Evaluation of Innovative Land Tools in Sub-Saharan Africa

Paul van Asperen
Content

A. Land administration and innovative land tools
B. Research design
C. Case-studies in Namibia, Zambia and Botswana
D. Concluding remarks
The importance of land administration
Land administration in Sub-Saharan Africa

• Precolonial: access to land through customary law
• Colonial: imported western land administration systems
• Post-colonial: multiple tenure systems:
  • Formal (western): complex, expensive, slow
  • Customary: rural areas
  • Informal: without tenure security
• Formal land administration:
  • Estimated coverage of formal administration: 10-30%
  • Largely serving the wealthy and the elite
• Since 2000: innovative (pro-poor) land tools
Innovative land tools

- A land tool is a practical way to solve a problem in land administration and management. It is a way to put principles, policies and legislation into effect (UN-HABITAT, 2012).
- Not about ‘one size fits all’ – context specific solutions: fit-for-purpose
- Pragmatic – low cost, fast implementation, sustainable, simple
- Customer-oriented – what do the citizens require?
- Open to new technologies – pro-poor does not mean low tech
- Delivery of tenure security is fundamental!
Recent developments

• Fast urbanization, high rates of poverty
• Formal systems not coping
• Informal settlements (land occupation, illegal subdivision, contravening building/zoning regulations, ..)
• Peri-urban dynamics/multiple tenure systems: customary, informal, formal
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Research design

- Innovative tools as addition to conventional tools
- Land rights include land claims
- Taxonomy of land tools

<table>
<thead>
<tr>
<th>Legal framework tools</th>
<th>Institutional framework tools</th>
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<tbody>
<tr>
<td>Tenure tools</td>
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<td>Area</td>
<td>Individual</td>
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<td>Operational tools</td>
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Continuum of land rights

- Acknowledges reality of many forms of tenure and tenure regimes
- Deliver appropriate levels of tenure security for each of them

(Source UN-HABITAT, 2008)
Conceptual model

- **Rural**
  - Customary tenure
  - Statutory tenure
  - Informal tenure
  - Continuum of land rights
  - Pro-poor land administration tools
  - Secure tenure for the poor

- **Peri-urban**
  - Statutory tenure
  - Continuum of land rights
  - Pro-poor land administration tools
  - Secure tenure for the poor

- **Urban**
Case study methodology

Peri-urban settlements:
- Oshakati (Namibia): 2008
- Chazanga (Lusaka, Zambia): 2009
- Peri-urban Gaborone (Botswana): 2011
Case study methodology

- Qualitative approach
- Literature review
- Semi-structured interviews with officials and experts
- Semi-structured interviews with residents (approx. 25-30)
**Evaluation framework**

<table>
<thead>
<tr>
<th>Compound criterion</th>
<th>Criteria</th>
<th>Equity</th>
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<tbody>
<tr>
<td></td>
<td>Inclusivity</td>
<td>Affordability</td>
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<tr>
<td>Indicators</td>
<td>Legal recognition</td>
<td>Costs</td>
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<td>Support for the poor</td>
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<td>Accessibility</td>
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<td>Co-management</td>
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<td>Provisions for secondary rights</td>
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<tr>
<th>Compound criterion</th>
<th>Criteria</th>
<th>Effectiveness</th>
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<tr>
<td></td>
<td>Clarity</td>
<td>Legal tenure security</td>
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<tr>
<td>Indicators</td>
<td>Awareness</td>
<td>Type of right</td>
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<td></td>
<td>Transfer possibilities</td>
<td>Documented evidence</td>
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<td></td>
<td>Duration</td>
<td>Transfer possibilities</td>
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<td></td>
<td>Inheritance</td>
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<th>Criteria</th>
<th>Efficiency</th>
<th>Completeness</th>
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<tbody>
<tr>
<td></td>
<td>Simplicity</td>
<td>Speed</td>
<td>Approach</td>
</tr>
<tr>
<td>Indicators</td>
<td>Boundary system</td>
<td>High volumes</td>
<td>Individual or systematic</td>
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# Tenure security

