

The Impact of Traditional Landholding Certificates on Social Differentiation

A Case Study in Petauke District, Zambia

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Abstract

This study examines the implementation of Traditional Landholding Certificates in the Petauke District, and how providing access for small-scale farmers to secure land is affected by the power structures on customary land. Nine weeks were spent collecting data in the Petauke District through quantitative and qualitative interviews with stakeholders and farmers. The empirical material showed a higher perception of security and relatively equal distribution in the model villages, where the creators had aimed to implement the certificates in every household. However, it also showed indicators that the existing power relations on customary land allow chiefs to benefit by the Traditional Landholding Certificates on behalf of farmers that not yet have obtained them, which highlight the potential worsening of social differentiation. The implementation of the certificates has occurred from the Zambian National Decentralisation Plan's aim to increase the participation of chiefs in governance, and the World Bank's encouragement to build equitable land rights on already existing systems.

This paper calls for a closer look at the existing power structures, which have to be emphasised when it comes to the idealistic image of decentralisation bringing power closer to the grassroots. I would like to emphasise the risk of an unequal opportunity for negotiation among the farmers, and the risk of the chiefs being political and becoming economic actors putting their own interests first, rather than the benefit of the farmers. The Traditional Landholding Certificates are built upon an administrative system that contains power structures where the elite control access to resources, and hence – the vulnerable social groups that often lack access to secure land may, in fact, still lose out in the implementation of the certificates.

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1. Introduction

“After the demise of my father, his brother chased my five siblings and me from five hectares of land, He told us that our father’s land was his and not ours”

The Case of Mary, Zambia¹

1.1 Problem Statement

Traditional Landholding Certificates were introduced by Petauke District Land Alliance in 2010 as a new system to make land secure for all small-scale farmers. The alliance itself was created three years earlier as a reaction to a survey showing that Petauke District was extra prone to increasing disputes over land in the Eastern Province of Zambia, and has since then worked to develop a new system in order to decrease the disputes². The idea is that headman and chief - the authorities on customary land – would allow the farmers to cultivate their piece of land, where they could use the document as proof. Hence, conflicts arising from unclear ownership will be reduced, as many claims to the same piece of land are based upon different interpretations of the often contradictory customary norms.

The implementation of the certificates can be seen in light of the what is called “New Evolutionary Property Rights”, which is suggested by the World Bank to build land reform on already existing systems for a more pro-poor, efficient and adaptive outcome through negotiability on a local level³. The Zambian National Decentralisation Plan is aiming to bring the people closer to the government by decentralising power down to a local level, increasing the participation of chiefs in governance in order to trickle down development to the grassroots level⁴. It is within this context that the implementation of the Traditional Landholding Certificates came to be, with international and national encouragement of civil society to negotiate a new system which can benefit the poor while remaining the structure of traditional land. However, this approach barely takes into account the power structures on customary land and the potential impact those structures have on the conflicts through the dimensions of inclusion and exclusion of access to productive resources like land. Given that the certificates are based upon the existing structure of customary land, I call for a closer

¹ We Effect (2013). “Study on the Land Rights of Women in Southern Africa”

² Interview with Andrew Kamanga, Petauke District Land Alliance, 10th of February

³ Peters, Pauline (2004). “Inequality and Social Conflict Over Land in Africa”

⁴ Lusaka Times “Government approves the Decentralisation Policy”; AllAfrica “Zambia: New Decentralisation Policy Empowers Chiefs – Sata”

historical and empirical look at the power structure's impact on social differentiation – of whether remaining within the new system of Traditional Landholding Certificates has a potential to affect the success of equal security to land among small-scale farmers.

1.2 Increasing Value of Land

With approximately 60% of the total population living in rural areas, the dependence of agricultural production remains crucial for survival for a big part of the population⁵. Though the Zambian economy lately has experienced high growth rates due to rising world demand for copper, the inequality within the country is increasing, with a major difference being seen between the urban versus the rural areas⁶. With the majority of rural people depending on subsistence agriculture and poorly rewarding off-farm incomes as sources of livelihoods, the importance of land for the poor needs to be taken seriously⁷. Land in Zambia is considered relatively abundant, as in most of Africa. The population is increasing rapidly however, with 2,8% per year between 2000 and 2010, and although urbanisation continues rapidly, the population growth in the urban as well as the rural areas forces people to look for new land – either for farming purposes or in order to live outside and commute into town⁸. Increasing pressure and value of land affects the customary land more than the state land because of the fact that state land is considerably more expensive while all Zambians have the right to obtain customary land. According to Chileshe, the proportion of land in the villages that are communally held has been reduced while family-held land has risen. He concludes that “it is clear that customary land available per household by province is becoming scarce and even critical in provinces such as Eastern”⁹. Zambia has a dual land tenure system influenced by the British colonial policies, where the more fertile land, approximately 6%, were cultivated by the colonisers under state law, whereas the remaining 94% were cultivated by indigenous farmers under customary law based upon the traditional norms depending of chieftdom. The duality remains through present day, with laws separating the individuals on state land from the farmers on customary land. However, the laws on customary land are different depending on ethnic tribe, where the individual farmers are defined as members of the tribe and their access to land highly linked to that membership and the negotiable laws posed upon them.

⁵ Zambia Central Statistical Office (2012); We Effect (2013) “Study on the Land Rights of Women in Southern Africa”

⁶ Gapminder (2013)

⁷ Chileshe (2005). “Land Tenure and Rural Livelihoods in Zambia”

⁸ Zambia Central Statistical Office (2012); Peters (2004). “Inequality and Social Conflict Over Land in Africa”

⁹ Chileshe (2005). “Land Tenure and Rural Livelihoods in Zambia” p. 4

The rising demand is making the value of land in Zambia increase, and trends show that unequal access to land spurs the conflicts and competitions, likely to intensify social differentiation.

1.3 Global Agenda and National Decentralisation Policy

In the end of the 1980s, the World Bank started to emphasise existing traditional systems, arguing that their flexible character made them more adaptive to changes than state-led intervention. This shift in agenda is strongly associated with past failures to improve agricultural development and economic growth. In the end of the colonial era, prejudices against customary land tenure included the lack of security and clearly defined property rights, which were seen as reducing incentives to invest in the land. In order to modernise agriculture, land policy reforms included a replacement of customary land tenure systems in many African countries with land titling systems in the 60s and 70s. The 80s did however show a failure to achieve the expected results of development. Land titling programmes had neither led to increased growth within the agricultural sector nor safeguarded the customary rights of the rural communities, but instead concentrated land in the hands of the elites¹⁰. For farmers that had depended on customary land rights, statutory land titling had in some cases even resulted in landlessness and increased poverty¹¹. World Bank experts on land, when forced to rethink, instead suggested building on already existing systems, and introduced the new framework referred to as the “New Evolutionary Property Rights”, which emphasise secure land rights but with local negotiations to result in more equitable land right outcomes, and urge for caution about state-led intervention. Zambia, highly influenced by the agenda of the World Bank, has implemented a decentralisation plan, where rationales for decentralisation include: improved transparency and accountability, reduction in power of the central government, and most importantly for my research question; greater equity and effectiveness in the allocation of resources. The government aims to facilitate the decentralisation of land administration and process of management, and refer to land when writing that “The restructuring and strengthening of the Ministry will aim to make it more effective, professional and transparent so as to secure fair and equitable access to, and control of this vital resource”¹². The sixth national development plan goes on to say that “the National Decentralization Policy seeks to improve the functioning of the local government system by

¹⁰ Chileshe (2005). ”Land Tenure and Rural Livelihoods in Zambia”

¹¹ Platteau (2000). ”Land tenure, economic growth and poverty in sub-Saharan Africa”

¹² “Fifth National Development Plan 2006-2010” Republic of Zambia, p.57

increasing responsibilities of the local authorities through devolution [independent authority] of power with matching resources and embodying democratic principles”¹³. They highlight that the most fundamental reason is that the government and the people are brought closer together.

1.4 Aim and Justification of Research

The above discussion is assuming that decentralisation, where chiefs will participate more in local governance, will lead to equitable outcomes of development through negotiability. However, I would like to emphasise the risk of unequal negotiability powers among the farmers, and the risk of the chiefs being political and economic actors with own interests rather than the benefit of the farmers. The Traditional Landholding Certificates are built upon an administrative system which contains power structures where the elites control the access to resources. Many studies show how vulnerable groups like women and children lose in the conflicts over land, which hence calls for a closer look at the relationship between the power structure on customary land and farmers’ access to secure land¹⁴.

The aim of my study is to get a deeper understanding of how the system of Traditional landholding certificates works. By looking at the relationship between power structures and access to economic resources, in this case land, I wish to investigate whether or not the certificates have an impact on inequality and social differentiation, and who wins and who loses when it comes to the implementation of the certificates.

This study is based on theory as well as on the field study that was carried out in Petauke District, Eastern Province in Zambia during nine weeks in the beginning of 2014. Theoretically, it builds on the discussion of power relations, chieftaincy, and unequal access to land on the specific administrative system of customary land influenced by the writings of Mahmood Mamdani and Pauline Peters. Empirically, it builds on the analysis of the quantitative and qualitative data gathered from small-scale farmers, PDLA and other stakeholders in Petauke District regarding the Traditional Landholding Certificates.

¹³ “Sixth National Development Plan 2011-2015” Republic of Zambia, p.168

¹⁴ We Effect (2013) “Study on the Land Rights of Women in Southern Africa”

1.5 Research Question

What impact does the power structure of customary land have on social differentiation under the implementation of Traditional Landholding Certificates?

- Is the access to the Traditional Landholding Certificates equally distributed among farmers or do social groupings affect the access?
- How does the implementation of Traditional Landholding Certificates affect the security to land?
- How does the role do the chiefs affect an equitable implementation?

2. Background

The Traditional Landholding Certificates (TLHC) were created in order to solve the increasing conflicts over land in Petauke District, and empower the vulnerable social groups that, in conflicts, are more prone to lose the land which their livelihood depend. To understand how the TLHC are intended to work we have to look at the reason for the implementation based on the unequal access to land and security to keep the land through customary tenure. As the TLHC is also building on the administrative system of customary land tenure, we first need to look at how the customary system works, the conflicts, and how the TLHC aim to solve them according to the creators at Petauke District Land Alliance (PDLA).

2.1 The Customary Land Tenure System

“Zambia has 72 tribes that since immemorial have lived on customary lands in customary ways, so what defines a tribe is land”¹⁵.

The republican constitution of Zambia states that all customary land should lawfully be alienated to a specific community by any process of law, hence the management and administration are different depending on tribe and chiefdom¹⁶. Each chiefdom consists of a number of villages, each village having a headman – their roles inherited just as the chiefs’ – who is the land administrator in the village. Customary land, when used for subsistence farming, was held by the community rather than the individual, with individual rights subordinate to the community ones. This facilitated periodical redistribution among family members and prevented a class of individuals that were permanently landless to ascend. With

¹⁵ Interview with Moses Phiri, Petauke District Land Alliance, 10th of February

¹⁶ The Constitution of the Republic of Zambia

population increase, however, a system of communal property rights emerged with the members of the tribe obtaining the right to cultivate¹⁷. Though the procedure for acquiring customary land differs, the general practice involves an interview by the local headman who allocates the land. If the applicant of the land originally comes from another chiefdom then a letter from that chief introducing and describing the applicant is required¹⁸. The main debate regarding inequality on customary land focuses on highly unequal access depending on social identity as well as security to the land¹⁹. A lot of the conflicts over land are situated within family land, which is held by the family and under the control of the family head. In this sense customary land is owned by the community, but each piece of family land works as individually controlled by the family. Approximately 99% of the customary land is family land, and most land that is given to grown up children (and their spouses) are pieces of the family land which hence becomes divided into smaller and smaller plots. To understand the context in which many of these conflicts arise, it is important to look at the inheritance system and the fact that every person belongs to a specific village. In Zambia, you belong to the village where you have your ancestral roots. Even the people living in the cities have their roots in a village somewhere, and the land that they belong to is the land that their parents come from - where their families belong²⁰. That the people are defined as belonging to a certain village in relation to the either matrilineal or patrilineal inheritance system can create issues for women and children especially. Generally, Zambia is matrilineal, in which the matrilineal extended family is seen as higher than the household. Chileshe expresses in clear sentences;

*"In many cases, women living in their husband's village lose land rights upon the death of a husband. The matrilineal relatives of the late husband will often claim most of the valuable household assets including crop fields. This practice is based on the belief that a wife comes to her husband's village 'empty handed' and that her place is in her mother's village. However even when women relocate to the maternal village their access, control and ownership of land is also uncertain and is dominated by male relatives"*²¹.

