A pro-poor land adjudication procedure for communal land

by Edward Kurwakumire, Tshwane University of Technology

Current studies within the land administration domain require that all sorts of rights whether formal or informal be registered. This is in line with pro-poor land management practices in which the poor and people dwelling in communal areas are often excluded from the formal land administration system. This article focuses on important aspects to be considered when developing a land adjudication procedure, the general conduct of the adjudication process and the social actors that need to be involved to ensure a successful implementation.

Land and is a resource that is shaped by various cultures, institutions, norms and social values and these define the way of life of African rural communities. It is of importance to understand such values when attempting to adjudicate communal land as it helps to better map the relationship between mankind and land, namely land tenure. Land adjudication can be defined as the process of ascertaining and recording existing land rights and their respective holders. Land adjudication is the first step towards registration of rights [1], whatever their nature. The definition of the land object or parcel is a prerequisite for adjudication. That is, before the adjudication process, all parcel boundaries should be delineated and defined. In cases where boundaries are not defined, boundary delineation can be done concurrently with adjudication.

The problem with formal land adjudication procedures is that they are particularly expensive to dwellers in communal areas. This is in the wake of the fact that communal land has not been given an economic value in most African countries and neither can it be sold in some countries. On the other hand, having the communal system documented and registered could improve the quality of life of rural dwellers through improved land management practices and good governance in land. In this regard it is possible to employ unconventional and pro-poor land administration principles when delineating and registering communal land rights. There is a definite need to involve the local community during the adjudication process so that it becomes a participatory process (see Fig. 1) in which the community is also empowered through participation and learning. The aim of conducting this procedure is to confirm the legal position of rights that are in existence, but not to change them. This strengthens the nature of the rights from a legal perspective as there is a trail of some documentation. Communal land is governed under customary law [2] which is recognised in the area and also by the state through the Communal Land Act [3] so whatever rights that exist can be viewed as legal entities. What is lacking is the customary tenure documentation part and the procedures of how to register these rights, namely adjudication.

In the event that existing rights are altered, there should be a mechanism for compensating the affected parties. Urban cadastral systems have been evolving and this has seen many cadastral reform initiatives in many countries. Customary tenure has also been evolving, and designing a model that is computer-based for registering and managing it is a means to achieving some cadastral reform and equity with rural communities. The intent of this study is to develop a set of procedures that can be used in developing a model for adjudicating communal land which can be applied in different contexts. The term customary tenure will be used synonymously with communal tenure and communal land synonymously with rural land.

**Background**

Approximately 70% of Zimbabwe’s population is concentrated in rural
Fig. 2: Activity diagram for the adjudication process.
areas [4] where customary tenure is predominant. Communal land constitutes approximately 40% of the total land in Zimbabwe. Land tenure arrangements have not been documented in these areas. Traditionally ethnic groups have lived as tribes and/or people with common totems. Due to intermarriages across tribal communities some of these cultures have been diluted significantly in as far as communal land administration is concerned. This is due to the fact that chieftainships often follow family lineages [5]. As a result, these families are very knowledgeable about the land administration of their respective areas.

Formal land adjudication procedures do not always work well in cases where there is uncertainty in some or all land rights [6]. Such is the case in some customary tenure systems where rights often overlap and boundaries are ill defined from a land administration point of view. There are often claims that these boundaries are well known locally in the area concerned. There is however danger of loss of information as land changes hands through inheritance and as generations change. Pro-poor land administration practices aim to accommodate all forms of rights, be they formal or informal. The aim is not always to change the local institutional arrangements into a tiling system, but rather to document what exists on the ground and improve the traditional customary system by making it more functional, efficient and transparent. The aim of this study is to develop a procedure based on the roots, cultural norms and values of the traditional land tenure arrangements, but which from a land administration point of view, improves land management and the social wellbeing of the citizens. If rural communities can better manage their land, water and forestry resources, this will assist in alleviating poverty. Having a tribal land information system (LIS) can assist land administrators in delivering public services efficiently and in achieving better and informed governance of land as well as improved land use and environmental management. As urban land becomes even more scarce, the potential for economic prosperity in communal land starts to emerge.

**Communal tenure in Zimbabwe**

In Zimbabwe’s rural community, chiefs are the traditional leaders responsible for allocating land to people within their territories. The allocation, per family or household comprises a residential place as well as arable land (farming fields) with access to common pasturelands and forests where the public is free to collect fruits and firewood. It is also the norm that wells, boreholes and rivers are owned at group or community level. Ideally males have been dominant in as far as land is held and has been usual in most cases that the heirs to land are men, usually the eldest son alive at the time of inheritance. However, in recent years, society has come to recognise the need for equal access to land, though the enforcement part is still lacking. It is normal for women and minors to be disposed of their land, if they are not properly represented during the inheritance procedure. In this study we attempt to develop a land adjudication procedure that includes all individuals and social groups within the society with emphasis on the rural areas where land rights have not been registered to date. The design of this adjudication procedure will attempt to record the secondary rights.

