JSESD001: Land Tenure and Neo-Customary Commodification Practices in Seke and Domboshava Communal Peri-Urban Areas, Zimbabwe

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ABSTRACT

In Zimbabwe, rural areas close to large cities – communal peri-urban areas – operate under customary land tenure. Urbanites are scrambling for this cheaper land through illegal subdivisions and sales despite the legal provisions of the Communal Land Act (Chapter 20:04). Literature describes this process as 'neo-customary commodification', or Operation Garawadya Panotorwa Mahara *(enjoy the benefit before it is reversed and land is taken for free), in colloquial Shona. This article, focussing on Seke and Domboshava in Zimbabwe, seeks to examine transformations in customary land tenure in communal peri-urban areas. It also unpacks the capacity, prospects and precincts of the existing institutional and legal frameworks of the land tenure system. The adopted mixed methods approach consists of surveys in Seke and Dombosahava, and key informant interviews with respective Rural District Council officials and traditional leaders. The article establishes centrifugal and centripetal factors catalysing the neo-commodification practices, including legal pluralism, flouting of the land allocation system in communal peri-urban areas, communal peri-urban landholder disgruntlement with the vesting of communal land in the State, lack of compensation for communal peri-urban land excised for urban development, and the tragedy of the commons. To address these issues, this study recommends the formulation of a new comprehensive land policy informed by ongoing policy reviews. The new policy should ideally include divestiture of communal land from State ownership to communal land trusts. The study also recommends the formulation of a responsive compensation policy to improve outcomes for communal landholders after excision of land for urban development, and the development of a comprehensive spatial planning policy that declares*

communal peri-urban zones as special development zones. Such policy measures for communal peri-urban areas would facilitate the gradual transformation of communal land rights, and promote proper land-use planning and the emergence of a proper legal market in Zimbabwe's communal peri-urban areas.

Keywords: commodification, communal peri-urban areas, compensation, land tenure, neo-customary commodification

Introduction

Land is a fundamental resource for the overall development and economic growth of a country. It forms the basis of existence, the foundation for shelter, any type of agricultural/industrial production and all forms of human existence and sustenance (Ng'ombe et al., 2014; Yaro, 2010). To fulfil these roles, land should be properly governed through appropriate land tenure systems. In most developing countries including Zimbabwe, dynamic changes are being experienced in communal peri-urban areas (CPUAs) arising from emerging diverse interests and processes (Kwangwama, 2016). The existing customary tenure system governing land ownership is no longer coping with emerging challenges, especially the rising demand for land emanating from increased population pressure in CPUAs.

The relevance of communal tenure has become questionable in CPUAs near large cities. Due to increased demand for land from urban-rural migrants (urbanites), customary land is being sold, contrary to the existing legislation governing it. Customary land in most developing countries is vested in the State President. The customary land tenure allocation rules have been flouted and manipulated over time, resulting in the development of neo-customary commodification practices described by Chimhowu and Woodhouse (2006) as a 'vernacular land market'. The prevalence of these commodification practices has physically manifested through the creation of organic, haphazard, unplanned, more densely-populated and urbanised settlements in CPUAs, without any provision of basic infrastructure and services (Kwangwama, 2016).

Several sources of literature have given narratives of the land tenure systems in precolonial Africa, commonly described as 'customary' tenure (Moyana, 1984; Cheater, 1990; Chimhowu & Woodhouse, 2006). Customary tenure is regarded as communal ownership of rights to allocate and use land for residential, agricultural and grazing purposes by a group of people with the same lineage, history and cultural identity (Durand-Lasserve, 2004). The land is administered by a traditional leader representing the community and

ancestral interests. Customary tenure conforms to the African philosophy on land ownership where "land belongs to a vast family of which many are dead, few are living and countless numbers are still unborn" (Channock, 1991: 64).

The key characteristics of customary tenure include the vesting of land in existing tribal leadership based on their ancestral claims through clearance and first occupation, or by conquest, granting of use and occupation rights to members of the community through oral agreements, the inalienability of the land with same lineage background and history, and access to land by each member of the community, including vulnerable groups (Chimhowu & Woodhouse, 2006; Wehrmann, 2008). The philosophy of inalienability of customary land has been ingrained in respective communities to this date, as evidenced by a quote from a South African schoolboy in Sobantu:

> I do not believe people should be allowed to buy and sell land…The land is a gift from God to the people. It is not a house. A house is made by man's effort; land is not. That's why the land should not be for sale. I would not pay even a shilling for it. The land is my blanket. I wear it, like my ancestors wore it, (Chimhowu & Woodhouse, 2006: 358)

There has, however, been a divergent view on the alienability of land under customary tenure. It has been argued that customary tenure had individualised rights in relation to specific land. Sibanda (1979: 35) argues that although land may have been communal for grazing and collection of thatching grass, firewood and wild vegetables, arable plots were not held communally or worked communally. Also, the proceeds of these plots did not contribute to a communal 'pool'. Individuals and families were allocated plots for their use and could make decisions on land-use and any other investments on the land. This perspective could be equated to the Western 'freehold' ownership.