¹⁷ Petauke District Land Alliance (2012). "Customary Land Administration Guidelines"

¹⁸ Swedish Cooperative Centre and Zambia Land Alliance (2012). "Lets talk about Land: Study Circle Material"

¹⁹ Chileshe (2005). "Land Tenure and Rural Livelihoods in Zambia"; Deininger (2004). "Land Policies and Land Reform" World Bank

²⁰ Andrew Kamanga, Petauke District Land Alliance, 13th of March

²¹ Chileshe (2005) "Land Tenure and Rural Livelihoods in Zambia" p. 133

The spouses that left their village after marriage and hence are an extra vulnerable social group when it comes to inheritance disputes will for the remainder of this paper be referred to as strangers, as they are according to traditional customs belonging to another village. Much criticism towards customary land is based upon these disadvantages women, children, and strangers face, and it is hence not the access to land, but rather the secure rights to the land obtained that is the major problem creating disputes. Apart from inheritance disputes, boundary disputes due to the lack of demarcation, trespass disputes, and encroachment disputes are common, as well as conflicts between as well as within chiefdoms. In a study circle material provided by the Zambian Land Alliance and Swedish Cooperative Centre it is argued that these land disputes arise when the subjects are victims of poor land administration, where both corruption and frustration can spur conflicts²². To add to the severity, the belief in witchcraft affects the conflicts, and the threat of being bewitched can be enough for people to leave their land. As a pastor I spoke to put it;

“People fight. And the problem with Africans is that if you continue to persist a fight, someone is going to bewitch you. And that is bad. You understand what I’m saying? But what we, as Christian believers of God, we don’t believe in those! But that is what happens to those who are not Christians, they do that. And you can die for sure”²³.

Because the norms that the customary law follows are not written down, but are instead accepted in respect to the dressing, marriage, burial, and any other beliefs by the tribe, the dispute resolutions become complex. This has opened up room for misinterpretations and misapplications of the norms which can be contradictory and open for negotiation. The traditional leaders have the right to reallocate people from their land without consulting the people cultivating it and settle these disputes²⁴.

It is argued that the main advantage with state land is that it is the most secure way of holding land as it is clearly defined and registered on title deeds. The security is also enough for the banks to accept the deed as collateral when the owner seeks to obtain a loan²⁵. The land policy after independence was built on socialism and humanism, and apart from deciding that all land should be vested in the president and hence centralizing the policies, was also against the conversion of customary land into leasehold. The land policy was however revisited when the

²² Swedish Cooperative Centre and Zambia Land Alliance (2012). “Lets talk about Land: Study Circle Material”

²³ Interview with Pastor Shamwanga, Petauke, 11th of February 2014

²⁴ Petauke District Land Alliance (2012). “Customary Land Administration Guidelines”

²⁵ Swedish Cooperative Centre and Zambia Land Alliance (2012). “Lets talk about Land: Study Circle Material”

movement for multi-party democracy (MMD) formed government in 1991 with a more liberalized economy in focus²⁶. The Lands Act No. 29 of 1995 clearly states that

*“[A]ny person who holds land under customary tenure may convert it into a leasehold tenure not exceeding ninety-nine years on application” and “The conversion of rights from a customary tenure to a leasehold tenure shall have effect only after the approval of the chief and the local authorities in whose area the land to be converted is situated”*²⁷.

Among the problems with leasehold, however, is the cost of surveying the land, which is too expensive for the majority of small-scale farmers to afford²⁸. Therefore, the present government (president Sata’s party the Patriotic Front) is aiming to strengthen customary land and is focused on the poor, and is demonstrating its ability to support the demands on the implementation of the decentralization policy through systems like the traditional landholding certificate²⁹.

2.2 Traditional Landholding Certificates

The PDLA is one out of seven district alliances under Zambia Land Alliance, a network of NGOs that collectively promote equitable access to secure land by advocating and lobbying for fair laws and land³⁰. The PDLA want to make sure that whatever they do with the implementation of TLHC is within the confines of the law, and emphasize the current decentralization policy and village registration and development act³¹. The certificates are built upon the traditional norms of customary land tenure in Petauke District to give security on customary land. PDLA argue that they do not promote conversion into leasehold, as

*“[O]nce land is converted, it doesn’t go back to the chief, which means that all that has got to do with the chieftaincy, will also go. And we will not allow our traditions and customs to go. So in a way we need to preserve that and the only way is to make sure that the land within customary remains there”*³².

²⁶ Sichone (2008), “Land Administration in Zambia with particular reference to customary Land”

²⁷ The Lands Act No. 29 of 1995, 20 of 1996, Chapter 184, p.9

²⁸ Chileshe (2005) ”Land Tenure and Rural Livelihoods in Zambia” p. 186

²⁹ Commissioner of Lands, Chief workshop 25th of February 2014, Petauke

³⁰ Zambia Land Alliance website 2014-04-10

³¹ Moses Phiri, Petauke District Land Alliance, Chief workshop 25th of February, Petauke

³² Moses Phiri, Petauke District Land Alliance, 10th of February

The certificates are hence a form of title on customary land, not used for speculation but still providing farmers with security to their land which can – as soon as the banks accept - also be used as collateral to allow the farmers to get loans to increase their productivity. As PDLA wants the certificates to benefit the small-scale farmers, they want the application and access to certificate as fast and cheap as possible (title deeds that have been severely criticized for being expensive and difficult to obtain without a comprehensive document, excluding many disadvantaged farmers).

Petauke District is a farming community with an estimated 90% of the population of 350 000 involved in farming activities with an average farm size of 5 acres that is shrinking with population increase and a rising value of land³³. From a survey done by the umbrella organisation Zambia Land Alliance it was discovered that Petauke District had more inheritance and boundary disputes than any other place. Arguing that it is ownership that is the cause of these disputes, PDLA came up with a document where the chief and headmen have to commit themselves that they have given the land to you and therefore cannot misuse their power³⁴. The certificate is based upon the Customary Land Administration Guidelines that PDLA produced after collecting and documenting the norms on customary land in agreement with the chiefs³⁵.

There are two different application forms (see appendix) for farmers that wish to obtain a certificate; one for people already cultivating a piece of land, and another for people who apply for a completely new plot to cultivate³⁶. In both applications, the procedure goes as follows;

1. The farmer have to obtain double application forms from the chief's palace
2. Both forms have to be filled in with one passport size photo attached to each copy
3. Return the forms to the chief's palace.

The chiefs that issue certificates must have formed a Land Allocation Board (LAB) which has to approve the application before it is signed by the applicant, local headman, and chief. The LAB is a committee that enforces who should allocate land by law. The role of the LAB is to advise chiefs in all matters of land administration, establish a land fund, control the allocation and cancellation of the certificates by chiefs and headmen, decide on application for rights of

³³ Moses Phiri, Petauke District Land Alliance, 10th of February

³⁴ Andrew Kamanga, Petauke District Land Alliance, 10th of February

³⁵ Moses Phiri, Petauke District Land Alliance, 12th of February

³⁶ Andrew Kamanga, Petauke District Land Alliance, 10th of February

leasehold, create and maintain registers, and perform any duties that the chief assign. The members of the LAB are meant to consist of representatives from the Traditional Authority, NGOs, the ministry, organized farming groups, and women representatives³⁷.

In the application form, no expensive surveying of the land is needed but instead the boundaries have to be agreed upon by a minimum of four neighbouring farmers. With the agreement registered in the land register, only an approximate size is established in order for the chief to know how much land that is vested in the certificate³⁸. Just as the certificates are to solve boundary disputes, they also include an important section to solve inheritance disputes; the statement of dependants to take over the land in a case of a death of the certificate holder. With the spouse being the first to inherit, women, children and strangers will be empowered as the land cannot be grabbed from them by the family members of the deceased in the unfortunate cases of death of the applicants. The certificate will therefore be transferred to the spouse and children with a lifelong security if agreed in the application³⁹. The holder of the certificate can also chose to surrender it to change ownership, and as PDLA put it;

“Now they have let it to say that “now I can’t be pushed by the headperson because if the headperson is to push me out he must have authority from the chiefs”, alright? What it is now is that the headperson who cannot make it any reaction to chase this person because they have to change the ownership of the person, but how do they do it? That person must surrender the certificate, and if he doesn’t then he still owns that area”⁴⁰.

When a TLHC is obtained, the sense of security and access to loans may lead to improvements being made on the land. In case of a transfer, a compensation for the improvements can be conditioned by the chief for the new landholder to give to the old landholder. As no person has a claim against the chief, traditional leader or the state for the improvements, no new owner has the right to take away or destroy the improvements. The chief, however, can in consultation with the headperson agree to remove it.

³⁷ Petauke District Land Alliance (2012). “Customary Land Administration Guidelines”

³⁸ Moses Phiri, Petauke District Land Alliance, 10th of February; Andrew Kamanga, Petauke District Land Alliance, 13th of March

³⁹ Andrew Kamanga, Petauke District Land Alliance, 10th of February; Petauke District Land Alliance (2012). “Customary Land Administration Guidelines”

⁴⁰ Andrew Kamanga, Petauke District Land Alliance, 13th of March

The chief also has the right to revoke the given certificate on certain conditions such as;

1. If it is issued in error
2. If the land is being rented out or sold
3. If the holder of the certificate applies for consent to convert to leasehold
4. If holder does not respect the restriction of the certificate
5. If the land has not been used for three years or is used for wrong purposes⁴¹.

The chiefs are also allowed to claim a minimal fee in the form of money or goods for the allocation and production cost of the certificate – “bearing in mind that the fee does not disadvantage the underprivileged”. The fees agreed by the six chiefs in Petauke District and PDLA related to small-scale farming is 500 kwacha for high cost-peri-urban areas and farm lands bigger than 5 hectares, and 50 kwacha for village fields less than 5 hectares⁴².

2.3 The role of the chiefs

The TLHC were introduced in order to solve these defects on a local level, so that farmers can obtain security to their land without converting their land to leasehold tenure which is too expensive for the majority of farmers to obtain and also allows the traditions to slip away. Solving the conflicts on a local level does however assume that the local mechanisms will manage the system smoothly and correctly through the local power structures instead of on a state-village level. The local power structure does however contain struggles and conflicts that cannot be neglected in new implementations. Chiefs have previously given out other documents to elites rather than all farmers, also accepted royalties as fees for purchasing land when allocating, as well as speculation in land where land that could have been obtained for the price of a chicken has been sold by headmen for as much as 3000 kwacha (~USD430)⁴³. This presents potential conflicts with a successful implementation of the TLHC, with the remaining power structure having a possible impact on the access and security to land that may not disappear with the new system. I will in the next chapter introduce two different approaches in which the power structures on customary land related to increased social differentiation can be understood.

⁴¹ Petauke District Land Alliance (2012). “Customary Land Administration Guidelines”

⁴² Petauke District Land Alliance (2012). “Customary Land Administration Guidelines”

⁴³ *ibid*

3. Theoretical framework

There is growing evidence that conflicts are increasing in big parts of Africa while rifts between - as well as within - social groups are deepening. The narrowing of belonging and increased exclusion, in combination with population growth creates tensions that reveal social differentiation, and research on conflicts over land and its resources emphasises the roles of the elites⁴⁴. As mentioned in the previous chapter, I wish to draw attention to the power structure on customary land in relation to social differentiation as understood by Mahmood Mamdani and Pauline Peters⁴⁵. Without an aim to test their theories on the implementation of the Traditional Landholding Certificates, they have merely been used as a theoretical framework for my study.