<table>
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<th>Effectiveness</th>
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<tr>
<td><strong>Criterion</strong></td>
<td><strong>Legal tenure security</strong></td>
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<tr>
<td>Indicators</td>
<td>Type of right</td>
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<td>Transfer possibilities</td>
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Case Oshakati (Namibia)

- Tenure systems
- Land rights and land tools
- Impact on tenure security
Tenure systems in Namibia

Oshakati

- Founded in 1966
- Population (estimated) 40,000
- Surrounded by oshanas (50%): prone to flooding
- Areas with informal settlements declared Town Land (1993): tenure change
# Land tenure in Oshakati

<table>
<thead>
<tr>
<th>Tenure</th>
<th>Estimated population</th>
<th>% of population</th>
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<tbody>
<tr>
<td>Formal residential</td>
<td>7918</td>
<td>22.1</td>
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<tr>
<td>Informal residential</td>
<td>25976</td>
<td>72.6</td>
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<tr>
<td>Former customary: Homesteads</td>
<td>1875</td>
<td>5.2</td>
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<tr>
<td>Total</td>
<td>35769</td>
<td>100</td>
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</tbody>
</table>

(Source: Urban Dynamics, Oshakati Structure Plan, 2001)
Land rights in Oshakati

- Freehold
- Recognized occupancy (informal)
- Former customary land rights (homesteads)
- Illegal settlers (shacks)
- Saving schemes
- Flexible Land Tenure Act
Land rights and tools Oshakati

Customary right

Informal right

Proclamation of Townland 1993

Recognized occupancy

Illegal claim

Savings scheme

Land rights agreement

Various acts

Freehold

Implemented upgrading

Theoretically possible upgrading

FLTA

Starter title

FLTA

FLTA

Land hold title
Tenure security in Oshakati

- Recognized occupancy:
  - Legal security: limited
  - Perceived security: fair (land rent)
- Saving scheme:
  - Legal security: limited
  - Perceived security: high (SDFN, building permit)
- Possibility of relocation due to flooding danger
- Flexible Land Tenure Act (2012)
  - Legal security: fair
Case Chazanga (Zambia)

• Tenure systems
• Land rights and land tools
• Impact on tenure security
Tenure systems in Zambia

Figure 3.1.1-1 Land tenure categories in Zambia prior to 1995

(Source: Mulolwa, 2002)
Chazanga

- Unplanned settlement in Lusaka
- Population (estimated): 50,000
- Contested land: between Lusaka City Council and Traditional Authority
- Ward Development Committee (WDC)
Land rights in Chazanga

- Customary rights: on customary land
- Informal rights: on council land
- Leasehold: converted customary land through Land Act

- Implementation of Housing (Statutory and Improvement Areas) Act: occupancy license
Land rights and tools Chazanga

- Customary right
- Lands Act
- Leasehold
- Informal subdivision
- Informal right
- Declaration of Improvement Area
- Occupancy license

Implemented upgrading
Theoretically possible upgrading
LUSAKA CITY COUNCIL

OCCUPANCY LICENCE

No. 7108.

PLOT/STAND No. 23/130Ch 180.  01/01. Serial

Republic of Zambia

OCCUPANCY LICENCE IN AN IMPROVEMENT AREA
COUNCIL OF THE CITY OF LUSAKA

THE COUNCIL OF THE CITY OF LUSAKA DOES HEREBY GRANT TO

a licence to occupy the land thereon and immediately adjoining thereof for Group Number 23/130
Improvement Area.

Subject to the terms and conditions contained in the Housing (Statutory and Improvement Areas) Act, 1974, and any amendments thereto and regulations made thereunder, and in particular subject to the terms and conditions contained in the Fifth Schedule appended to the said regulations, and to such other terms and conditions as may be enumerated on the reverse side of this licence.

