

Registering land offer letters in dealing with precarious/volatile security of tenure in the Zimbabwe fast track land reform

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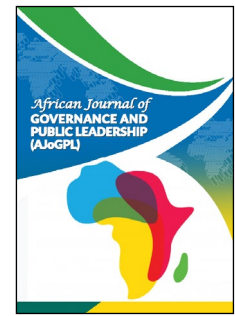
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Abstract

Zimbabwe had traditional-led; council-led and state-led land management systems until the emergence of the Fast Track Land Reform Programme (FTLRP) that used tenant letters called Land Offer Letters (LOL) also Land Rental Leases (LRL) with questionable issues of ownership, longevity of use, land rights, support for productivity and tenure policies. The study was aimed at establishing challenges associated with land registration after the 2001-2003 FTLRP in Zimbabwe using LOL that defied existing land management systems as the lessee received an insecure 99-year rental lease. The LOL were offered without land surveys and demarcations to give the beneficiary bankable title deeds that provided legal benefits to the lessee. The study used Mobile Instant Messaging Interviews (MIMI) as its study design for this qualitative study. The method was used to collect data from key informants and focus groups. Results from the study revealed that LOL demotivated beneficiaries from developing and increasing productivity on land allocations due to insecurity of tenure. Lessees, more often than not, engaged in land boundary conflicts on natural resource extraction and incessant ownership wrangles with former white farmers. Farmers struggled to source farming equipment and inputs. In conclusion the study found out that South African land registration laws were adopted in Zimbabwe during the colonial era. Postcolonial land registration in Zimbabwe should transform the LOL to become registrable using surveys, demarcations and entitlements that provide legal rights to the FTLRP beneficiaries. Land registration has been hailed for future land reforms in Zimbabwe.

Key words: Land Offer Letters, Land Reform - Zimbabwe, Land tenure - Zimbabwe

Introduction

Zimbabwe's agricultural land has three management systems, that is, the traditional (family); local authority and central government (the state); and the market systems (Rukuni, *et al.* 1994; Agarwal, 2003). The Fast Track Land Reform (FTLR) programme of 2001-2003 defied these management systems as they provided beneficiaries with tenant letters called Land Offer Letters (LOL) with questionable issues of ownership, longevity of use, land rights, support for productivity and tenure policies. For this reason, Rukuni (2012a, 2012b) advocates for maintenance of a multi-form of land management system to achieve tenure security in the post-FTLRP (Zikhali, 2008). Problems in the FTLRP have been created by lack of land registration processes, even though scholars in Agrarian Studies argue that there will never be a complete and efficient system in any country at any given time to provide perpetual security of tenure to land, as new issues always emerge at some point (Nel, 1991:28).

Zimbabwe's LOL provided leasehold for 99 years agricultural land, 25 years for forestry and game reserves. LOL did not undergo a process of registration to provide the binding nature of benefit such as collateral security and notice when the government wants to take over the land for other purposes. The leases given in the FTLRP were unfortunately unregistrable, and could not give significant long term real rights to leaseholders (Independent Staff Reporter 2021). This study was in the area of Land and Agrarian Studies where the use of LOL in the FTLRP has created controversy around security of tenure concerning family succession, which is perpetuating insecurity around land ownership, rights, use, productivity and tenure policies. The study was done using people engaged in political processes, or elite interviews, those who can tap into otherwise difficult areas to examine (Beamer, 2002). In these systems were government offered African Purchase Areas where people were given title deeds like white farmers and estates. Banks could offer loans for the development of these areas, which they cannot do to FLTRP beneficiaries with LOL where A1 farmers were given five hectares in the villagization scheme not controlled by traditional leaders as in rural and communal areas (Mkodzongi & Lawrence 2019). LOL were also given to A2 farmers above ten hectares with 99-year leases, while wildlife safari and forestry areas got 25-year leases. Leases and LOL do not provide beneficiaries with security of tenure as several beneficiaries have presented similar letters on identical geographical sites making use of LOL unsustainable for procuring bank loans for development, compared to use of title deeds.

Background

Land in Zimbabwe has always been a contentious issue even before the colonizers came, because agriculture has been the backbone of the national economy (Matondi & Dekker 2011). After colonialism, land was always a centre of conflict between a few white farm owners and a landless black-majority (Frankema, Green & Hillbom 2014). These imbalances were entrenched by the installation of legal frameworks that protected white interests. It created various insecurities on the majority of blacks. One of the national grievances that led to the liberation struggle, inclusive of forced labour, hut tax and education, was the land question. The types of land ownership in Zimbabwe included the state-led approach, market-led approach, peasant-led approach and the state-society driven approach (Musodza 2015). This means that after independence in 1980 to 1992, the land question remained an unresolved issue as Africans started to demand for more land because they had more cattle yet during the colonial era, whites used to do culling for their cattle, and they would tell blacks that they do not need extra cattle, and have to sell them out at a particular prize. There was no one else who could buy them but a white person who told the seller the prize at which the cattle would be sold. After independence, blacks exercised freedom with their cattle, whose herd became enlarged, resulting in the demand for more land (Masengwe 2011; Cliffe 1988). Between 1980 and 1992, Zimbabwe enjoyed the fruits of independence, but in the 1990s began to suffer from the legacy debt. The British who had promised to buy land for the landless black majority reneged on the promise, forcing Mugabe to accept the economic structural adjustment programme (ESAP) between 1990 and 1995.