Barume (2010) observes that the advent of colonisation brought with it complexities and controversies on the issue of rights to land and natural resources embodied in land under customary tenure. He argues that the experience of colonisation globally has been "dispossession, forced removals and discrimination" (Barume, 2010). Colonisation in Africa introduced foreign systems (including common and statute law) that were operated in conjunction with existing legal customary law systems for the management of people, land and other natural resources — the origin of legal pluralism (Toulmin & Quan, 2000; Wily, 2001; Adams & Turner, 2005). However, there were variations of European colonial policy in their respective colonies. The British adopted indirect rule while the French adopted the assimilation policy. Adams and Turner (2005) observe that the British indirect rule policy

was based on the argument that indigenous land rights should be respected, including the traditional land administration responsibilities of local leaders. However, the rationale of this British policy was premised on their philosophy that they needed to extend their authority over new territories at the least cost to the tax-payer in Britain.

In British colonies, customary land was held in trust by the colonial power, and was designated 'Crown Land', 'Native Reserve' or 'Trust Land' (Adams & Turner, 2005). Indigenous African people were merely regarded as tenants of the customary land they had been forcibly moved to. The colonial State sanctioned their rights to use and occupy the communal land. The colonial administration applied eminent domain in managing the indigenous people and natural resources under its rule and in areas designated as customary land occupied by indigenous people (Wily, 2001). However, at the attainment of independence by most African countries, contrary to expectations of reversing the status quo on the vesting of customary land in the State, new governments did not grant property rights to community groups or private individuals in communal areas in fear of losing power and allegiance (Toulmin & Quan, 2000; Wily, 2001). This study argues that this has been the major source of disgruntlement, contributing to neo-customary commodification of land under customary tenure.

The first section of the study gives the introduction and background. The second section engages the Evolution of Land Rights Theory (ELRT) that traces the evolution of property rights from communal to freehold rights due to population increase. The same section also explores the legal options of recognising and regulating customary tenure. The third section analyses two case studies in Botswana and South Africa to illustrate regional experiences of neo-customary commodification practices in CPUAs. The fourth section presents findings of a doctoral research, using evidence from Domboshava and Seke CPUAs. The key findings of the study reveal neo-customary commodification practices in the two CPUAs. The last section contains the discussion, conclusion and recommendations.

The study points to the urgent need for central government to conclude the review of the existing national land policy, the formulation of a new policy with appropriate land tenure policy options that could include the divestiture of communal land from State ownership to communal land trusts, and the amendment of existing legal and administrative institutional framework governing CPUAs in Zimbabwe. There is also need to review the existing compensation policy and formulate a new policy that improves the life of the communal land holder after excision of land for urban development, as

well as the development of a national spatial policy that declares CPUAs as special development zones.

Methodology

This study is based on a doctoral study conducted in Domboshava and Seke CPUAs in Zimbabwe between 2016 and 2017. The study focused on planning and real estate issues emerging in these two CPUAs. These areas are currently experiencing pressure for land for housing and other ancillary uses from urbanites, owing to their proximity to large cities (Harare and Chitungwiza) and their fluid land allocation systems. A 'vernacular land market' has developed, code-named Operation Garawadya Panotorwa Mahara (Enjoy the benefit before it is reversed and land is taken for free). The study used the mixed methods approach to collect data. Two surveys were conducted in Domboshava and Seke to collect quantitative data, while qualitative data was collected through in-depth key informant interviews that were held with the Provincial Administrator of Mashonaland East Province, the District Administrators for Goromonzi and Seke, town planners at the Department of Physical Planning, Goromonzi Rural District Council (GRDC) and Manyame Rural District Council (MRDC). Interviews were also held with the Chief Executive Officers of GRDC and MRDC, councillors of the affected wards, Chief Chinhamora and Chief Seke, and village heads of the affected wards. Focus group discussions were conducted in the affected wards with special interest groups, such as women and the youth. Observations also complemented the data collection process. The study used observation guides to capture information regarding physical planning, population and settlement densities and provision of infrastructure in the two CPUAs.

Definition of Key Concepts

The peri-urban is commonly labelled as exurban, urban tract, rurban, urban fringe and semi-urban (Iiaquinta & Drescher, 2000). The peri-urban has also been defined as an intermediate zone located between rural and urban areas, and straddling numerous administrative boundaries with mixed land-uses and ambiguously demarcated inner and outer boundaries (Rakodi, 1999: 2). The definition of peri-urban has resulted in the coining of the term 'peri-urbanisation', defined as a process characterised by dynamic physical, economic and social changes occurring in a piecemeal fashion in rural areas located on the boundaries of large existing cities (Webster, 2002: 5). The peri-urban area has been described as experiencing risks and opportunities, institutional fragmentation, mixed land-uses, fragmented land holdings and social structures, and rapid changes (Adell, 1999).

Land tenure refers to the relationship, either legally or customarily, among people, individuals or groups that set up rules regarding how property rights to land should be allocated (FAO, 2005). Sjaastad and Bromley (2000: 3) define property rights as social conventions backed by the enforcement power of the State (at various levels) or the community, allowing individuals or groups to lay a claim to a benefit or income stream that the State will agree to protect through the assignment of duty to others who may covet, or somehow interfere with the benefit stream.

Various sources of literature use a metaphor that describes property rights as a 'bundle' of rights, including usage rights, transfer rights (rights to sell, give, mortgage, lease/rent/bequeath), exclusion rights, enforcement rights (legal, judicial, institutional and administrative provision to guarantee use), transfer and exclusion rights and rights to resolve disputes (Sprankling, 1950; Rukuni, 1994; Wehrmann, 2008).

