2017 CONFERENCE ON LAND POLICY IN AFRICA

Theme: Strengthening land governance and administrative institutions both at the local and national levels including the adoption of technology and innovations for securing land rights under different tenure regimes;

Scaling up pro-poor land recordation: findings and consequences of three peri-urban cases from sub-Saharan Africa

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Abstract

The coming decades are challenging for African cities, as they grow at unprecedented speed, partly due to high levels of population growth. Land has to be made available and/or contested for to house the many youths. Insufficient land delivery creates both risks and opportunities for prospective land holders, resulting in a tangle of insecure land rights and claims under often multiple tenure systems. The growth of cities in Africa will to a large extent be absorbed by the development of informal settlements. Recently, pro-poor land recordation tools have been proposed and implemented to formalize land tenure.

GLTN released its pro-poor land recordation tool (PPLRT): a set of design principles for establishing and maintaining land records for a community's poorest members (UN-HABITAT et al., 2012; Zevenbergen, 2013). Recently, the PPLRT system and design elements was improved and refined based on updated literature review and four rural cases of documentation (Hendriks et al, 2016). This resulted in the following list of design elements:
- Apply macro and micro political-economy analysis
- Enable mobilization
- Build on inclusive community tenure practices
- Introduce acceptable local recognition and a para-legal officer
- Recordation of all tenure forms
- Joint inspection of land records
- Affordable and accessible dispute resolution
- Land records, indexes and a record keeper for a specified area
- Multiple sources of evidence and local weighting
- System ownership and co-management by state and community – as a public good
- Emphasis on continuum of land recording.

This paper will both confirm (or deny) the PPLRT-system and its design elements in (peri-) urban contexts and propose improvements or refinements of these elements. Three case studies in Zambia, Namibia and Botswana have been selected. Each case-study is carried out with a literature review and expert interviews regarding the legal and institutional framework, together with semi-structured interviews with poor land holders in the settlements.

In Oshakati (Namibia), interventions relating to proclamation of townlands, recognized occupancy rights, saving schemes and the flexible land tenure system have been studied. In Lusaka (Zambia), the study concerned the conversion of customary rights, declaration of improvement areas and occupancy licenses as defined by the Housing Act. Lastly, tools relating to customary land grants according to Tribal Land Act and the presidential amnesty to 'self-allocations' have been studied in peri-urban Gaborone (Botswana).

The findings in the studied cases confirmed the validity of the PPRLT design elements in peri-urban contexts, more specifically peri-urban settlements with population sizes between 30,000 and 50,000 inhabitants. All tenures (including informal and customary tenure) and corresponding land rights are recognized, most of which were recorded along a continuum. It was also found that continuums could differ depending on the tools which were applied. Local practices and local knowledge are usually incorporated in the recordation process, although the process of local weighting was difficult to evaluate.

The majority of design elements focus on co-ownership, co-management and partnership between authorities and the community. In all cases, it is observed that land recordation is mainly imposed by local government, whereby support from the community is organised as much as possible. Co-ownership and co-management is almost non-existent. This most probably relates to the fundamental conflict often found in the peri-urban areas in sub-Saharan Africa: the authority of land is contested by government and the traditional authority. When the authority is not both settled and accepted, co-management and co-ownership of land recordation is difficult to achieve.

The following refinements are proposed:
- To introduce para-professionals as a more generic term for the para-legal officer, the fourth design element would then be rephrased as 'Introduce acceptable local recognition and a para-professional.'
- To add 'unambiguous' at the fifth design element: 'Unambiguous recordation of all tenures'.
- To add 'well-informed' to the seventh design element: 'Affordable, accessible and well-informed dispute resolution'.

The last two refinements are specifically valid within the peri-urban context: because of the co-existence and contestation of customary and statutory authorities.

