



Happy Hut Million

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RESEARCH ON FEASIBILITY OF ISSUING TITLE DEEDS TO VILLAGERS IN ZIMBABWE'S RURAL AREAS

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Introduction

Research background

For this research entitled '**Happy Hut Million**', COMALISO was motivated by that 60% of Zimbabwe's property is valueless. This is largely due to the country's colonial experience that confined indigenous populations to what colonisers termed 'Reserved Lands.' These lands had no titles other than being 'controlled' by traditional leaders. Even the Lancaster House Agreement of 1979 that brought civil war to a halt made only one reference to 'rural areas'. However, since the arrangement, like the Rhodesian government, placed chiefs in Parliament, there was de facto acceptance that traditional leaders would continue playing a role as custodians of 'Tribal Trust Lands'. The government of Zimbabwe saw it pertinent to perpetuate the narrative that rural areas were not just poor, but also its citizens were not capable of owning that land outside the algorithm of traditional supervision.

COMALISO then committed itself to carry out a nationwide survey that would give clarity on the overall perception of rural citizens on advantages of and anxieties about title deeds. The **primary objective** was to ascertain the degree to which rural citizens knew about the benefits of and enforcement of private property rights. Once the results were analysed, the **secondary objective** was to use the outcomes to influence legislators, policy makers and traditional leaders to change regulations that would allow rural property owners to initiate nationwide property titling for their homesteads.

Budgetary implications

Inevitably, COMALISO initiated an aggressive fund-raising campaign that targeted 'traditional' proponents of private property rights like Friedrich Naumann Foundation, Old Mutual Properties, First Mutual Life and Central African Building Society (CABS). Funding for a nationwide research was not forthcoming, however limited support was provided by COMALISO's long-standing liberal partners Atlas Network and Friedrich Naumann Foundation.