Mahmood Mamdani discusses in his book *Citizens and Subjects* how the role of the chiefs were strengthened under British colonial rule, going as far as referring to the chiefs as despots with absolute power. Though generalising all chiefs as despots is a radical statement, what I take with me as a foundation of this paper is that the chiefs remain strong economic and political actors until today. Peters argues that customary land tenure and law was formed in order to promote the interests of Europe and the state in the colonies in Africa, in which traditional leaders were created unless they could not already be identified⁴⁶. The roles of the chiefs had been ritual and territorial before the colonisers arrived, but were misinterpreted as being political and sovereign, in which authority over others was exerted. Mamdani's perspective of the administrative system of chiefs are based on the same notion which argues that indirect rule increased the powers of the chiefs for the interest of the colonial powers, though it has to be noted that the authorities in many cases also had to stay accountable to the farmers over which he/she ruled. Earlier experience from e.g. the British colonisation of India led the British especially to change focus from what Mamdani defines as a "civilising mission" to a "law-and-order obsession"⁴⁷. The British strategies to control the diversified indigenous did not only result in the strengthening of the chiefs to reduce the expensive costs of governing vast areas of land and people, but also provoked struggles over access to resources. In their search for control, colonial officials gathered often contradictory local laws

⁴⁴ Peters (2004). "Inequality and Social Conflict Over Land in Africa"

⁴⁵ Peters (2004). "Inequality and Social Conflict Over Land in Africa"; Mamdani (1996). "Citizens and Subjects: Contemporary Africa and the legacy of late colonialism"

⁴⁶ Ibid p. 272

⁴⁷ Mamdani, M. (1996). "Citizens and Subjects: Contemporary Africa and the legacy of late colonialism" p. 50

in order to unify the heterogeneous population into more easily controllable tribes. As Sara Berry puts it;

*“Whichever version of customary rights and practices an official chose to believe, people were sure to challenge it – both because the past was in fact complex and changing, and because Africans took advantage of officials’ interest in tradition to offer evidence favourable to their own interests”*⁴⁸.

The access to resources hence became a struggle between social groups in which negotiation skills could shape the way tradition was written, and how authority and control over land and people could be claimed⁴⁹.

European rule in Africa had a strong emphasis on the customary, developing a customary law that came to include not just personal law – like in India – but also land as a communal and customary possession. The dual law system created a dichotomy between what Mamdani refers to as the citizens and the subjects - the colonisers and the indigenous farmers. The citizens were ruled under modern laws based on individual rights, whereas subjects were ruled according to different customary laws - defined as members of different tribes rather than individuals within the society. The chiefs’ increased power came to include passing rules on subjects, executing laws and settle disputes – and hence judicial, executive, legislative and administrative authority were all given to one single individual; the chief⁵⁰. At the same time as land became a possession of the customary, the sense of belonging can be seen as shifting from someone belonging to the land - to the land belonging to someone. Thereby also the shift from inclusion to exclusion⁵¹. Also, with land being a customary possession, the productive activity could only partly be affected by market forces, and the use of force by the traditional authorities became necessary for the colonial powers to control productivity without letting the land be governed by the market. Chiefs became in charge of extracting products as well as labour from farmers by force, while also extract personal tribute as a source of revenue apart from the salaries earned from the state. Again, indirect rule worked by preventing the dissolution of society through containerization of the subject population under tribal authorities with autonomous powers once appointed by the colonisers. This is what Mamdani refers to as decentralised despotism. The chiefs and the subjects that Mamdani

⁴⁸ Berry (1993), “No Condition is Permanent” p.30

⁴⁹ Berry (1993), “No Condition is Permanent”

⁵⁰ Mamdani (1996). “Citizens and Subjects: Contemporary Africa and the legacy of late colonialism”

⁵¹ Peters (2004). “Inequality and Social Conflict Over Land in Africa”

describe highlight strongly the power relations between them, with the chiefs benefiting from the system as they have control over the distribution of resources. Influenced by Mamdani, I chose to emphasise the containerisation of the farmers as a subordinate group under the chiefs by referring to them as subjects in this paper. However, Mamdani treats the subjects as a homogenous group, while in fact social differentiation within the subjects can be seen through the increasing conflicts where some social groups benefit while others do not⁵².

Pauline Peters stresses the class differences on customary land, arguing that the subjects are far from a homogenous group⁵³. These conflicts over land reveal social differentiation in access to secure land rights, and Peters argues that these conflicts derive from the specific social and political land relations that exist on customary land in Africa in which inequality of class must be considered. She shows the heterogeneity among the subjects by emphasising different social groups that exist, where struggle between them are linked in the dynamics of exclusion and inclusion to the access of productive resources. Peters highlights the struggle between genders, generations and ethnicities, in which both gender and age are highly linked to the issue of matrilineal inheritance especially mentioned in the previous chapter. Much literature emphasises the marginalisation of women when it comes to access to secure land. As mentioned earlier, the traditional laws were more or less established during the colonial era through negotiations where less vulnerable groups, like men, had a stronger voice to define norms that continued to deny women rights to land up until today. Married women in Zambia do in general have access to land through their husbands, also often needing permission to cultivate the land. If not married, the matrilineal inheritance system mentioned in the previous chapter keep the women dependent on their male relatives for access. Whether the woman marries into a matrilineal or patrilineal system, the rights to land differ, but though matrilineal systems can allocate land to women, which patrilineal do not, in both cases it is often controlled by the husbands or male relatives. Also, empirical research has shown that land allocated to women continue to be claimed by spouses or male relatives⁵⁴. As children in matrilineal societies belong to their mother and hence mother's relatives, they as well are deeply affected by inheritance conflicts, with little power to claim their own rights to the land against their fathers' relatives. When it comes to ethnicity, Peters brings up writers like Buijtenhuijs that argue that ethnic wars like what happened in Rwanda was as much based on

⁵² Mamdani (1996). "Citizens and Subjects: Contemporary Africa and the legacy of late colonialism"

⁵³ Peters (2004). "Inequality and Social Conflict Over Land in Africa"

⁵⁴ We Effect (2013). "Study on the Land Rights of Women in Southern Africa" chapter 2

conflicts over land as between ethnicities⁵⁵. In pre-colonial Africa, strangers – often in forms of spouses – were welcome and came with increased status, but Mamdani argues that tensions between ethnicities increased are linked to the fact that access to land became confined to the members of the tribe⁵⁶. The important dimension that is missing when ethnicity has been discussed by Mamdani and Peters is the social bonds that are created by marriage between not only different ethnicities – but also between different villages. This can be highly linked to the inheritance systems, in which spouses that have married into a stranger village have little claim to the land in the case of death of the landholder, but instead are told that they should go back to their own village. The access to secure land is hence highly dependent on inclusion or exclusion of different social groups - where women, young, and strangers are especially vulnerable.

The post-modern thinking that customary systems are negotiable and adaptive forms of landholding and hence an open field of discussions between tribes, communities, civil society, national, regional and local groups would lead to an equitable outcome is argued by Peters to be idealistic, as certain social groups have limited or no negotiation power. It is within this context that the important need to look at how the TLHC functions in relation to the power structures over land is made abundantly clear. The PDLA have introduced the certificates in order to reduce the conflicts over land and provide secure land rights for everyone, but are building the certificates on the existing power structure on customary land to provide an alternative to title deeds. The new evolutionary property rights approach that Peters talks about is based on various actors negotiating their own solutions in order to secure access to land. Ideally, decentralization would allow the society to play a greater role in the administration of land, and negotiability on customary land would allow adaptable and equal outcomes. The danger, however, is that what is likely to happen looks quite different from the post-modern idealisation when put in context of how the existing power structures over land in many cases serve the interests of the ruling class. Social differentiation when it comes to land relations cannot be neglected, and the risk of national and local elites to capture the benefits of decentralisation which are supposed to benefit the poor remains⁵⁷.

⁵⁵ Buijtenhuijs (2000), "Peasant Wars in Africa: Gone with the Wind?" p. 119

⁵⁶ Mamdani (1996). "Citizens and Subjects: Contemporary Africa and the legacy of late colonialism"

⁵⁷ Peters (2004). "Inequality and Social Conflict Over Land in Africa"

4. Methodology and data

The design used for my research is that of a case-study, looking at the case of the area where the Traditional Landholding Certificates (TLHC) has been implemented in Petauke District. Though I am basing much of my data on interviews with farmers in two different villages, there is no comparison between them. Instead, the case is the TLHC – interesting in itself – where I have aimed to get an in-depth understanding of the potential impact on social differentiation.

4.1 My role as a Researcher

First I would like to emphasise that I am aware that my methods used, my questions, and my choice of theory are chosen according to my own beliefs. I believe that the main common denominators behind political actors like chiefs and traditional authorities, as well as governments, are economics and power; hence decentralising power to few individuals closer to the civil society will not necessarily result in the benefit of the marginalised without a voice. As I (as a researcher) influence the research, while the research setting influences me, there is a need to discuss my role - especially since it was the first time I visited Zambia, and the first time I carried out formal research.

Jarvie, discussing the intellectual rather than practical reasons for anthropologists to do fieldwork, emphasises the important idea of fieldwork being necessary for the reason of understanding the context of the research subject⁵⁸. Though the oddities may still exist after reduced bias and a better understanding of the surroundings, being present in the area of interest will save you from making obvious errors, while mapping of the society should be made before selecting the research topic and issues. The increased knowledge I generated in the field affected the way I actively constructed and changed my methodology and research questions accordingly. I believe the reason why many researchers, including myself, twist and turn the subject after arriving to the country has much to do with the broader picture of the society and its issues made apparent. This is far from saying that one will understand the whole context as correct, but a better understanding is more likely. What direct experience adds on a personal level is the motivation to involve oneself further, to sit down to learn more. Hope, discussing the importance of direct experience, argues that though it is not certain for all, many establish a connection during fieldwork that spurs us to give our full attention. As

⁵⁸ Jarvie (1967), "On Theories of Fieldwork and the Scientific Character of Social Anthropology"

Hope says, we care more for those we have encountered directly⁵⁹. We have to acknowledge that our backgrounds will make us see things from another perspective than the people from the community that we meet. To believe one understands the context fully would be a naive and dangerous assumption, but fieldwork can give a “we-feeling” that can make the researcher stay objective and more motivated. My time in the field helped me to see my boundaries when it came to how research could be conducted in this specific setting, while talking to people challenged me to rethink and become aware of the issues the people in question were facing. Hope also argues that deep learning increases the critical thinking when motivation comes from within, as the researcher will be able to connect theory with direct experience.

Much of what motivated me were the passionate and interesting people I met in Zambia. I want to point out that me being a foreigner, as well as a woman, may have affected the way I was approached, but the interest and kindness I was met with surprised me. It was through friendly new interactions that my snowballing for more contacts became possible.

4.2 Methods

My primary data comes from interviews with stakeholders like the PDLA and Chiefs, as well as the farmers from two out of three model villages in Petauke District, which should not be seen as representative for the district. Initially, I wanted to visit a randomly sampled village for representative reasons, but discovered after meeting with the PDLA that the certificates were only fully implemented in three villages, with the rest of them spread out. The chiefs’ approval of the certificates is essential for the spread of them, therefore, I was unable to pick any random village within the district, but had to limit myself to where the certificates had been implemented in order to see how they work. The model villages are special, in the sense that it is where the PDLA (in agreement with the respective chiefs) have done a pilot test with the implementation of the certificates in whole villages, rather than a few individuals. The selection of the villages is unclear; one chief I spoke to argued that they were picked by the PDLA, while the PDLA stated that the chiefs singled them out, and submitted the names to them. We therefore have to discern a possible bias in the model villages, as they may be more approved by the chiefs, as well as the implementing actors. I do, however, argue that this is to my favour, as if the more *approved* farmers express concerns or critique - it can indicate that other, less favoured farmers in other villages could have similar or even more negative

⁵⁹ Hope (2009) “The Importance of Direct Experience” p. 177

perspectives on the matter. This issue will be returned to in the analysis chapter. The three model villages in Petauke District are the Sikankhomba and Nkhumba villages (under Paramount Chief Kalindawalo), and the Dani village (under Chief Nyamphande). I was given the names of Sikankhomba and Dani – which are the two villages in which my mixed methods research finally was carried out.

