendo, ‘Some Issues of Theory in the Study of Tenure Relations in African Agriculture’, *Africa*, 59, 1 (1989), pp. 6–17.
23 See, for instance, G. Kajoba, ‘Women and Land in Zambia: A Case Study of Small-Scale Farmers in Chenena Village, Chibombo District, Central Zambia’, *Eastern Africa Social Science Research Review*, 18, 1 (2002), pp. 35–61; R.A. Chileshe, ‘Land Tenure and Rural Livelihoods in Zambia: Case Studies of Kamena and St. Joseph’ (PhD thesis, University of the Western Cape, 2005); A. Chapoto, T.S. Jayne and N. Mason, ‘Widows’ Land Security in the Era of HIV/AIDS: Panel Survey Evidence from Zambia’, *Economic Development and Cultural Change*, 59, 3 (2011), pp. 511–47; F. Strobbe, C. Olivetti and M. Jacobson, ‘Breaking the Net: Family Structure and Street-Connected Children in Zambia’, *Journal of Development Studies*, 49, 5 (2013), pp. 670–88.
24 See, for instance, D.I. Ray, ‘Traditional Leadership and Rural Local Governance’, in D.I. Ray and P.S. Reddy (eds), *Grassroots Governance? Chiefs in Africa and the Afro-Caribbean* (Alberta, University of Calgary Press, 2003), p. 93; W.F.S. Miles, ‘Traditional Leaders and Development Administration: Chieftaincy in Niger, Nigeria, and Vanuatu’, *Studies in Comparative International Development*, 28, 3 (1993), pp. 31–50; C. Owusu-Sarpong, ‘Setting the Ghanaian Context of Rural Local Government: Traditional Authority Values’, in Ray and Reddy (eds), *Grassroots Governance?*, pp. 31–68; C. Wright, ‘What Role for Traditional Leadership in the “Pluralistic State” in Africa?’, in Ray and Reddy (eds), *Grassroots Governance?*, pp. 287–97.
on the assumption that chiefs speak and act on behalf of the population within their jurisdiction. However, detailed case studies give limited support for making such an assumption.

Based upon an examination of the chieftaincy–societal relations in South Africa, Williams argues that the chieftaincy has a strong ability to adapt without losing authority and emphasises that ‘it has nonetheless sought to direct, or redirect, these changes in ways that bolster its own authority’. In agreement, Cotula raises the point that socio-economic change in the inner Niger delta has resulted in village chiefs becoming ‘integrated in the administrative structure of the state’, in many areas using this influence to gain greater control over pasture land. Peters also gives the example of how lobbying by traditional authorities in Malawi has ‘resulted in chiefs being made the chairpersons of the new land allocation committees’. Decentralisation programmes, she further claims, have enabled traditional authorities to ‘capture the benefits of decentralized forms of management’. A growing rural population enables chiefs to impose institutionally induced scarcity, as it provides chiefs with increased opportunity to gain financially from land transfers when demand for new land increases among families. From this perspective, we claim that there is a significant risk that the certificate will not provide more equitable and secure access to land, but will give chiefs, certificate holders and the lineage elites the tools to impose institutional scarcity more efficiently, for their own benefit.

**The Road to Traditional Landholding Certificates in Zambia**

The land policy of newly independent Zambia shared basic features with colonial land policies, based on a dual judicial system. All land before independence officially belonged to the British Queen, but Europeans had the right to buy or lease land, while African tenure systems were based on the principle of customary (then ‘native’) rights. Africans had usufruct rights to land, but were not allowed to buy, sell or lease landed property. Chiefs were in charge of the distribution of land within customary areas. With independence, land was transferred to the Zambian state, but the dual judicial system remained intact.

In general, the customary tenure system remained fairly constant until the Movement for Multiparty Democracy came to power in the early 1990s. The new government wanted to ensure the right to private property and facilitate investment in agricultural development. An initial land conference recommended developing ‘a procedure for systematic titling of all holdings’. The original proposal was withdrawn, owing to opposition from the chiefs, who felt that their powers were being threatened. Instead, a compromise was reached. The Lands Act of 1995 allowed for conversion of customary land to private title, but required consultation and consent from the chief.

Despite the modifications, the provisions of the Act continued to lack popular support and have continued to be criticised by civil society. It is argued that conversion to title deeds benefit wealthier farmers, while the poorer are left with insecure land rights.