Limitations

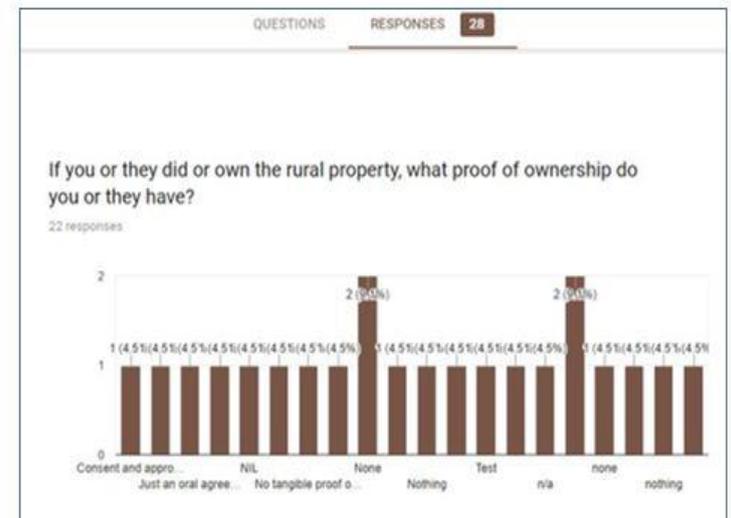
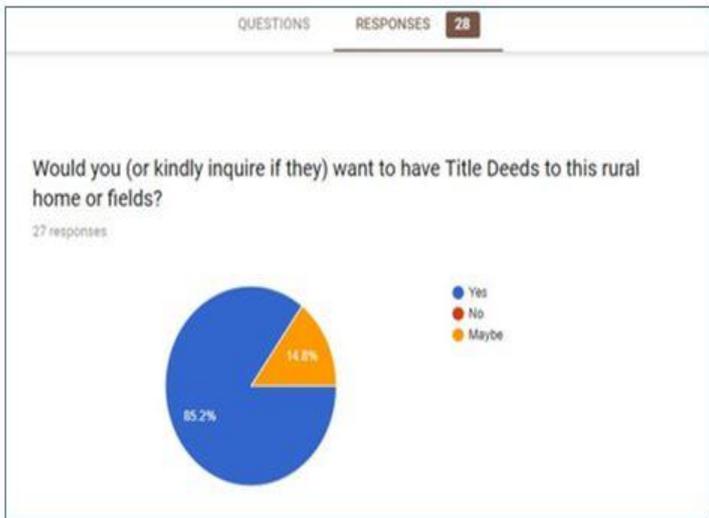
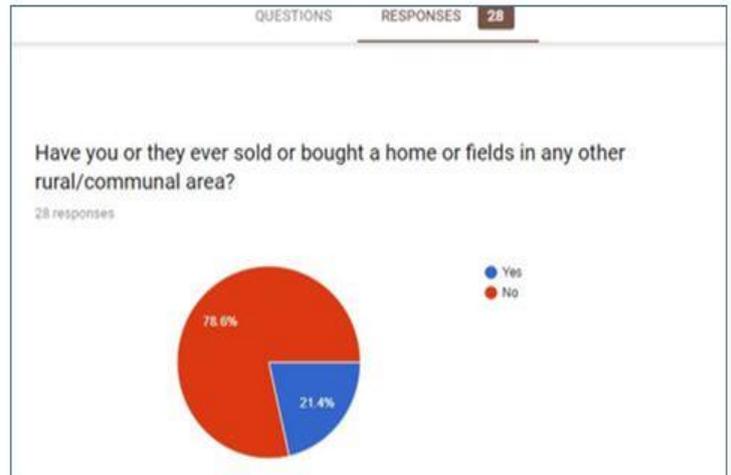
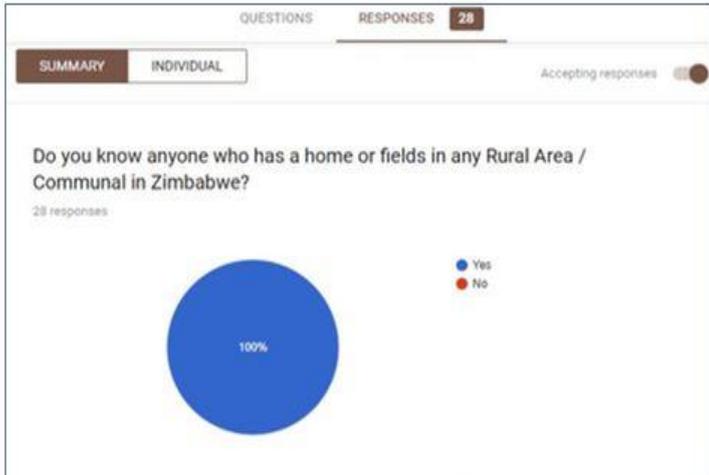
This meant the research would be confined to selectively accessible places like Goromonzi, Mutoko, Chinhomora, Domboshava, Manyame, Zvimba and Mbembesi - rural areas in four instead of ten provinces as originally planned (Mashonaland East, Mashonaland West, Matabeleland North and Harare). The 3 000 hardcopy questionnaires printed in two local languages (Shona and Ndebele) were meant to be distributed via rural primary and secondary schools in the targeted regions. However due to chocking government bureaucracy, we still await authority from the relevant education ministry. However, this did not stifle the enthusiasm of the research.

Methodology

The first cost-effective strategy was to deploy no less than 5 000 electronic questionnaires onto COMALISO’s email database and face book page using the Google Forms. There were 28 responses to the questions that produced aggregated summaries as sampled on

<https://docs.google.com/forms/d/1LLagjM39nkSq51ha7fJpr2UVzjZeDw6UO8ZmCj09vE/edit#responses> :

Aggregated Summaries of Responses to Happy Hut Million Questionnaires



After printing 3 000 questionnaires in two local languages, we approached local government departments, schools and hospitals to distribute the instruments. As stated above, the request is still bogged down with bureaucracy. The rest of the research involved visiting the randomly sampled communal areas, focused group discussions, one-on-one interviews and completing the questionnaires in situ. Most respondents were reluctant to complete the instruments on their own. Two of the experiences were video recorded.