Besides, the Lancaster House Constitution's willing buyer, willing seller principle, prevented Mugabe from taking the land. The 1990 election resuscitated it, that in 1992, the Land Acquisition Act became the first major law to address the issue of land but the pace was very slow, because one had to receive a certificate of no present interest from government for all purchases that were going to be funded by the British to be acquired (Onslow 2017, 2009; Coldham 1993). This led to widespread unrest, poverty and eventually the formation of the Movement for Democratic Change (MDC), an alternative threat to

the ruling ZANU PF party (Laurie 2016). On the backdrop of this, it culminated in the fast track land reform (FTLRP), which was done without proper planning, proper administration and implementation processes, without post-settlement and policy framework to support farmers (Musodza, 2015:81-95). The FTLRP was done without infrastructure development, and was supposed to be for master farmers, after the roads, houses and farmland areas have been designated (Madhuku 2004; 2007). The problem was on proving one's eligibility as a master farmer, and the issue of corruption where land was initially bought for people but was taken away by politicians. Thus the FTLRP cannot dissociate itself from the political considerations because of timing – it was something fundamental to rally support for economic issues, but was used to divert the attention of the people by using new rallying points with no proper planning in order to cut supplies for the opposition MDC from white farmers (Laurie 2016). Giving virgin land was a change of space in the politics and economics of Zimbabwe. Unfortunately the beneficiaries of the FTLRP were given Land Offer Letters (LOL) which did not have the value of title deeds to address security of land needs. People could be content with the LOL given by the government they loved, which gave them arable spacious land and farming inputs because the places from where they were coming, had no good soils and weather patterns (Lephakga 2017). LOL, like 'laugh out loud' used in social media, had negative implications for the future of having and owning land, because when new issues and challenges emerged, LOL were found to be inadequate and ineffective, especially if one fell out of favour with the authorities or when bigger and influential politicians came. The LOL also became vulnerable to corruption resulting with the initial beneficiary losing out, who probably fought to disperse the white owner. On women owners it is worse, because even culturally, women are not given titles to land hence a question was once asked, 'Please go and ask the government why, when it distributes land, we do not get a title. Are we not peasants? If my husband throws me out, what is my security?' (Agarwal, 2002:2).

The FTLRP produced A1 and A2 farmers, but the African Purchase Areas still remained with title deeds. The LOL had the perennial problems of land ownership because land belongs to government (A2 LOL [then 99-year leases] ; A1 LOL [then permits]); and the process is on slow pace, as the problem between government and commercial banks could not be addressed by the 99 year leases which have not yet been upgraded (Independent Staff Reporter 2021). Those in forestry and wildlife safari areas were also given 25-year leases with no requisite tenure security. The LOL also had problems of productivity, for they could not support a broad spectrum of development, which led to persistent inefficient use of allocated land for effective support of modern farming methods (Scones *et al* 2011:981). Most resettled farmers used village or rudimentary approaches to farming. The mode of production remained subsistence farming, with no capacity for agricultural mechanization, irrigation or processing (Leake 1998; Alexander 1994). This affected the nation's prospects for food security, leading to the need for disaster preparedness. For the most part, most resettled farmers received adequate land to build accommodation and decent housing, but most of them were satisfied with rural development standard accommodation which is susceptible to cyclones like Cyclone Idai that hit Chimanimani, in Manicaland region (Seers 1969). Also with LOL, land had no transferability to the bank to acquire development loans as LOL had no market value. Of the 18000 beneficiaries of the farming permits, land conflicts were common as no surveys were done before they resettled (Robertson 2006). This leads us to argue for security of tenure in the FTLRP, which should be measurable (Darden 2021; Moyo 2018) and to a large extent, perceivable in the land tenure systems security in Zimbabwe (Matondi & Dekker 2011).

In all, the FTLRP was exclusive especially on women (Sachikonye 2003). Land reform favoured male war veterans and other militants (Goebel 2005). In Chingarande it is stated that '86 percent of the women depend on the land for the livelihoods of themselves and their families, but women living in the communal areas are treated as dependants of men, not as landholders or farmers in their own right' (2004:1). Minority groups such as youths and the disabled were also excluded, hence 'the idea of exclusion under the Fast Track has been a challenge because most people feel that they don't own the land, since it is government land' (Matodi and Dekker 2011:28).