The Zambia Land Alliance (ZLA) was created in 1997 as a reaction to the land reform process, and is a network of civil society organisations that works through research, community

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27 J.M. Williams, ‘Leading from Behind: Democratic Consolidation and the Chieftaincy in South Africa’, *Journal of Modern African Studies*, 42, 1 (2004), p. 113.
28 Cotula, *Changes*, p. 90.
29 Peters, ‘Conflicts over Land’, p. 550.
30 *Ibid.*, p. 549.
31 M. Adams, ‘Land Tenure Policy and Practice in Zambia: Issues Relating to the Development of the Agricultural Sector’, draft document for DFID, Lusaka office (2003).
32 *Ibid.*, p. 60.
33 *Ibid.*, S. Evers, M. Spierenburg and H. Wels (eds), *Competing Jurisdictions: Settling Land Claims in Africa*, Afrika-Studiecentrum series, vol. 6 (Leiden, Brill, 2005).
34 Adams, ‘Land Tenure Policy’; Evers, Spierenburg and Wels (eds), *Competing Jurisdictions*. 
participation and lobbying for fair land policies. It is one of the organisations that the
government has included to be part of the Technical Committee that works to oversee the
development process of a national land policy. The ZLA supports the chiefs’ struggle to protect
customary land against policies that render chiefs irrelevant to the ‘administration of their own
land, inherited from their ancestors’. At the time of writing, the latest draft of a national land
policy of Zambia was completed in October 2015. The draft claims that what is needed is a
correction of the poor land development practices and indiscriminate use of land that results
from ‘the lack of a coherent national Land Policy throughout the 50-year long post-colonial
history’. Meanwhile, conflicts over customary land have continued to increase. The Customary Land
Administration Guidelines, written by the ZLA, show many cases in which farmers have been
pushed out of the land they have cultivated for decades, either by other farmers claiming their
rights to the land or by chiefs and traditional leaders, who have the authority to grab and sell
land from anyone without consulting the farmers. There are signs of misuse of the chiefly
power as well. There are instances in which the same piece of land has been granted to more

Figure 1. Zambia, and Petauke district. Source: Nations Online Project, administrative map of Zambia, showing
Petauke district (in black) in Eastern province, at the border with Mozambique.

35 Zambia Land Alliance, website available at http://www.zla.org.zm/, retrieved 13 June 2016.
36 E. Kabilika, ‘Press Statement to Clarify Presentation of Land Policy to Traditional Leaders’, Zambia Land Alliance,
11 January 2016, available at http://www.zla.org.zm/2016/01/statement-on-presentation-of-draft-land-policy-to-
chiefs-110116/ (land policy statement), retrieved 18 June 2016.
37 Ministry of Lands, Natural Resources and Environmental Protection, ‘Draft National Land Policy’, working paper,
Lusaka, October 2015, p. 12.
38 PDLA, Customary Land Administration Guidelines (Petauke, 2012).
than one farmer, creating confusion as to who has the right to cultivate it, and other instances in which the traditional leader has retroactively denied that land has been given to a family. The royalty paid by farmers to chiefs in exchange for rights to land has sometimes been so high that it has been mistaken for payment, which has created confusion about whether the allocated land has been purchased or not.

A survey conducted by the ZLA discovered that Petauke district had among the highest number of inheritance and boundary disputes, which were also likely to increase. In addition, there were signs of fundamental changes in inter-family land transfers, as the matrilineal system is kept intact while the practice of matrilocal migration patterns is slowly being replaced by patrilocal migration patterns. The need to solve land disputes in Petauke the area necessitated the creation of the PDLA, which worked for three years to develop a new system before introducing the TLHCs in 2010. The PDLA emphasises that it is the unwritten traditional norms and laws that are open to misinterpretation and manipulation, causing suffering to women and other marginalised groups. When it comes to converting customary tenure into leasehold, the PDLA fears that chieftaincy and its traditions and customs will fade, and so the customary system needs to be preserved.

It is within this context of uncertainties that the TLHC system was created by the PDLA in 2010. By giving farmers documents to show their entitlement to the land, the certificates are meant to reduce conflicts, create security and preserve the structure of customary land administration through headmen and chiefs. By formalising the existing laws on customary land, the TLHC system attempts to strengthen customary norms and land allocation according to the way the customary land tenure system was originally supposed to function. Since 2010, 4,900 certificates have been issued, and by early 2014, four out of six chiefs in Petauke district had agreed to implement certificates.