Impact of Law

In carrying out this research and making recommendations, COMALISO encountered some critical legal implications on the potential of rural citizens attaining title deeds. A few are noted below:

Legal instrument	What it says (paraphrased)	Implication on title deeds
Constitution of Zimbabwe	<p>"The Constitution allocates the power to administer communal land to traditional leaders to be exercised subject to legislation, see section 282(1) (d)". Law democr. Dev. vol.20 Cape Town 2016 Tinashe Chigwata.</p> <p>Section 282, para (2)" ... Traditional leaders have authority, jurisdiction and control over the Communal land or other areas for which they have been appointed..."</p>	<p>"For effective governance in these areas, there is a need to explore ways in which the DA, traditional leaders and rural local governments can work together in land related matters for the benefit of the communities. Local authorities can be assigned exclusive powers over communal land which they exercise subject to consultation with the relevant traditional leader." Law democr. Dev. vol.20 Cape Town 2016 Tinashe Chigwata.</p> <p>It seems to us 'jurisdiction and control' does not necessarily insulate land from title, because even with title, chiefs can remain in control. The only problem is that chiefs would want to moderate 'change of occupancy', which they cannot once land has title.</p>
	Section 297, para 1 (c) (iv) and (v) Land Commission: "... simplification of	Land Commission can be a target of advocacy for rural title deeds.

Legal instrument	What it says (paraphrased)	Implication on title deeds
	acquisition ...and transfer of rights...systems of land tenure..."	
Communal Land Act	Part II, Section 4 "...communal land is vested in the president..."	The new president (after the elections) will need to be targeted. However, the high appetite for traditional patronage may be an obstacle.
	Part II, section 5: "...Minister may amend the description of the area..."	This is good because an effective ministerial lobby may have positive results.
	Part III, Section 9: "...Rural District Councils can authorise use of land through permits..."	District Councils will have to be convinced that issuance of title is not necessary loss in income.
Land Acquisition Act	Part II, Section 3 Para (a): "... Government can acquire any land..." Para (b): "...any rural land..."	It makes it difficult for government to acquire the land without compensation...if it is titled (in principle)
	Part IV, Section 12, Para (1): "... minister may designate any rural land..."	
Traditional Leaders Act	Section 3 of the Act provides for the appointment of Chiefs to preside over communities residing in communal lands and resettlement areas... Adjudicating in and resolving disputes relating to land in his area	The new Council of Chiefs may still want to perpetuate this feudal system, unless there is a new government different from ZANU.PF.
	"The traditional authority is the custodian of the	

Legal instrument	What it says (paraphrased)	Implication on title deeds
	land, responsible for the distribution and conservation of land in rural areas. "Although the principal Act governing rural local governance is the Rural District Council Act (Chapter 29:13), rural local governance is equally impacted by the Traditional Leaders Act and others such as the Communal Lands Act (Chapter 20:04)." Ministry of Rural Development, Promotion and Preservation of National Culture, Legal Affairs Director, Mr Fredson Mabhena.	

There is a bevy of other Acts that will require harmonisation for example, Regional Town Planning Act; Rural District Councils Act and other instruments relating to land surveying and registration of title deeds.

Central Government

Year 2018 is Harmonised Election time in Zimbabwe, the first time in the country's 37 years of independence that Robert Mugabe is not a presidential candidate. The 17 November 2018 military coup that ousted him ushered a new era of 'glasnost' under his former subordinate Emmerson Mnangagwa. In order that the latter portrays an aura of legitimacy, he has made public pronouncements that Zimbabweans should be free to campaign without police interference. This new era makes it possible to carry out this sort of research reported in this manuscript, especially in rural areas that were habitually hostile during Mugabe's reign.

However, it was not all easy passage. Firstly, as mentioned above, COMALISO intended to use schools to distribute the research instruments, but the relevant Ministry of Primary and Secondary Education declined this request. The Permanent Secretary argued that it would 'disturb' the school system.

Challenged on why the ruling party commandeers school buses and schoolchildren to attend rallies, she became evasive.

Team COMALISO then had discussions with the Ministry of Local Government under which rural district councils fall. He was cooperative in explaining the role of government in determining the ownership fate of any rural area. At face value, he seems opposed to the idea of rural title deeds on the basis that rural citizens are already 'secured' by current demarcations. Besides, he sees complications in how to deal with communal spaces like grazing fields, rivers and dams. His assertion is that traditional leaders did not pay for the original right to land, thus even compensation would be difficult to ascertain, especially that all rural land is constitutionally state land. Where government has a development agenda, it would be difficult to manoeuvre the course of private ownership without compromising the projects. What government can only do is to relocate the villagers.