The Theory to the Land Tenure Systems Security in Africa

Nine out of twenty participants in the study regarded the FTLRP in Zimbabwe a success despite the LOL that did not provide security of tenure. In South Africa, it similarly promises land restitution, tenure reform and redistribution (Moseley & Mccusker 2008; Deininger 1999). In both instances, the issue of land is meant to address problems of unemployment in Zimbabwe and empowerment of farm workers in South Africa (Keefer & Knack 2002; Torstensson 1994). It was found that management systems in South Africa and Zimbabwe are largely similar on the three forms of management and land tenure security (Musodza, 2015; Kloppers & Pienaar 2014). In this case, land tenure establishes 'a set of rules that legally or customarily connects individuals or groups of people to landed property' (Musodza 2015:24). These rules govern how land is owned, utilized and managed, citing the owner's responsibilities, obligations and limitations (Berry 2002). Studies indicate that security of tenure identifies beneficiaries with access rights, length of time, and conditions for use. Secure landowners are assured of state protection from expropriations, forced evictions, or any other forms of property rights violations or infringements. The lessee in this case has guaranteed and exclusive control, use and transfer of land rights for his or her own interests. Results of the study in the next section demand that two theories that have a long history with democracy be established, namely: the Communitarian Social Capital Theory and the Neoclassical Liberal Economic Theory (Obeng-Odoom 2012). Though both were developed in very different contexts, the communitarian social capital theory appeals to African communitarianism proverbially rooted in collective/traditional land ownership systems; while the neoclassical liberal economic theory appeals to postmodernist systems of individualism and privatization as presented below.

The Communitarian Social Capital Theory

Communitarianism suggests that interpersonal relations are valuable to individuals in community. These interactions are shares to achieve individual and collective significance or desired results (Obeng-Odoom 2012). While the identity, ideology and interest of social capital is contestable, community activity facilitates the social life, identity and personality of an individual. Therefore social capital represents networks of common purposes in social interactions that enable a society to effectively function. Individuals in a group share a lot in common, which leads to common identity, trust and individual cooperation in society. Individuals benefit from these social networks without violating other people's rights (Coleman 1988). This encourages individuals to remain committed to group interests, which has led to agricultural network support among the Shona, summarised as *humwe*, meaning working together (Musodza 2015). This theory, first used by John Dewey in *The School and Society* (1899), has a long history of struggle with individualism and capitalism in the USA with James Madison's *The Federalist Papers* and Alexis de Tocqueville's *Democracy in America*. It encouraged network bonding through social cohesion and social connectedness. Individual members are protected from harm by network sanctions among family, friends and clansmen networks.

Social capital relates to land reform in that when we encourage strong networks of trust within families and communities can lead to sustainable economic growth (Musodza, 2015). Communitarianism, *humwe* in Zimbabwe and *Ujamaa* in Tanzania, provide needed traditional norms and values that favour collective rather than private ownership of land. It is useful when LOL, drawn up using marginalizing and disempowering capitalist, individualist and privatist systems of land ownership. LOL empower government with all land, and communities are not secure under that system (Obeng-Odoom 2012). To give security of tenure to beneficiaries, LOL must be aligned to customary laws that respect private property boundaries regulated by community property courts based in communities of interactions among resource users (Musodza 2015). This theory may be manipulated by traditional institutions that similarly have turned capitalist in an insidiously colonized postcolonial African state.

The Neoclassical Liberal Economic Theory

The neoclassical liberal economic theory was first used at the Arizona School by Andrew Sabl in his definition of libertarian philosophy as observational and empirical (Long 1996). The theory broadly focuses on demand and supply using productivity, pricing and market, hence has competed with classical economics since the 1900s. It is driven by capitalist and individualist economic theories of the liberal and neoliberal global financial institutions, the Bretton Woods institutions, the World Bank and the International Monetary Fund. The theory believes that individual ownership of property formalized through title deeds stimulates vital farm improvements to boost agricultural productivity. A privatized land ownership arrangement makes one secure and confident to invest in technical, mechanical and human resources without fear of losing because of tenure insecurity. Title deeds act as collateral access to commercial or private funding to support farming activities (De Soto 2000). Title deeds end battles between claimants to land ownership, especially during periods of transition. Decentralizing the administration and management of land boosts other agriculturally linked economic sectors and reduces public sector management costs, which reduces the cost of keeping or transacting in land (Thomas 2003). This further promotes public and private transparency on land administration and management for the sustainability of the economy (Obeng-Odoom 2012), because it is believed that 'all social phenomena can best be construed and explained in individual, rather than collective and structural, terms' (Obeng-Odoom 2012:162). The neoclassical liberal economic theory thus opposes the communitarian social capital theory because individual interests are limited in communally owned properties (Musodza 2015). In *The Tragedy of the Commons*, communitarian social theory has been accused of promoting irresponsible and harmful actions to the common good for people are generally motivated by self-interest, which is discouraged by communitarian social theory of land ownership. 'As such, they are prone to engage in unproductive and irresponsible land use tendencies' (Musodza 2015:28).

Unfortunately, the neoclassical liberal economic theory has its own challenges because land with title deeds has often been forfeited due to unpaid loans or debts, robbing livelihood to the farmer and family, relatives and farm workers who depend on the farm in the form of jobs, housing, and basic productive capital for their families. Title deeds are also dangerous because the farmer may sell land to cover health-related costs, business or travel, which may eventually concentrate land in a few capitalist institutions and individuals, hence reverse the land reform policy. In this way, Zimbabwe maintains that land is a state property, and no one can be paid for it, but their developments on it; which ensures that the African state keeps the land from capitalist vultures. This controls and protects the land of the poor to keep their livelihoods viable (Musodza 2015).