The Field Study

The fieldwork for this study was undertaken mainly in two villages in Petauke district in early 2014. The two villages, Dani village, under Chief Nyamphande, and Sikankhomba village, under paramount Chief Kalindawalo, were selected in 2013 as model villages by the PDLA and/or chiefs to test the effect of implementing the TLHCs in practically every household.

Approximately 300 certificates have been issued in the two model villages. The relatively equal distribution of certificates in these villages can be contrasted to other villages in the district, where few or no certificates have been issued. There is a potential bias arising from the fact that our analysis is based on the selected model villages. However, while it increases the risk of the chosen villages being favourable to the implementation of the certificates, it can nevertheless work in our favour. The implementation in the model villages was done as a pilot project, in order to see what happened if all households in a village obtained certificates. By examining the model villages, we examine the impact of the ideal distribution of certificates in a village and thereby avoid biases that might have appeared if we based our conclusion on failing cases.

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39 Interview with PDLA, Petauke, 10 February 2014; interview with Pastor Shamwanga, Petauke, 11 February 2014.
40 PDLA, Customary Land Administration Guidelines.
41 Interview with PDLA, Petauke, 10 February 2014.
42 Ibid.
43 Ibid.
44 Ibid.; S. Nilsson, ‘Land Access Does Not Imply Land Security: How to Enhance Women Empowerment in Customary Land Reform Initiatives’ (Bachelor’s dissertation, Umeå University, 2016).
45 It should be noted that a disagreement as to who selected the model villages arose during the interviews. While chiefs claimed it was the PDLA that selected them, the Alliance claimed it was the chiefs. Interview with PDLA, Petauke, 13 March 2014; interview with Chief Nyamphande, Petauke, 26 February 2014.
46 Interview with PDLA, Petauke, 13 March 2014.
Between January and March 2014, Norberg conducted semi-structured, open-ended interviews with key informants, including the programme officer and the co-ordinators of the PDLA and the ZLA, the chairperson of Petauke District Farmers’ Association, chiefs and religious leaders. An all-day chiefs’ workshop organised by the PDLA addressing the implementation of the certificates was also attended by four out of six chiefs in Petauke district, headmen as representatives of a few villages, the commissioner of land, and the district council secretary. The meeting was followed by fieldwork in the two model villages. Data were collected through one-to-one, structured, qualitative interviews with the assistance of research assistant Lydia Lungu, who translated the interviews from the local Nsenga language directly into English. The final sample size for the villages totalled 67 male and female volunteers ranging in age between 17 and 87. Out of these, 31 provided further qualitative information after being encouraged to elaborate on important issues such as land disputes, security and the implementation of the certificates.

Traditional Landholding Certificates in Petauke

Petauke district is a farming community in the Eastern province of Zambia, located approximately 400 kilometres from Zambia’s capital city, Lusaka, and 180 kilometres from Chipata, the administrative headquarters of the Eastern province (see Figure 1). The province has a population close to 1.5 million. There are 305,000 households in the province, of which 22.5 per cent are headed by women. The majority of households are located in rural areas, where they are engaged in farming and raising livestock and poultry. Maize is the most common crop, followed by groundnuts, sunflowers and sweet potatoes. According to the PDLA, the average farm size in the province is approximately two hectares.

There are approximately 59,000 households in Petauke district, and the population of just over 300,000 consists of 49 per cent men and 51 per cent women. The local language is Nsenga. The main town of Petauke district is Petauke town (boma), only two kilometres across, out of the 8,359 square kilometres in the whole district. The town has one main road surrounded by small shops, markets, a few motels, schools and a church. Apart from the main road between Lusaka and Chipata, situated a couple of kilometres south of the town, the condition of the roads is poor, increasingly so farther out towards the location of the villages. More than 90 per cent of the district’s population live in rural areas and are involved in subsistence farming, even though other sources of income, such as small-scale trading, exist either separately or simultaneously. As off-farm incomes are often seasonal or meagre, there is great dependence on agriculture for a secure livelihood. The population density in Petauke district is 36.8 persons per square kilometre. This indicates an abundance of land, but, as we have argued above, the measure is too crude to provide an accurate description of land available for farming. Not all land is arable, and sections of the district are not evenly populated. Although the general land–labour ratio in the district is 2.7 hectares per person, most farmers cultivate land of less than one hectare.