One can interpret his argument as that it is not impossible per se to issue villagers with title deeds, but first, there are plans (based on the Presidential Directive of 1983) to offer such privilege to rural commercial business centres. Second, that the titling exercise would be too complex and expensive for those it intended to benefit.

Local Authorities

District Councils represent Central Government at local level. Our initial steps were to enquire on the possibility of either distributing questionnaires through councillors or interviewing them directly. At first, there was ambivalence in responding to enquiries, but eventually all the councils Team COMALISO visited were willing to say their opinion. Their concern is the irregular land allocation and settlement motivated by land occupiers who profit from illegal land distribution. For instance, in Domboshava rural area, the Goromonzi Rural District Council accused land occupiers of perpetuating property insecurity and unplanned settlements. However when you talk to land occupiers, they express lack of confidence in local authority valuation and ownership systems. District councils generally have an interest in the context of title deeds but they are hamstrung by the laws and statutes referred to above - especially the law that gives president and government overall 'ownership' of rural land.

Traditional Leaders

In Mutoko rural area, traditional leaders expressed both scepticism and enthusiasm about the issue of title deeds. There was visible concern about inevitable loss of control over property allocation, especially that the local district council had started issuing title to land owners adjacent to business

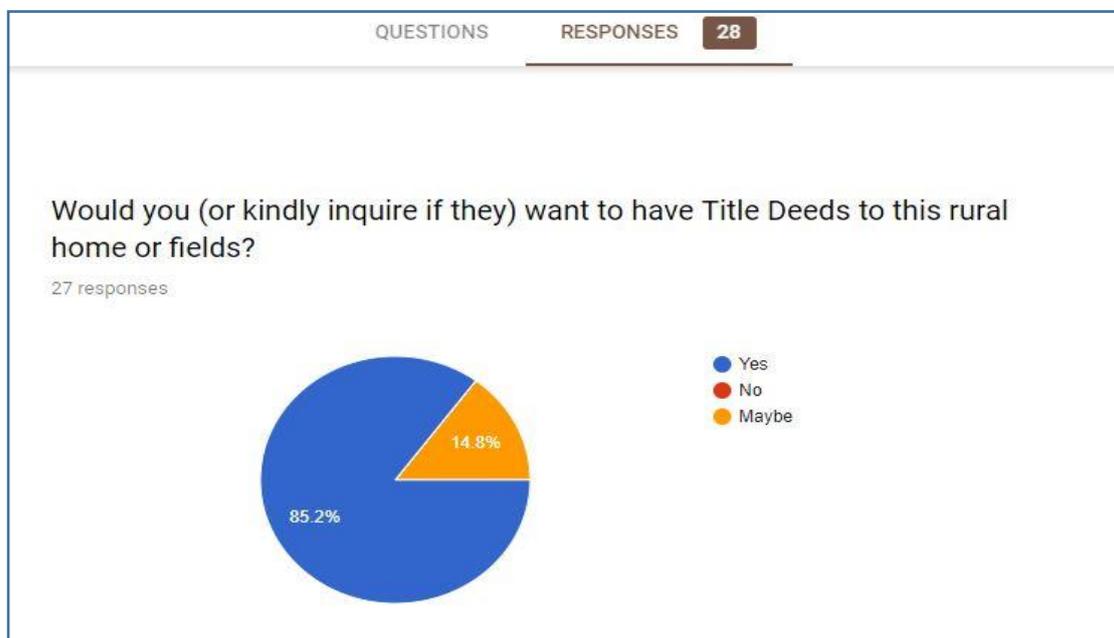
centres "without consulting us". In Murewa, one of the chiefs who already owns several urban properties in Harare was excited at the prospect of the national dialogue around rural title deeds. The Village Head woman in Domboshava rural area was not sure how traditional property rights would be enforced with title because there was already a high degree of insecurity associated with the local council authority. The case of the Mbembesi chief in Matabeleland is explained below. In principle - Mbembesi had title deeds bestowed on the community in the early 1900s by Cecil John Rhodes. The Bulawayo office of the deeds registry placed several conditions to access relevant records, but it would seem there is indeed evidence that the 'Fingo People' have legitimate title to their rural land.

