

# Zambia Integrated Forest Landscape Program

Land Administration, Resource Tenure and Land Use Assessment in Zambia



## A FOCUS ON LAW AND PRACTICE IN THE EASTERN PROVINCE

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<b>Cover Photo</b>	Settlement in Lundazi National Forest

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## ABBREVIATIONS AND ACRONYMS

BCP	BioCarbon Partners	LPA	Local Planning Authority
BLS	Better Life Scheme (COMACO)	LPF	Legal and Policy Framework
BWS	Bird and Wildlife sanctuary	LRP	Land Resettlement Programme
CAC	Camp Agricultural Committee	M&E	Monitoring and Evaluation
CBCS	Community Based Conservation Strategy	MLNREP	Ministry of Lands, Natural Resources and Environment Protection
CBNRM	Community Based Natural Resource Management	MRV	Monitoring Reporting and Verification
CCAs	Community Conservation Areas	NDLA	Nyimba District Land Alliance
CCPA	Community Partnership Park Agreement	NGO	Non-Governmental Organisation
CDLA	Chipata District Land Alliance	NP	National Park
CFA	Community Forest Agreement	PALF	Policy and Legal Framework
CFM	Community Forest Management	PAs	Protected Areas
CFMG	Community Forest Management Group	PDCC	Provincial Development coordinating committee
CMP	Catchment Management Plan	PFA	Protected Forest Areas
COMACO	Community Markets for Conservation	PFM	Participatory Forest Management
CPP	Community Partnership Park	PGs	Producer Groups
CPPs	Community Partnership Parks	PIP	Participatory Impact Project
CRBs	Community Resource Boards	PLF	Principal Lead Farmer
CSO	Central Statistics Office	RDIP	Revise Decentralisation Implementation Policy
DACO	District Agricultural Coordinator	REDD+	Reducing Emissions from Deforestation and Forest Degradation including Enhancing Carbon Stocks
DDCC	District Development Coordination Committee	R-SNDP	Revised Sixth National Development Plan
DFNM	Decentralisation Forests and Other Natural Resources Management	R-SNDP	Revised Sixth National Development Plan
DFNRMPD	Decentralised Forest and Other Natural Resources Management Project	SAP	Structural Adjustment Programme
DNPW	Department of National Parks and Wildlife	SCC	Sub-Catchment Council
DOR	Department of Resettlement	SCF	Strategic Communication Framework
DP	Decentralisation Policy	SCMP	Sub-Catchment Management Plan
DPIC	Decentralisation Policy Implementation Committee	SCP	Sub-Catchment Plan
ERPA	Emission reduction Payments	SNV	Stichting Nederlandse Vrijwilligers (Netherlands Development Organization)
FAD	Fisheries and Aquaculture	TLHCs	Traditional Land Holding Certificates
FBD	Farm Block Development	TIZ	Transparency International Zambia
FD	Forestry Department	TLC	Total Land Care
fdf	Forest Development Fund	UNFCCC	United Nations Framework Convention on Climate Change
FIMC	Fisheries Management Committee	USAID	United States Agency for International Development
FNRM	Forests and Other Natural Resources Management	VAGs	Village Action Groups
FPIC	Free Prior Informed Consent	VFiMC	Village Fisheries Management Committee
FRE/RL Level	Forest Reference Emission Level/ Reference Level	VPC	Village Productivity Committee
GMA	Game Management Area	WDC	Ward Development Committees
HBs	Hunting Blocks	WLC	Wildlife licensing committee
HIV/AIDS	Human Immuno Virus/ Acquired Immunity Deficiency Syndrome	WUAs	Water Users Associations
HRH	His/Her Royal Highness	ZANIS	Zambia News Information System
ICCS	Interim Climate Change Secretariat	ZARI	Zambia Agricultural Research Institute
ICRAF	International Center for Research in Agroforestry	ZDA	Zambia Development Agency
JFM	Joint Forest Management	ZEMA	Zambia Environmental Management Agency
JFMA	Joint Forest Management Area	ZFIMC	Zone Fisheries Management Committee
JFMA	Joint Forest Management Area	ZIFLP	Zambia Integrated Forest Landscape Programme
JFMC	Joint Forest Management Committee	ZLA	Zambia Land Alliance
LAP	Local Area Plan		
LDF	Lands Development Fund		



## EXECUTIVE SUMMARY

In Zambia's Eastern Province, rural development is challenged by unsustainable human agricultural, forestry and wildlife activities, resulting in degradation of these resources and steadily causing food insecurity. Interventions in these and other natural management sectors are clearly needed to elevate the socio-economic conditions of smallholder households. Results- and market- based incentives including carbon finance for forest conservation and improved land management are also a potential catalyst for the development of enhanced deforestation mitigation, sustainable land management and agricultural development activities that can collectively transform the province's development trajectory. To serve this purpose, Zambia Integrated Forest Landscape Program was initiated by the Government of the Republic of Zambia.

The nature of rights over land and forests which are situated on them have a bearing on the country's REDD+ activities and on progress towards payment for results in the consideration of the Emissions Reduction Program and related safeguards activities. For this, it is important that land tenure be both equitable and secure. Specific legal instrument options that may support equitable and secure land tenure include a legal framework that accurately responds to a mix of aspects. These may include de facto occupation, management and use; land registration and transfer procedures that are clear, accessible and enforceable; protections against intra-community discrimination; and rules on the acquisition of lands, concessions and transfers of interests including free, prior and informed consent; and appropriate compensation or resettlement policies.

The current study was conducted to address these and other issues in general. In particular, the study aimed to assess land administration and planning to inform the design and implementation of the ZIFL-P in the Eastern Province by providing detailed information of relevance to REDD+ project objectives and activities; which includes major challenges affecting customary lands, land occupancy, land and forest use management, and land acquisition, and resettlement and relocation experiences in the Province.

Using a literature analysis, key informant interviews and focus groups discussions, the study revealed that both the formal and traditional sectors are engaged in land transfers and cash transactions, as provided by the various complementary laws that are adequate and appropriate to guide land use investment in Eastern Province, and elsewhere in the country. However, the processes are not without challenges. The major issues being overcentralized state control over land matters, patronage and limited transparency within Government, local authorities and customary authorities in land delivery. The associated lengthy land delivery procedures cause breakdown in land administration. In turn these create a number of corruption vulnerabilities associated with the different systems of land administration and the transfer of land under each system.

In terms of policy and legal framework, there are relevant, adequate and appropriate enabling elements for the broader aspects of community based protected areas management, access to and sustainable use of resources. There are rights, which include use, transfer, occupancy, education, financial,) that are spelt out clearly, alongside investor requirements under different set ups.

To mitigate some of the inherent weakness in the land resources administration system that is characterized by several vulnerabilities and challenges in practice, it would be necessary to institute some measures like decentralisation of land and other natural resources management. The institutional arrangement exists in practice that would be more functional effectively but with external support, especially capacity development in the disadvantaged areas of integrated and inclusive planning and legal and institutional implementation.