Introduction

Africa is urbanizing at rapid pace. By 2050, 56 percent of its population is expected to be living in cities or towns (United Nations, 2014). In 2015, the child population in urban areas was more than tripled since 1980, while the rural child population only doubled its size since then (UNICEF, 2014). These demographic tendencies will increase demand for housing and land in the very near future, especially in cities. Nevertheless, governments in Africa have struggled to deliver land in an orderly way, leading to informal land access and the emergence

of informal settlements. Nowadays, a majority of the population in many African cities lives in informal settlements. This generally leads to tenure insecurity leading to negative impacts on housing improvements and fear for demolition. In order to improve tenure security, land recordation tools have been proposed. They differ from conventional 'titling' tools, which have been copied from the western world. These conventional tools largely failed, they are far too complex and expensive and tend to favour the elite. GLTN has released its pro-poor land recordation tool: a set of design principles for establishing and maintaining land records for a community's poorest members. These design principles have been tested in four rural cases, and will now be tested in this paper against three (peri-)urban cases in sub-Saharan Africa.

Pro-poor land recordation tool

The pro-poor land recordation tool is one of the pro-poor tools developed by GLTN in their efforts to increase tenure security for poor land holders in developing countries (UN-Habitat et.al., 2012). It is a set of design principles for establishing and maintaining land records for improved protection and access to land for a community's poorest members (Hendriks et al, 2016). As explained in Zevenbergen et al. (2013), the requirements for such tools are partly equal to those for conventional recording tools, but need additional requirements to include land access methods and land rights as practised by the poor. They are listed as follows:
- Apply macro and micro political-economy analysis
- Enable mobilization
- Build on inclusive community tenure practices
- Introduce acceptable local recognition and a para-legal officer
- Recordation of all tenure forms
- Joint inspection of land records
- Affordable and accessible dispute resolution
- Land records, indexes and a record keeper for a specified area
- Multiple sources of evidence and local weighting
- System ownership and co-management by state and community – as a public good
- Emphasis on continuum of land recording.[1]

These additional requirements have been tested in four rural cases (Hendriks et al, 2016). In this paper, they will be verified in three peri-urban cases in sub-Saharan Africa. Before the explanation and verification of each requirement, the cases will be briefly described.

Case study areas

Case-study areas were selected on the basis of the rate of urbanization, the existence of multiple tenure systems, and the implementation of pro-poor land tools. In order to be able to make broader conclusions, the evaluation was carried out in different countries. The following areas were chosen (see Figure 1): Oshakati, a small city in northern Namibia; Chazanga, a peri-urban settlement in Lusaka, the capital city of Zambia; and two peri-urban settlements around Gaborone, the capital of Botswana: Tlokweng and Mogoditshane.

The case-studies focused on the beneficiaries of the land tools: the poor land holders in peri-urban areas. A qualitative approach has been followed to gather the data. In each settlement around 25 to 30 land holders were interviewed. In addition, a literature review was carried out

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[1] 'Evaluation of social, economic and environmental outcomes' has been added as a new design element, but is not dealt with in this paper.

and experts and officials were interviewed as well. All interviews took place between 2008 and 2011 (Van Asperen, 2014).

Figure 1 Case study areas

Oshakati

Oshakati's population is estimated at 36,000 (Republic of Namibia, 2011). Oshakati was of particular interest because the Flexible Land Tenure System was piloted there (Hackenborch & Kozonguizi, 2005). Unfortunately, it could not be completely evaluated in this study, because it was not operational at the time of the fieldwork. The first major change affecting land tenure was the proclamation of townland in 1993 when the jurisdiction of the Oshakati Town Council expanded. From that time on, the land was no longer under the traditional authority. The traditional farmers previously under customary tenure where transformed under statutory tenure of the council (Hamata, et al., 1996). Secondly, the majority of informal land holders were given a right to occupy. Another land tool was the savings scheme. The savings scheme provides access to land for the poor with the support of NGOs, like the Shack Dweller Federation of Namibia (SDFN) and the Namibia Housing Action Group (NHAG). Despite the possibilities for occupancy rights and savings schemes, a number of land holders continued to settle illegally, leading to illegal land claims. In 2001, informal land holders made up to 60% of the total population, while 5 % was estimated as illegal settlers. The savings scheme catered for 30 households. Land issues in Oshakati are further complicated by the fact that about 50% of the area is prone to flooding. These areas have already been partly built up by informal land holders who are therefore at risk for relocation, even when registered under recognized occupancy (Van Asperen, 2014).