Customary tenure arrangements in the African context have been discussed in detail by Akrofi and Whittal, Alden-Wily, and Ollennu [5, 7, 8].

**Problem context**

Some social groups are often deprived of their right to own land in rural areas [9]. This contradicts the view of communal land being a birth right under customary law. With communal tenure, there is a lack of procedures and tools for performing the land adjudication procedure so that rural communities can access the benefits of land registration. Communal tenure is complex as it is highly reliant on cultures, social values and institutions of local people and these may vary according to context. Often there are overlapping claims and temporal rights. This makes the adjudication of communal land a complex process. There is a need for a model which is adaptive to the temporal and other behavioural aspects presented in the context. Customary tenure presents a social tenure based on local agreements which need a social approach to registering them. This social approach to land registration involves the use of unconventional approaches to land administration so that all social tenures excluded from the formal land administration system (LAS) can be documented [9, 10]. This study brings to light the best practices for designing a field procedure for performing land adjudication within the rural communities. This is achieved through synthisising best practice reports from other nations and current literature within land administration such as the social tenure domain model [9, 11, 12].

The end result should be a relatively low cost land adjudication procedure that does not require experienced technocrats for implementation.

The whole adjudication process should be of a participatory nature involving all members of the community. The community should ideally benefit from the community learning process as the land adjudication procedure is carried out. This study identifies the social groups (see Table 1, Fig. 3) and the best practices to be considered in the development and execution of the land adjudication process. A first draft of a field procedure for performing land adjudication within the rural communities is developed (see Fig. 2). This is achieved through utilisation of Enterprise Architect and Unified Modelling Language (UML) in modelling procedures carried out in land adjudication.

**Related work**

Land information provides evidence of land transactions, yet its administration brings forth major challenges in most African states [13]. The Tanzanian land transaction and cadastral system is a manual system, and as such it is time consuming to access land records. A similar situation is found in Zimbabwe [4, 14]. Tanzania needs to move from a manual to a digital and distributed land information system (LIS) which combines the cadastre and land registry into one integrated system. The drive towards this move is to achieve good land governance and attain social and economic development.

Barry, Molero, and Muhsen [6] present the talking titler system which can be used to register uncertain tenure conditions. It consists of four primary classes namely media, person, land
Land adjudication actors

uc: Land Adjudication Actors and Roles

Fig. 3: Actors and roles (UML illustration).
object and reference item. The talking title system is adaptive, hence it evolves with the dynamic needs of the tenure arrangements. China’s cadastral systems consists of an urban and rural cadastral data model [15]. The rural model handles collective rights which are similar to customary or communal tenure rights in the African context. The land parcel is the basis of the urban cadastre model as rights in the formal system are well defined. The rural cadastre presents more complexity as it puts into perspective various land use modules on the commonly owned land parcel.

Reliable and up-to-date land information is crucial for development planning, sustainable land use and economic development in any country [14, 16]. There has been wide research on automation and reengineering of cadastral systems [14, 17-20], in particular for urban areas with formal land administration systems. Similar interest has not been placed in customary tenure areas where the majority of the population is African. Customary land usually has no value placed on it, yet land administration officials normally demand expensive land survey procedures to have it adjudicated. People in communal areas are usually not economically empowered as is the case in urban areas. Pro-poor and unconventional land administration approaches allow for the use of inexpensive boundary delineation methods in order to register all rights that exist and to develop a complete cadastral layer for the country [10]. This has been conceptualised through the social tenure domain model (STDM) [9, 11, 21] and the boundary delineation carried out in Ethiopia [22]. Often these unconventional procedures focus on involving the community and they employ participatory GIS and voluntary GIS concepts. The other aim of pro-poor land administration is to ensure inclusion of all social groups in the land adjudication process. Within the communal land tenure paradigm, land is a birthright to all inhabitants of a community. Thus all groups (individuals, women, widows, children and orphans) have a right to own land. Even minor ethnic groups have a stake in land as the land has passed from their ancestors and then from generation to generation through to them.

**Structure of the adjudication system**

The proposed adjudication employs a systematic adjudication approach with the aim of cost minimisation. With this systematic approach government will incur the costs of adjudicating land rights as this is a social responsibility or public service to the rural citizenry. The target group of this social land registration exercise involves mostly the poor and/or disadvantaged with a few privileged individuals and families. The programme executors through the Ministry of Local Government decide on the administrative wards that will be targeted as well as the order of progression of the adjudication exercises.