## CHAPTER ONE | BACKGROUND

### 1.1 Introduction

Zambia is located in Southern Africa between latitudes 8 and 18 degrees South, and the longitudes 22 and 23 degrees East on the Central African plateau between 1000 meters, and 1600 meters above sea level. The country covers an area of about 752,614 square kilometres (MD, n.d<sup>1</sup>). It has ten administrative regions called provinces, which include the study region: the Eastern Province. Eastern Province is along the border with Malawi and contains globally significant biodiversity and large areas of intact forest. The climate is semi-tropical, with a single rainy season from November to April, and rainfall varies between 500-1400 mm per year. Average temperatures vary from 6-26 degrees in the cold season (April-August) and from 17-35 degrees in the hot season (September-October)<sup>2</sup>.

In Zambia's Eastern Province, rural development is challenged by unsustainable human activity largely related to agriculture and charcoal production and use, which is driving deforestation, land degradation and wildlife depletion. Food insecurity and unproductive farming practices are driving natural resource depletion across the entire landscape of the province. Interventions in the forestry and other natural management sectors are clearly needed to uplift the socio-economic conditions of smallholder households, which in turn will positively impact conservation of natural resources. Results-based incentives including carbon finance for forest conservation and improved land management are also a potential catalyst for the development of enhanced deforestation mitigation, sustainable land management and agricultural development activities that can collectively transform the province's development trajectory.

In the context of its Sixth National Development Plan (SNDP), the Government of the Republic of Zambia (GRZ) has initiated the Zambia Integrated Forest Landscape Program (ZIFLP), which seeks to improve rural livelihoods while conserving the valuable forest, agriculture, and wildlife resources within the designated program area of the Eastern Province. The ZIFL-P will help advance Zambia's ability to benefit from the United Nations Framework Convention on Climate Change's (UNFCCC) mechanism for Reducing Emissions from Deforestation and Forest Degradation (REDD+). In that sense, REDD+ is an effort to create financial value for carbon stored in forests, offering results-based payments (RBP) as incentives for Zambia, as a developing country, to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. The program will achieve emission reductions by promoting interventions

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<sup>1</sup><http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/1910/Main%20Document.pdf?sequence=2>

<sup>2</sup>M. Mercedes Stickler\*, Heather Huntington\*\*, Aleta Haflett\*\*, Silvia Petrova\*, and Ioana Bouvier, 2016. Does Secure Community Forest Tenure Affect Forest Condition? New Pre-Treatment Evidence from A Redd+ Project In Zambia. Paper prepared for presentation at the "2016 World Bank Conference on Land and Poverty". The World Bank - Washington Dc, March 14-18, 2016.

that prevent deforestation and forest degradation, such as improved land-use planning, climate smart agriculture, rural energy generation, and legal and policy framework that enhances sustainable management of forests and wildlife. At the national level, the ZIFL-P will act as a pilot program for testing integrated land management as a means for advancing the rural development agenda in Zambia following a jurisdictional approach.

The ZIFLP's management arrangement will include relevant national ministries such as those responsible for forestry, agriculture, lands, energy, water, Chiefs and traditional affairs and national parks and wildlife. Relevant provincial, district, and community level institutions will also be involved.

## 1.2 Justification for the Study<sup>3</sup>

The nature of rights over land and forests which are situated on them have a bearing on the country's REDD+ activities and on progress towards payment for results in the consideration of the Emissions Reduction (ER) Program and related safeguards activities. It is important that land tenure be both equitable and secure.

Specific legal instrument options that may support equitable and secure land tenure include:

- a legal framework that accurately responds to de facto occupation, management and use;
- clear and accessible legal frameworks supporting and protecting the attribution of entitlements under customary, leasehold, and state;
- customary land registration and transfer procedures that are clear, accessible and enforceable;
- protections against intra-community discrimination; and rules on the acquisition of lands, concessions and transfers of interests including free, prior and informed consent; and
- appropriate compensation or resettlement policies.

The GRZ has undertaken reform initiatives of its land tenure legislation in recognition of numerous gaps, barriers and challenges. In 2006, the Ministry of Lands undertook a comprehensive review of existing laws and institutions and issued recommendations for reform in the Draft Land Administration and Management Policy of 2006. These draft policies have, however, never been enacted. Two major challenges are associated with policy completion. One is agreeing the content of the policy between the different interest groups, complicated by the emerging issue of transfer of public or customary land to private and foreign investors. The other challenge is the concurrent Constitutional reform processes addressing land tenure that have been simultaneously

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<sup>3</sup> as outlined in the terms of reference for the study

underway. As the Constitution is the supreme law of the country, any other legislation must be consistent with it. The discussions on the constitutional reform have included issues of land reform such as the establishment of a National Lands Board. The Ministry of Lands has postponed any amendment to the legislation governing land tenure until Constitutional issues are resolved, which was done in 2016. Meanwhile, numerous laws and Statutory Instruments<sup>4</sup> remain in force. Zambia is currently developing a land audit and has drafted the National Land Policy, which was sent out for public consultation in April 2016. There is also a National Land Titling Program and Zambia Land Management Information System. In parallel, the country has also been undergoing a national Land Governance Assessment Framework to establish national land indicators.

The Forests Act of 1973 provided for a centralized management of customary lands and protected forest areas, with government having absolute power over all aspects of customary land management. This Act has been replaced by the enactment of Forests Act No. 4 of 2015, which clearly defines responsibilities and roles of various stakeholders, including in customary lands. The rights to use and benefit from natural resources for the general population is enshrined in the national constitution and bestowed in both statutory and customary laws. However, the right to commercial exploitation of forest resources by rural groups is subject to permits and licenses issued to an individual or a group by appropriate government institutions and as provided in relevant legislations. The group also needs to be registered with the Registrar of societies as a corporative of enterprise. Even though the land tenure of most groups in rural areas is formally recognized, ways for them to gain legal representation are not regulated, which represents a big challenge<sup>5</sup>.

The Draft Land Administration and Management Policy of 2006 documented that the prevailing land tenure regime has resulted in adverse effects on communities and vulnerable peoples (i.e. women, youth and persons with HIV/AIDS) with regard to access to secure land entitlements. In Zambia, there is a breach between de facto customary and de jure statutory land management. Although the Constitution expressly permits discriminatory treatment on the basis of attributes such as sex and marital status for the devolution of property, without a formal say in the transfer of property interests, community members and vulnerable populations may be refused the opportunity to register title (following conversion) and may be deprived of their lands

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<sup>4</sup> (e.g., the 1960 Survey Act, the 1985 Lands Circular, the 1970 Lands Acquisition Act, the Lands Act of 1995)

<sup>5</sup>For example, in 2006 the Joint Forest Management (JFM) system under statutory Instrument No. 47 of 2006 was piloted through the Provincial Forestry Action Programme (PFAP), which aimed at testing and generating JFM guidelines. However only a few Forest reserves and only one customary area piloted the JFM and these faced some administrative challenges. The Forests Act No.39 of 1973 proved to be a stumbling block on which the statutory Instrument was developed. This Act did not have provisions on community participation or benefit /cost sharing schemes, and there was no legislation governing benefits sharing arising from the use or sale of resources.

without free, prior and informed consent or adequate compensation. Although the actual practices of Chiefs in granting or refusing land title applications should not be generalized as good or bad, the absence of mechanisms for transparency and reporting, make land allocations vulnerable to highly discretionary and unaccountable decision-making.