The data collected from the farmers in these two villages were carried out in two steps; quantitative questionnaires and qualitative interviews. Because of reading difficulties, the quantitative questionnaires had to be held as structured face-to-face interviews, where gender and age of the respondents were of relatively equal numbers. The questionnaires were hence carried out by bringing one farmer individually to the table where my interpreter and I were located, and included questions regarding conflicts, economic status, gender, origin, age, lost land, sense of security to the land, knowledge about the certificate, ownership of the certificate, and improvements since the implementation (see appendix). Apart from the necessary information that was collected through these questions, they also facilitated the sampling of the farmers relevant to interview in a qualitative manner. Extra attention was drawn to farmers who expressed any concerns or critique towards the implementation of the certificate, people without access to them, and those without a strong sense of security on their land. These qualitative interviews were carried out in an unstructured manner, elaborating on details, and deeply adjusted depending on the response of the interviewees.

4.3 The material

As can be understood from the data used in the background section, this study is based on secondary sources in the form of articles and documents, as well as the primary source interviews collected in the field. One major source that has been used in order to explain how the certificates are supposed to work is the Customary Land Administration Guidelines document, which is created by the PDLA after the gathering of norms, and agreed upon by the chiefs in the district. It could be argued that this document is highly biased in favour of the certificates, both because they are working passionately to implement the certificates and because they are in need of funding to spread the idea further. However, as I am not using this document as a *truth* for how the system works, but rather as an ideal picture of how it is *supposed* to work from the perspectives of the creators, I find it valid to use. I base my research on work focusing on conflicts and struggles over resources. As perhaps obvious from my theoretical framework, chapter 3, much is influenced by the works of Mahmood Mamdani

and Pauline Peters, and my agreements with their core arguments need to be emphasised as an obvious bias in my paper. The ways I try to find errors in the system, as well as the way I analyse my data, are influenced by the aforementioned theories.

4.4 The interviews

First I would like to emphasise that the informal observations, discussions, and interviews with the town people, youths, translators, church people and councillors have not been actively used in this paper, but helped me understand the context better. Being aware that many of the contacts I made are part of the elite or the actual creators of the certificates, my production of knowledge, which has affected the way my research was conducted, may be biased. However, together with others, they provided me with context information regarding conflicts, bewitching, jealousy of more successful farmers, the need for security, and the fear of headmen and chiefs. The pilot testing of the questionnaire in the Chongwe District did, apart from fill its purpose of ensuring well-functioning questions in order to reduce error, also increase my understanding of the situation for farmers outside of the model villages⁶⁰. As Chongwe is located not far from Lusaka, the sense of an increased value of land was apparent. The three farmers interviewed passionately expressed their need for secure land, and described obstacles with the chief and headmen in order to receive their security. These unofficial interviews were interpreted in the moment and scribbled down as notes.

The questionnaires and interviews with farmers were carried out in Sikankhomba village and Dani village the 27th and 28th of February. The long and slow process of arranging meetings according to the customs of the Zambian rural areas, as well as the time it takes to reach the villages (rain season and bad roads), makes the villages hard to access. Thanks to the councillor in Petauke, my formal meetings could eventually be arranged, allowing me to visit Chief Nyamphande in his palace for an interview and presentation of myself, to gain permission to enter Dani village. It should be noted that according to customary traditions, the one visiting the chief is required to pay royalties. Unfortunately, Chief Kalindawalo was unavailable, but the Councillor took me to Sikankhomba village anyway in order for me to arrange the research day with the headman of the village. As he happened to be out in his field far from the village when we arrived, we spoke to one of the elderly women about my

⁶⁰ Bryman (2012). "Social Research Methods" p. 263

future visit. This was necessary, in order for the word to be spread so that as many as possible could attend when the day arrived.

My Zambian researcher recommended me to skip the in-depth interviews because of the difficulties of accessing the villages, and emphasised focus groups instead. Holding focus groups does, however, in my context contain a number of shortcuts; Firstly, men and women would have to be separated, creating two different groups. The reason for this is because the presence of husbands or male relatives can have an impact on what the women say out loud. In my case, however, access to land, security, and concerns are sensitive subjects that the farmers within the community most likely would not openly talk about. The presence of the headman, aka the land administrator, could affect the answers in a focus group tremendously. One-on-one interviews consequently came out as the only way forward, and as mentioned earlier in this chapter, illiteracy contributed to the fact that they had to be face-to-face, rather than in the form of self-completing questionnaires.

As the majority of people in the villages of Petauke District speak Nsenga as their main language, I hired a translator and interpreter to carry out the semi-quantitative interviews. Kapborg and Berterö discuss how the use of an interpreter in qualitative interviews can threaten validity⁶¹. My translator was an experienced teacher from Petauke, with patience and understanding of the situation present in the District. Prior to the days when we visited the villages, we met up to discuss what the aim of the study was, and to go through all the questions and their meaning. While my research assistant conducted the interviews, I noted down body language and facial expressions to understand the interview situation better. The interviews were not translated word by word, but instead interpreted by my assistant and translated back to me. The fact that only notes and no recordings were taken is a weak point with my translation process, which has to be clearly emphasised, but limited resources made it hard to transcribe that amount of interviews. However, because my interpreter was well informed of my research aim and also could explain things to me that I would not have been able to understand from the exact wording given, some sentences would have meant little to me unless I had received the explanation of the actual meaning. The analyses of the interviews with the farmers were therefore different from the other interviews, and reflect both my translators' interpretations and my own.

⁶¹ Kapborg and Berterö (2002) "Using an interpreter in qualitative interviews: does it threaten validity?"

In total, 67 farmers from the two villages were interviewed through the questionnaires; 31 men and 35 women, ranging between the ages of 17 and 87. These 67 farmers made up the maximum number I was able to interview in both villages with my limited time. Out of these, 31 provided me with further qualitative information, of which 14 included relevant information for the research questions in this thesis. In both villages, the farmers were summoned to a familiar place where they remained all day, and one by one came to my table. Although I stated that I would like to talk to people in different age groups, the same amount of women as men, and with or without certificates, it must be emphasised that a cultural hierarchy in the villages may exist, that I as a visitor cannot control. Therefore, the people I got an opportunity to speak to may have been biased towards the elite, or may have been in favour of the certificate. Another factor that may have created a bias was the presence of myself and other people during the interviews, which could have affected the answers given. This was especially present in the Sikankhomba village, where the interviews were held within hearing distance from where the waiting respondents were located. Not being familiar with the existing relationships in the village, I cannot say in what way the presence of one person can affect the answers given by another. In Dani village, we were much more separated from the others, though the presence of my translator and I cannot be overlooked. My presence as a western outsider there to interview them regarding the TLHC has a high probability to have had an impact on the respondents' replies. Where they believe their replies will end up, or their assumptions on what my aim is with the research, may have influenced them to be more positive about the certificates. The fact that I brought lunch to the attending farmers may also have influenced them to reply what they thought I wanted to hear. Another potential risk that may have affected the replies of some of the farmers was the fact that they likely believed I was associated with the PDLA and their agenda, or perhaps had the influence to affect the implementation, and possibly withdraw or increase the potential of the certificates. Note has to be taken that I was transparent in telling them that the interviews were voluntary and anonymous, as well as that I was a student and not linked to any government or organisation⁶². Still, I would highlight the potential motives of the farmers' replies, and take their credibility with a pinch of salt. Another point that has to be made is that the farmers I interviewed were sampled from the ones that attended the whole-day meeting. With the lack of food during the time I was there, I was told by the headman in Sikankhomba village that some farmers could not attend because their fields were too far away and they needed to

⁶² Bryman (2012). "Social Research Methods" p. 483

cultivate. With that said – not all farmers were equally available, and there is a risk that some of the most marginalised are the ones that could not attend⁶³. I will return to this issue later.

Apart from participant observation and interviews with small-scale farmers, this field study is equally based on semi-structured and open-ended interviews with 8 key-informants of which 6 have been used in this study; Chiefs, Pastors, Farmers Associations and above all; Petauke District Land Alliance. I made two attempts to get an interview with the Ministry of Lands to get a deeper understanding of the role of the government in making the certificates a part of customary law, but unfortunately that aspect will have to wait. I also attended a Chief workshop arranged by PDLA where four out of six chiefs attended together with indunas (the chiefs' advisors), some headmen, the commissioner of lands and the government secretary. Though most conversation occurred in Nsenga, a lot of the dialogue was translated for me. I also want to highlight my own presence and the way I was presented again, which may have had an impact on the parts that were being translated.

4.5 Structure of Analysis

I have used SPSS in order to analyse and see patterns based on representativeness among the answers given by the farmers that were interviewed. When it comes to the quantitative data analysis, the questions in the questionnaire were designed in advance to facilitate the analysis in SPSS, with circling of the answers making it easy to codify into numbers. Many questions were in the form of dichotomies, with either/or replies. Apart from that, some questions called for real numbers when replied, others were interval variables, and some were nominal/categorical. When it comes to the transcribing of the recorded interviews, it has to be acknowledged that the information I selected was important enough to note, and also reflected my underlying assumptions⁶⁴. In the case of the chief workshop, a lot of visual data was noted down to portray the potential power play taking place between the participants in the room. Much was being said in a mix between English and the local language Nsenga (recorded and transcribed simply as “Nsenga”), and I later returned to the Petauke District Land Alliance in order to get parts of the whole-day workshop explained to me, in the cases where Nsenga was spoken.

⁶³ Ibid p. 188

⁶⁴ Bailey (2008), “First steps in qualitative data analysis: transcribing”

The stakeholder interviews were recorded and later transcribed into a word document in order to be analysed and coded using tools of grounded theory (see appendix). This was done through open coding of the interviews, where I broke down the transcripts into three categories; access to the certificates, security of the land with the certificates, and the role of the chiefs. After that, connections between the categories were done by linking them to the bigger context of power structures on customary land, through axial coding⁶⁵. The recordings were carefully listened through more than once during transcribing, so as not to miss any important meanings or detail. Problems with the audio recording device hindered two of the interviews, and so had to be analysed from the notes taken at the time, where there is a risk of misinterpretation and memory shortage. Neither of the interviews were, however, relevant for my analysis, but provided me with a better understanding of the context in which this research was carried out.

I would like to emphasise that the information in next chapter derives from the 67 quantitative interviews with small-scale farmers in the Dani and Sikankhomba villages, as well as the 23 qualitative interviews with farmers, the PDLA, organisations and chiefs that all represent different actors on customary land. Based on my theories, the farmers are subjects representing a subordinate group to their chief, themselves representing different social groups based on gender, age, origin and class. The PDLA both represent civil society and the creators of the certificates, with their aim to implement them in the whole district and beyond. The recognition of these actors as representatives in a power structure on customary land is essential.

5. Analysis

As previously mentioned, the unequal access to secure land between social groups has been acknowledged by global institutions, chiefs, NGOs and farmers alike. Women, young people, strangers, and the poor are generally more marginalised and vulnerable than men, older people, village natives, and the wealthy. The recognition of specific social groups in need of empowerment has created a whole pro-poor global reform agenda, which the Petauke District Land Alliance (PDLA) strongly kept in mind in their aim to decrease conflicts that often disadvantage the vulnerable groups. This chapter will look at the farmers' access to obtain the

⁶⁵ Bryman (2012). "Social Research Methods" p.568

Traditional Landholding Certificates (TLHC), the security to the land, and the role of the chiefs.

5.1 Access to the Traditional Landholding Certificates

“[W]e wanted it to be as fast as possible, as affordable for everybody in the village”

Moses Phiri, Petauke District Land Alliance, 10th of February

First, it is to be noted that in order for the implementation of the TLHC to be successful in equal terms, it requires all farmers to have certificates that cover their lands. As the title deed is expensive and not easily accessible to obtain, the PDLA created the certificates to provide a cheaper and more easily accessible alternative that could give security for the poor. Hence, when it came to the model villages, after numerous meetings to increase the farmers’ knowledge about the certificates, all households that were present at the final meeting received certificates, whereas the farmers who were in Lusaka or somewhere else at the time did not. PDLA argue that the main benefit with owning a certificate is that no one from the family can remove you from your piece of family land without the consent of the headman and chief. As mentioned in chapter 2, approximately 99% of the customary land that is used for cultivating is family land. New pieces to cultivate are given out of the family land by the family head, to members of the family who are getting married while staying on the land. However, the new household still does not own that piece, but has rather been given it to cultivate. According to the PDLA, age matters when it comes to the actual owning of family land. Andrew Kamanga at the PDLA explains;

“I did a small survey to check what age group has the own land and you find out that the person who has his own land now are those guys between the ages of 60 and upwards. All of those who are below 60- Or in the range of 60 - They don’t have their own land – all is family land. Now. If it is family land you have to get consent from family to say I want to rent this, or sell this piece of land. Or I want to use it with my husband. Because when you are there – for example if your husband comes into a field, the family must find the field that you must be using, and say this is the family field. For you to allow your husband to have a share in the ownership, you have to go back to the family”⁶⁶.