Neo-customary refers to "a combination of reinterpreted customary practices with other informal and formal practices" (Durand-Lasserve, 2004: 3). The neo-customary land delivery system operates through individuals who transact more rights than they obtain from the customary system. (Durand-Lasserve, 2004: 3; Wehrmann, 2008). Commodification practices refer to informal subdivisions and subsequent sales of customary land to obtain monetary value (Durand-Lasserve, 2004: 3; Wehrmann, 2008). Yaro (2010) observes that in Ghana, such land transactions have evolved into an industry involving chiefs, clan heads and individuals.

Theoretical Framework

The Evolution of Land Rights Theory (ELRT) provides the main analytical framework for assessing the state of land tenure in developing countries and making predictions regarding how it will evolve (Platteau, 1996). The basis of the ELRT is that land rights evolve over time from open access systems to individualised rights (Krier, 2009). As the land rights evolve, the right holders demand the creation of duly formalised private property rights (Platteau, 1996). Kalabamu (2014) identifies five stages of the ELRT: open access, the emergence of land rights and claims, the conception of customary laws and tenure, the emergence of private ownership and the commoditisation of land rights and open land markets.

The first stage of open access is characterised by a small and thinly distributed population whose livelihood is centred on hunting and gathering (Kalabamu, 2014). Such communities have undeveloped territorial or private possessions. However, over time, population increases result in more competition for natural resources. Hunting and gathering can no longer

sustain a higher population size and density, hence communities resort to subsistence farming and land ownership. Krier (2009) argues that agriculture cannot effectively occur on open access tenure. Consequently, exclusive rights emerge to deal with challenges of production and consumption of the agricultural yield. Thus, the second stage of the ELRT relates to the transition of economic activities from hunting and gathering to agriculture, marking the beginning of possession of ownership of land rights.

As the population continues to grow, competition, claims and conflicts over scarce and fixed land resources increase. Consequently, individuals are compelled to come together forming clans, tribes and chiefdoms, marking the beginning of order and collective responsibility (Kalabamu, 2014). The leadership of the communities develop rules and guidelines regarding the regulation of access, use and transfer of land rights. Members are penalised for disobeying these rules. Kalabamu (2014) observes that this third stage of the ELRT could be equated to the indigenous, traditional tribal or customary tenure where individual usufruct rights are allocated to specific pieces of land.

Kalabamu (2014) describes the fourth stage of the ELRT as the emergence of private ownership and commoditisation of land rights. Platteau (1996) observes that due to continued increase in population and growth in product demand, communal land ownership and customary tenure become unstable, creating harmful effects that manifest through mismanagement and over-exploitation of land, the valuable resource. Kalabamu (2014) highlights that this stage is characterised by more emphasis on individual acquisition of land for exclusive use, more assertiveness to prevent holders of secondary rights from exercising their customary prerogatives, and increased direct transfer of land rights from fathers to sons or preferred heirs. Furthermore, this stage is characterised by the use of land rights as collateral to obtain financial loans, the emergence of deals confided to group members but later opened to outsiders, and rising land ownership and inheritance disputes and property boundaries.

The last and fifth stage of the ELRT is the development of open land markets. Kalabamu (2014) observes that at this stage, the intensification of conflict associated with land results in increasing lawsuit costs and social upheavals, forcing governments to institute administrative reforms to end wasteful usage of scarce resources and social tensions arising from land conflicts. Platteau (1996) highlights that at this point, the government is required to undertake reforms involving the adjudication of land rights, full cadastral surveys, and formal registration of land rights through the issuance of title deeds, certificates, permits or leases. Kalabamu (2014) further

observes that this process permits customary land rights holders to obtain titles officially accepted and supported by legally registered documents and codified laws. Consequently, open/free reliable and efficient transactions of land rights without any cultural considerations and obligations, emerge.

The ELRT confirms the thesis by Boserup (1965) who argues that population increase and subsequent scarcity of land initiate the dynamic transition of customary tenure to modern freehold rights. However, the two have divergent views regarding the transition. The ELRT assumes a smooth and peaceful transition from open access to individualised property rights. In contrast, Boserup (1965) projected an increase in conflicts and tenure insecurity during the transition period — a phenomenon currently characterising CPUAs in most developing countries, including Zimbabwe. The ownership and allocation of land in CPUAs is a highly contested issue.

Fitzpatrick (2005) identifies four options to recognise and regulate communal tenure transformation. These are the minimalist approach, the agency approach, incorporation of customary groups, and the establishment of land boards. The minimalist approach argues that the State does not interfere with customary land. Customary areas are administered using customary practices that are not registered or recorded. The rationale of the minimalist approach is to be economic in terms of the required resources. In the agency method, the State identifies agents to represent the traditional communities. If the agents enter into agreements with outsiders, they are binding on the group (Fitzpatrick, 2005). Group incorporation includes the combination of the principals and the agents where a traditional group obtains legal identity. A typical example is South Africa's Community Property Association Act of 1996. Land Boards entail the establishment of decentralised institutions constituted by locals from the community and officials from government. After attainment of its independence, Botswana transferred the administration of its customary land from chiefs to land boards through its 1968 Tribal Land Act (Fitzpatrick, 2005).