Methods

Study design

The study targeted land leaseholders who received LOL during the FTLR and are vulnerable to loss of land and lack of support by local banks. Leaseholders in Masvingo were purposively selected due to their vulnerability to the LOL. The study used published materials in academic journals and books, newspapers and court papers. Field studies used mobile instant messaging interviews (MIMI) due to SI 77 of 2020, on COVID-19 Prevention, Containment and Treatment Regulations to collect qualitative data. MIMI used a mobile messenger, WhatsApp, to collect in situ interviews, surveys and questionnaires. MIMI was developed by Kaufmann and Peil in 2020 to study real-time life experiences of participants (Kaufmann, Peil & Bork-Huffer 2021). MIMI is suitable for multi- and mixed methods designs and as well as longitudinal designs. MIMI demands smart ways of nudging research participants to elaborate their responses when well prepared and carefully coordinated (Kaufmann, Peil & Bork-Huffer 2021:1).

Data Collection Methods and Tools

Sampling procedures

Leaseholders and ministry of lands officers responsible for A1 and A2 farms in Masvingo were identified and contacted in three stages. The first stage selected ten (10) A1 farmers. The second stage consisted of seven (7) A2 farmers; and the third of three (3) lands officers. The sample constituted a total of twenty (20) participants; eight (8) male and twelve (12) female.

Mobile Instant Messaging Interviews

Key Informant Interviews

Three key informant interviews (KIIs) or elite interviews with three (3) purposively chosen experts (two female and one male land officers) were conducted in Masvingo. These experts were also engaged in political processes because the officers could tap into difficult areas on the subject (Beamer 2002). Professionals provided the study with invaluable data on the registration of land in Zimbabwe. MIMI connected the researcher to participants in their socio-technological spaces (Kaufmann, Peil & Bork-Huffer 2021:2) because social distancing required a 'socially distant method' (Lobe, *et al.*, 2020:1) that compiled results 'from home' (Lupton 2020). KIIs through written and voice responses provided new ways of research during lock downs (Lobe, *et al.*, 2020; Teti, *et al.*, 2020), including inaccessible data by these remote methods of research (Ohme *et al.*, 2020:2).

Focus Group Discussions

Focus Group Discussions (FGDs) were conducted with ten (10) women and seven (7) men volunteer participants purposively selected for the study. Data collected applied to the broader section of the national population in a way resettled farmers 'weave their everyday mobile mediated social interactions' (Aguado & Martinez 2020:439; c.f. Ohme, *et al.*, 2020:4) using participants' mobile phones to produce in situ data using WhatsApp. Collected data was collected from phone onto the computer. Data collected addressed research questions. Results applied to resettled farmers beyond targeted areas in the province. The study addresses the issue of LOL that failed to provide security of tenure, bankable support from banks and inheritance to family members.

Unfortunately, digital methods used failed to compensate for social interaction in the lives of participants (Costa & Conradie 2018; Rogers 2013). However, the relevance of the method is difficult to ascertain without social interaction with participants.

Data Management and Analysis

The researcher compiled participants' written and voice notes for transcription, translation and analysis using a computer package called Atlas.ti 8 (SPSS + Nvivo 8) to collate data into themes.

Ethical considerations

Participants were not coerced, deceived or induced to participate in the study. The study ensured and emphasised the ethics of informed consent, privacy and confidentiality. Participants signed informed consent forms that were passed electronically. They informed the participant about the study purposes and objectives; participant expectations; risks and benefits; voluntary participation and freedom to withdraw without explanation; anonymity; and right to contact investigators on any study questions. All participants were 18 years of age.

Presentation and Discussion of Findings

The Nature of the Fast Track land Reform Tenure Security

Although the study results indicated that there are more forms of land management in the world where social capital and liberal economic theory top the range, this study limited its criticism of the LOL to three common land management systems in Zimbabwe and South Africa, the state-led, council-led and community-led. These systems however do not have ideologies of their own as they tend to conveniently borrow from the two above. On a theory to use on tenure security in this study, participants indicated that leasehold, which is some form of legal entitlement theory. LOL thus are land permits that provided partial-legal title as proof of land ownership. LOL were adequate for emotional security of land to the new farmer who was coming out of community-led system. However 'The letters explicitly stated that the government could revoke the land offer at any time, under the discretion of the responsible Ministry, and this created tenure insecurity and was a source of a number of production problems due to uncertainty for the new farmers on the fast track farms' (Musodza, 2015:92). This realization has de-motivated most FTLRP beneficiaries from investing on farms using revocable letters rather than secure titles. Invested resources could possibly be lost without adequate compensation if revoked. Participants indicated that the volatility of the LOL made it impossible for them to secure any credits in the form of bank loans. Literature supported findings in that LOL did not offer farmers any forms of collateral, unless they gave up their houses and company titles to secure loans (Marongwe, 2013:180). Participants indicated that government was pushing banks to support agriculture in the ninety-one available categories of bank loans without altering the LOL without much success (Independent Staff Reporter 2021; Marongwe 2013).

Further, participants had mixed feelings on the behaviour of government to provide resettled farmers with agricultural inputs to increase agricultural output and farm development. Participants are aware of double-dipping by politicians who undeservedly and wastefully use connections to access state funding and resources (Scoones 2015). Literature supports findings that poor output was caused by lack of agricultural inputs in the forms of seeds, draught power, fertilizers and agro-chemicals (Moyo 2013). Most study participants were new farmers without adequate savings to purchase exorbitantly charged inputs.