The term of this licence shall be for a period of thirty (30) years from the first day of January 1972 and shall be extended for the further period of thirty (30) years from the date of expiry of this licence provided that the occupant has observed all terms of this licence and of such regulations and by-laws as may be declared or enacted with respect to the physical improvement of dwelling within the said Improvement Area.

Dated at Lusaka this eighteenth day of June 1981.

S.P. PETERSON

Council Registrar

Memorials

<table>
<thead>
<tr>
<th>Date of Document</th>
<th>Date of Registration</th>
<th>Registered No.</th>
</tr>
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<tbody>
<tr>
<td>18/1/81</td>
<td>16/4/81</td>
<td>180/231</td>
</tr>
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</table>

SUBJECT TO THE EXEMPTION RESERVATIONS, RESTRICTIONS, RESTRICTIVE OBLIGATIONS AND CONDITIONS HITHERTO CONTAINED OR REFERRED TO IN THE TERMS OF OCCUPANCY (REGULATION 32) FIFTH SCHEDULE OF THE HOUSING (STATUTORY AND IMPROVEMENT AREAS) ACT, 1974.
Tenure security in Chazanga

- Informal subdivision and sales, partly customary, partly overseen by WDC
  - Legal security: none
  - Perceived security: fair (contracts, WDC)
- Housing (Statutory and Improvement Areas) Act
  - Occupancy license: legal security limited
  - Perceived security may drop during implementation
  - Costs issues (contribution for mapping, arrears in land rent)
- Lands Act: conversion to leasehold
  - Legal security: high
  - Perceived security: high (documented lease, surveyed plot, land rent)
Case peri-urban Gaborone

- Tenure systems
- Land rights and land tools
- Impact on tenure security
Peri-urban Gaborone

Source: Mothibi et al (2011)
Peri-urban Gaborone

- Population and land tenure:
  - Gaborone: 182,000: State Land
  - Mogoditshane: 58,000: Tribal Land
  - Tlokweng: 36,000: Tribal Land
Peri-urban Gaborone

(Source: Nkwae, 2002)
Land rights in peri-urban Gaborone

- Tribal Land Act: Customary land converted into Tribal Land (1970)
  - Customary land grant (perpetual)
  - Common law lease (99 years)
  - Formal land allocation through Land Board
- Mogoditshane:
  - Continuing self-allocations/informal occupation: subdivision and sale of land without Land Board
  - Regularisation upon payment of fine (1300 U$):
    - Opportunities or payment problems
    - Planning problems
Land rights and tools peri-urban Gaborone
Tlokweng: land allocation

(Source: Daily news, 2013)
Tenure security in peri-urban Gaborone

- Tribal Land Act: Certificate of customary land grant
  - Legal security: high
  - Perceived: high (perpetual)
- Presidential Amnesty:
  - Legal security: depending on payment of the fine
  - Perceived security: depending on affordability
Content

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Concluding remarks

• Innovative land tools are effective:
  • Higher levels of legal tenure security (step by step)
  • Varying levels of perceived tenure security:
    • initial land access
    • during implementation
    • after implementation

• Innovative land tools improve on accessibility, affordability (occupational) and simplicity
• Innovative tools can be improved on co-management, support for the poor, affordability (initial registration) and speedy implementation
Challenges for the future

• Equitable land access in peri-urban areas (land tools?)
• Implementation of land tools at scale
• Continuous availability for the poor
Possible future research topics

• To add quantitative and longitudinal indicators in the evaluation framework
• To construct a taxonomy of land tools for land use types and policy areas
• Land administration is no longer exclusively within government domain (co-management): what is the impact, what are best practices?
• Can rental tenure contribute to the solution?
Thank you for your attention!

Questions?

- Download thesis at http://dx.doi.org/10.4233/uuid:46562c4a-8e99-422f-b2e3-6949358299f6
- Or search at http://repository.tudelft.nl/

p.c.m.vanasperen@tudelft.nl