Registration and documentation of land transactions provide written evidence on any sale/purchase of land. This assists in the prevention of multiple sales of one property based on oral agreements. Some sellers may be unscrupulous by selling land to many prospective purchasers. Some of these fraudulent cases end up in court. In Zimbabwe, the Surveyor General's Office is the depository for all records regarding surveys of land, and keeps all general plans and survey diagrams of titled land. Formal transactions for titled land are documented and registered in the Deeds Registry Office. Both the Surveyor General and Deeds Registry are highly centralised offices currently operating in Harare and Bulawayo only.

It is critical to highlight that communal land in Zimbabwe, including CPUAs, is not registered or documented except the land excised for urban development reserved for business centres. The colonial State argued that it would maintain the customary practice that did not register communal land. At the attainment of independence, the new government maintained the status quo. However, the dynamic changes in CPUAs characterised by the increase in demand for land, call for a revisit of the non-registration and non-documentation of communal land.

As already indicated, the section that follows analyses two case studies, one from Botswana and the other from South Africa. These illustrate regional experiences on neo-customary commodification practices in CPUAs.

Case Studies

Mogoditshane is a traditional village located west of Gaborone under the Kweneng District Council. Its land falls under customary tenure. The physical built up area of Mogoditshane is composed of "an unplanned traditional core, informed area and planned areas" (Asperen & Zevenbergen, 2012). Several factors triggered neo-customary commodification practices in Mogoditshane. Kalabamu (2014) identifies the push and pull factors, including rising population growth, increasing demand for land for housing, lack of affordable housing in Gaborone, and availability of cheaper and easily accessible customary land in Mogoditshane.

During the 1980s, Mogoditshane experienced commodification practices without the sanctioning of the Kweneng Land Board. These were characterised by illegal subdivision and subsequent disposal of communal land without the approval of the responsible land board (Home, 2001). The rampant illegal subdivisions of land were not properly planned and resulted in organic, unplanned and haphazard developments without basic infrastructure. Home (2001) attributes the commodification practices to corruption by the responsible land board that brought in irregularities and the flouting of rules and procedures in the allocation of land. Agricultural plots, known as *masimo,* were haphazardly converted to residential uses without following customary norms and procedures.

In 1991, the Government of Botswana set up a Commission of inquiry to investigate the neo-customary commodification practices in Mogoditshane. The Commission's findings revealed the payment of 'thank you money' for plot payments, issuance of fraudulent ownership certificates without any proper planning permission to enhance buyers' confidence and trust, and demands that buyers immediately develop the acquired plots. (Home, 2001; Kalabamu, 2014). The Commission of Inquiry ascribed the commodification

practices to a range of factors including Mogoditshane's internal population growth, delays in allocating land by the Kweneng Land Board, financial gains by the players involved in the illegal transactions, inadequate guidance by the State to the Kweneng Land Board, and the myth that the land boards had no jurisdiction over agricultural fields and land allocated before 1968 (Kalabamu, 2014).

Although there were no extensive disputes among landholders, regular conflicts, disputes and litigation cases manifested between individuals and the Kweneng Land Board. Kalabamu (2014) argues that the differences could be ascribed to different interpretations of granted land rights. The perception of the land board was that it granted beneficiaries formal use rights, but the perception of beneficiaries was that they had been allocated 'freehold' rights. Disputes also emerged from different expectations on compensation levels. Landholders in Mogoditshane were disgruntled by lower levels of compensation when their fields were appropriated for public or resettlement reasons compared to the proceeds they would have realised from commodification practices.

Adams Mission is an emerging CPUA located approximately 30 kilometres south of Durban's Central Business District in eThekwini Metropolitan Municipality, whose administration incorporates several rural areas under the former KwaZulu Bantustan government (Mbatha & Mchunu, 2016). The settlement is built on customary land administered by Ingonyama Trust formed in 1994 to administer customary land in the KwaZulu Natal Province. The Trust manages approximately 2.8 million hectares of land. The formation of Ingonyama Trust is a typical example of Fitz Patrick's agency approach to managing land discussed earlier on in the study. It was established to manage the commodification of customary land by innovative risk-taking land developers.

Mbatha and Mchunu (2016) highlight that the *Inkosi* and the traditional council are responsible for allocating land at Adams Mission, not the municipal ward councillor. The acquisition of customary land at Adams Mission is largely permitted and guided by traditional procedures. A potential purchaser identifies land and negotiates the size of land and purchase price with the landholder. The transaction should be approved by the *Inkosi* or a member of the traditional council. On conclusion of the transaction, a welcome ceremony is conducted at a scheduled future date to welcome the new member to the community. The purchaser brings a token of appreciation in the form of an alcohol or beverage bottle for consumption by witnesses of the site's boundaries during the ceremony.

At Adams Mission, as is the case with other CPUAs in South Africa, it is

legal for customary landholders to subdivide and sell their land to purchasers. The land that can be sold is the land traditionally allocated to a household. No title deeds are issued to the purchaser. Proof of ownership is based on the trust entrenched in traditional social values. The emerging Adams Mission is characterised by high-income houses constructed with carefully selected building materials of fine quality. Municipal regulations are not applied during construction, and few houses have approved plans from the municipality.