### 1.3 Objectives, Tasks, Aspects to be highlighted and Questions

- This study informs the design and implementation of the ZIFLP<sup>6</sup> based on the assessment of land administration and planning in the Eastern Province. The study supports the ZIFLP process in three principal ways, i.e. it
  - 1) provides detailed information concerning land, forest tenure and land rights issues of relevance to REDD+ project objectives and activities;
  - 2) identifies major challenges affecting customary lands, land occupancy, land and forest use management, and land acquisition, and
  - 3) summarizes resettlement and relocation experiences in the Province.

The information to support the ZIFLP was generated through two major tasks summarized below.

- **Task 1: Determining how the formal and traditional sectors operate in relation to land transfers and cash transactions.**

This task resulted into insights on customary land transfers and land registration and recording across the Province based on analysis of both formal commercial markets and collateral requirements and the common procedures and transaction history for the larger traditional markets. Aspects of recordation, registration and future land transfer and sales are summarized. While the focus is on the Eastern Province, particular attention is also paid to the experiences accumulated on these matters in other areas<sup>7</sup>.

As a minimum, aspects highlighted include the following:

- The process for recording/documenting all such rights and agreements, e.g., through local district folios or chieftain records
- Experiences or lessons based on pilot initiatives in other regions of Zambia (e.g. DFNRM)<sup>8</sup>
- Mechanisms in place for providing “inputs” for farming and/or livelihood enterprises e.g. advance credit, gifting, etc.

<sup>6</sup>ZIFLP objective: To improve landscape management and increase the flow of benefits for targeted rural communities in the Eastern Province <https://www.thegef.org/project/zambia-integrated-forest-land-project-ziflp>

<sup>7</sup>For example, experiences or lessons presented include those generated from COMACO’s working areas with local communities and other private sector initiatives that encompasses contract farming.

<sup>8</sup>(e.g., Decentralised Forest and other Natural Resources Management Programme, Tenure and Global Climate Change Project, etc.)

- Estimates of annual increases in benefits and revenues resulting from such activities.

It is important to note that, although estimates of annual increases in benefits and revenues resulting from such activities as advance credits, gifts, etc. should have been assessed, there is an information gap as records were hard to access. As such, further investigation may be conducted during the course of the project planning and implementation processes or stages.

➤ **Task 2: Assessing the legal and institutional framework in light of the various ZIFLP activities.**

The result of this task is a critical assessment of **the adequacy and appropriateness of the legal and institutional framework** to satisfy the broader aspects of community based protected areas management (CBPAM), access to and use of traditional resources across protected forests, national parks and other categories of protected resource zones.

Further, the information output from the second task responds to the following questions:

- Are land rights (including secondary rights of use and access) well-defined both legally and spatially? What are the different relevant categories of such rights and how does their treatment differ from one another in law and practice?
- Are transparent, fair, inclusive and consultative processes in place for the Provincial and District planning of land uses and development schemes, including processes for the identification of land available for investment?
- What options exist under current law and practice for the conveyance of land rights to investors, and what are the strengths and weaknesses of each?
- Do current laws, institutions and practices provide an adequate framework for the negotiation and implementation of secure, balanced and binding agreements between households and groups of households, ensuring appropriate sharing of benefits, monitoring and enforcement of investor obligations, and safeguarding local rights?
- Are laws and practices related to compulsory acquisition fair, transparent, appropriately limited in scope and use and consistent with the principle that impacted livelihoods should be restored or improved?
- Are the existing or envisioned ER Program's benefit sharing arrangements, as or to be specified under the Benefit Sharing Plan, reasonable to help the Program Entity to ensure its ability to transfer Title to ERs?

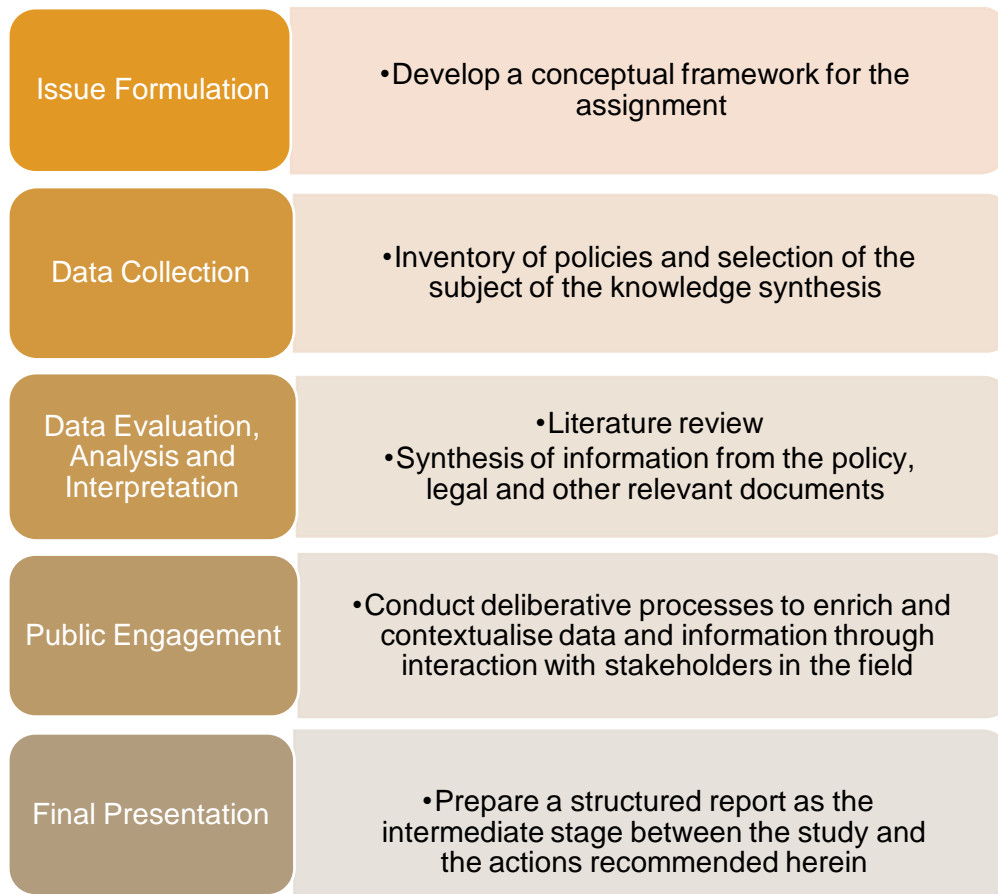
## 1.4 Approach and Methods

The adopted process for the assignment was deliberative and involved the key stages of knowledge synthesis (Figure 1)<sup>9</sup>.