Chazanga

Chazanga is an unplanned settlement in the northern part of Lusaka, which is claimed by both the Lusaka City Council (LCC) and the Traditional Authority. The area is rapidly urbanizing and has a lively informal land market. The population of Chazanga is reported to be 38,000 (LCC & ECZ, 2008), although local experts estimated it at 50,000. The Council has started preparations for formalization through the Housing (Statutory and Improvement Areas) Act. Part of Chazanga (approximately half of the area) would then be declared an Improvement Area, at which time informal land holders would be issued occupancy licenses. In the past, the Land Act of 1995 has been applied to convert individual customary land rights to statutory leasehold (Mudenda, 2007). Nevertheless, such conversions are legally impossible on Council land. The land subdivisions and transfers are overseen, as far as possible, by the Ward Development Committee (WDC), consisting of volunteers managed by the area councillor. The WDC is instrumental in providing the information needed in the formalization process (Van Asperen, 2014). Chazanga has been piloted for the Social Domain Tenure Model (SDTM), it is assumed that this pilot is held for uncontested customary land, outside the jurisdiction of LCC. [2]

Peri-urban Gaborone

Gaborone, the capital city of Botswana, is almost completely built up. Incoming settlers are largely absorbed in the neighbouring villages, particularly Tlokweng and Mogoditshane, making them the peri-urban areas of Gaborone. Their population numbers are estimated at 36,000 and 58,000 respectively (Republic of Botswana, 2011). Land in the villages, excluding Gaborone, is managed through the Tribal Land Act of 1970. This legislation formalizes customary tenure into statutory tenure, while retaining most customary rights. It also provides for the issue of certificates of customary land grants by the Land Board. A customary land grant can be upgraded to a 99-year common law lease (Kalabamu & Morolong, 2004).

The majority of land holders have been issued certificates since 1970. Tlokweng contains around 5000 residential plots, whereas Mogoditshane has around 5800. Nevertheless, due to high demand and long waiting lists, people have accessed land informally, especially in Mogoditshane, for decades. Informal land access mostly happened through the subdivision and sale of customary land. There is no exact figure on the amount of these so-called 'self-allocations', they are believed to be several hundreds. These land holders are monitored by the Land Boards; in some cases people have been evicted and their houses demolished. Several presidential amnesties have been declared during the last 20 years, offering formalization upon the payment of a fine (Kalabamu & Morolong, 2004). During fieldwork in 2011, an amnesty was declared as well, aiming to formalize all land claims within one year thereafter (Van Asperen, 2014).

Results

Apply macro and micro political-economy analysis (PEA)
PEA aims to situate development interventions within an understanding of the prevailing political and economic processes and interests in society – specifically the incentives, relationships, distribution and contestation of power, influence and opportunities between different groups and individuals – all of which greatly impact on development outcomes (McLoughlin, 2014; Fritz et al., 2014; see also Harris, 2013).

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[2] See website http://www.gltn.net/index.php/country-work/zambia

The development interventions considered here are the land recordation tools. The main theme within PEA in the peri-urban context is the 'conflict' between state authority versus traditional authority with respect to land management. In Oshakati, the council has the authority over land, which is acknowledged by most land holders. Nevertheless, sentiments from the traditional authority still persist, like a headman responded: *'I am the one with the final authority, but the municipality is the one that has the most.'* Land holders can therefore choose either the council or headman to deal with land issues. In Chazanga, the case is even stronger, because the council and traditional authority both claim authority over the area.

Before land recordation can be fully implemented, this issue has to be resolved first. In peri-urban Gaborone, the Tribal Land Act is very clear that traditional land is managed by the Land Boards since its enactment. Nevertheless, traditional practices are still used to access land, because formal access is almost impossible. From the cases, it is learnt that in peri-urban areas claims and conflict between local authority and the traditional authority need to be addressed. Traditional norms and practices may persist, especially when they offer easier access to land compared to formal procedures.