Due to lack of subsidized inputs, most farmers interested in cotton, cattle-ranching and tobacco used their own resources to buy inputs at black-market rates (Mazingi & Kamidza 2011). Small-holder or A1 farmers confessed that they could only benefit from properly organized presidential input schemes. However, findings indicate that such farmers have poor agricultural training, access to extension services and farming equipment. The government has rather blamed western smart sanctions for failure to support farmers with inputs. Government reports thus have justified little progress in the farming sector in the 2019 land audits on sanctions rather than bankable Land Rental Leases (LRL) to secure bank loans (Mukeredzi 2019).

Finally, farms occupants who participated in this study revealed that at one time or the other were involved in land boundary conflicts. One piece of land was at once allocated to two claimants (Tom 2015:91) and 'conflicts on the ground are due to the fact of inadequate survey and demarcation' (Matondi & Dekker 2011:101). New farmers bemoaned wasting valuable agricultural productive time in courts attempting to resolve ownership wrangles due to these double allocations and un-surveyed boundaries. Some participants indicated that their farms were at once uninhabitable, and on several planting seasons, remained unused while waiting for court settlement (Musodza 2015). In A1 farms, some conflicts were resolved by traditional leaders including community elders and land officers (Tom 2015). Interestingly, the government agreed with participants and academics that LOL provided insecurity of tenure, yet remained reluctant to offer them title deeds. This has denied farmers from investing and maximizing on productivity (Musodza 2015). This led the study to investigate land registration and production processes in the history of Zimbabwe.

Land Registration in the History of Zimbabwe

Land registration in Zimbabwe is inseparable from the South African (SA) land registration system especially the issue of title deeds offered by the Deeds Registries Act (Mhishi 2004) that was brought by the British South Africa Company (BSAC). 'The system of land registration in Zimbabwe was therefore underpinned by the colonial history' (Sadowera 2016:10). The roots of this practice are found in the Germanic Customary Law, which stated that 'for a transfer of land to take place, the parties would gather on the land itself and in the presence of some witnesses the transferor would declare his intention to transfer his right to the land' (Mhishi 2004:2). In this traditional process, 'the transferee would be put in possession of the property or land (*investitura*) which constituted the handing over of a blade of grass or clod symbolising the land. This was followed by the solemn departure of the transferor symbolized by the throwing away of, for example, a twig' (*effusticatio*) (Mhishi 2004:2). The process does not mention registration in the transfer of land, but use of officials to witness the transaction.

Similarly, the Roman law, as cited, also used traditional methods on land transfers. Land was not legally registered, until a custom began to rise in Europe, of noting the transaction in a book kept specifically for land transfers and purchases. The process always began with both the seller and purchaser appearing before an official of the state 'in the presence of community members to witness that such a sale of land took place (Bvekwa 2017).

Further, the Zimbabwe Constitution, Amendment No. 20 of 2013 section 71(2), on property rights states that: 'Subject to section 72, every person has the right, in any part of Zimbabwe, to acquire, hold, occupy,

use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others'. This process is very clear. It begins with land surveys, and then it draws diagrams to demarcate the land. Nel argues that 'An efficient system of registration of title to land is impossible unless each registered unit of land is surveyed and represented on a diagram or general plan' (1991:1). The process of land registration in Zimbabwe is governed by the Deeds Registries Act and the Land Survey Act (Deeds Registries Act and Land Survey Act) (See Bvekwa 2017). In this case, the law is clear that the real right to ownership is adequately protected by its registration in the Deeds Office. Land registration has thus revolved in order to ensure that real rights are registered and there is no doubt of the person who owns a piece of property. The act of registration notifies everyone that a real right is registered to an owner. When a right is registered in the Deeds Office, ownership cannot be disputed, as the owner can merely produce a certificate of ownership in the form of a registered deed. In the case between *Fryes (Pty) Ltd vs. Ryes, J. Hoexter 1957(3) SA 575 at 582 para A's* judgment stated that 'If the registered owner asserts his right of ownership against a particular person he is entitled to do so, not because that person is deemed to know that he is the owner, but because he is in fact the owner by virtue of the registration of his right of ownership'.

The rationale for registering one's land by acquiring title deeds is that 'the right should be effectively registered so as to afford security of title [...] It follows then that the purpose of establishing the deeds registries was to keep records of title to land and other instruments' (Sadowera, 2016:13). In South Africa, where Zimbabwe acquired its land registration processes, getting a title to land prohibits the registrar of deeds from registering a grant from the estate of un-alienated state land unless a diagram is annexed thereto (section 18 of the South African Deeds Registries Act). On protection of real rights, it is said, in *Fryes (Pty) vs. Ries* above: 'as far as the effect of registration is concerned there is no doubt that the ownership of a real right is adequately protected by its registration in the Deeds Office' (1975 at 582 para A). Jones' remarks that: 'an efficient system of registration of title is impossible unless each registered unit of land is surveyed and represented on a diagram or general plan' (Nel 1991:1). This is envisaged in The Land Survey Act Chapter 20:1238 that: 'title of land originates in the survey of a unit of land to be registered' (The Land Survey Act [Cap 20:12]). According to The Deeds Registry Act a diagram is defined to mean 'a diagram which has been signed by a person recognized by law as a land surveyor and which has been approved or certified by the surveyor general' (Land Survey Act No. 8 of 1997 in South Africa).