- 1) *Develop a conceptual framework for the assignment (Issue Formulation)*: design the study and confirm it through an inception report and presentation (at the Interim Climate Change Secretariat in Lusaka) targeting a common understanding of the assignment by elaborating the approach, methodology, documents and stakeholders to be consulted, as well as schedule of operations.
- 2) *Inventory of Policies and Selection of the Subject of the Knowledge Synthesis (Data Collection)*: Compiling an inventory of and selecting the policies and legal instruments that are relevant to ZILFP objectives and vision (Appendix 1), and determining the focus of the knowledge synthesis. The preliminary exploration of literature was done to identify the range of policies incidental to the tasks of the study. This included documents recommended in the terms of reference. A multi-source approach was used to access the policy and legal instruments: internet including websites of national organizations interested in land matters, face-to-face contacts, etc. Additional information was obtained from stakeholder consultative sessions /meetings in Lusaka and Eastern Province, through field missions, etc.
- 3) *Literature Review (Data Evaluation, Analysis and Interpretation)*: this entailed the actual extraction of data from and information on the policy and legal documents. The synthesis of the information was done according to the themes identified.
- 4) *Conduct Deliberative Processes (Public Engagement)*: this was done to fill information gaps in 3) above. The aim at this stage was to interact and discuss with stakeholders to enrich and contextualize data and information. This was done through key informant interviews and focused group and one-on-one discussions with government, civil society, private, and traditional authorities (chiefs) organisations in Lusaka, Nyimba, Chipata, Mambwe/Mfuwe and Lundazi districts.
- 5) *Prepare a structured report (Final Presentation)*: this report is a product of the entire process from inception, through analysis of literature and associated discussions to current conclusions. It is a proposal into the future through recommendations, and could also be taken as an active record of engagement.

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<sup>9</sup>Morestin et al., 2010. Method for Synthesizing Knowledge about Public Policies. Report | September 2010



**Figure 1**Key stages of knowledge synthesis adopted for the study



## CHAPTER TWO | LAND ADMINISTRATION AND INSTITUTIONAL FRAMEWORK IN ZAMBIA

The aim of this Chapter is to identify and characterize the formal and informal land transfers and/or alienation practices. *Land alienation refers to specific grants of land made by the State under statutory law (ref.)*. This is the principal subject of this Chapter. It addresses the question: What is the procedural, legal and institutional framework that controls the way in which land is alienated under State land. Thus, it provides an analysis of the land rights definition; consultation processes; analysis of conveyance of land rights to investors; compulsory acquisition/ compensation and matters of benefit sharing.

### 2.1 Historical perspective<sup>10</sup>

To understand the past land tenure development, three periods are important: the pre-colonial (PCP), colonial (CP) and post-colonial (PCE) (with three major reform periods: 1975, 1985 and 1991 land reforms). During the PCP, land was held jointly by families or chief/-nesses on behalf of the community in accordance with the community's respective customary laws. Back then, there was only rights to use especially by individuals in the land owning group. There were no rights to sell<sup>11</sup>. Land could be inherited according to customs and conditions. Customary laws were recognized but in form community-level-negotiated rights with associated rules agreed upon.

During the PC, generally continuity stopped in the effectiveness of the customary laws as a result of influx of new institutions created in this time space and the PCP. Some key functions and responsibilities of the traditional leadership were either incorporated in the new laws or abandoned. In addition, traditional land management and decision-making processes and systems were weakened and undermined, resulting in a number of land categories based on distinguishing the settlers and local people. The land and Deeds Registry Act was born to ...

In the PC era (PCE), the property rights were changed but regulations had colonial period semblance and resulted in re-categorisation of land into state and customary land (i.e. collapsing the prior three categories). The 1975 land reforms vested land in the president marking the success of the nationalization programme, which undermined the customary land tenure systems and decision-making processes as well as systems through the land (conversion of titles) act<sup>12</sup>. The current 99-year leasehold tenure replaced the freehold tenure. No selling of land (similar to PCP customary situation), all underdeveloped land was acquired by government (central or local) and no consideration of land value except for developments on land, no granting, alienation or transfer of land to non-Zambian was

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<sup>10</sup> This section draws heavily from Mushingi, A. and Mulenga, S., 2017. Legal Pluralism and Tenure Security: Exploring the Relationship between Statutory and Customary Land Tenure in Zambia. *International Journal of Social Science Studies* Vol. 4(3)

<sup>11</sup> Land was understood as a Gift from God

<sup>12</sup> CAP 289 of the laws of Zambia

allowed (Mushinge and Mulenga, 2003; Adams, 2003). Further, hallmark land reforms were instituted in 1985. The reforms resulted in the amendment of the 1975 Lands Act to extend ownership rights to non-Zambia through granting, based on conditions, alienation and transfer (See section...). The third and last land reforms in the PCE were in 1991, which indicated a notable political power and system paradigm shift from the socialist to capitalist (liberalized markets economy) ideologies. This economic change introduced privatization of land ownership eventually culminating into the Land Act of 1995 that has been in force since then. The 1993 Land Bill preceded the current Act. This Bill was rejected by traditional leaders, civil society, etc. on the basis of the perception of undermining the customary power and systems of land administration (Mushinge and Mulenga, 2016; Adam, 2003<sup>13</sup>). According to Adams (2003:16) *the Lands Act 1995 was pushed through Parliament in 1995 very hurriedly and as a result it lacks public support* (Adams, 2003). This means, and it is important to note that, there is contestation over the Land Act, 1995. This contestation may be closest to section 7(1) and Section 8(1) that are about recognition of the customary tenure and the alienation of the same (See section on Security of Tenure).