Enable mobilization
Collective action, social movement, and civic-driven change literature learns that mobilization can be interpreted and implemented from the organizing (bottom-up) tradition or the mobilizing (top-down) tradition (Boyte, 2008; Biekart & Folwer, 2009). Mobilization was not found in the case study areas, the saving scheme in Oshakati being the exception. An aspect which needs more consideration is that theoretically land recordation tools only recording the change, while the change itself (land use change, urbanisation) has already occurred. Nevertheless, in the countries under study, NGOs and CBOs were active, although not at a scale that they could involve the majority of poor land holders. It might have been beneficial to have them included during the implementation of recordation tools in the case study areas. This will also be pointed out when discussing the requirement 'system ownership and co-management'.

Build on inclusive community tenure practices
This design element concerns the extent in which the recordation tools take local practices into consideration. It is assumed that recordation will be more successful when local practices are supported. The first question is whether the community practices are accepted. In peri-urban Gaborone, land allocation and recordation is fully formalised, and local practices of informal subdivision and subsequent sales were clearly defined illegal. In Botswana, there is a strong political drive to end informal land rights. The consequence is high pressure on formal land delivery, as is illustrated by long waiting lists and 17,000 applicants for about 285 plots[3]. A second question is which practices are considered. When studying the micro-level, there are many ways how people access land and how tenure is secured. It might differ because of timing (land authority might have changed), original way of access (occupation of bare land, buying an existing house), etc. In Oshakati and Chazanga, the laws and policies on land recordation tools did not refer to local practices, nevertheless local leaders were involved in overseeing land transactions, and in many cases, they liaised between individual land holders and the council. It appears that in these two cases, inclusion of local practices related more to pragmatism then to adhere to the principle.

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[3] http://www.mmegi.bw/index.php?sid=1&aid=5&dir=2009/August/Friday28

Introduce acceptable local recognition and a para-legal officer
The land recordation tools under study did not introduce acceptable local recognition automatically. Awareness had to be created amongst the land holders first. Meanwhile, communities themselves develop local practices, normally before land interventions are implemented. Although some settlements under study had a local land committee, some were not very active. They can be regarded as para-legal officers, but were not specifically trained for that. Only in Namibia, efforts were made to introduce a land measurer to support the implementation of the Flexible Land Tenure Act (Hackenborch & Kozonguizi, 2005).
We therefore suggest that the requirements should be rephrased in the sense that the land recordation tools should be recognised by the community as an acceptable approach and that para-professionals (lawyers, land surveyors, land officers) support the implementation of the tools.

Recordation of all tenure forms
This design element relates to the recognition by all stakeholders and subsequent recordation of all existing tenures and rights. They may vary from claims to land, with or without supported by locally accepted documents and official authorised permits and titles, based on formal land rights (Hendriks et al., 2016).

In Oshakati, most informal tenures are registered through the local council. Actually, only occupancy is registered. On top of that, land holders on former communal land might be registered by the headman. Illegal settlers are not registered, when encountered, the council orders them to leave. Although not encountered, titled land is registered by the Deeds Registry of the Ministry of Lands. It is therefore not managed by the council. Informal rights in former communal areas may be registered by the headmen as well, creating a shadow registry. Shadow registries might be kept as a temporary measure, as long as formal systems are not yet fully established, see for example the MWEDO case in Tanzania (Hendriks et al, 2016). Nevertheless, in Oshakati, it is more probable that the headmen try to maintain some authority over the land. Such shadow registers can be used as evidence (see 'multiple sources of evidence'), however they might create confusion as well. Therefore, this design element could be rephrased as '*unambiguous* recordation of all tenure forms'.

In Chazanga, all informal tenures are taken into consideration for official recognition. Land claims are based on former customary land acquisition, informal land sales and gifts. Headmen might keep shadow registries like in Oshakati. Application of the HSIAA converts the informal claims into formal occupancy licenses. HSIAA is not dealing with title deeds, so when existing, they should be cut out of the Improvement Area.