In another case between *Chapeyama vs. Chapeyama*, in *McNally (2000 (2) ZLR 103)* it is said:

The registration of rights in immovable property in terms of the Deeds Registries Act [Chapter 139] now [Chapter 20:05] is not a mere matter of form. Nor is it simply a device to confound creditors or the tax authorities. It is a matter of substance. It conveys real rights upon those in whose name the property is registered. The land reform programme however took away those real rights in land through violent mode of acquisition.

Land Offer Letters and Land Reform in Zimbabwe

Land reform must be justified at both law and politics. Laws were important for colonial powers; hence at its onset in 1890, laws were introduced to protect the white minority (Masengwe 2011). Colonial laws were condemned for segregating the black majority. However, LOL are recommended for rural areas, but in amended form, to allow entitlements to its residents. Families in Chilonga, the Lowveldt of

Zimbabwe, have been displaced by government to give way to hay and fodder production, hence the need for registered land. The LOL in Zimbabwe followed the suspension of the law as the FTLRP was done using Presidential Powers (Temporary Measures) (Land Acquisition) Regulations 2000, which amended the 1979 Lancaster House Constitution. This negatively impacted traditional land registration processes in place at the time, Section 16 of the Deeds Registries Act. The provision of LOL without land surveys and registrations meant lessees had no title to land. The Act that was put in place invested all the power over land into the hands of the state. Sadowera (2016:17) states that:

The Act portrays that ownership in Land can only be conveyed or transferred from one person to the other by deed of transfer executed or attested by a Registrar. During the Fast Track Land Reform such processes were not adhered to since the land reform was characterized by a series of violent farm invasions and the state simply declared that all land belongs to it. In that respect the Constitutional amendments indeed acted as weapon to safeguard the programme at the same time it destroyed the deed rooted principles of land registration. The amendments made the government to ignore that whenever land is transferred there are some procedures which must be followed in the Deeds office.

Sadowera (2016:18) further states that: 'This was instrumental as it made fundamental alterations to the Land Acquisition Act [Chapter 20:10] in line with the amendments made to the Constitution of Zimbabwe by The Constitution of Zimbabwe Amendment (No: 16) Act No 5 of 2000 which came into effect on 19 April 2000. The President used his discretionary powers to engineer amendment of laws in line with the acquisition programmes'. Amendment to the Land Acquisition Act (Chapter 20:10) using Presidential Powers (Temporary Measures) Act of 1986 was done to improve on the procedures used by the state for the compulsory acquisition of land, especially land to be used for agricultural purposes by resettled peasant farmers. The programme suffered from lack of funds to support the FTLRP. The Act that was put in place through the Presidential Powers in 2000 was later cemented in the Constitution of Zimbabwe, Amendment No. 20; Section 72, as read with section 290; which states that:

As soon as practicable after agricultural land is compulsorily acquired in accordance with subsection (2), the officer responsible for the registration of title over land must, without further notice, effect the necessary endorsements upon any title deed and entries in any register for the purpose of formally cancelling the title deed and registering the State's title over the land.

The Zimbabwean Deed Registries Act, Section 14 of the Act stipulates how transfer of real rights can be affected. In Sub-section:

- (a) States that the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by a registrar;
- (b) Other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by a registrar.

The Zimbabwean Deeds Registries Act section 65(1) further states:

Save where provision to the contrary is made in any enactment, any lease or sub-lease of land and any cession of such a lease or sub-lease intended or required to be registered in a deeds registry shall be executed by notaries deed by the lessor and the lessee or by the lessee and the sub-lessee or by the cadent and the cessionary, as the case may be.

On registration of the FTLRP in the Deeds Office it was stated by one officer that: 'the fact that un-alienated state land need not be registered means that our land registration system is to that extent incomplete' (Nel, 1991:28). Title is defined in Section 2 of the Deeds Registries Act as a certificate of state title and as the only title which exists in respect of un-alienated state land. Title can also be understood as a long term lease (in longum tempus) is defined as a lease of a period of not less than ten years or which have been concluded for the natural life time of the lease or any other person mentioned in the lease, or which is renewable from time to time (Badenhorst, Pienaar & Mostert, 2003:405). The land registration law in Zimbabwe during the FTLRP was therefore not followed, hence 'Its greatest weakness was that it did not alter the land registration system per se yet at the same time no attention was even given to the legislative provisions which governed land registration at that particular time' (Sadowera, 2016:21). Land was given and occupied without any survey diagrams, and that people could be offered multiple letters on the same land (Land Surveys Act [Chapter, section 49]; Nel, 1991:1). The Land Survey Act [Chapter 20:12] and Section 3 of the Deeds Registries Act of Zimbabwe is a legislative measure on the survey of land, which applies to any survey used for the purpose of affecting the registration of any land in the Deeds Registry (Chikono, 2019; Mhlanga, 2018.).

On the flouting of these laws during the height of the FTLRP, war veteran leader, Cde. (Hitler) T. Hunzvi was quoted saying: 'Comrades we are not afraid of the High Court [...] this country belongs to us and we will take it whether they want it or not. The judges must resign. Their days are numbered as I am talking to you. I am telling you what the comrades want not what the law says' (Madhuku, 2004:142; Mhishi, 2004:53). This was also uttered by the Commissioner General of Police, Augustine Chihuri, who said, 'The problem of land is better solved politically. The solution to land issue lies in the political domain and not (in) courts' as captured in the Commercial Farmers Union vs. Minister of Lands and Others SC 31/10 case on the FTLRP (Jones & Dunn 2011; Oliver & Dunn 2011).