Systematic adjudication reduces the possibilities of having floating parcels while ensuring the availability of a complete index map after the completion of each and every ward. All land parcels will be included in a register that shows the parcel, owner and the corresponding rights as per the land tenure model. Community education and consultation is a significant component within adjudication that is designed to ensure that existing land rights are accurately recorded. As a part of educating the community, information on why it is important to have their land rights recorded is imparted. When the community is well informed, the task of adjudicating will be easier as everyone is aware of the proceedings and the reason for doing so. The first exercises act as pilot projects with future projects learning from the pilots through collection of information about successes, failures and complaints. Land adjudication in communal land is a new concept so not only the community benefits from the learning process but the land officers performing the land adjudication exercise do as well. The adjudication crew will comprise many actors who will be able to resolve disputes that arise during the process. In this case oral evidence will be employed in bearing witness as there are no written documents that can be used to resolve disputes. The knowledge from the lineage of chiefs and village elders is also useful in mitigating land disputes.

Land disputes are resolved on-site to avoid unnecessary costs that can be incurred using the court procedures which are lengthy. For each property, all owners and neighbouring owners should be present. This way, neighbours can bear witness to the correctness of the boundaries. The chief, or a member from the village elders should also be available to authenticate the procedure and represent the administrative leadership. If there is a consensus on boundaries during adjudication, then future disputes, evictions and dispossession are likely to be minimal. Any appeals or objections that arise after the register of land rights is compiled are availed to the district administrator who represents the Ministry of Local Government. A copy of the register in both computerised and hard copy format is stored at the district administrator’s office for public viewing.

To achieve the goal of cost minimisation, unconventional approaches to land administration [10] are employed particularly to reduce the costs of the initial land survey of boundaries. High resolution satellite imagery such as Ikonos, Quickbird and WorldView1 can be employed to delineate boundaries of land parcels. This will meet the needs of the exercise as general boundaries are the ones which would be recorded. The expertise of a licensed surveyor is not necessary. The use of satellite imagery reduces the costs and the time needed to mark the boundaries. The whole village is visible on one or a series of adjacent imagery and thus it is possible to locate parcels against their adjacent parcels. The boundary description will be noted down on the sketches by the survey technician. Parcels can be assigned a number and/or text description in order to cover all possibilities for parcel descriptions during the adjudication exercise. A piecemeal land adjudication approach can be employed whereby the ward is broken down into villages and the adjudication process carried out village by village. The village is further broken down into sections so that the exercise is manageable with minimum interference from dwellers from further off properties and/or villages. The segmentation of the villages is based on collaborative efforts with the chiefs who, as local leaders, decide on the optimum way
to conduct the procedure. This also ensures that the chiefs assume an active role in the process.

Customary tenure is classified as a social tenure [9, 12] and as such requires a social approach to the conduct of the adjudication exercise in order to minimise resistance from the villagers. The adjudication process comprises the following major steps, which are explained in due course, and these are:

- Land officer notifies chief about the exercise through the district administrator
- Chief mobilises villagers on a meeting date
- Educating the people (citizens)
- Chief provides information on local customs and rights to land
- Documenting detail – person, right, witnesses and delineating boundaries
- Storage of documents by district administrator
- Lodging documents in national register

The social actors and their roles are depicted in Fig. 3 and described in Table 1.

Conclusions

This study focuses on land adjudication particularly in communal areas where pro-poor and unconventional land administration practices are necessary. This article does not offer a solution to the land adjudication problem nor does it provide a model to conduct land adjudication. However, it points out some aspects that need to be considered in the development of an effective adjudication procedure. Future work based on this study aims to develop a model for land adjudication which is a hybrid of concepts presented in the STDM and land administration domain model while incorporating pro-poor land administration aspects. In addition, land adjudication forms need to be developed based on the relevant information captured during the field exercise, and a parcel addressing system needs to be developed for use within rural areas and as unique parcel identifiers for the system. The model also needs to be conceptualised into an operational communal land information system (CLIS).

Acknowledgement

I acknowledge the input from Nyaradzo Chaminama from Navteq GIS, Netherlands and the support from Wilright Boshomane from Limpopo Provincial Department of Agriculture in Polokwane. I acknowledge Athuman J Msuya from the National Bureau of Statistics in Tanzania for providing the photograph for the participatory mapping process. This article is an updated version of a paper presented at the South African Surveying and Geomatics Indaba 2013 and is republished here with permission.

References


[16] C Augustinus, C Lemmen, and P van Oosterom: "Social Tenure Domain Model: Requirements from the Perspective of Pro-Poor Land Management," in FIG Working Week 2012 - Knowing to manage the territory, protect the environment, evaluate the cultural heritage Rome, Italy: FIG, 2012.

Contact Edward Kurwakumire, Tshwane University of Technology, kurwakumiree@tut.ac.za