Policy Makers

Parliament stands dissolved in preparation for the 30 July 2018 general elections. Thus, the opinion of policy makers will be sought when the new Parliament is in place after August. This will be COMALISO's first attempt at advocacy for laws relating to rural title deeds to be changed.

Urban Citizens

As has been indicated above, urban citizens contacted via the Google Form expressed general appreciation of the importance of title deeds in rural areas:



Rural Citizens

More than 1 000 rural citizens contacted via instruments, focus group discussions and spontaneous interviews were relatively well informed on the subject and nature of title deeds. For example, in Goromonzi rural, there was a combination of keen

enthusiasm and nervous optimism. Citizens were excited on the prospects of increased land value, security of ownership, and elimination of ownership disputes associated with title deeds. There were pockets of anxiety that titling had profit motive by rural district council especially the possible high cost of surveying passed on to land owners. There was also an issue of rural councils mostly interested in territorial expansion to increase revenue rather than guaranteeing security of citizens, especially where rural homes are close to business centres. Some rural citizens insisted that traditional inheritance was more dignified and sustainable than modern titling as a way of family bonding. In Matabeleland, most rural citizens were confident that title deeds are the best means to ensure security and 'lock' value. However, in Mbembesi where traditional families are still intact, there was discomfort that more title deeds would open up a mercantile stampede that would attract 'aliens'.

Personal Encounters

Some personal testimonies and experiences of respondents:

Plaxedes - a fifty-year-old divorcee, village head of Gukwe Village, Domboshava, just over 30km north of Harare. She was 'evicted' from her urban (Chitungwiza) home when her husband sold the house without her knowledge. It is not clear what type of 'title' the house had, but her name was certainly included on the Rates Payment Card. She then was 'allocated' a piece of land in Domboshava by her brother who is also a village head. She pays 'licence fees' to the Goromonzi District Rural Council but feels insecure. COMALISO made a commitment to follow up the urban home ownership wrangle under the POAMP program. Plaxedes is convinced that all homes should have title deeds so that surviving spouses do not suffer or fall victim to the vagaries of traditional practices. She wants to be free to acquire and dispose of land.

Marshall - a late twenty something young lad who resides with his seventy something grandmother just next / adjacent to Mverechena (Domboshava) growth point (rural shopping centre). Marshall's grandmother had this huge piece of land as part of her husband's inheritance. She subdivided the land and sold some parts to other villagers. Marshall pays 'fees' also to the village head, but is insecure since Goromonzi District Rural Council advised his grandmother not to build permanent structures. This is ironic because their home is a fully-fledged village home, hence his desire to have title deeds because the Council has always expressed intention of 're-developing' land around the growth point. COMALISO made a commitment to follow up the home ownership paradox with Goromonzi District Rural Council under the POAMP program.

Esther - a late thirty something woman who lives with her soldier husband at Dema Village, 50km southeast of Harare. Manyame District Rural Council administers the village where Esther's husband pays 'licence fees'. Marikopo Village Head narrates that where Esther resides it was their old fields, which they sold, but Council demanded that some payments be made despite having no title to the home. Like in Domboshava, they were cautioned against building 'permanent' structures - some structures were actually destroyed. In principle, all home ownership in Dema is still under a confusing 'dual management' system between traditional leaders and the Manyame District Rural Council.



Vast and Valueless: Team COMALISO views Domboshava from a nearby hill

The Case of Manyame Rural District Council

Manyame Rural District Council (MRDC) is unique in that its jurisdiction 'spills over' five types of settlements: rural, peri-urban, urban, commercial farming and resettlement areas. Although its work mostly relates to Dema / Seke rural areas - the vast settlements flung forty or so kilometres southeast of Harare, the main office is located in Beatrice - a commercial farming area fifty kilometres south of Harare along Masvingo road. There are satellite offices in Dema and Guzha that largely handle local financial transactions for citizens, but the bulk of the 'structural' work and administration is done at Beatrice. Planners explained that when rural and commercial farming councils were amalgamated, the decision was to remain at Beatrice because of already existing good infrastructure to efficiently administer council affairs.