Changing or Making (Un)Equal Access to Land Permanent

The aim of the TLHCs is to provide a more equitable alternative to privatisation of land rights by formalising customary land rights, in the context of increasing conflicts over land. Thus

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47 Central Statistical Office of Zambia, 2010 Census.
48 Interview with PDLA, Petauke, 10 February 2014.
49 Central Statistical Office of Zambia, 2010 Census.
50 Interview with PDLA, Petauke, 10 February 2014; Central Statistical Office of Zambia, 2010 Census.
51 Interview with PDLA, Petauke, 12 February 2014; Central Statistical Office of Zambia, 2010 Census.
52 Chileshe, ‘Land Tenure and Rural Livelihoods’.
53 Interview with PDLA, Petauke, 10 February 2014; Central Statistical Office of Zambia, 2010 Census.
the main question we ask is whether the certificates have improved the situation of (unequal) access to secure land. One way of distinguishing the outcomes between groups is to look at the potential changes in secure access to land across different groups based on their right to inherit land rather than their economic wealth. Farmers who have inherited access to land from their own matrilineal lineage tend to be better placed to negotiate for secure rights to land when disputes arise. At the other end of the spectrum are farmers, increasingly women, owing to patrilocal migration patterns, who cultivate the land of their spouses and whose negotiating powers for continued access to land are weak.

We can illustrate the security outcomes by categorising the farmers into three groups: those who have obtained certificates on the land they are cultivating, those who have been identified as dependants on a certificate and those with neither certificates nor their names written on a certificate. The first thing one needs to ask is who gets a certificate. The procedure of obtaining one is quite complicated and involves a number of negotiations, explained by the PDLA as follows: ‘I, the holder of the certificate, should be the first one to sign, and after that I get the consent from the headperson to sign. The last person to sign is the chief’.54 While the chiefs retain the final authority to approve the application, the role of the lineage members should not be neglected. As explained by the PDLA, the applicant needs approval from the lineage that the land plot belongs to: ‘they must all agree to say “yes, we can give you a certificate of your own ownership now granted”’.55 The procedure indicates how applicants with good relationships to their lineage are more likely to obtain certificates. In the case of the model villages, the initial phase of implementation of the certificates provided a crucial time for farmers to negotiate ownership. An interview with Chief Nyamphande emphasised how competing claims for land increased when farmers applied to obtain certificates in the early phase: ‘initially, they [the conflicts] increased. In fact, we had quite a few problems before giving out the certificates, because one of the issues we had to resolve was who owned what piece of land’.56

Farmers who, through marriage, have moved to the lands of their spouses face a more difficult situation in acquiring security through the certificates. In patrilocal societies, the security of a wife who has moved to her husband’s land depends on whether she is identified as a dependant on the certificate belonging to her husband, which the husband’s lineage has to agree upon. If they give consent, the wife will obtain secure access to the land and will take over the certificate in the event of her husband’s death. If they do not agree, the wife is left with no secure access to land, and continues to risk being pushed off the land in the future. The certificate is assumed to work as the stronger claim when the lineage of the deceased husband attempts to reclaim the land. Meanwhile, the risk of losing their claim to land provides incentives for lineage members not to give consent, increasing the vulnerability of farmers who are excluded from obtaining a certificate or being identified as dependants on them.57 As one woman with a husband owning a certificate argued, ‘I do not feel that the land is safe for me and my children due to the different views people have. My husband has the certificate and there is a risk that his family members will come to get this land if he dies. I do not feel secure’.58 In this case, the husband’s lineage may not have been willing to take the risk of allowing a certificate to a lineage member who may pass the land on to a spouse or children of different descent.

In the next case, in which the man had a wife from another village, the lineage actively prevented the tiller of the land from getting a certificate: ‘my land belongs to my parents and I need their permission to cultivate it. If I die, my parents can take back the land, so it is not

54 Interview with PDLA, Petauke, 12 February 2014.
55 Interview with PDLA, Petauke, 13 March 2014.
56 Interview with Chief Nyamphande, Petauke, 26 February 2014.
57 Interview with PDLA, Petauke, 13 March 2014; interview with farmer D17, man aged 68, Dani village, 28 February 2014; interview with farmer S16, woman aged 28, Sikankhomba village, 27 February 2014.
58 Interview with farmer D08, woman aged 25, Dani village, 28 February 2014.
safe for my wife and children’. ⁵⁹ In practice, it means that the man’s parents – though allowing him to cultivate the land as if it were his own – do not permit him to get a certificate on which his wife’s and children’s names would be written as dependants. The risk of being refused inheritance to the land in the case of the man’s death remains.