The two reviewed cases illustrate the prevalence of neo-customary commodification practices in CPUAs in Southern Africa as a region. However, the South African case is unique in that communal land in KwaZulu Natal Province was vested in Ingonyama Trust through legislation, hence the sale of land in eThekwini is legal unlike in Mogoditshane in Botswana. As is discussed later in the study, the situation in CPUAs in Zimbabwe resembles the Mogodistshane case, as it is characterised by mismanagement of land, corruption and flouting of land allocation procedures that resembles stage four attributes of the Experiential Learning Theory.

The Context of Communal Land Tenure in Zimbabwe

Communal land tenure in Zimbabwe can be traced under three phases of the country's history — precolonial, colonial and post-independence periods. Prior to colonisation in 1890, all land was communally owned under the custody of the chief on behalf of the whole community (Moyana, 1984). The colonisation of the country in 1890 resulted in the appropriation and conversion of land into white commercial farming areas and native reserves for Africans. After failing to secure the Second Rand they believed was located north of the Limpopo, the British Pioneer Column observed that the new colony had very good agricultural land, hence they resorted to farming (Sibanda, 1979). In 1898, the British government evoked an Order in Council compelling the colonial government to create native reserves under native commissioners who allocated land unsuitable for white settlement to blacks.

The Rukuni Commission (1994) observed that in 1965, customary tenure was consolidated under the Tribal Trust Land Act of 1965. This legislation created tribal land authorities, including traditional leaders, and operated under district commissioners. However, this communal land administration system ceased at independence when the Communal Land Act that vested all communal land in the President was promulgated in 1982. Specifically, Section 4 of the Communal Land Act (Chapter 20:04) vested communal land in the President, who grants authority for its occupation and usage as provided for in the Act. Thus, communal land, including CPUAs, is governed under the provisions of the Communal Land Act (Chapter 20:04), the Traditional Leaders

Act (Chapter 29:17) and the Rural District Councils Act (Chapter 29:13). From the attainment of independence, the Ministry of Local Government, Public Works and National Housing was given the mandate to administer all these pieces of legislation until 2015 when it was transferred to the newly-created ministry for the rural development portfolio — the Ministry of Rural Development, Promotion and Preservation of National Culture and Heritage. The two ministries were, however, merged again in 2017 to constitute the Ministry of Local Government, Public Works and National Housing. In 2019, the Ministry was dismantled again to form the Ministry of Local Government and Public Works and the Ministry of Housing and Social Amenities.

Section 26 (1) of the Traditional Leaders Act (Chapter 29:17) provides for the allocation of land with the approval of the appropriate rural district council (RDC), the administrative authority with overall control over the use and allocation of all communal land. In complementing this provision on the administration responsibility of communal land, Section 8 (1) of the Communal Land Act (Chapter 20:04) provides that a person may occupy and use communal land for agricultural or residential purposes with the consent of the RDC established for the area. However, Section 8 (2) of the Communal Land Act highlights that the RDC, where appropriate, should have regard for customary law relating to allocation, occupation and use of land in the subject area. The Constitution of Zimbabwe Amendment (No. 20) Act of 2013 also supports this provision, highlighting that traditional leaders have a role in the governance of communal land. These legal provisions of the Communal Land Act and the Constitution juxtapose the statutory system with the traditional systems as shown in Fig. 1.

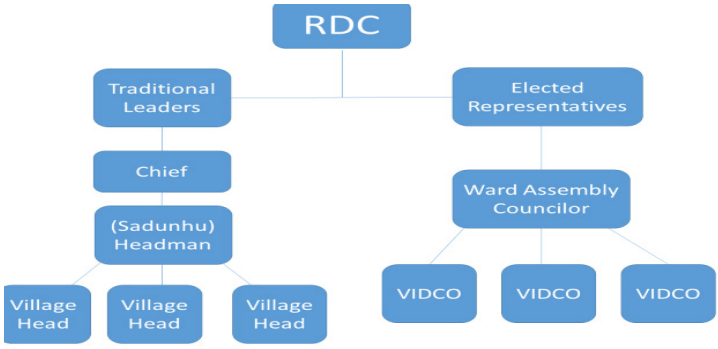


Figure 1: Communal land administration in Zimbabwe
Source: Fieldwork, 2016

The juxtaposition of traditional and statutory laws in the administration of communal land, including CPUAs, has resulted in legal pluralism. As far back as in 1994, the Rukuni Commission highlighted the problem of legal pluralism in the administration of communal land in Zimbabwe (Government of Zimbabwe, 1994). Traditional leaders attribute their land administration responsibilities to their ancestral lineage passed from generation to generation. On the other hand, RDCs and the Village Development Committee (VIDCO) structures argue that they derive their land allocating powers from the Communal Land Act, (Chapter 20:04). Traditional authority is more respected and recognised as the authentic local authority over the administration of land and natural resources in communal lands (Government of Zimbabwe, 1994).

The RDC Act (Chapter 29:13) provides for the planning of communal areas including CPUAs, reserving land for various uses including residential, cemeteries, grazing, forests, crop cultivation and other rural uses. RDCs are guided by the Department of Spatial Planning and Development that is responsible for national spatial planning. However, due to financial constraints, most RDCs have not been able to prepare these land-use plans. When expropriating communal land for urban development, RDCs use the town planning excision procedures as shown in Fig. 2.