In peri-urban Gaborone, all customary rights have been recognized and converted. However, informal subdivision and subsequent transfer is not allowed. Affected land holders can regularize through a fine or otherwise they will be evicted. Freehold is not possible within the Tribal Land Act, however customary certificates can be converted into common law leases.

It is concluded that in general all tenures (including informal and customary rights) and land rights are recognized, however it does not automatically lead to recordation. In addition, recordation might occur at different institutions. Therefore, 'unambiguous' recordation should be added to this design element.

Joint inspection of land records
Joint inspection by both officials and land holders will improve transparency and build on trust in the tools. There is little evidence in the case-studies that joint inspection of land records is arranged. People can only inquire at the local authority or land board about their own situation. Only within the saving scheme in Oshakati, information is shared, because every member is actively involved in the scheme.

Affordable and accessible dispute resolution
Pro-poor land recordation should ideally result in a decrease of land disputes. It is difficult to monitor such a decrease, because the introduction of land recordation might introduce other conflicts while the type of conflicts may change over time as well. Nevertheless, dispute resolution should be affordable and accessible at all times.

Regarding dispute resolution in Chazanga, respondents brought their grievances to different persons and institutions: the area councillor, the headman, the Ward Development Committee (WDC) or the police in the event of violence. On the topic of costs, people thought that resolution would be either free or cost a small amount, payable to the headman or WDC. According to WDC officials, people have to pay approximately the equivalent of 2 USD for conflict resolution.

In Oshakati, people would refer to the council, to the headman (both informal settlements and former customary areas have a headman), to the Ward Development Committee. The headmen mostly refer conflicts to the council because they are formally not the land management authority. Costs for handling a dispute with a headman were said to be the equivalent of 0.5 USD. The Flexible Land Tenure Act refers to the Registrar of the local Land Rights Office for dispute resolution. Due to the fact that the Act is not implemented at large scale yet, there is no empirical data on dispute resolution.

In peri-urban Gaborone, people would mainly report to the Land Board. When the issue cannot be solved, both land holder or Land Board can appeal at the Land Tribunal. The fee for registering an appeal is the equivalent of 1 USD. With respect to informal occupiers, Onoma (2009) explains that the land board often resorts to issuing a customary grant to the informal occupier, in order to prevent long appeals at the tribunal and to avoid the probable loss of face when its case is rejected by the tribunal.

Due to the unclarity of land authority, people refer to different persons or institutions for dispute resolution. Dispute resolution in the areas studied is in general accessible and affordable; nevertheless there is a danger that disputes are handled by persons or institutions that do not have the mandate to do so. Accessible dispute resolution therefore not only includes short travel distance to offices, but awareness on the issues they can handle as well. It is therefore proposed to add 'well-informed' to the design element.

Land records, indexes and a record keeper for a specified area
This design element relates to properly and the orderly recording and storage of forms, documents and maps (Zevenbergen et al., 2013). Records were kept at either council (Chazanga, Oshakati) or Land Board (peri-urban Gaborone). In addition, shadow registers were kept in some parts of Chazanga and Oshakati by the headman and the saving scheme. The headmen keep their registers independent from the council, while the saving scheme synchronises with the council's administration.

Mapping can be useful for recordation and monitoring as well. In Chazanga a base map was attempted, but not finalized during the research. In Oshakati, an index map was piloted, although not adopted in official procedures. Only the saving scheme used an index map for internal purposes and negotiations with the council. In peri-urban Gaborone, the development plan was used as an index map. However, this map did not take account of the reality on the ground, causing a lot of uncertainty for land holders. Over the years, attempts were made to use aerial photography and satellite images to determine who settled illegally.

Multiple sources of evidence and local weighting
As said, people may access land through a variety of channels, with a variety of evidence. This is already pointed at through the existence of shadow registers. It is not known how and by whom these sources are weighted during the implementation of land recordation. It was observed that in peri-urban Gaborone technical tools like mapping and imagery were used, while in Chazanga witnesses of transactions were important. A detailed study of documented conflict resolution might shed some further light on these weighting processes which can contribute to improved transparency.