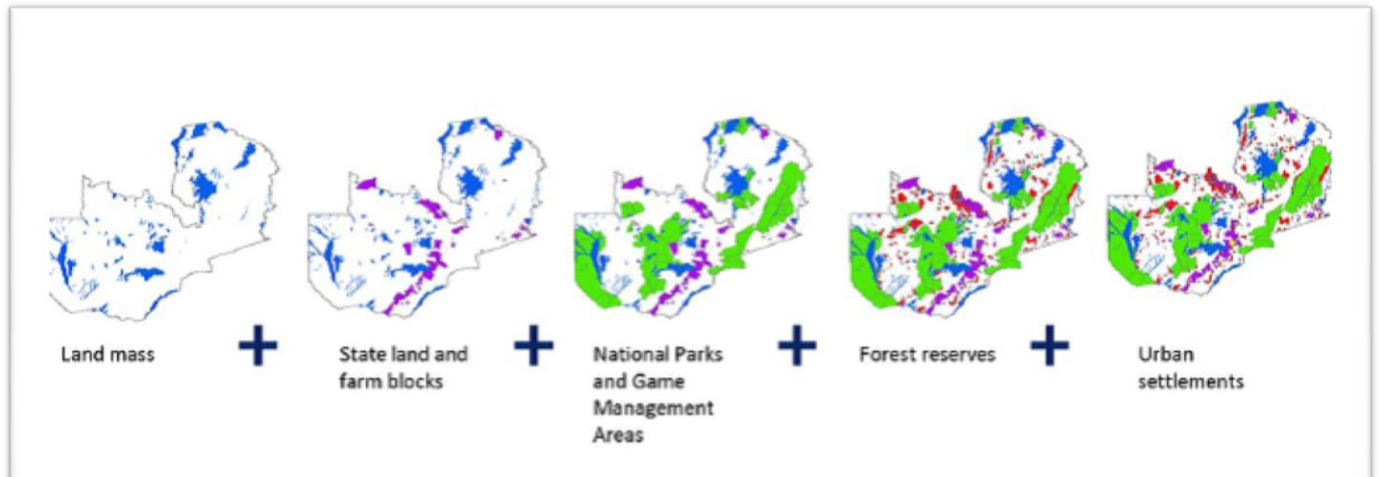
## 2.2 Systems of Land Administration in Zambia

There are only two systems of land administration in Zambia. The customary and statutory systems. The customary land is the largest constituting 94% of the country land mass occupied by tribes and the rest (i.e. six percent) is state land (Box 1) (Mulolwa, 2015; MD, n.d.; Adams, 2003; Robles, 2013<sup>14</sup>). However, Sitko et al., (2015) estimate that only 54% of Zambia's land remains under customary control and potentially available to smallholder cultivation. They work the percentage by accounting for land that is administered as state land (e.g. farm blocks, urban settlements, etc.) and land use categories under customary control but where smallholder cultivation is either prohibited, such as national parks, or subject to ambiguous or competing regulatory frameworks, such as in forest reserves and game management areas. They visually present the land that is not available to smallholder cultivation in Zambia in Figure 2.

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<sup>13</sup> Adams, M. 2003. Land tenure policy and practice in Zambia: issues relating to the development of the agricultural sector. London: Mokoro Ltd Online: <http://fsg.afre.msu.edu/zambia/resources/Land1.pdf>

<sup>14</sup> Robles, F.F., 2013. Legal analysis of cross-cutting issues for REDD+ implementation Lessons learned from Mexico, Viet Nam and Zambia. FAO.



Source: Sitko *et al.*, 2015:5

Figure 2 Accounting for land that is unavailable to smallholder cultivation in Zambia

Customary and State land are different including in the following aspects:

- State land and customary land also differ in their ownership. At the same time, chiefs are the custodians of customary land, in trust of their subjects, and the state administers state land.
- Titles are leases with the state and provide a strong sense of ownership to beneficiaries.
- While state land is seen to be owned by individuals or the state, in practice, ownership of customary land is highly centralized through an individual chief, and most people think customary land is owned by the chief (Mulolwa, 2015).

State land (by definition) does include statutory reserves, which are areas created by statute or gazetted for specific purposes. Common among these areas are reserves for Forestry, Game Management or National Parks. These areas are reserved for purposes of distinguishing them from the general State land (national, local forest reserves, Botanical reserves), or customary land (e.g. Game Management Areas, Community Forests, Joint Forest Management Areas). However, there are protected areas (PAs) located on state and customary lands (MD, n.d.). Of the total landmass of the country, about nine percent (or ca. 67,680 km<sup>2</sup>) is under forest, about eight percent (or ca. 60,160 km<sup>2</sup>) under national parks and about twenty-two percent (or approximately 165,440 km<sup>2</sup>) is under Game Management Areas (GMAs)<sup>15</sup>. There are land use overlaps, whereby some PAs such as forests and national parks are located on customary land but subjected to statutory tenure system.

#### Box 1 Definition of State land

By description, State land refers to that category of land which prior to 1964 or Zambia's (political) independence was designated as Crown lands and administered by the Governor

<sup>15</sup>[http://www.un.org/esa/dsd/dsd\\_aofw\\_ni/ni\\_pdfs/NationalReports/zambia/Land.pdf](http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf)

of the Territory. This category of land was from its inception designated for occupation and use exclusively by the white settler community. Crown land, now State land only constituted six percent (4,518, 953 hectares) of the country's total land mass. The creation of only six percent as Crown land was premised on the belief that the white community was small, and therefore Crown land created for their use was sufficient for their occupation. Crown land was generally located along the line of rail from Livingstone in the Southern Province, to the Copperbelt Province, and a few areas around Chipata in the Eastern Province, Mkushi in the Central Province, and Mbala in the Northern Province (Source: MD, n.d.). In the Forests Act, unless the context otherwise requires, State Land means all land in Zambia, other than customary areas, National Forests, Local Forests and land under leasehold tenure vested in any person (Forests Act 2015, 87:2).