According to information gleaned from the planning department, one confronts mainly three pieces of law when dealing with matters of title deeds: Traditional Leaders Act, Communal Lands Act and the Rural District Councils Act. These laws apply even when there is a rural-to-urban transition, usually resulting in what Zimbabweans refer to as 'Growth Points' (rural business service centres created via Robert Mugabe's Prime Minister Directive of 1983). In principle, however, when one requires a piece of land in the areas administered by Manyame, the village heads moderates the process with a village assembly but the ultimate endorsement is done by the RDC. This shows how powerful RDCs are in deciding land 'ownership', almost arbitrarily overriding any village assembly recommendations.



Once the verification has been done (availability and suitability of land), the Village Head 'pegs' the land and registers the 'owner' in a book whereas he makes licence payments to the RDC. In service centres, leases are issued with an option for purchasing with renewable licences. The government (is) still to decide whether to urbanise villages around growth points - since 'urbanisation' comes with title deeds.

It seems reluctance to issue title deeds is based on that 'successful' sale of such property will 'attract foreigners'. Moreover, there is fear that titling and its anticipated cost may incite an exodus spurred by inability to pay surveying and transfer fees. Manyame planners seem to be content with the

lease / licensing system since it is a source of guaranteed revenue. However, there needs to be enlightenment that the overriding factor behind titling has more to do with economic empowerment than fiscal security of local authorities. Besides whenever a title changes hands, there are still benefits from transfer fees and capital gains tax, albeit at minimum levels.

Fengu Xhosa, the only tribe with title deeds in Zimbabwe's rural areas

Up until Team COMALISO encountered the case of a tribe called Xhosa (Fengu) in Zimbabwe's Matabeleland Province, just under 50km from Bulawayo, Zimbabwe's second capital, it was impossible to envisage how rural title deeds could ever be applied. Here is what historians say about this case:

“After the occupation of Matabeleland in 1893, the Ndebele took up arms in an effort to re-establish the Ndebele State in 1896. Cecil John Rhodes brought a group of Mfengu fighters (who had fought on the side of the British) and were derogatively known as "the Cape Boys" in 1896. After the war, Rhodes tried further to 'neutralise' the 'war-like' Ndebele people by inviting more Fengu people into Southern Rhodesia. He promised the Fengu three reserves that each man would work for three months a year, and after 36 months of labour, each would be given land. More Mfengu leaders moved to Southern Rhodesia as Wesleyan Methodists, Salvationists, Anglicans, Presbyterians and Lutherans.” (https://en.wikipedia.org/wiki/Fengu_people)

“1938 there was what was known as the Bullock Commission, which carried out a survey on the property rights of the Xhosa people in Zimbabwe. And they claimed the land that they had originally held in the Cape Colony in South Africa. It was then that the Fengu Location Land Distribution Act was put in place, offering 177 plots to those who were entitled to them, and it is the same act by which we still hold those title deeds..... Well in the first place the ownership of the title deeds has been the cornerstone of our resistance to being moved by successive white settler governments. Because having title to the land, it was legally impossible for them to remove us.” Busani Bafana on <https://cgspace.cgiar.org/handle/10568/57317>

“The key elements of the offer were that three 'reserves' would be created for the Mfengu in Matabeleland in the Matopo hills, Mbembesi and Nyamandhlovu, on which they could settle with the proviso that each man would work for three months each year. After 36 months of labour, each one of them would be given an individual title to five morgen of land (Moyo, 2006, 10-11; Ranger, 1999). Though Rhodes's scheme did not materialize in the Matopo Hills, it did with regards to Mbembesi where the Mfengu were introduced....In the colonial era the Fingo Location was designated as a Native Purchase Area, allowing Africans freehold tenure over their land (Rasmussen, 1979, 92).” <http://umthwakazireview.com/index-id-news-zk-1483.html>



COMALISO director Rejoice Ngwenya (extreme right) with Chief Nondo (centre) of the Xhosa Tribe and his Village Head (Nkomo) after the 23 June 2018 interview, Mbembesi, South West Zimbabwe.