⁶⁶ Andrew Kamanga, Petauke District Land Alliance, 13th of March

The farmers who have obtained certificates, and their dependents written on it, can therefore not be removed from the land by family members who claim the land belongs to them. But at the same time – it is not possible to obtain a certificate on family land unless the family has agreed to say that the applicant is allowed to apply for one. This enables them to limit access for relatives and their dependants in the first place. According to my SPSS analysis (see appendix), a number of farmers interviewed did not have certificates in their own names, but instead cultivated pieces of family land where the certificate was written in the name of a family member instead. Others had been successful in obtaining a certificate on their pieces of family land after consent was given from the family.

Of the farmers who claimed the certificates are their own, younger as well as older, men as well as women, villagers as well as strangers, and wealthier as well as poorer all expressed their gratitude. Note that, as written in the previous chapter, their replies may have been affected by their beliefs of my intentions, or a possible link to the PDLA. The majority of men spoken to were heads of households, representing a less vulnerable social group in the villages, and owned certificates, whereas nearly half of the women spoken to did not. Though this can be interpreted as men being favoured the granting of certificates over women, I would rather argue that the heads of households are the ones with a bigger advantage, which in most cases - but not all – the heads were male. One particularly interesting case arose when a man I interviewed told me that his wife had a certificate on the land, and he did not. He had lived in the village for five years, and was of another ethnicity compared to the native villagers in the Petauke District. However, so were his wife and children, and although he was the headman, she was the owner of the certificate⁶⁷. Consequently, according to the collected data, the access to the certificates can be perceived as equal in the model villages, with representatives from all social groups holding them.

I also spoke to many farmers who did not own certificates in their names. Most of them were cultivating pieces of family land where other members of the family had a certificate that covered their piece. This was also true for some heads of households⁶⁸. One head of household lost his land after plans to build a boarding school were granted, and was rejected a certificate on his land after applying one year ago⁶⁹. Two other farmers were refused

⁶⁷ Farmer interview D17, Man, 68 yrs, Dani village, 28th of February

⁶⁸ Farmer interview D10, Woman, 83 yrs, Dani village, 28th of February; Farmer interview D25, Man, 35 yrs, Dani village, 28th of February

⁶⁹ Farmer interview D23, Man, 44 yrs, Dani village, 28th of February

certificates because they lacked the compulsory passport photos in their applications⁷⁰. Though the PDLA argues that almost no one who has applied for a certificate has been refused, the application process is not as simple as it may sound. The difficulty for poorer farmers to obtain passport photographs in the remote villages may ultimately prevent them from successfully applying for a certificate. One man, 34 years old, head of a household, native in the village and with an above average output of maize – hence not belonging to any of the vulnerable social groups mentioned earlier – also complained about the application form requiring a knowledge of English. As he only spoke Nsenga, he said he felt it unfair that only English-speaking people can apply⁷¹. When it comes to the local language, however, the PDLA claim that the issue is whether the farmers could read it or not once translated – so only few people would benefit from it, while the cost of translating would be high⁷². Some farmers, such as the last one mentioned, did not know how to apply. One was in fact the senior headman, who had only heard about the certificates but never seen any, and claimed he would try to save up the money to obtain a certificate but could not do it right now because last year he was sick, and so the harvest was poor⁷³. Surprisingly, the headmen of the villages that I interviewed – representing the elite with their power to allocate land in the village – neither appeared wealthier than others, nor favoured, when it came to the access of the certificates. Another example of a person who did not know how to apply for a certificate was a young woman of 26, whose mother, being the head of the household, had a certificate covering the acres of land that the interviewee considered her own. She wanted her own certificate that covered her acres instead⁷⁴. This brings us to the continued power of family heads on family land and the perception of security.

The PDLA estimates that most certificates, 3-4000 of them, are spread within the urban areas⁷⁵. The distance to town and access to information may play a big role, but should not undermine the nature and willingness of the chiefs, who make a difference in whether the subjects in the chiefdom get the possibility to apply for a certificate or not. If the chief, as the highest authority on customary land, does not accept the implementation of the certificates, no certificates will be signed and hence the farmers in that chiefdom will not have any

⁷⁰ Farmer interview D14, Woman, 62 yrs, Dani village, 28th of February; Farmer interview D20, Woman, 35 yrs, Dani village, 28th of February

⁷¹ Farmer interview S17, Man, 34 yrs, Sikankhomba village, 27th of February

⁷² Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁷³ Farmer interview D03, Man, 67 yrs, Dani village, 28th of February

⁷⁴ Farmer interview D30, Woman, 26 yrs, Dani village, 28th of February

⁷⁵ Moses Phiri, Petauke District Land Alliance, 12th of February

opportunity to obtain them. If rounded up, the number of certificates issued in the model villages reaches approximately 300 out of the 4000+ certificates issued in Petauke District. The PDLA argue that the model villages are the only villages where the certificates have been implemented in practically every household, and that the rest of them, meaning at least more than 3500, are spread out to individuals rather than villages⁷⁶.

One big concern that stood out in two of the interviews, with one female and one male farmer from Dani village, was the fact that only the farmers in the model villages had received certificates for free, while the rest would have to pay to obtain them.

“[B]ecause they are a model village, the people that got certificates were lucky. But not everyone in the village has a certificate, and that is a problem. Only 60 people have certificates. Of the people that are left – they will have to pay!”

Woman, 43 years, TLHC committee member⁷⁷

One farmer, a woman of 51 years, explained the selection of farmers that would obtain certificates in the model village was made during a village meeting that the PDLA held one year ago, where everyone at the meeting wrote their names down on a list, and later obtained the certificates. The ones who could not come to that meeting were left behind⁷⁸.

“We in the model villages did not have to pay anything. The chief wanted 150 kwacha but we talked to him and said NO. However, it now will cost 200 kwacha for residential area and 150 kwacha for fields for everyone else. And all that money goes to the chiefs. Poor people can’t afford that. Why do they need that much? The people aren’t buying the land! It still belongs to the chief and he can take it back! I wish we could pay in kind instead of a fee. Just if you want to go and speak to the chief you need to bring a goat.”

Man, 43 years, TLHC committee member⁷⁹

As mentioned in the background section, the agreed price of farmland below 5 hectares is 50 kwacha, equivalent to a little more than 7 USD. The authority of the chiefs, and lack of enforcement of the agreements with the PDLA does, however, give the chiefs complete control. The fact that the PDLA argues that some chiefs even charge 250 kwacha (~36

⁷⁶ Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁷⁷ Farmer interview D36, Woman, 43 yrs, Dani village, 28th of February

⁷⁸ Farmer interview D37, Woman, 51 yrs, Dani village, 28th of February

⁷⁹ Farmer interview D38, Man, 43 yrs, Dani village, 28th of February

USD)⁸⁰ for farmland makes the matter worse, as it indicates that the prices the chiefs decide to charge may vary, between the different individual chiefs and also on their relationships to the applicants. This issue will be returned to later in this analysis.

I would argue that as the collected data of how the TLHC works in the model villages can indicate how it could work in other villages. The fact that not everyone in the model villages were aware of how to apply for the certificates also indicates that farmers in other villages, without information meetings given numerous times by PDLA, may have a low access to the information needed to apply. Access may more easily reach the political and economic elite, who are more likely to be able to afford to invest more time on meetings and networking than marginalised farmers. As an example, I wish to bring up an interview with the chairperson of the Petauke District Farmers' Association, who, after the chief workshop, suggested it would be a good idea for the information about the TLHC to be spread throughout their organisation. Though the spreading to the members of the organisation could be done through village meetings and also through a trickledown effect of the knowledge, the first hand access would reach the members, who pay a fee of 100 kwacha (last year's fee), and with access to loans, would represent a less vulnerable class of farmers⁸¹.

Though my SPSS data of the model villages showed unequal access to the knowledge of how to apply for the certificates, it has to be acknowledged that it was on random terms. No indicators of biases towards the more favoured social groups of men, elders, villagers and wealthier people could be found in the access to applying within the village. Access to the knowledge about the certificate is, however, not the same as the access to obtaining them, which is highly linked to whether the implementation is successful or not. As argued in chapter 2, increasing conflicts are revealing social differentiation on customary land, which is of the highest importance for the new system of the TLHC to decrease. My data showed that within the model villages, unfavoured social groups like women, youngsters and strangers had been successful in obtaining the certificates, which indicated a non-significant bias in the implementation of the TLHC, and the access the farmers had to obtaining them. However, it should still be noted that not everyone could attend the PDLA meeting where the names were collected, and that there is a risk that the worst off may have been out in their fields during the time the certificates were issued, just as they were during my interviews.

⁸⁰ Andrew Kamanga, Petauke District Land Alliance, 25th of February; Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁸¹ Joseph Lungu, Petauke District Farmers' Association, Petauke, 25th of February

More importantly, the power structure situated on family land remains, and can control the access of farmers in obtaining a certificate. The social groups of older people, men, and native villagers still remain more powerful than their opposites, especially as they are more common as family heads with control over the access to family land. Unless the head of the family accepts parts of the family land to end up in - for example - the hands of a relative's spouse, the head will not accept a certificate to that relative and his/her spouse. If a certificate is granted, the land will pass on to the relative's spouse and children as an inheritance, without the family being able to reclaim it, unless with consent from both the headman and the chief. Social groups in inheritance disputes like women, children, and strangers, can remain unfavoured – and continue the social differentiation even after the implementation of the TLHC.

5.2 Security to the land

“Before I lost land because I didn't have certificate, but now I won't. Both me and my family will be secure even when I die. First my wife will take over then my children”

Man, 58 yrs, Sikankhomba village⁸²

As mentioned in chapter 1, the PDLA was formed in 2007, after a survey was compiled by the Zambia Land Alliance to find out which districts were most prone to conflicts⁸³. The idea of the certificates then came out of the PDLA's wish to decrease the conflicts in Petauke, and increase the security for the farmers who had been vulnerable after losing their land in the disputes. According to Chief Nyamphande, conflicts initially increased when villagers that had migrated to urban areas heard about the implementation, and came back to claim ownership to the land⁸⁴. Since the rightful owners were established and the TLHC was implemented, the conflicts over land in the model villages have, according to the PDLA, been reduced, while also empowering women and the young, who will no longer be displaced in the case of death of the breadwinner⁸⁵.

According to my SPSS data (see appendix), the perception of decreased conflicts since the implementation of the TLHC in both Dani and Sikankhomba village are high among farmers who have obtained the certificates, as well as the ones who have not. Relatively equal

⁸² Farmer interview S01, Man, 58 yrs, Sikankhomba village, 27th of February

⁸³ Andrew Kamanga, Petauke District Land Alliance, 10th of February

⁸⁴ Chief Nyamphande, Petauke, 26th of February

⁸⁵ Andrew Kamanga, Petauke District Land Alliance, 10th of February

amounts of men and women, both people from the village and strangers, both old and young, and those with different economic situations felt that the disputes had decreased. A few farmers argued that they did not see a decrease in disputes in the village from previous years, but had only heard about them happening - something they had not encountered themselves. Those farmers were, however, also mixed in gender, age, origin and income; hence owning a certificate does not seem to matter in the perception of conflicts. When it comes to security, it has to be acknowledged that though almost everyone I spoke to felt that the land they were cultivating would be secure to their children after the breadwinner's death. I wish to emphasise that many – but not everyone - mentioned the certificates as a cause for that type of security, with some stating the reason for this security lays in the fact that the land would belong to the children. As previously mentioned, note should be taken that their replies may be affected by perceptions that I could be linked to PDLA. My SPSS data showed that farmers with certificates in their own names, as well as farmers with certificates in a family member's name (and also one farmer who did not know how to apply), felt more secure since they had obtained the certificate about a year ago. None of the farmers that felt less secure owned a certificate in their name, but had land belonging to a family member with certificate, had been refused one, or did not know how to apply. Once again, these farmers belonged to different social groups, and hence, the access to the certificate cannot be viewed as unequal based on my SPSS data collected through quantitative questionnaires. However, concerns were expressed related to security by some farmers without certificates in their own names;

“I do not feel that the land is safe for me and my children due to the different views people have. My husband has the certificate and there is a risk that his family members come to get this land if he would die. I do not feel secure”

Woman, 25 years, with a husband owning a certificate⁸⁶

“My land belongs to my parents and I need their permission to cultivate it. If I die my parents can take back the land, so it is not safe for my wife and children. I'm hoping to soon ask for more land from the headman for my wife and children”

Man, 35 years, with a wife from another village⁸⁷

⁸⁶ Farmer interview D08, Woman, 25 yrs, Dani village, 28th of February

⁸⁷ Farmer interview D25, Man, 35 yrs, Dani village, 28th of February

The latter quote indicates that the man's parents – though allowing him to cultivate land as if it was his own – do not permit him to get a certificate in which his wife and children's names would be written as dependants, and be the ones to inherit the certificate and land in case he would die. The lack of security that these two individuals express is highly linked to the remaining power structure on family lands, as discussed in the previous sub-chapter.