System ownership and co-management by state and community – as a public good
System ownership by both state and community was not found in the case study areas. It was either the local authority (Chazanga, Oshakati) or the Land Board (peri-urban Gaborone) made fully responsible for the land records. As said, shadow registries were maintained by the traditional authority (Oshakati, Chazanga) or the saving scheme for its members (Oshakati). Only the register from the saving scheme was synchronised with the council's register.

Co-management was studied through the degree of community representation and participation during the implementation of land tools. Especially in Chazanga, the community is involved at the grassroots level, both in land issues and in the development of the settlement. The activities of the Ward Development Committees (WDCs) and their zone leaders distinguish Chazanga from the two other study areas in that the committees are authorized to monitor and witness land sales within their territory. In peri-urban Gaborone, community representation is arranged through the election of land board members. Nevertheless, the degree of community participation at the grassroots level in peri-urban Gaborone is rather low. Even with a history of eviction and demolition, there was little evidence of an organized community.

The level of co-management tends to be linked to project implementation. This is evident in the Community Development Committees (CDCs) in Oshakati and the WDCs in Chazanga. The activities of CDCs had slowed down and cooperation with the local authority was no longer highly valued. It is also advisable that traditional authorities, especially in peri-urban areas, are included in co-management. Their roles have already been briefly discussed in the political economy section.

The results of the fieldwork suggest that the poor are best supported through local committees because these best represent the philosophy of co-management. Nevertheless, involvement of local committees and CBOs is no guarantee of success. For example, mismanagement and the vested interests of major stakeholders might put the poor at a disadvantage or create a gender bias. Overall, it is confirmed that system ownership and co-management is also very important for design and implementation of pro-poor and recordation in peri-urban areas.

Emphasis on continuum of land recording
The pro-poor land recordation system needs to support the poor to take the first step on the property ladder. These pro-poor land records should be part of a continuum of land recording (Zevenbergen et al., 2013) In other words, land rights and their related records should be upgradable. Nevertheless, the first possibilities for upgrading are believed to be of major importance for the poor. Opportunities to upgrade are considered better in peri-urban Gaborone compared to Oshakati and Chazanga. Especially in Chazanga, laws and regulations excluded the possibility of upgrading of the occupancy license. Remarkably, upgrading would have been possible on customary land, where land could be transferred to a leasehold. One should also take notice of the possibility of downgrading, which was reported in peri-urban Gaborone, where land holders downgraded their 99-years common law lease to a perpetual customary land grant.

Conclusions and recommendations

The aim of this paper was to confirm (or: deny) the PPLRT-system and its design elements in (peri-)urban contexts and propose improvements or refinements of these elements. The findings in the studied cases confirmed the validity of the PPRLT design elements in peri-urban contexts, more specifically peri-urban settlements with population sizes between 30,000 and 50,000 inhabitants. All tenures (including informal and customary tenure) and corresponding land rights are recognized, most of which were recorded along a continuum. It was also found that continuums could differ depending on the interventions which were applied. Local practices and local knowledge are usually incorporated in the recordation process, although the process of local weighting was difficult to evaluate.

The majority of design elements focus on co-ownership, co-management and partnership between authorities and the community. In all cases, it is observed that land recordation is mainly imposed by local government, whereby support from the community is organised as much as possible. Co-ownership and co-management is almost non-existent. This most probably relates to the fundamental conflict often found in the peri-urban areas in sub-Saharan Africa: the authority of land is contested by government and the traditional authority. When the authority is not both settled and accepted, co-management and co-ownership of land recordation is difficult to achieve.

The following refinements are proposed:
- To introduce para-professionals as a more generic term for the para-legal officer, the fourth design element would then be rephrased as 'Introduce acceptable local recognition and a para-professional.'
- To add 'unambiguous' at the fifth design element: 'Unambiguous recordation of all tenures'.
- To add 'well-informed' to the seventh design element: 'Affordable, accessible and well-informed dispute resolution'.

The last two refinements are specifically valid for the per-urban context: because of the co-existence and contestation of customary and statutory authorities.

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