A physical visit to Mbembesi by Team COMALISO did reveal that the community was well schooled in the above-referred historical

narrative. It seems there was post-independence displacement that caused conflict. It also distorted the tenure system, worsened by a disputed chieftaincy. Current Chief Ndondo has set himself a task to re-define the nature of Mbembesi title deeds but the statutory powers bestowed on Rural District Councils as explained above are an impediment. The route of solving the matter via the Chief's Council equally seems to encounter political obstacles, yet he insists the Mbembesi Title Deeds still exist. Team COMALISO has committed itself to use the Mbembesi 'discovery' as a blue print of rural area titling. The encounter has been so intriguing that is necessary to think around an idea of a two-hour documentary entitled "**Fengu - Recovering Land Titles of Zimbabwe's Last Tribe**".

The Makumbe Village Case

Makumbe village is flung forty kilometres to the North East of Harare, in the Chinhamora communal lands. It is populated with several mission schools, including a famous referral hospital, Makumbe Mission Hospital. For some reasons, it also falls under the Goromonzi Rural District Council - the council that is consistently being 'accused' by villagers of having a high appetite for expansionist urbanisation. The area falls under Chief Chinhamora but most village heads, including our subject Village Head Chonyera, are fearful of title deeds.

He outlines the first obstacle to issuing of title deeds as the law that prohibits selling of any land in rural areas. He however admits that - just like in nearby Domboshava villages - there are prevalently rampant cases of villagers buying and selling land albeit clandestinely without going through proper 'traditional' procedure. He argues that there is hardly any 'official' land to give away, however wherever available, this



is the procedure: prospective 'buyer' must submit all personal details to the Village Head, including reference from one's previous village or local authority. This, he adds, to avoid 'resettling and playing host to criminals". Chief Chinhamora and the Goromonzi Rural District Council also intervene before the prospective buyer is entered into the village records. His argument against titling is that perhaps in

surveying for title deeds, the issuing authority may downsize village plots in order to accommodate more owners - the fear of urbanisation.

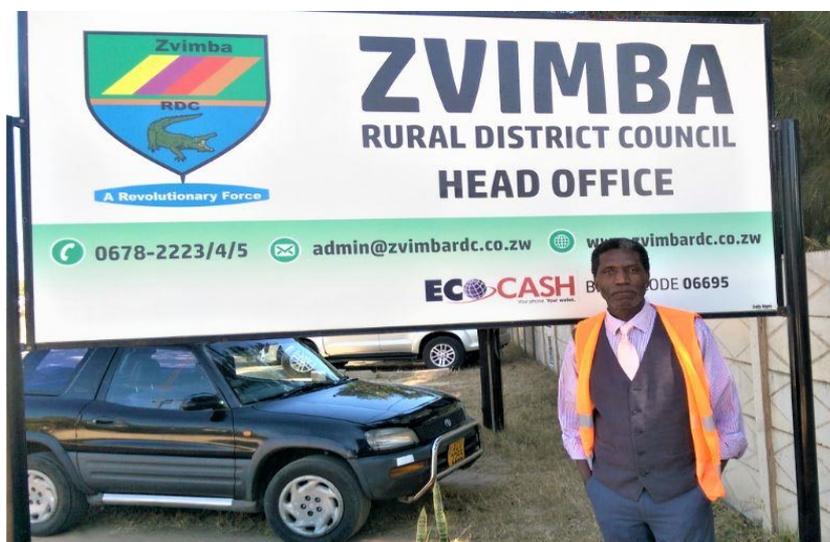
At the other village falling under the jurisdiction of Mike Gwindi (who also owns a home and works in Harare, we meet four men: two in their thirties and the other in their eighties. The elders know and appreciate the importance of title deeds because one of them acquired such property in Harare during the colonial era. He also has two rural homes: one in the local Makumbe Village and another further up in Musana Communal Areas. The two elders still believe in the system of 'ownership by inheritance' rather than titling. They are not sure how a title deed can protect all members of a family who are 'entitled to the rural home'. The two younger men are more comfortable with individual titling so that the onset of 'rural urbanisation' finds them with properties of real rather than assumed traditional value.