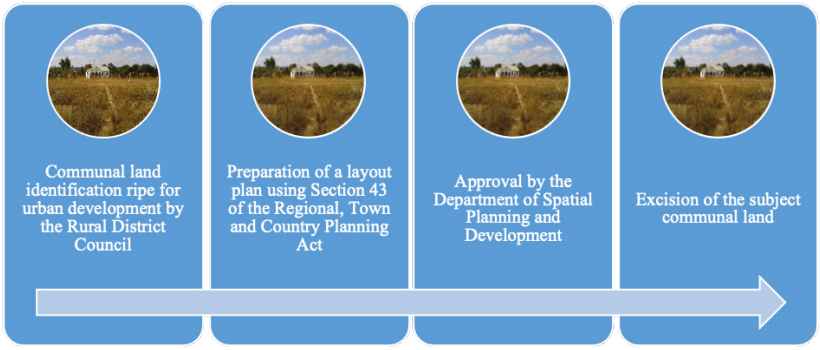


Figure 2: Town planning excision process and compensation of communal land for urban development

Source: Fieldwork, 2016

As already highlighted in this study, all communal land, including CPUAs, is vested in the State. When land in the CPUAs has been excised for urban development, compensation has only been given for improvements. This has caused a lot of CPUAs landholders to be disgruntled. Government and RDC officials argue that the land belongs to the State, hence there is no need for

CPUA landholders to seek compensation. However, the perspective of CPUA landholders is that at independence, the incoming government should have vested communal land in the individual landholders or in the communities as groups, as is the case with South Africa. This disgruntlement in ownership has significantly contributed to neo-customary commodification practices. Thus, Operation *Garawadya Panotorwa Mahara*, illegal as it is, tries to address the dissatisfaction of CPUA landholders regarding the ownership of land. There is mistrust between the government and traditional leaders and their communities who suspect that the government's intentions are always to dispossess them of their ancestral land.

It should be highlighted that Zimbabwe's land administration system is also governed on the basis of an existing operating National Land Policy approved in 1990, and administered by the Ministry of Lands, Agriculture, Fisheries, Water and Rural Resettlement. This policy outlines the existing land tenure systems in the country, including communal tenure. In 2020, the Ministry commenced a comprehensive consultative process to review the 1990 National Land Policy document. This process involves reviewing all the existing land tenure systems in the country, including communal tenure. However, at the time of writing this study, this reviewing process had not yet been concluded.

Insights of Neo-Customary Commodification Practices in Domboshava and Seke CPUAs

Domboshava Communal Land in Goromonzi Rural District Council (GRDC) is located approximately 25 kilometres north of Harare, the capital of Zimbabwe. GRDC is constituted by 25 wards out of which 10 are communal while 15 are located in the former white commercial farming areas. Half of the 10 communal wards are located in Domboshava Communal Land. The study established that the commodification practices are more prevalent in three wards of Domboshava (wards 2, 4 and 5). A household survey of 300 CPUAs landholders was conducted in these three affected wards. Seke Communal Land falls under the jurisdiction of Manyame Rural District Council (MRDC). MRDC is constituted by 21 wards out of which eight are communal and 13 are located in urban and former white commercial farming areas. Commodification practices are more prevalent in four wards (wards 1, 2, 3 and 8) located in very close proximity to Chitungwiza, the third largest city in Zimbabwe in terms of population. A household survey was conducted with 300 CPUAs landholders in the four affected wards.

Centrifugal and centripetal factors have triggered neo-customary commodification practices. Centrifugal factors are exogenous to

Domboshava and Seke, the two CPUAs originating in the two urban areas, Harare and Chitungwiza, respectively. These factors include high population growth, failure to secure affordable residential land, high cost of living, unemployment and underdevelopment, and increasing poverty, as in other rural areas in Zimbabwe. Centripetal factors are endogenous in the two CPUAs. They include the availability of reliable transport to and from Harare and Chitungwiza, rural electrification, availability of and easy access to natural resources, and the emerging economic opportunities in Domboshava and Seke, arising from increased population in-migration.

In both Domboshava and Seke, communal people trust traditional leaders more than the statutory system. These traditional authorities have continued to allocate land in communal land independent of the RDCs. They also have responsibilities regarding conflict resolution, arbitration, collection of development levies on behalf of the RDCs, and providing leadership in community projects. Their power lies in the fact that rural people have a stronger belief and more trust in the traditional leadership than they have in the RDC and the VIDCO systems. As is highlighted later in the study, the traditional leaders are involved in neo-customary commodification practices.

Land in all communal areas, including in the Domboshava and Seke CPUAs, is vested in the President and allocated on the basis of certain procedures provided for in the rural District Councils Act, as shown in Box 1.

Box 1: Land allocation procedures in communal land in Zimbabwe

a)	Approach the village head.
b)	The village head informs the VIDCO.
c)	Application is considered by the village assembly whose membership comprises community members 18 years and above.
d)	The Ward Councillor is requested to make comments.
e)	The report is prepared and submitted to the RDC for consideration.
f)	The RDC may approve/decline the application.
g)	If there are no objections, a communal land permit is issued, followed by the pegging of land.
h)	A transfer letter is written from the rural district of origin to the new rural district.
i)	The village head of the rural district of origin will also write a recommendation letter to the new RDC.
j)	Upon arrival at the new rural district, the new migrant's name is entered into the village register of the new communal land.
k)	No person is allowed to have two communal homesteads.