This created 'conflicts on the ground' because inadequate, if any, surveys or demarcations were done. It made the land reform chaotic; hence the use of LOL which could not provide beneficiaries of the programme with any security of tenure. 'There is therefore need for clear verification of boundaries, and for the authorities to properly manage land. For instance, in the old resettlement areas, there was survey and demarcation, which meant [there were] fewer conflicts over boundaries and this needs to be done under the new system' (Matondi, and Dekker, 2011:101). This calls us to reconsider how SA has carried out its land reform process as Zimbabwe borrowed a lot from there; if the 99-year leases can be converted into bankable leases with security of tenure to protect the lessee's investment. Besides that the land can be taken over by the state at any time, and for any reasons, the A1 and A2 farm sizes did not follow existing boundaries. 'It will be necessary to carry out another fast track survey of all resettled properties and produce diagrams or general plans' (Mhishi, 2007:53). The LOL therefore have been accused of making the villagization Scheme through A1 farmers, and no different from past colonial Acts that undermined black landless majority. To suggest on how the LOL can be transformed, although the prospects are difficult due to politics, we can examine in a few lines how the SA government is doing it.

Land Reform and Leasehold Tenure in South Africa

In South Africa, black people were prevented by Apartheid from obtaining full ownership of land. Most blacks thus have leasehold rights. The SA land reform programme is upgrading existing black land rights into full land ownership rights. A number of leaseholds were earmarked for upgrading into full

land ownership rights (van Der Walt & Pienaar, 2009:292). This means land reform followed the law, whose implementation was to regulate how acquisition was to be done in order to do away with the past discriminatory laws of Apartheid as outlined on the 1991 white paper and led to the constitutional amendment of 1996. This ensured that SA was going to take due process of the law to make land equitably accessed by all people in the country. The SA Constitution on section 25(4) and (5) states that land reform was done for purposes of expropriation in the interest of the public interest, and it did not mean agricultural land only but all land required for human survival. Zimbabwe failed to follow the same path and the FTLRP was initiated as a violent process to repossess land from their erstwhile colonial masters leading to unsystematic manner, hence made it difficult to amend laws to right the political wrongs in the FTLRP.

Registration of the Land Offer Letters

The 99-year leases have been questioned as to whether they could be registered by the Deeds Office as they were not registered before. Section 85 of the Deeds Registries Act prescribes that any lease, especially for state land, has to be in the form of a notary's deed. The beneficiaries of the 99-year leases therefore were supposed to ensure that the LOL were registered with the deeds office, and title deeds be given in lieu of those state land offers. Unfortunately, most land beneficiaries did not appreciate the significance of acquiring title deeds, which in this case was caused by the process of fast-tracking land distribution. Title deeds are important when resolving conflicts arising due to ownership challenges, five limited real rights to the owner, and at the same time, help improve land registration processes in the country. When registered, the owner is protected by the law, thus, can approach the courts to acquire an eviction order. With the LOL only, the lessee cannot proceed lawfully in case of violation of rights, and especially in regards to misused methods of terminating lease agreements such as just giving notice to the landowner to vacate the state land because it has been allocated to a more influential politician.

Title deeds basically offer security of tenure that is required by the farmer to provide economic security to the land owner, who in this case is an investor needing security of tenure to secure invested funds from banks and financial institutions. Registration of LOL therefore provides an opportunity to secure long-term tenure for the farmers, and thus revisiting the 99-year leases so as to relax the tenure laws improves on the rights of the lessee. In the current 99-year leases, clause 9 states that a lessee who fails to comply with development conditions of the agreement can lose the lease within 30 days. Read with, Clause 22, a 90 days termination notice may be served to the lessee to show the absoluteness of the rights of the lesser on the 30 days' notice given earlier. The conditions have made the LOL, as some retorted, 'laugh out loud' (lol) papers, because they do not offer the lessee any form of security in terms of tenure, finance or agricultural production support. Relaxing LOL's lease terms can therefore allow farmers to acquire loan facilities to support their farming business. In fact, if the 99-year leases were to be registrable, farmers could be able to approach banks for the over 91 types of bank loans and credits. It needs to be commended that the restrictive 99-year leases led to the success of the FTLRP processes, but does not guarantee resettled farmers with perpetuity of ownership, security of tenure, transferability through development loans and family inheritance. The state disbanded freehold forms of ownership for two unpronounced reasons: one, to prevent occupants from reversing the gains of the FTLRP by returning land to former white farmers; and two, to prevent new farmers from refusing to be moved when government decides to take away their land at any time in future. This study has appraised the need to make LOL registrable to promote efficient farming activities in A1 and A2 farms (Chikono 2019; Samkange 2019). Security

of tenure is possible if disbanded tenure systems are reintroduced such as the freehold, are reintroduced because 'Section 293 of the Constitution of Zimbabwe empowers the state to sell land to individuals and give them ownership' (Sadowera 2016:34). Some of the freehold land conditions could be production of food yields needed by the before lessees could pursue their own personal ventures, inclusive of right to sell land to another person other than possession by financial institutions for non-payment of loans, possession for which can be done for a period of time to service the debts. In all, LOL need to be amended to improve on land tenure security for the benefit of the farmer and national productivity.