The power structure on family land is not the only concern that the qualitative interviews with the farmers pointed out, but also the power of the chiefs. One especially insecure interviewee I spoke to had lost his land to the chief recently.

“I lost land in the building of a boarding school. Now I only have 2,5 acres and I need permission from the chief. My land was in the area where they wanted to build the school, so I was told I could continue to cultivate it only until 2014. I have been promised new land from the chief. My land was 10 acres. I feel really insecure! There is nothing I can do! I'm actually really upset and wanted to move from this village but the headman told me to wait and see what the chief says. But up until now I am still waiting”⁸⁸.

The other farmers' perception of security may come from a misconception of what the TLHC really is. Though the PDLA claim they visited the village a number of times to increase the farmers' knowledge about the certificates, I personally perceived people confusing the TLHC with title deeds. There is a lack of knowledge of what TLHC actually stands for, and the PDLA have highlighted that many farmers believe they have got full protection with the certificates, and that neither the headman nor the chief can push them out⁸⁹. No farmers that were interviewed indicated any knowledge of the chief being the actual owner of the certificates they were holding - information that was clearly stated by the PDLA during the chief workshop. The fact that the chief signs the certificates gives security in the case of disputes over ownership, and gives people a sense of security that they are fully protected with the certificates.

The whole village benefitting when the majority of households have certificates can be seen with fewer disputes, more clearly established boundaries, and a higher perception of security on the land. The inequality linked to social groups that have been more vulnerable when it comes to obtaining access to secure land is reduced through the certificates, as e.g. women,

⁸⁸ Farmer interview D23, Man, 44 yrs, Dani village, 28th of February

⁸⁹ Andrew Kamanga, Petauke District Land Alliance, 13th of March

children and strangers – if not already having a certificate written in their name - often are written as dependants that take over the land. The positive effect with the certificates is that, apart from being safer on family land, the headman or chief cannot remove the farmer who has obtained the certificate unless he/she breaks any of the conditions that were established when issued. The fact that the certificates come with conditions highlights the possibility for the chief to remove people without certificates more easily, which could indicate a future risk for those worse off, when others have certificates. Once again, we must look beyond the model villages, and link this to the previous sub-chapter of the access to certificates that in the model villages might have been insignificantly biased, but outside the model villages may appear different. As established above, there are indicators that reveal both access to knowledge of, and access to obtaining the certificates would be harder in other villages – and where the wealthier would potentially have better access. If that would be the case, then security could be limited to the households that know of, and can afford the certificates. Women, youngsters, and stranger spouses belonging to that specific household would then benefit, whereas the households unable to obtain that security would not. In those households, the equivalent vulnerable social groups would continue to be the most disadvantaged.

5.3 The Power of the Chiefs

The fact that the perception of security has increased, while conflicts have decreased within the model villages, could be understood as encouraging reasons for the chiefs to accept the certificates. However, as mentioned previously, only four out of six chiefs in Petauke District have started to distribute them⁹⁰.

Some chiefs in the district fear the certificates and believe that they resemble title deeds which will make them lose power, and hence are unwilling to cooperate with the PDLA in the implementation. Though not yet with same authority as title deeds, for example electricity companies is using TLHC as a source of proof of entitlement to the land given by the chief. The same chief that does not want to cooperate with the PDLA in the implementation has, however, gone to the extent to falsify the documents in order to bring in electricity⁹¹. In the PDLA's attempts to emphasise the benefits of implementing the TLHC, they also focus on the fact that the chiefs benefit from less disputes in their chiefdoms, as it will be calmer and will allow them more control. In many cases, the indunas have advised against the certificates. An

⁹⁰ Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁹¹ Andrew Kamanga, Petauke District Land Alliance, 25th of February

example of this, according to the PDLA, is when it led to one chief never implementing the TLHC in a model village in which he had claimed he would – but instead continued to maintain he was going to do so and never did. With a lack of transparency, and no one to enforce the chiefs to follow what has been agreed upon, they can do as they wish when it comes to the TLHC. Chiefs have also argued that they cannot implement the TLHC, as they do not know the actual household numbers or fields⁹². Apart from the reduction in disputes, the PDLA also emphasise that the TLHC is an alternative to title deeds in which farmers will have security, while chiefs continue to have the same powers and control. During the chief workshop in which four out of six chiefs in the Petauke District were gathered, the PDLA assured that they aimed to keep the powers of the chief through the implementation of the TLHC. On customary land, they argue, people have started to lose respect for the chiefs, as the chiefs' indunas are increasingly taking power and misusing it. The administration of the only asset – land - has gone to everybody else, instead of being kept with the chiefs and headmen who are the true land administrators⁹³. In fact, the TLHC therefore puts the chiefs and headmen in focus, and increases their power. The headmen continue to have control over the usage of the land, but have no control in pushing people out without the consent from the chief. Andrew Kamanga from PDLA expresses it like this;

“You know the thing is that the chiefs’ still has the control. The headperson still has the control. But the headperson only has control over the usage of this land but no control to say this is my land right get out of here without having consent from the chief. So that this time, for example, if I died, the headman despite having the authority or my family having the authority, they cannot tell anyone to inherit it until the chief also consent to say yes, this person can inherit”⁹⁴.

The struggle for power at the top between chiefs, indunas, and headmen has led to the idea of a Land Allocation Board (LAB) to be implemented together with the issuance of certificates. Consisting of representatives from different stakeholders on customary land, the LAB aims to return the power to the chiefs and headmen, the authorities with rights to allocate land, rather than the indunas who only are advisors to the chiefs. Concerns have been expressed that gathering representatives from the ministry would be difficult without offering sitting

⁹² Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁹³ Andrew Kamanga, Petauke District Land Alliance, Chief workshop 25th of February, Petauke

⁹⁴ Andrew Kamanga, Petauke District Land Alliance, 12th of February

allowances⁹⁵. However, similar concerns have also been expressed by the PDLA regarding meetings with the chiefs to discuss the TLHC, arguing that they demand sitting allowances, transport, and in some cases even overnight stays in order to attend. The PDLA argue that problems derive from the declaration that all land has value in spite of the vast abundance;

“[Y]ou see the government has been I think for the last 20 years when we just came up with multipartism, the government was the direction. The direction in the sense that they declared that any traditional land all land is now marketed; all land has value, all land. Remove that barrier. Suddenly chiefs started to get allowances. Political games. And when chiefs started to get allowances, problems came up on the successions... So we have all these struggles. Now they can give them loans and grants you know. Just to make them more powerful...”⁹⁶.

And these demands from the chiefs have to be put within the context of a new system that is supposed to benefit their subjects. Clearly – the benefits of the subjects are not always highest on the chiefs’ agenda. For example, a major benefit with the title deeds is that the official documents make banks accept the land as collateral, when farmers want to take out a loan in order to develop their farms. As security alone is not enough to increase productivity, the PDLA is in the process of also making the banks accept the TLHC as collateral⁹⁷. If a farmer with a certificate wants to apply for a loan at the bank, he will first have to receive consent from the chief, who is the actual holder of the land. If the farmer then cannot repay that loan, the bank will have the authority to sell it⁹⁸. As title deeds take authority from the chiefs, the land being converted to leasehold tenure would make the chiefs lose power over it, which makes it important for them to keep the customary system intact. If this is the case, then the possibility of the farmers receiving consent from the chief to use the certificates as collateral seems very low.

The chiefs’ fear of losing power also puts the PDLA in a difficult position as the implementer of the TLHC. Different civil society organisations may have ideas of how a reform can benefit the poor, but without the chiefs benefitting from it – it would be unlikely for anything to happen, as the chiefs do not want to lose power. This claim is made based on indicators of

⁹⁵ Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁹⁶ Andrew Kamanga, Petauke District Land Alliance, 13th of March

⁹⁷ Chief Nyamphande, Petauke, 26th of February; Chief Macha, Choma, 31st of January

⁹⁸ Andrew Kamanga, Petauke District Land Alliance, 10th of February; Andrew Kamanga, Petauke District Land Alliance, Chief workshop 25th of February

the struggles the PDLA face with not being able to enforce the chiefs to stick to the agreements made, between the PDLA and the six chiefs in the district. If the chiefs can misuse their power on customary land, they can also use the implementation of the certificates to their own advantage. The PDLA is torn in between; wanting the farmers to benefit as much as possible, while having to adapt to the chiefs' will as the system of the TLHC can only work with the agreement of the chiefs. Attracting their interest therefore becomes a high priority.

It should be noted that the PDLA aim for the certificates to be produced and distributed by the chiefs, instead of by themselves, as it is unsustainable for them to do it in the long run. At the present moment, the chiefs lack the technology to be able to produce and distribute it on their own. The three model villages succeeded in getting their certificates for free, as they function as a pilot test for the PDLA in the implementation of the certificates. According to the PDLA, they were also doing village governance in the model villages; turning a blind eye and letting the villagers fight on their own to obtain certificates – just as others will have to do outside of the model villages. An important point to notice is the fact that the model villages were selected by either the chief or the PDLA, with both parties claiming that the other made the selection⁹⁹. The proneness of the chiefs to try model villages, as well as the fact that the PDLA themselves stated that they did not want a village headman or people that were not on good terms with the chiefs in the model villages (as the implementation would then fail), indicates that the farmers outside the model villages could be in an even more complicated situation than the favoured farmers inside them.

Though the PDLA distribute the certificates for free for the chiefs to hand out, some chiefs, in order to overcharge, have told their subjects that the PDLA charge for the certificates. The interviews showed that farmers applying for certificates need to pay a price higher than agreed by the PDLA. Instead of reflecting the production and time costs, the price of the certificate is looking similar to a source of income. The PDLA put it in clear writing;

*“Chiefs will capitalise on that. Make money out of it, and my question is, where does that money go? Not back to the farmers!”*¹⁰⁰

The self interest of the chief – a political and economic actor - does not always walk hand in hand with the benefit of the subjects.

⁹⁹ Andrew Kamanga, Petauke District Land Alliance, 13th of March; Chief Nyamphande, Petauke, 26th of February

¹⁰⁰ Andrew Kamanga, Petauke District Land Alliance, 13th of March

If, then, disputes are decreased resulting in more order within the chiefdom and less work for the chiefs, the question arises of why they do not keep the agreed lower price of the certificates, so that more farmers can afford to obtain them; or in fact – why all chiefs do not decide to implement them in the first place. What first has to be understood, is that norms on customary land include the offering of royalties for anyone who wishes to visit or consult the chiefs. As it is now, the disputes generate an income for them, in which I have been told that the royalty needed to even speak with the chief is too high for some farmers to be able to afford, in order to raise their issues. The disputes over land force them to arrange consultations, generating an income for the chiefs. Thus, there is reluctance from the chiefs to willingly adapt to the new system if it includes a loss of one source of income, which is combined with the fear that they might lose power by doing so¹⁰¹. This is one of the reasons, that the PDLA argues, for why two of the chiefs do not want to implement the certificate. The PDLA states that the education of the chiefs matters, as less education makes the chiefs that are born into power ignorant of their true role of looking after the subjects in the chiefdom. The most ignorant chiefs, and the ones most in need of money would hence be the ones least prone to implement the certificates¹⁰². The PDLA's argument goes hand in hand with the fact that Chief Nyamphande and Chief Kalidawalo are the more educated and wealthy chiefs, and are also the ones who have agreed on the implementation. However, the interviews with farmers belonging to these chiefs, as well as the interviews with the PDLA proved that people without a certificate would have to pay a higher price than agreed upon between the chiefs and the PDLA. If that is the case, it indicates that the less wealthy or uneducated chiefs are likely to charge a higher price to the farmers if eventually deciding to implement the TLHC.