Source: Research findings, 2016

CPUA landholders in both Domboshava and Seke are disgruntled by the vesting of communal land in the State President. Several village heads in both CPUAs argued that they have been dispossessed of their ancestral land twice in the history of Zimbabwe — first at colonisation, then at independence when they hoped that their ancestral land would be returned to them. This argument advances a critical point regarding the perception of ownership of communal land by the CPUA communities who regard themselves as 'freehold owners' by virtue of their ancestral occupation of the land and subsequent inheritance. For this reason, they justify the commodification practices and the benefits that accrue to them from the sales proceeds.

The disgruntlement arising from customary land ownership has resulted in the flouting of communal land allocation procedures in Domboshava and Seke. Owing to the ever-increasing demand for land in the two CPUAs, landholders secretly negotiate with prospective purchasers. On average in 2016 and during the dollarisation period, plots measuring approximately half of an acre (2000m^2) were sold for a price range of US$1500.00 to US$2000.00 in both Domboshava and Seke CPUAs. The prospective purchaser would pay the CPUAs landholder based on verbal agreements, with no witnesses. Consequently, some unscrupulous landholders would sell one plot to numerous purchasers. Officials at both Goromonzi and Seke Magistrate Courts confirmed the rising volume of court cases on land commodification disputes. After the conclusion of the CPUA sale transaction, the seller would approach the village head (*sabhuku*) and introduce the purchaser as his relative (usually described as a *muzukuru* — grandchild or sister's child) to whom he would have allocated a portion of his/her landholding. Customary practices give CPUA landholders permission to subdivide and allocate their ancestral landholding to any member of their lineage clan. CPUA landholders in both Domboshava and Seke have manipulated this cultural practice to enable them to engage in commodification practices.

The key players in the neo-customary commodification processes include the prospective purchasers migrating into CPUAs, village heads, headmen and chiefs. When a new member joins a community, it is cultural practice for the new member to pay a token of appreciation to the village head for being welcomed into the new community. The commodification practices have transformed this gesture into substantial charges paid to the village head. During the time of the study, the amount paid was equivalent to US$200.00 per transaction. The village head would then approach the headman and the chief to introduce the new purchaser. This second introduction also attracted higher charges, ranging from US$300.00 for the headman and US$500.00

for the chief. All these charges were paid based on verbal agreements. The customary token of appreciation, known as *mbudzi yamambo* (goat for the chief), has now been converted into a commercial charge by these commodification practices. Purchasers regard these verbal transactions as insecure and, to guarantee security, purchasers take immediate occupation of the acquired plot. This has led to the rapid growth of illegal settlements in the two CPUAs.

The Goromonzi Rural District Council (GRDC) and the Manyame Rural District Council (MRDC) have responded to the commodification practices in their respective areas. The MRDC engaged the central government to assist in conducting a land audit in Seke Communal Lands in 2013. The audit revealed commodification practices by village heads, councillors, ordinary villagers, unscrupulous land barons and housing co-operatives (Kwangwama, 2016). The RDC conducted awareness campaigns educating the public on the inalienability of customary land in Seke CPUA, which was State land. The education campaigns also informed the public about the legal land allocation procedures of communal land. The MRDC also warned the public about penalties for those found guilty of flouting land allocation procedures. The RDC advertised in both the print media (*Sunday Mail*) and on television (Zimbabwe Broadcasting Corporation), warning the public that engaging in commodification practices was illegal. The MRDC conducted inspections in Seke and penalised all illegal purchasers who were asked to pay a fine of US$1000.00.

The GRDC warned CPUA residents to desist from flouting land allocation procedures and engaging in commodification practices, as shown in Plate 1. In 2014, the RDC conducted a study to establish the number of in-migrants who had settled in the most affected area, Ward 4, also known as Zimbiru. A significant number of Zimbiru residents were not original communal landholders from Domboshava. Their national registration numbers revealed that they were immigrants from other areas including Harare and Chitungwiza. An unforeseen consequential effect of the GRDC's study was an intensification of the commodification practices. Communal landholders in Zimbiru became suspicious that the GRDC wanted to excise their land for urban development due to its proximity to Harare. This meant that their land would be taken away without any compensation, except for improvements. It would therefore benefit them to be actively involved in Operation *Garawadya* than to let their land go for free.

Plate 1: A notice warning neo-customary commodification practices in Domboshava erected by Goromonzi Rural District Council



Source: Research findings, 2016

The commodification practices in Domboshava have continued unabated, as illustrated by advertisements of stand sales for *musha* (homestead) in the print media (*Sunday Mail*, 12 May 2019, and 4 August 2019). Unlike the MRDC, the GRDC does not have a fully-fledged Planning Department, and this compromises its ability to conduct regular inspections and penalise villagers for engaging in commodification practices. It could be argued that the adverts in the print media mark the integration of illegal commodification practices into the legal property market.

The commodification customary practices have also manifested themselves in the illegal subdivision and disposal of the commons, such as grazing land and wetlands in both Domboshava and Seke CPUAs, confirming Hardin's (1968) thesis of the tragedy of commons. In Seke CPUA, the commodification practices and the subsequent construction of houses within sensitive ecosystems (wetlands) and water-ways have compromised the environment (Kwangwama, 2016). The consequence of illegal sand extraction in both Domboshava and Seke CPUAs has been land degradation, leaving a trail of scattered pits in which rainwater collects, becoming death traps for children. In both CPUAs, few people still keep animals largely due to the illegal conversion of former grazing lands into sites for human settlements.