While these interviews indicate considerable vulnerability for women, who often move to the land of their husbands, the same vulnerability exists for men who move to their wives’ land. In a case where a farmer had moved to his wife’s land without holding security through a certificate, the PDLA explained it as ‘the relatives of the woman refused to have a co-holder of the certificate. They have to agree’. ⁶⁰ In all cases, farmers excluded from being identified as holders or dependants on the certificates remain vulnerable, with low security of access to the land they are cultivating.

Although the certificate in theory provides security for previously vulnerable farmers by adding them as dependants, it seems that this is far from a common practice. Access to secure land remains highly dependent on keeping good relations with the members of the lineage.

The Cost of Security

According to the Alliance, there is high demand among farmers for the certificates. ⁶¹ This can partly be attributed to what seem to be misconceptions among farmers about the security that the certificates can provide. The majority of farmers interviewed expressed their need for title deeds rather than certificates. Some have brought their TLHCs to the council in order to provide proof that the chief has agreed to let the farmer convert the land to title deed. ⁶² This indicates that farmers expect that the certificate, in the future, will increase their independence and allow them to trade land without the consent of the chief. In reality, however, it looks as if the certificates are increasing the power of chiefs, as they open up opportunities for the chiefs to impose institutionally induced scarcity. ‘If the chief decides that he is going to give a document to the person who is occupying customary land, it is in his jurisdiction, and consistency among the chiefs was enough for us to begin the implementation’. ⁶³ This remark confirms that chiefs retain the right to veto the implementation of the certificates in their respective chiefdoms – that is, the success of the certificates is initially dependent upon the chiefs’ willingness to accept the system. The relatively slow implementation process is an indication of the initial misconceptions of the chiefs rather than a lack of demand from the farmers. The PDLA had to find a way of getting the chiefs to agree. In an interview regarding the role of the chiefs in the implementation process, the PDLA claimed that an emphasis on the increasing powers of the chiefs was necessary for a successful implementation:

first of all, they never believed it. They thought … that they are losing power, because the first thing that came into their mind is that this traditional landholding certificate was a title. First of all, they didn’t actually understand what we meant. For them – it was a title. But we said, ’no, this is not a title. This gives you also power.’ ⁶⁴

While many of the farmers interviewed expressed confidence that the certificates gave them secure access to the land, a few were aware that the chiefs retain the power to reallocate farmers with certificates if necessary. ⁶⁵ This could be done only under the specific conditions mentioned

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⁵⁹ Interview with farmer D25, man aged 35, Dani village, 28 February 2014.
⁶⁰ Interview with PDLA, Petauke, 13 March 2014.
⁶¹ Interview with PDLA, Petauke, 10 February 2014.
⁶² PDLA Chief workshop, Petauke, 25 February 2014; interview with farmer S13, man aged 26, Sikankhomba village, 27 February 2014.
⁶³ Interview with PDLA, Petauke, 12 February 2014.
⁶⁴ Interview with PDLA, Petauke, 10 February 2014.
⁶⁵ Interviews with farmer D38, man aged 43, Dani village, 28 February 2014; farmer D07, man aged 31, Dani village, 28 February 2014; farmer S06, woman aged 68, Sikankhomba village, 27 February 2014.
in the Customary Land Administration Guidelines, the document upon which the certificates are based. However, the content of the specific conditions is difficult to establish, as they are specified in various ways throughout the document. The conditions initially are clearly stated as: i) if the certificate is issued in error; ii) if one is found selling or renting such a piece of land; iii) if one applies for consent to convert the customary land right to leasehold. However, additional conditions in which the chief has the authority to cancel a certificate are mentioned later in the document, including if the land has not been used for three years, a condition not mentioned previously. Furthermore, it was revealed during the workshop that there are even more possibilities for the chief to reallocate farmers to other land: for example, when there are development projects in the area. Negotiations between the chiefs and the PDLA thus seem to be ongoing and determined by compromises by the Alliance. An indicator of the chiefs’ increased power is the difference between de jure and de facto prices of the certificates.