This could indicate a risk of deepening social differentiation, based majorly on income. A segregation, in which some social groups can obtain the knowledge, access to, and afford to pay the price for increased security, while other social groups cannot. One could hence claim that the power of the chiefs, when misused, can deepen social differentiation further with the TLHC. Apart from the segregation that may arise within villages if some individuals are able to obtain certificates, whereas others, representing more vulnerable social groups like economically marginalised, are not – there may also arise segregation between chiefdoms if farmers belonging to one chief obtain higher security on their land than farmers from another

¹⁰¹ Andrew Kamanga, Petauke District Land Alliance, 25th of February; Moses Phiri, Petauke District Land Alliance, 10th of February

¹⁰² Andrew Kamanga, Petauke District Land Alliance, 25th of February

chiefdom. The heterogeneous farmers continue to be subjects under the chiefs – defined as members of the tribe rather than individuals – with the chiefs as their authority, shaping their access to security of the resources on which their livelihoods depend.

6. Summary Conclusion

In this study, I have presented indicators that show the existing power relations on customary land allow chiefs to benefit by the Traditional Landholding Certificates (TLHC) on behalf of the subjects, which in turn reflect the continued containerisation of small-scale farmers on customary land, and highlight potential social differentiation. These power relations have to be emphasised when it comes to the debate of whether decentralisation brings power closer to the grassroots, or if it does not. My research has been based on conflicts and struggles over resources from a political economy approach, more specifically influenced by the writings of Mahmood Mamdani and Pauline Peters. To relate the possible impact of existing power structures on new systems created by civil society in order to provide equal land rights on customary land, I spent nine weeks in Petauke District to get a better understanding of how the system works from an economic and political approach.

The quantitative questionnaires not only showed that the perception of conflicts had decreased in the model villages I visited, but that an overall perception of increased security existed where the certificates had been implemented. The interviews with the farmers, as well as with the Petauke District Land Alliance (PDLA) did, however, indicate a risk of misconceptions among the farmers of what security the TLHC really offers. Chiefs remain the owners of the certificates, but with the authority to recall the issued certificate if any of the conditions are broken. The certificates naturally give inheritance to the remaining spouses and children, which especially empower women and young people – representing vulnerable social groups on customary land that before have been more prone to losing their land in conflicts. The fact that boundaries and inheritance both become more clearly established has a potential to reduce the conflicts over family land, which the farmers in the model villages expressed they could already feel only a year after the implementation of the TLHC. However, the power structure on family land is still intact, as the consent from the family is required before a relative can apply for a certificate on the land. Family heads, the majority being around 60 years old or more, represent a more powerful group that can limit access to obtain a certificate for relatives and the security for their spouses, especially if deriving from other villages.

These spouses represent a vulnerable social group, just as women and young people on family land, which is why power is limited in the access to security. An even bigger issue arose regarding the price of the certificates, with concerns expressed by the farmers. The pilot tests in the form of model villages were successful in obtaining the certificates for free by the chiefs – but every farmer in the model villages who have not yet obtained the certificate, as well as the farmers in other villages, would be required to pay. The interviews with the farmers also showed that the chiefs charge a 3-5 times higher price than what was agreed upon between the PDLA and all the chiefs in the district. This relates back to the authority of the chiefs and the lack of enforcement for them to keep their agreements with civil society, which in turn brings us back to decentralisation and the power structure on customary land. The decentralisation policy's aim to bring powers down to a local level, where chiefs' participation in governance is considered a key for development to trickle down to a grassroots level, must therefore be questioned and the complexity emphasised. The system the TLHC is aiming to implement is a Land Administration Board that will return powers from the indunas, without the traditional right to the power, to the chiefs and headmen. The fact that the indunas' often corruptive behaviour will be reduced does not, however, eliminate the risk of the chiefs misbehaving in a similar fashion.

That the seemingly most wealthy and educated chief in the district is overcharging for the certificates indicates the possibility that other chiefs, less prone to implement the certificates, could do the same or even more. As the TLHC reduces conflicts that serve as a source of income for the chiefs, it is likely that that loss of income would be substituted by generating a new income through the issuance of the certificates. However, that puts the chief as an economic and political actor with the authority to indirectly exclude subjects from obtaining security through the certificates. If you can afford to pay, you gain security, whereas you do not if you do not have the access to obtaining them. When the access to obtaining the certificate becomes more difficult than the security, there is a potential risk of social differentiation worsening. The price charged by the chief presents a risk of segregation within villages, as some wealthier social groups would obtain increased security by affording to buy certificates that come with conditions, while the less fortunate might not be able to afford to pay the required cost, and without the certificates could be displaced more easily.

The post-modern thinking that customary systems are negotiable and adaptive forms of landholding, and hence an open field of discussions between tribes, communities, civil

society, and national, regional and local groups, would lead to an equitable outcome that can hence be argued as idealistic. While certain social groups have limited or no negotiation power, the PDLA have to adapt to the chiefs interests in order for the implementation of the certificates to work. The Petauke District Land Alliance is stuck in between, with a goal for the certificates to benefit all small-scale farmers, but the system not reaching the farmers at all unless the chiefs agree on it. The need for the PDLA to attract the chiefs in order for the system to work creates problems and shifts the not-yet-fully-established system into a compromise between the chiefs and the PDLA. Even when arranged, nothing is enforcing the chiefs to hold on to that agreement, limiting the negotiation power of civil society. At the same time, the farmers continue to be containerised as a subordinate group under the chiefs, with no forum or power to negotiate their will unless the chief agrees and is available. Once again, the farmers are nowhere near a homogeneous group with same interests that the chief – even if wanting to - could represent equally on a district level.

The World Bank and other global institutions are promoting the “New Evolutionary Property Rights” as a way of building equitable land rights on already existing systems. The National Decentralisation Policy of Zambia is growing by increasing the responsibility of local authorities and participation of governance by the chiefs, and putting the chiefs as keys to ensure development on a grassroots level. This paper calls for a closer look at broad processes of inequality and class formations in relation to power structures on customary land, that may inhibit development and security for certain social groups through limitations of access. If the implementation of the TLHC is to be successful, reduction of conflicts is not enough – it also has to benefit all social groups equally.

However, I wish to highlight that the certificates are still being developed and improved, and much can occur until fully established. A bill proposed to parliament could change and adapt the certificates further. If the TLHC achieves the same authority as the title deed, which the PDLA is hoping for, the relationships between individual farmers and chiefs becomes even more important. The subjects’ relationship with the chief can affect the chief’s willingness to accept the certificate and land to be used as collateral, leading to possible development. A risk of increased social differentiation may occur if that security and access only benefits certain social groups, where conflicts may be reduced at the expense of the vulnerable. The farmers continue to be dependent on the authority of the chief under the TLHC, defined as members of a tribe belonging to a chief, rather than separate heterogeneous individuals of the nation.

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Farmer interview S17, Man, 34 yrs, Sikankhomba village, 27th of February
Farmer interview D03, Man, 67 yrs, Dani village, 28th of February
Farmer interview D08, Woman, 25 yrs, Dani village, 28th of February
Farmer interview D10, Woman, 83 yrs, Dani village, 28th of February
Farmer interview D14, Woman, 62 yrs, Dani village, 28th of February
Farmer interview D17, Man, 68 yrs, Dani village, 28th of February
Farmer interview D20, Woman, 35 yrs, Dani village, 28th of February
Farmer interview D23, Man, 44 yrs, Dani village, 28th of February
Farmer interview D25, Man, 35 yrs, Dani village, 28th of February
Farmer interview D30, Woman, 26 yrs, Dani village, 28th of February
Farmer interview D36, Woman, 43 yrs, Dani village, 28th of February
Farmer interview D37, Woman, 51 yrs, Dani village, 28th of February
Farmer interview D38, Man, 43 yrs, Dani village, 28th of February
Andrew Kamanga, Petauke District Land Alliance, 10th of February
Andrew Kamanga, Petauke District Land Alliance, 12th of February
Andrew Kamanga, Petauke District Land Alliance, 25th of February
Andrew Kamanga, Petauke District Land Alliance, Chief workshop 25th of February, Petauke
Andrew Kamanga, Petauke District Land Alliance, 13th of March
Chief Nyamphande, Petauke, 26th of February
Chief Macha, Choma, 31st of January
Commissioner of Lands, Chief workshop 25th of February 2014, Petauke
Joseph Lungu, Petauke District Farmers' Association, Petauke, 25th of February
Moses Phiri, Petauke District Land Alliance, Chief workshop 25th of February, Petauke
Moses Phiri, Petauke District Land Alliance, 10th of February
Moses Phiri, Petauke District Land Alliance, 12th of February
Pastor Shamwanga, Petauke, 11th of February 2014

8. Appendix

Customary Land Administration Guidelines
September 17, 2011

Appendix 1

APPLICATION FOR CUSTOMARY LAND RIGHT

To His/her Royal Highness

.....

.....

I, The undersigned, NRC
number..... sex.....

Nationality..... name of
spouse.....

Names of other
dependants.....

.....

Of..... village.....

Chief..... District.....

Province..... P.O.Box.....

.....

Hereby apply for a right
to.....

[State the right to a farming unit or a right of residential unit or such other right to any form of
customary tenure]

In respect of:

[A] Approximate size of land applied
for.....

[b] Village of the traditional community in which the land is situated

Customary Land Administration Guidelines
September 12, 2011

.....

[c] Chiefdom/district in which the land is
situated.....

The land is currently being used
for.....

Does any other person hold a customary land right in respect of portion of land?

If the answer is YES to the above question, state the name and address of the holder concerned, as
well as the type of the
right.....

.....

[a] Has the holder agreed to relinquish his/her right in respect of the portion of land?

.....

[B] Is any compensation payable in this regard?

.....

I hereby declare that the information submitted is true and correct. The fees of K..... has
been paid, of which receipt
no..... dated.....

.....

Signature of applicant..... Date.....

Customary Land Administration Guidelines
September 12, 2011

Appendix 2

**APPLICATION FOR RECOGNITION AND REGISTRATION FOR EXISTING CUSTOMARY LAND
RIGHT**

To: His/ Her Royal Highness

.....

.....

.....

I,.....

The undersigned, NRC number
..... sex.....

Nationality..... name of
spouse.....

Names of other dependants.....

.....

of.....

[State residential address]

Hereby apply for recognition of existing.....

.....

[State a right to a farming unit or a right to a residential unit].

Which was allocated to me..... in respect of?

[A] Approximate size of land applied for.....

[b] Traditional community area in which land is situated.....

Customary Land Administration Guidelines
September 12, 2011

.....

What is the current use of the land.....?

.....

Does any other person hold a customary land in respect of the portion of land?

If the answer to the question above is "Yes"

[A] State the name address of the holder concerned as well as the right.

.....

[b] Has the holder agreed to relinquish his or her right in respect of the portion of land?

.....

[c] Is any compensation payable in this regard?

[d] Have suitable arrangements been made for resettlement of the holder on alternative land?