Zvimba Rural, a Case for 'Urbanisation'

The ZRDC Perspective

We found Rural District Council to be one of the most progressive, thus far, whose mission reads, "to promote and facilitate sustainable development for the well-being of inhabitants, clients and stakeholders". Situated 100km west of Harare, ZDRDC is home to scores of high-level ZANU.PF political heavy weights; including 'housing', the rural homestead of former president Robert Mugabe. Much larger than Goromonzi, it would seem its appetite for urbanisation is more virulent in that its urbanisation trajectory literary begins in the surrounding villages and ends at the boundary of Harare, seventy kilometres away. We encountered urbanisation plans that include villages like Sandton, Murombedzi, Marwede and Nyabira.

According to the planning office, most of its clients are mainly rural, yet its encroachment into Haydon, Westgate, Mt Hampden,



Nyabira and Glenview gives the ZDRDC a head start in appreciating the essence of titling property. Ironically, this is one of the few rural councils in Zimbabwe with offices in a central business district of a major city. There is reason to believe that

central government has an appetite to offer title deeds in rural areas like Murombedzi and Chivhere. However, it seems unlikely that the council will consider 'traditional' communal spaces for title deeds, reason being that that land is owned by the state and chiefs have been made custodians of that land. What is likely is that as the 'townships' (densely populated areas around the growth point, if ever it is accorded town status) expand, the ZRDC will apply to central government to issue title, as has been done with commercial stands. Thus far, very few rural outposts have been title surveyed.

One of the most potent obstacles, says the planning officer, is



Village Head Mr. Manongovere (left, with crutch) poses with his family; COMALISO's Liz and Trish. His daughter is in striped socks

inability of local rural councils to meet the service requirements (roads, water) of titled land, especially in rural areas. However, there are rural service centres (Murombedzi, Nyabira) where people get lease agreements that mutate into outright purchase.

The Village Perspective

COMALISO was keen to discover how titling is considered next to Kutama Mission, where the past president of Zimbabwe, Mr. Mugabe, was brought up. We encountered village head Manongovere at Nyarumwe Village with his large family that was preparing for a wake. He did appreciate the importance of title deeds but was uncertain if the central government would appreciate it. It would be ideal to initiate such an idea at the nearby rural service centre (Mazunzahomwe) where they already operate with lease agreements granted by ZRDC. However, his daughter, a widow of a largely polygamous background, was in support of title deeds

for several reasons. First, she is encountering ownership wrangles with wives of her late husband, thus she felt if she had title to all her property, there would have been no conflict. Second, her view was that her own children - and not children of the 'other' wives - would be more secure under an official titled property. Lastly, her late husband had initiated a home improvement project in the homestead. Nevertheless, with his passing away, funding has dried up. If they had titled, she could have borrowed money.

Another young male member of the family was aggrieved that the agricultural land he was settled on (A1) has no official title other than the 'Offer Letter'. (This is the document / letter issued to all prospective land occupiers on farms previously populated with white commercial farmers),

Recommendations and the way forward

It is clear that there is a juxtaposed and confused system of jurisdiction over land / home ownership between traditional leaders and Councils in villages surrounding Growth Points. It might be that such areas are the best test cases for fully-fledged title deeds since there already is some form of interaction/cooperation between the two authorities. Although this augurs well with the government's long-term plans of 'urbanising' rural area, some villagers still feel they can be 'titled' but still remain rural. Thus, the next phase of COMALISO's Happy Hut Million advocacy will adopt several steps:

1. Study and analyse to what extent the law is flexible or subject to change with a view to harmonising the Acts.
2. Continue lobbying rural schools to distribute our 3 000 research instruments so that research is spread wider.
3. Wait until there is a new government in place then present these findings to the relevant parliamentary portfolio committee and Land Commission.
4. Wait until there is a new government in place then present these findings to the new council of chiefs.
5. Wait until there is a new government in place then present these findings to the new Rural Councillors Association.
6. Compile findings into booklet for ease of proliferation during the September 2018 International Book Fair.

COMALISO embarked on a national campaign to **raise awareness** by at least one million rural 'hut' owners on the economic benefits of and happiness derived from registered property title - hence the brand **Happy Hut Million**. Ultimately, the idea is to place the Happy Hut Million project on the government's 2018 -2023 Legislative Calendar. *End of report.*