How to determine the price of the certificates was an important part of the negotiations between the PDLA and the chiefs in Petauke district. As a way of providing equal access to security, the PDLA has aimed for the issuing of the certificates to ‘be as fast as possible’, as well as ‘affordable for everybody in the village’. Perceptions of how much the farmers could be charged for a certificate varied between chiefs before an agreement was made. Some suggested a fee of 1,000 kwacha (US$172). This cost is unlikely to be affordable to everyone in the village, as 70 per cent of the farmers interviewed had no bags of maize left to sell after their own consumption. The final agreement was set at 50 kwacha for rural farmland up to five hectares, a reflection of the production cost that the chiefs could charge the farmers to cover the recurrent cost of providing farmers with certificates. The idea was that chiefs would take over the administrative process of producing and issuing the application forms and certificates, but, according to the PDLA, ‘the challenge for the chiefs is the production of these documents. Capacity is not there where they can produce these documents or papers and so on’. At the time of interviews, approximately a year after the implementation of certificates in the model villages, the PDLA remained the producers of the certificates. As the Alliance explains it, they have produced the certificates for free while all the benefits have gone to the chiefs: ‘I said [to the chiefs]: “I have 1,000 certificates for you for free, all right?” And while I was doing that, most of these guys have been telling their subjects: “they charge us 50 kwacha for the certificates”. OK?’

In spite of the stipulated regulation, the price of the certificates appears far from established in practice. Farmers in the model villages raised concerns about the unequal distribution of certificates and the cost of obtaining one:

because they are a model village, the people that got certificates were lucky. But not everyone in the village has a certificate, and that is a problem. Only 60 people have certificates. Of the people that are left – they will have to pay! That’s when segregation can start, and only rich people will be able to afford to get it.

The interviews with farmers indicate that, instead of the 50 kwacha agreed upon between the chiefs and the PDLA, the de facto price demanded was three times higher than initially agreed:

66 PDLA, Customary Land Administration Guidelines, p.9.
67 Ibid., p. 14.
68 PDLA Chief workshop, Petauke, 25 February 2014.
69 Interview with PDLA, Petauke, 10 February 2014.
70 Interview with PDLA, Petauke, 13 March 2014. The exchange rate is that for 28 February 2014 (ZK1 = US$0.1715).
71 Based on 67 interviews with farmers, Dani and Sikankhomba villages, 27–28 February 2014.
72 Interviews with PDLA, Petauke, 10 February 2014, 13 March 2014.
73 Interview with PDLA, Petauke, 12 February 2014.
74 Interview with PDLA, Petauke, 13 March 2014.
75 Interview with farmer D36, woman aged 43, Dani village, 28 February 2014.
we in the model villages did not have to pay anything. The chief wanted 150 kwacha but we talked to him and said ‘No’. However, it now will cost 200 kwacha for residential area and 150 kwacha for fields for everyone else. And all that money goes to the chiefs. Poor people can’t afford that. Why do they need that much? The people aren’t buying the land! It still belongs to the chief and he can take it back! I wish we could pay in kind instead of a fee. Just if you want to go and speak to the chief you need to bring a goat.  

A very recent study of the implementation of TLHCs has confirmed that the overcharging for certificates remains. The study compared the model village Sikankhomba in Petauke district to Monze district, where farmers who have received information have been able to apply for certificates. The case of Monze district indicates that chiefs and village headmen have charged up to 400 kwacha per certificate, a price eight times the originally agreed amount.

The PDLA has reacted to the overcharging in Petauke district and claims that people have not been comfortable with it: ‘this guy is going to charge us 250 kwacha from it. Where do we find that money?’ According to the Alliance, the high prices of the certificates are not due to the production costs, but rather indicate rent-seeking behaviour among the chiefs, as they use the certificate to accumulate wealth. In that regard, the introduction of the certificates not only keeps the powers of the chiefs intact, but opens the possibility of the chiefs strengthening their authority and control over land distribution. This functions directly, as the certificates require the headman to seek consent from the chief to remove people, and indirectly, by accepting that the certificates should not be handed out for free.

We can distinguish two possible opportunities for chiefs to increase their authority using the powers that they have as price-makers. The first is to offer a low price, resulting in more transactions, as more farmers could afford to obtain a certificate. The second is to set a relatively high price, obtain more revenue per certificate, and exclude farmers who will need to save more in order to receive one and, as they may believe, finally secure their land. The latter seems to be the commonest strategy.