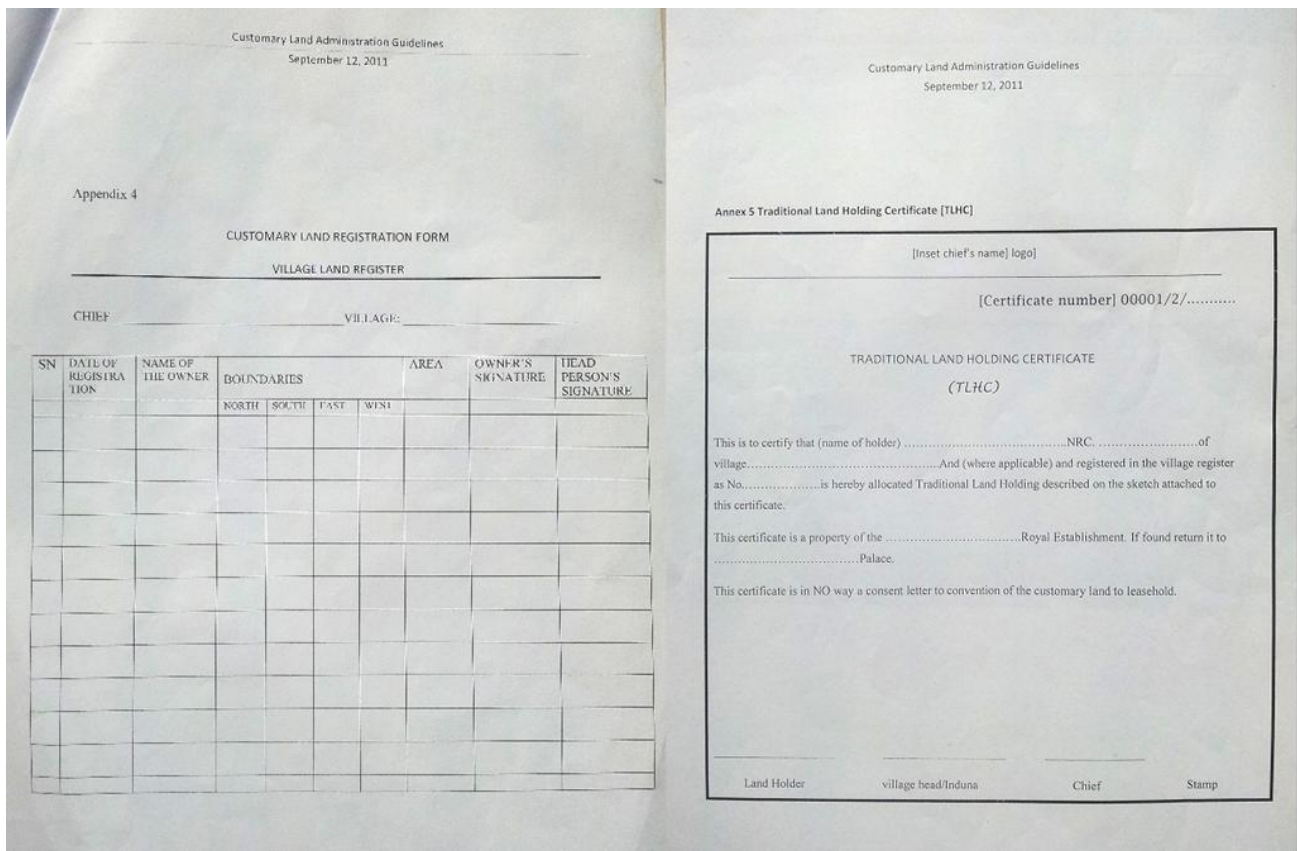
.....

I hereby declare that the information submitted above is true and correct.

The fee of K..... On receipt number..... dated
..... has been paid.

.....

Signature of the applicant..... Date.....



Questionnaire:

Date: _____ Village: _____

Interview number: _____ Name: _____

Q. no.	Question	Reply
1	Sex	Male Female
2	Are you a village headman?	Yes No
3	If not native of this area, where were you born?	
4	How many years have you lived here?	
5	What is your marital status?	Currently married Never married Separated Divorced Widowed
6	Name of head of household	
7	Sex of head of household	Male Female
8	What age are you?	
9	What is your ethnic tribe?	
10	What ethnic tribe is your spouse? (if you have one)	
11	What ethnic tribe are your children? (if you have any)	
12	What is your total farm size in the village? Specify	
13	How much of this land is your own land? Specify	
14	How much of the land is cultivated? Specify	

15	How much of the land is rented to others? <i>Specify</i>		
16	Do you have land outside the village?	Yes	No
17	Do you have full control of all the land you now cultivate or do you need to consult any other person in order to obtain permission for cultivation, change crops/land use, for some or all of your land?	Full control	Need permission
18	If market conditions improved, would you be able to put more land under cultivation to expand your farm?	Yes	No
19	Would you consider taking a loan in order to increase the productivity on the land if you had the possibility to?	Yes	No
20	Have you lost land that you considered that you had rights to cultivate?	Yes	No
21	Do you feel that your land is secure for you and your family at the present?	Yes	No
22	You know we are bound to die, what if tomorrow you are not there, do you feel that your land still will be secure for your family?	Yes	No
23	Why?		
24	Have you ever considered converting your land to leasehold land/title deed?	Yes	No
25	Have you seen this certificate before? <i>Show. If no - jump to question 32</i>	Yes	No
26	Where did you see/hear about it?		
27	Do you own a certificate?	Yes	No
28	If no – why not? <i>(after answer – jump to question 33)</i>	My spouse owns a certificate I was refused I have no interest I don't know how to apply	
29	When did you apply?	>1 yr ago 2 yrs ago	1 yr ago 3 yrs ago 4 yrs ago
30	Do you feel more secure on your land after obtaining the certificate?	Yes	No
31	Have you invested more in your land after obtaining the certificate?	Yes	No
32	<i>If not seen certificate before:</i> Would you be interested in obtaining one?	Yes	No
33	What was your total output of maize last year? <i>Specify in bags of maize.</i>		
34	How many bags of maize did you sell last year? <i>Specify</i>		
35	Do you have any other source of income? <i>Specify. main source?</i>		
36	Do you feel that it has been a lot of disputes over land in the village?		
37	Do you feel that they have changed during the last 4 years?	Yes, less	No, same Yes, more
38	Why?		

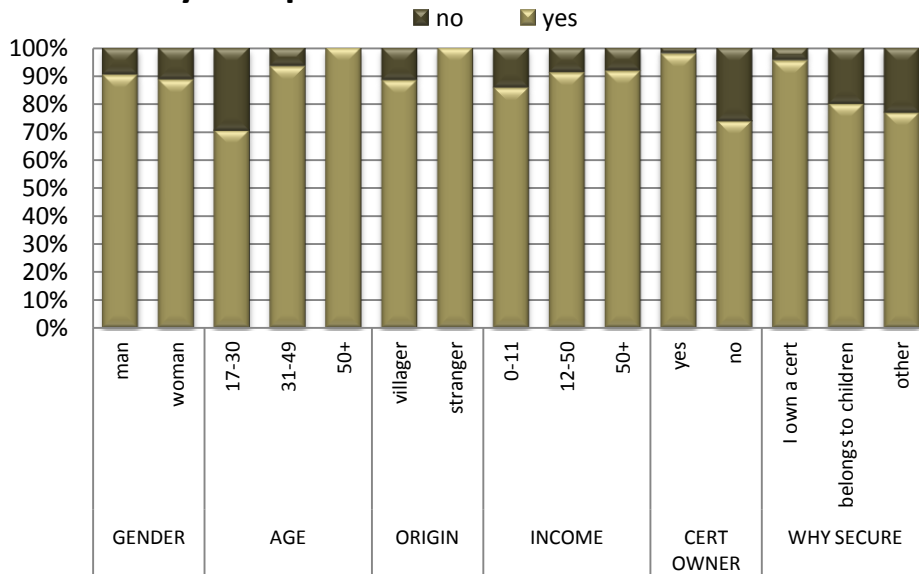
Do you have any comments?

Example of Coding:

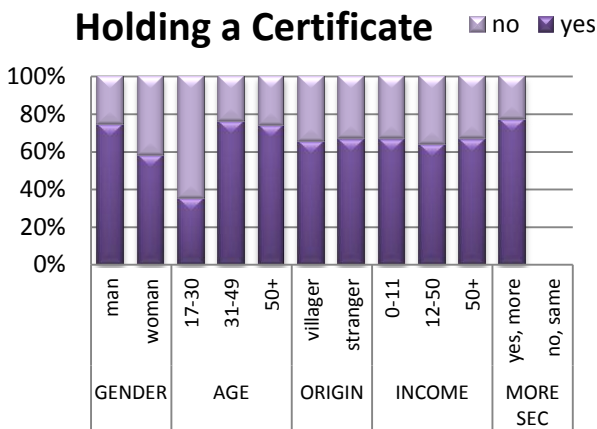
Quotations	Open Coding	Axial Coding	Selective Coding
All of those who are below 60- Or in the range of 60 - They don't have their own land – all is family land. Now. If it is family land you have to get consent from family	Need consent from family head	Family power structure remaining	Access
And most of these, around 3-4000 they are just within the urban areas mostly	most certificates spread within the urban areas	Urban bias	
I've heard about the certificate but not seen it. I don't know how to apply either or how much it costs.	Do not know how to apply	Issues with applying	
I was informed by the chairman of how to apply, but I don't know how to do it because it is in English. If it was in Nsenga I would apply today! I feel that it is unfair that only some that speaks English can get it.	Cannot apply because wrong language		
Because the TLHC itself is just a security to that land. Because sometimes, within that family land, one of the guys can bully you around saying can you move from this field and can you look for another field somewhere else? So the protection is that this person cannot remove you out without getting the consent of the headperson and the consent of the chief.	family cannot remove without the consent of the headman and chief	If obtained – safe from family.	Security
one thing we must understand is that these guys are taking it for granted. Of saying that “as long as I get a certificate – I'm secure. Because no one is going to push me out”	Misconception of what TLHC actually stands for	Not secure from chief	
I do not feel that the land is safe for me and my children due to the different views people have. My husband has the certificate and there is a risk that his family members come to get this land if he would die.	Husband's family can still claim the land	Farmers feeling insecure due to lack of certificate or name written as dependant	
My land belongs to my parents and I need their permission to cultivate it. If I die my parents can take back the land, so it is not safe for my wife and children.	Parents can claim land back from his wife and children if he would die		
Those certificates should be free but you know what will happen? They will capitalise on that. And they will make a lot of money out of it and my question is where does that money go? The amount of money they collect..! It's not going back to the farmers!	Chiefs making money out of certificates. Not reaching farmers.	Chiefs benefiting	Chiefs
However, it now will cost 200 kwacha for residential area and 150 kwacha for fields for everyone else. And all that money goes to the chiefs. Poor people can't afford that.	Price of certificates		
First of all they never believed it. They thought maybe just as you said that they are losing power, because the first thing that came into their mind is that these traditional landholding certificate was a title. First of all they didn't actually understand what we meant. For them – it was a title.	Some chiefs fear the certificates and believe that they are title deeds which will make them lose power.	Chiefs not implementing	
And this is one thing that some indunas are telling the chiefs that “don't give them. Because if you give them what will happen is that you won't have these conflicts” because them – this is madness of thinking that – but as long as there are conflicts they survive better.	Disputes generate an income for the chiefs		

Example of Quantitative Data Analysis:

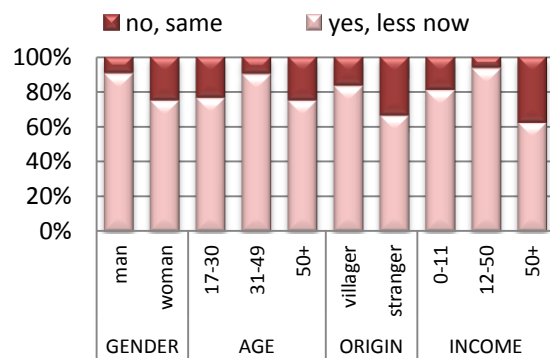
Security for spouse and children after own death



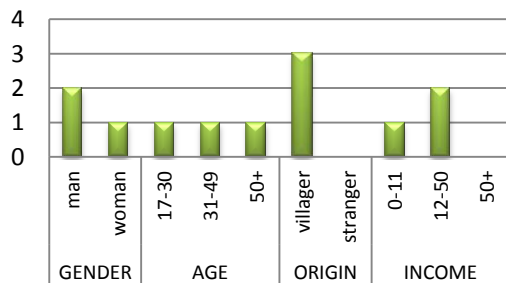
Holding a Certificate



Decreased



Unaware how to apply



Refused a certificate