Way-forward

Tenure security has been discussed in view of land registration important for a lengthy period of stay and productivity. Tenure security however has never been complete or efficient in any given country at any given time. With the LOL, the Zimbabwean government took some initial steps towards changing land policies, but land reform, as a government minister was quoted saying it remains 'work in progress' (Mukeredzi 2019). Government promised to resolve some outstanding issues within a few months to make the 99-year leases bankable because 'the issue of non-bankable leases continues to scare off investment, because without them the government can take over land at will' (Noyes 2020:19). An international official working on financial issues in Zimbabwe said: 'The current leases are still not bankable and many do not want to invest in land that can be taken over' (Noyes 2020:19). The LOL did not undergo a process of registration to provide collateral security, transfer notice and the binding nature of legal benefits to land titles. The article argues that LOL need to be amended, followed by land surveys and demarcations so as to be registered. When registrable, LOL can provide significant long term real rights to leaseholders. In all, secular land titles can transform agricultural productivity in the country as registered land with the deeds office protects the owner at law and in real rights.

Sub-Saharan Africa consists of countries found to the south of the Sahara desert (See Figure 1). The continent of Africa is commonly divided into five sub regions, four of which are in sub-Saharan Africa: West, East, Central and South Africa. The World Bank statistics from 2018 recorded a total population of 1.078 billion for the Sub-Saharan Africa, making it the second largest population region in the world (World Bank, 2018). The history of sub-Saharan Africa is characterized mainly by European colonialism, whereby white minority governments controlled the economic and political affairs in most countries. The 20th century witnessed armed struggles and violent confrontations as black majority parties and groups fought for their independence from colonial governments. Colonialism plundered the continent while stifling local political and economic development, and left behind a legacy with ramifications for the present, as reflected in the patterns of contemporary globalization (Ocheni & Nwankwo 2012; Heldring & Robinson 2013; Frankema, 2015; Austin, Frankema, & Jerven, 2016). Across the continent, many countries (e.g. Nigeria, Cameroon, Ghana, South Africa, Senegal, Kenya, Rwanda) have made significant strides in the social, political and economic spheres since the turn of the millennium, although some of these successes have yet to be firmly consolidated, with corruption proven to be playing a major role (TI, 2018).

Corruption is a factor seen as contributing to the stunted development and impoverishment of many countries in the Sub-Saharan region (TI, 2020). According to TI (2018), a leading global watchdog on corruption, six of the ten countries considered most corrupt in the world are in Sub-Saharan Africa. High levels of corruption across the Sub-Saharan Africa have become a threat to many countries considerable

efforts towards the vision of a democratic, prosperous, and peaceful continent (TI, 2020). Sub-Saharan Africa is the poorest-performing region in the Corruption Perceptions Index (CPI), which uses a scale of zero (0) to hundred (100), where zero means that a country is perceived to be highly corrupt and a hundred means it has no corruption at all, in other words, it is clean. In the last three years, Sub-Saharan Africa's average score in Transparency International's CPI is thirty-two (32); a score that is well below the global average of fourth-three (43) (TI 2020).

According to TI's 2020 CPI, perceptions of corruption in a number of Sub-Saharan African states show little improvement from the previous years, nonetheless, major regional players continue to struggle. Alongside the problem of bribery, money laundering and mismanagement of public funds which is extensive in some parts of the region, the interrelated phenomena of fragility, crony capitalism, and poor governance have resulted in shocking forms of corruption, notably state capture (Crabtree & Durand, 2017; Logde, 2019). In response, countries in the region have enacted various anti-corruption legal instruments. Besides, regional organisations, civil society, and the media are also tackling the problem head-on. With all these anti-corruption instruments, a number of Sub-Saharan African states have improved both their scores and rankings in 2020 CPI, with countries like Seychelles, Botswana, Sierra Leone, South Africa, Guinea-Bissau, Benin, Cabo Verde and Guinea as regional outperformers. Nevertheless, some of the region's major economies such as Cameroon, Ghana, Nigeria, Kenya and Senegal continue to under-perform with flat or (in Cameroon and Nigeria's case) declining scores. At the bottom of the index are Sudan, Somalia and South Sudan (TI, 2020).

According to 2020 CPI, Côte d'Ivoire has considerably improved, by nine points since 2013. However, the political crisis surrounding the re-election of the country's president, which erupted into violence and human rights violations, risks derailing progress.

With a CPI of 19, the Republic of Congo significantly declined by seven points since 2012. This performance is reflective of endemic corruption and impunity by the country's political elite. The Republic of Congo has an anti-corruption framework in place, but its implementation remains weak. TI submits that, in Senegal, the political will of its leaders to tackle graft has declined in recent years. Nigeria also continues to under-perform, notwithstanding the country's anti-graft stance of its president. Similarly, Corruption in Togo continued to worsen in 2020, potentially undermining authorities' otherwise successful efforts to entice foreign investors, such as reducing corruption and bureaucracy (TI, 2020).

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