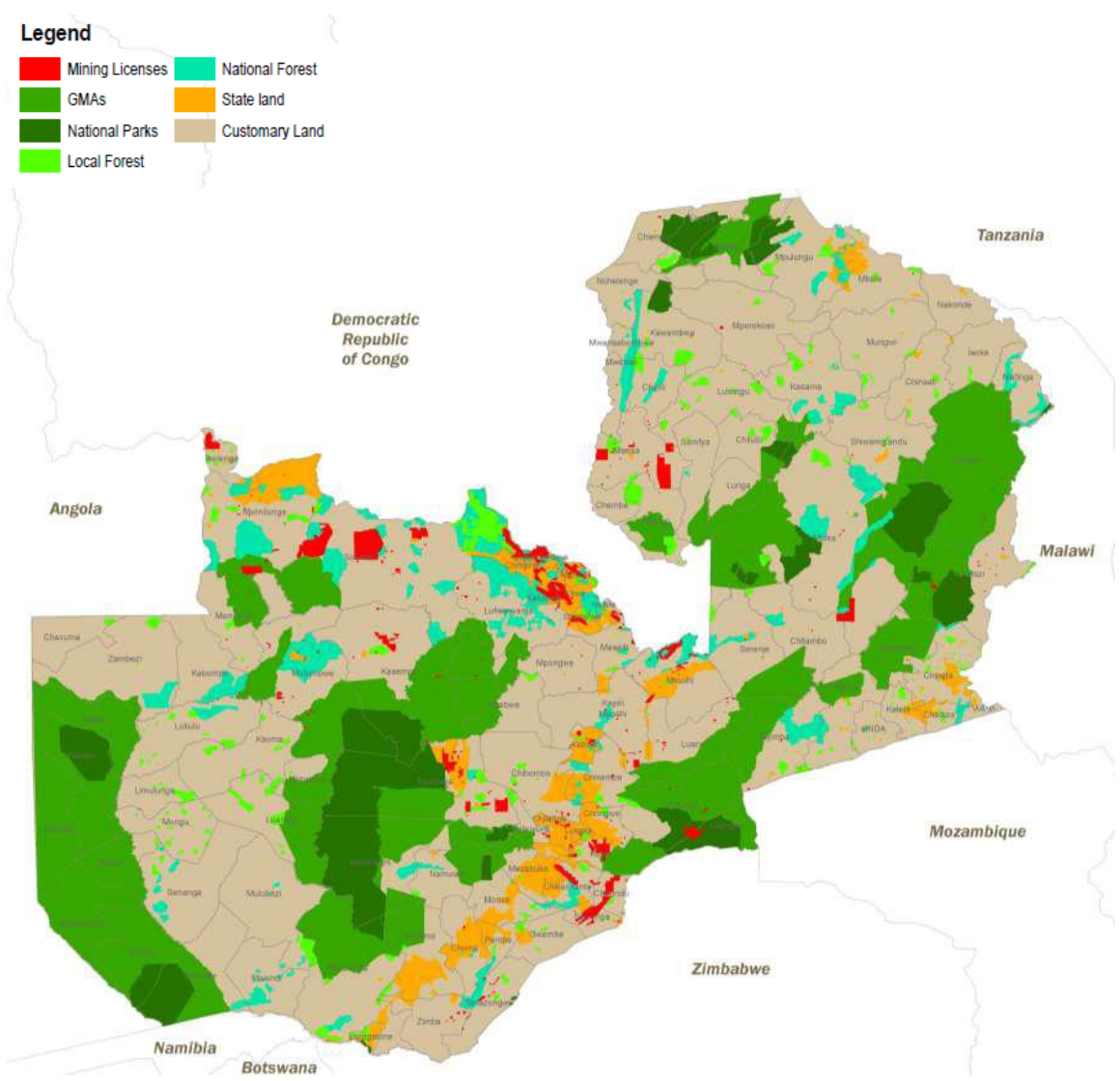
The figures on the status of land in Zambia have not been officially updated since the 1970s (Chileshe, 2016<sup>16</sup>), and as such literature presents different percentages that range from 60 – 94% for customary, and correspondingly for statutory or leasehold systems. According to Mousseau and Mittal (2011), though, the amount of state land is steadily increasing as a variety of factors lead to the rise of a private formalized land market, including increased commercial agricultural operations. There has been argument that the conversion of land as provided in the Lands Act does not remove the land in question from customary areas (Mulolwa, 2015). This assertion is in agreement with the concept in Box 1, i.e. there is no change in the amount of state land and customary land, but merely as Ng'ombe (n.d.<sup>17</sup>) states, a reflection of the dynamic nature of the land (*not a mount of state land*<sup>18</sup>) tenure system in country. Regardless of the tenure system, the land uses in the country are as presented in [Figure 3](#).

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<sup>16</sup>Land Acquisition for Large-Scale Investment on Customary Land: An Examination of Mechanisms and Processes. Presentation at the Research Symposium on Zambia's Customary Land Management Held at Mulungushi Conference Centre, Lusaka. 6 -7 April, 2016. Roy Chileshe, Niraj Jain, Ephraim Munshifwa and Anthony Mushingi, 2016.

<sup>17</sup>Customary land reform to facilitate private investment in Zambia: achievements, potentials and limitations. Austine Ng'ombe, Department of Real Estate & Construction, Oxford Brookes University, UK.

<sup>18</sup>Added , including emphasis, by the author



Source: Minango, 2015

Figure 3Map of the land uses in Zambia

The land tenure system in Zambia is the topic of much public and private debate, and its evolving structure is a critical component of the agricultural land investment context in the country. There is a definite trend of limiting the extent and power of the customary land system and a move towards a more private model of land tenure through changes to legislation inspired by the structural adjustment programme (SAP). Land tenure in Zambia as stipulated in the Lands Act of 1995 is either customary tenure or leasehold title (Mulolwa, 2015). This essentially means that it is possible to have leasehold title on customary land.

Because the legal requirements and other differences, land is administered directly under these two systems. The statutory land is based on written law while customary land is based on local customs or law. State land is titled, is administered by the GRZ, and

contains the rights and privileges that are features of private land tenure systems. The state grants four types of leases: (1) a 10-year Land Record Card (2) a 14-year lease for unsurveyed land (3) a 25- to 30-year Land Occupancy License for residential settlements and (4) a 99-year leasehold for surveyed land.

Customary land is under the custody of the country's 288 gazetted chiefs, leading to an average of 186,500 ha of land per chief<sup>19</sup>. However, the amount of land per chief ranges from less than 3,000 ha of land up to over 2 million ha. Of these gazetted chiefs, the Lozi chiefs in Western Province have the largest territories (Honig and Mulenga, 2015). There is information gap in terms of the actual land sizes per chiefdom. The current national chiefdoms map is not easily accessed and used even by the Ministry of Chiefs and Traditional Affairs as it is somehow perceived as sensitive due to numerous boundary disputes (Pythias Kakoma, pers. com.<sup>20</sup>). The EP has 50 chiefs (Assuming, an average of 186, 500ha per chiefdom

Under the customary system, landowners typically do not pay any land tax, communal/grazing areas are recognized, redistribution can occur, and there are typically no temporal limitations on use/ownership. Land is acquired through inheritance, land allocation from chief/headmen (e.g. young man coming of age, migrants with the blessing of chief, redistribution or by gift), or by purchase (usually within a community but increasingly involving outsiders) (Mulolwa, 2015; Mousseau and Mittal; 2011). Customary tenure is recognised at law, however, it is not recorded or the records that pertain to it such as maps of chiefs' areas are not part of official registers. Though customary tenure is now legally recognized through the Lands Act, there is no further practical, beneficial, consequence to the customary system. These shortcomings do not incentivize REDD+ practices especially the benefits from forest and other carbon assets. The holder of land under customary tenure cannot be forcibly removed from his/her land (normally they have to negotiate for a compensation (Mulolwa, 2015).