Discussion

CPUAs in developing countries are experiencing neo-customary commodification practices driven by increasing demand for land. These dynamic processes in customary tenure confirm the thesis of the ELRT on the transition of customary rights towards freehold rights due to population increase. In Zimbabwe, the current dynamic changes in CPUAs resemble

the fourth stage of ELRT which is characterised by commoditisation of land rights, instability of communal tenure, mismanagement of land, flouting of land allocation procedures and rapidly increasing land ownership and inheritance disputes and property boundaries. The prevalence of neo-customary commodification practices in Seke and Domboshava is similar to the Mogoditshane case in Botswana. However, the case of eThekwini in KwaZulu Natal Province of South Africa is unique as customary land was vested in the Ingonyama Trust legally created through South Africa's Community Property Association Act of 1996.

The transition of customary rights requires appropriate legal options to transform and regulate emerging ownership patterns. The study presents four options of the ELRT; namely, the minimalist approach, the agency approach, group incorporation and land boards. South Africa opted for the group incorporation outlined in South Africa's Communal Property Association Act of 1996, while Botswana introduced land boards in 1968. However, Zimbabwe maintained the status quo of the colonial period of using the minimalist approach with a few amendments that brought in elected councillors and village development committees. Under the minimalist approach, all communal land including CPUAs was vested in the President and remained under customary tenure that is undocumented and unregistered.

It is important to highlight that State ownership of communal land implies that if it becomes ripe for urban development, it is excised, with compensation paid for improvements only. Communal landholders regard communal land as their ancestral land which they equate to freehold ownership. Lack of compensation for this ancestral land has disgruntled the communal landholders, and they view the State and RDCs as inappropriately benefiting from proceeds of the land they regard as their ancestral land that they have occupied generation after generation. It is also critical to highlight that the vesting of communal land in the President was a deliberate decision by the new government to avoid paying compensation for communal land when it is excised by the State for a variety of reasons, including urban development. To date, this position has not changed.

To address their grievances against State ownership of customary land, CPUAs landholders have engaged in neo-customary commodification practices. This phenomenon has been prevalent in Mogoditshane in Botswana, and Domboshava and Seke in Zimbabwe. However, in South Africa, it is legal to transact in communal land through the legal framework of the South Africa's Communal Property Association Act of 1996. A typical case discussed in this study is the *Ingonyama* Trust and the traditional councils in eThekwini where CPUA landholders allocated land holdings through the

customary system can dispose of it to outsiders legally with the approval of the *Inkosi* and the traditional council. Emerging peri-urban settlements in South Africa, such as Adams Mission, resemble middle-income neighbourhoods in urban areas. Although new purchasers are not offered formal title, transfer is effected through socially embedded values of trust. With increasing CPUAs settlement densification largely arising from population increase, this study argues that verbal agreements and non-documentation of CPUA transactions are unsustainable. The dynamic changes and processes in CPUAs require proper planning, documentation and registration of land and any subsequent transactions.

Conclusion and Recommendations

CPUA landholders in Domboshava and Seke are disgruntled by the vesting of customary land in the State. At the attainment of independence, they expected divestiture of the former tribal trust lands from State ownership. This study first recommends that government should urgently conclude reviewing the existing land policy and formulate a new one with the most appropriate options to manage and regulate the transformation of communal tenure in CPUAs, including divesture of communal land from State ownership to communal land trusts. In pursuing this option, government could borrow from the South African experience of setting up a Communal Property Association Act providing for the establishment of communal land trusts. However, it is important to highlight that adopting this option requires political will and commitment. Such an option could address the State ownership grievances that were not addressed at the attainment of independence, and have catalysed the neo-customary commodification practices in CPUAs. The proposed divestiture of communal land ownership from State ownership to communal land trusts would also legally transfer land in CPUAs to the communal landholders and their communities.

The transfer of communal land into communal land trusts would require revision of existing legal compensation provisions that currently provide for compensation for improvements only. However, it is critical to highlight that the formation of communal land trusts may not be politically acceptable. To address this unwillingness to divest communal land ownership to communal land trusts, the study also proposes the formulation of a responsive compensation policy that focuses on the improvement of the life of the communal landholder after the excision of land for urban development. This means that if government does not divest communal land ownership from State ownership as is the case in the existing communal tenure system, it will still be obliged to pay adequate compensation that improves the life of the

communal landholder after repossession of the land.

It has been observed that customary tenure, in its traditional form, can no longer cope with the emerging needs and challenges in the dynamic CPUA environment. To bring order in the emerging organic, unplanned, and haphazard human settlements in CPUAs, the study makes a third recommendation that the Department of Spatial Planning and Development designates all CPUAs in Zimbabwe as special development zones requiring urgent special planning attention. Subsequently, a national spatial policy on CPUAs could be developed to comprehensively address all the emerging planning issues in CPUAs. The planning recommendations should be complemented by a land administration system in the CPUAs, properly documenting and registering land transactions. This will entail decentralisation of the operations of the Deeds and Surveyor General's offices from Harare and Bulawayo where they are currently housed, to all the country's provinces to cater for the needs of all communal land, including CPUAs. It is this study's considered view that the implementation of these recommended policy options would facilitate proper land-use planning and land administration in CPUAs, resulting in the development of sustainable human settlements.

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