In a sense, the chiefs are taking the opportunity given to them to extract rents stemming from the introduction of the certificates. The PDLA seems to be aware of this and has expressed concerns that the chiefs will capitalise on the certificates: ‘those certificates should be free but you know what will happen? They will capitalise on that. And they will make a lot of money out of it and my question is where does that money go? The amount of money they collect! It’s not going back to the farmers!’ The PDLA claimed that one reason behind the initial reluctance among chiefs was that they feared losing their economic benefits associated with resolving recurrent land disputes. Offering royalties has long been required in order to speak to the chiefs but can, as shown earlier, easily be misused as payment by the people in power. In that regard, the overcharging for the certificates may be, from a chief’s perspective, a just way of compensating for the loss of income generated from land disputes. This will work only as long as there are farmers willing to pay, and their willingness to do so indicates that the value of land is increasing. An example of a recent issuance of new farming land demonstrates how the certificates reinforce commodification of customary land:

so now if he gives you that area, the process is that you pay 100 kwacha to Nyamphande, and he will give you a letter to go and see a … what they call a chairperson at that area. … That person says, ‘for me to take you to the field you must pay me 20 or 30 kwacha. And when you come

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76 Interview with farmer D38, man aged 43, Dani village, 28 February 2014.
77 Nilsson, ‘Land Access Does Not Imply Land Security’, p. 35.
78 Interview with PDLA, Petauke, 13 March 2014.
79 Ibid.
80 Interview with PDLA, Petauke, 10 February 2014; PDLA chief workshop, Petauke, 25 February 2014.
81 Interview with PDLA, Petauke, 13 March 2014.
82 PDLA Chief workshop, Petauke, 25 February 2014; interview with PDLA, Petauke, 13 March 2014.
back from the chief now, you have to pay the amount I was telling you of 200 kwacha for you to receive the certificate." 83

The PDLA expressed strong concerns about the ineffectiveness of the agreements made at the meetings: “Do we agree?” “Yes, we agree”. Bullshit! Then they go back in the villages and they do something very contradictory”. 84 With no law enforcement, the chiefs’ power to navigate within the system is substantial, as they do not have to stay accountable to agreements made with the PDLA. The transactions required in order to receive TLHCs not only give the chiefs new opportunities for rent-seeking but may also lead to increased social differentiation, as the right to land, which farmers by customary norms should always have, becomes linked to monetary transactions. This is the commodification of land.

**Decreasing, Cementing or Reinforcing Inequality?**

We cannot claim that our very preliminary findings constitute an accurate basis on which to draw any certain conclusions regarding the effects of the implementation of TLHCs. Having said that, we do believe that the pieces of scattered information that we have collected indicate that the certificates are reinforcing existing processes of commodification and increased inequality.

It is sometimes claimed that access to land under customary principles is regulated through a number of informal contracts that need to be regularly renegotiated, since rights to land are derived from social relations rather than the market. 85 Some scholars emphasise the flexibility of the system, which is crucial, given the high risks and uncertainties associated with African agriculture. New institutional economics and economic history highlight, in contrast, the negative aspects of having constantly to renegotiate contracts. It increases transaction costs and the cost of investing in land.

TLHCs can, in this context, be seen as a compromise between fully fledged privatisation of land rights, whereby the property holder and his or her heirs have full control over land, and customary rights, in which control and rights to land are recurrently renegotiated. But is it a fruitful compromise?

One way of conceptualising the new land rights is to analyse their impact on rights and transfers within and between families. From that perspective, the certificates can be understood as a hybrid between two systems: one in which access and control over land are determined by social relations, and another in which land is partly commodified. The former regulates access to land within the family, while the latter concerns the relationship between families and the chiefs. Let us begin with the latter.

Our informants indicate that chiefs are using the certificates to empower themselves. Clear evidence of this is that the gap between the suggested regulated price of a certificate and the actual price indicates that the value of land is largely determined by its perceived market value. Such change strongly indicates increased commodification of land, as argued by Chimhowu and Woodhouse. 86 The immediate beneficiaries of this system are the chiefs themselves, who, through the introduction of certificates, are in a position to enhance their authority. To some extent, the chiefs can act as price-making agents and thereby have considerable freedom not only to increase their economic wealth but also to strengthen their political authority over the area under their jurisdiction. After all, as Benjaminsen and Lund remind us, tenure regimes regulate both access to productive resources and political authority. 87 In that sense, the TLHCs,

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83 Interview with PDLA, Petauke, 13 March 2014.
84 Ibid.
85 See, for instance, Berry, *No Condition is Permanent*.
86 Chimhowu and Woodhouse, ‘Customary vs Private’, p. 359.
87 T.A. Benjaminsen and C. Lund, ‘Formalisation and Informalisation of Land and Water Rights in Africa: An Introduction’, *European Journal of Development Research*, 14, 2 (2002), pp. 1–10.
somewhat paradoxically, manifest a system of increased commodification and strengthened authority of chiefs.