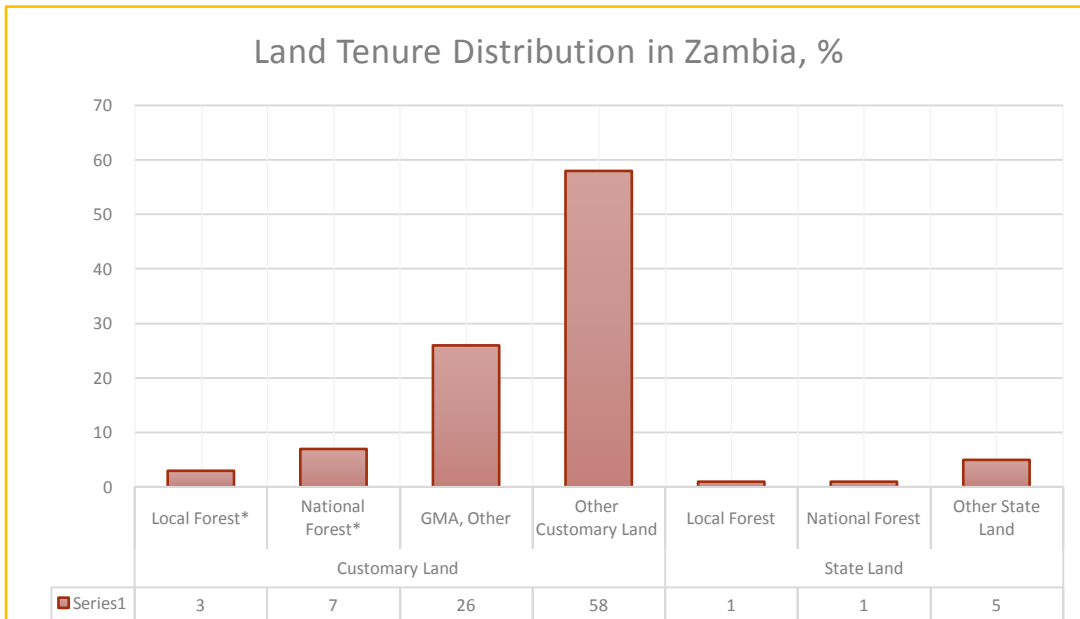
Regardless of these arguments, according to Mulolwa (2015) the distribution of the two land tenure systems are as in [Figure 4](#). The majority of the state land is situated along the north-south rail transportation corridor close to major infrastructure and relatively near markets. It bisects the country in a narrow strip of 30 to 50 km wide from Choma in Southern province to Kabwe in Central Province and northwards, with smaller segments of away from this corridor (Ng'ombe, nd; Mulolwa, 2015; Honig and Mulenga, 2015) and has caused difficulties in the expansion of the provincial capital (Moombe, 2016<sup>21</sup>).

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<sup>19</sup> This would not follow logically for example there are 50 Chiefs in EP and assuming this average, the EP would have about 4 million hectares larger than the province (i.e. ca. 9.3 million vs 5.4 million hectares)

<sup>20</sup> Chiefs and Traditional Affairs Officer, Chipata office

<sup>21</sup> Field notes



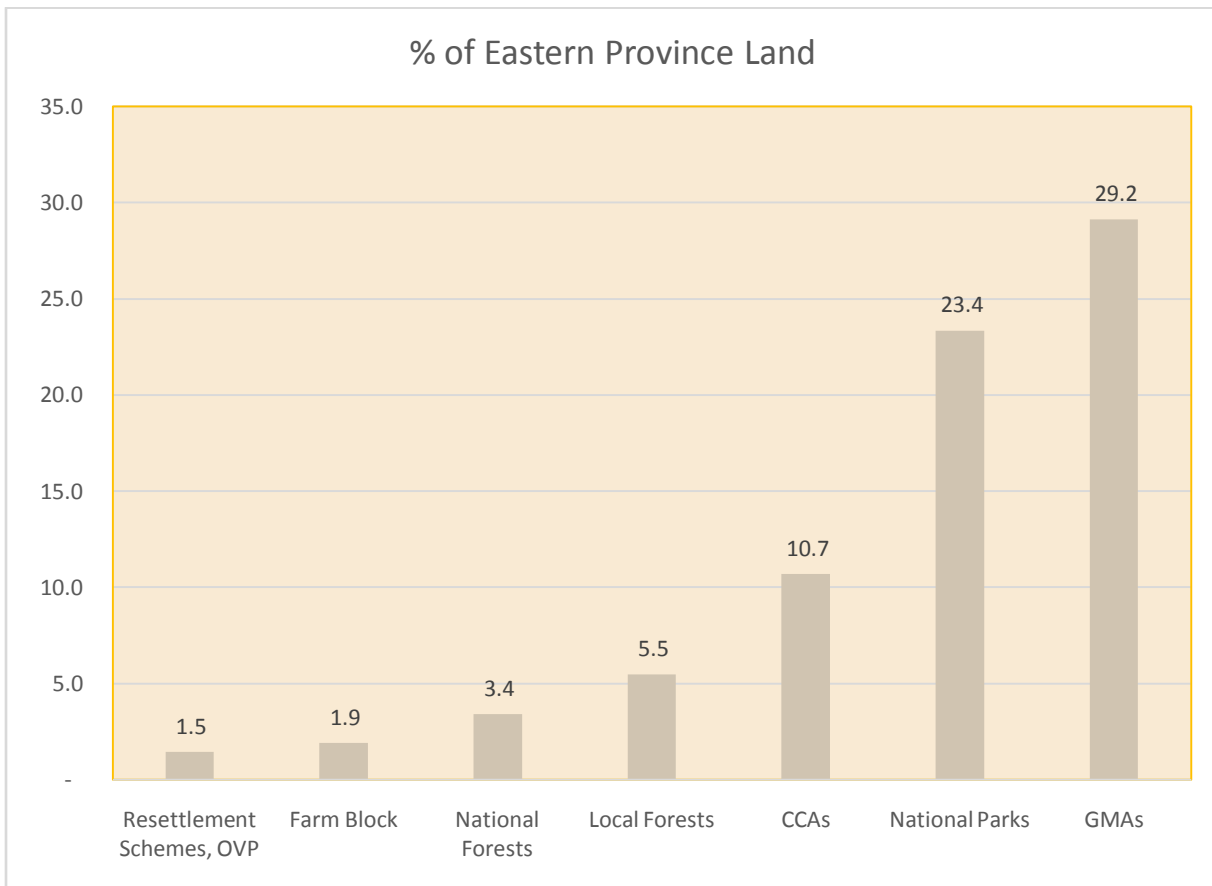
Source: Based on Mulolwa, 2015:22 (Table 2)<sup>22</sup>

Figure 4 Land tenure distribution in Zambia, %

For the EP, land is distributed as in Figure 5 and Figure 6. The total land size for the province is 51, 476 km<sup>2</sup>. The sectors presented in Figure 4 cover 75.6% of the land in the province. Thus, other sectors of categories cover 24.4%. The average area under agriculture over five years (2011-2016) is about 11% of the total land size for EP<sup>23</sup>. The land distribution in the figure is consistent with the national status of having more customary land than state land. Most of State land is around Chipata (Ng’ombe, nd; Mulolwa, 2015; Honig and Mulenga, 2015). However, the exact size of State land in EP is not available. The sectors whose data/information was not accessed under the current study include forestry plantations (private and community woodlots, forests), game ranches, resettlements schemes under agriculture, etc. However, it is important to note that there are overlaps in the land tenure.