Has this led to increased inequality? That is not obvious, as pre-certificate systems of customary land transfers might also have involved ‘gifts’ of considerable value. The implementation of TLHCs may in that regard not cause commodification, but it has clearly not been able to prevent it. Still, under the new system, farmers need access to money in order to obtain a certificate. It is thus likely that the certificate system attracts people who already belong to a group of wealthier farmers in the villages.

We are not able to identify a similar trend of commodification of land transfers within the lineage. On the contrary, access to land within the lineage remains regulated through social relations rather than the market. This does not mean that the implementation of the certificates has left family relations unchanged. While it is not obvious that the certificates have led to increased inequality between families by requiring monetary transactions between farmers and the chief, it seems like it has increased the division between members within the lineage. Historians who emphasise the functionality of customary systems point to their flexibility and the fact that access to land is constantly renegotiated. This level of flexibility is significantly reduced by the implementation of the certificates, as it becomes more or less impossible to renegotiate access to land once the certificate is signed, if the certificate holder has no interest in doing so. This increases the bargaining power of the lineage seniors and the certificate holders vis-à-vis non-holders, and in theory it means an increased capacity of certificate holders to control the labour of non-certificate holders.

We do not have evidence that either proves or disproves that the lineage seniors and certificate holders take advantage of these increased opportunities of controlling the labour of the dependants. It is too early to tell, as the certificates have been introduced only recently. For this article, the capacity to increase control over family members is as important as the actual practice of it.

In that regard, we argue that the certificates reinforce inequality rather than prevent it, not through the commodification of land, but through their effect on family relations. Just as the certificate increases the power of chiefs, it also increases the influential lineage members’ control of the productive resources of the extended family. In other words, the cost of being a member of a unit of production (a family) increases with the certificates.

**Conclusion**

The TLHCs are supposed to offer a sustainable compromise between the customary land tenure system and the fully fledged privatisation of land. To be more specific, the aim of the certificates should constitute an alternative to ideal types of customary and private land rights. As ideal types, customary land rights are thought of as systems that promote equality and flexibility, in which distribution of land operates through social relations and not markets. In contrast, private land rights are thought of as a system that promotes efficient use of land but also unequal access to land. Based on recent observations that the customary rights are being slowly eroded, policy makers and donor communities are trying to identify an alternative to both systems. The TLHCs in eastern Zambia are an example of such an alternative.

Our tentative findings suggest that the certificates, rather than offering a compromise, have reinforced existing processes of commodification and have possibly even increased inequality. The certificates enable chiefs to demand monetary transactions in exchange for land rights, thereby promoting commodification. At the same time, to be identified as a dependant on a certificate is of crucial importance to ensure cultivation and inheritance rights, which give certificate holders and the influential lineage members increased capacity to control the

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88 For example, Berry, *No Condition is Permanent.*
productive resources of the lineage families. It is too early to tell, but, theoretically, this may very well lead to increased social differentiation and inequality. This is not to claim that things would have been better without the reforms. It is not the TLHCs per se that explain the processes of increased inequality and insecurity. On the contrary, the economic mechanisms towards increased inequality are stronger than the judicial systems governing land rights. It may very well be that the certificates, by formalising land rights, are preventing processes of social differentiation to develop into major social conflicts or tensions in the rural areas. But to see them as a strategy to keep customary rights partly intact is probably a mistake.

While the case of TLHCs has provided us with a glimpse of the potentially negative implications that the third road may have on equal access and security to land, it is important to acknowledge that the transformation of land rights may not be uniform. Generalisations, during what we believe to be the very early stage of a major transition of social and economic relations in eastern Zambia, should be carefully avoided. Having said that, the findings in this article reveal for general reflection the implications of building land rights into existing customary systems. Our main concern is that it is still common among policy makers and scholars to describe customary rights in rather romantic terms, which are seldom grounded in realities. More important, there is a tendency to understand local rural institutions and cultures in Africa as significantly different from those in other parts of the world. Such substantivist claims are still common and have a significant impact on the formulation of ‘alternative’ systems of governing land rights. What our case shows is that there is a significant risk that projects and programmes that are grounded in ideal and unrealistic views of local practices may not only fail in achieving expected goals, but may make matters worse for already vulnerable groups in the African countryside.

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