<sup>22</sup>The Land Governance Assessment Framework (LGAF) ZAMBIA. 24<sup>th</sup> June 2015, Mulungushi Conference Centre. Presented by: Augustine Mulolwa

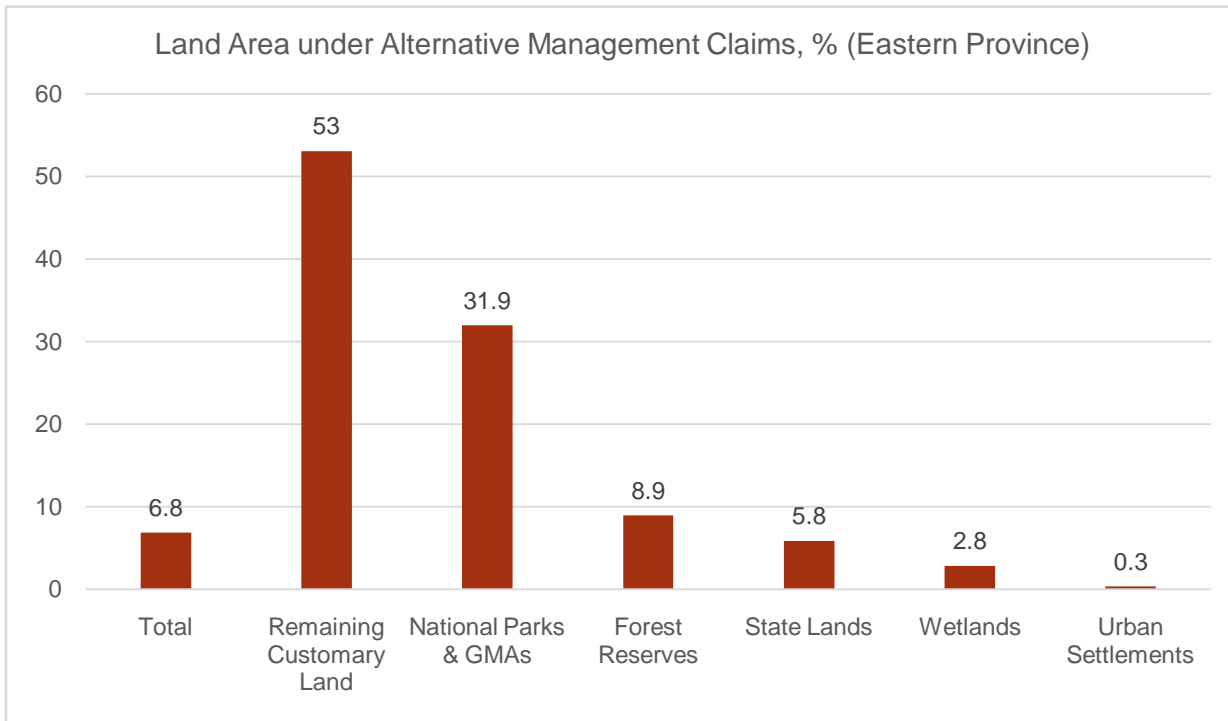
<sup>23</sup>Area planted, crops (source data provided on Sunday, 26<sup>th</sup> June, 2017 by Mr. Joseph Cheelo, Senior Agriculture Land Husbandry Officer, Chipata Office)



**Figure 5** Characterisation of land by sectors (percent of total land for Eastern Province)

Sitko et al., (2015) acknowledge that smallholder settlement does occur in some GMAs and forest reserves, but believe that the 54% calculation significantly under represents available customary land as they are unable to adequately account for land that has been converted by individuals from customary to leasehold land. If other land uses e.g. mining are accounted for the percent would rise substantially. The data on land conversions are out of date and lack spatial coordinates (Sitko and Jayne 2014a).





Source: Sitko *et al.*, 2015:6

**Figure 6** Land area under alternative management claims, % in Eastern Province.

### 2.3 Laws

The system of land tenure in Zambia is based on statutory and customary laws, where the former consist of rules and regulations which are written down, and codified, while the latter is assumed comprise rules and regulations are well known to members of the community, and so it is not written (MD, nd). Thus, customary tenure is fundamentally based on tribal law. Under the current law, all land in Zambia is vested in the president on behalf of the people of Zambia<sup>24</sup>. The presidential powers are delegated under this act are delegated to the Commissioner of Lands<sup>25</sup> to make and execute grants on behalf of the president. In Zambia the predominant legal instruments are the Constitution, National Policies, Acts of Parliament and Statutory Instruments (IDLO/FAO, 2011), and as such the law that governs, directly or indirectly, the aspect of land alienation is contained in several statutes<sup>26</sup> (Annex X). The scope of laws and institutions reviewed in this study is wide because laws create rights, responsibilities and hierarchies in interests that affect issues such as carbon ownership and use, the risk of reversals and displacements, participatory decision-making, and

<sup>24</sup> The Lands Act, 1995, Chapter 184 of the Laws of Zambia

<sup>25</sup>The establishment and functions of the Commissioner of Lands are derived from Statutory Instrument No. 4 of 1989.

<sup>26</sup>The Chapters of the laws of Zambia with relevance to land alienation in Zambia include Chapter 184 (Lands Act 1995); Chapter 188 (the Land Survey Act); Chapter 185 (the Lands and Deeds Registry Act); Lands Acquisition Act (Chapter 189); Chapter 187 (the Agricultural Lands Act); Chapter 199 (the Forests Act, 2015); the Zambia Wildlife Act, 2015; Chapter 194 (the Housing (Statutory and Improvement Areas) Act); and Chapter 283 (the Urban and Regional Planning Act, 2015).

results-based benefit distribution. Further the analysis is done in view of REDD+ design and implementation.

The state of affairs that is not desirable and makes the system inefficient and ineffective as it creates uncertainty among the institutions responsible for land alienation. For instance, while all the three instruments, the Lands Act, the Agricultural Lands Act and the Land Circular No. 1 of 1985 make reference to the alienation of agricultural land in Zambia, none provides clear procedure for acquiring this land (MD, nd).

While the size of State land remains the same (by the crown definition), there are major challenging issues among which is the difficult to alienate land because of inadequacy of land under this category for effective, and equitable distribution to those in search of land in line with the huge demand for leasehold land by many Zambians interested in developing land. There are unplanned settlements mostly in urban areas due to insufficient planning and surveying capacity especially in terms of rate with respect to demand for land (MD, nd).

These statutes do not also provide statutory procedures in land alienation. Further, the criteria for selecting applicants for land is not defined or provided for under the Lands Act or any other statute for that matter. This leaves the Commissioner of Lands with wide discretionary powers to determine the suitability and capacity of land applicants. Circular No. 1 of 1985, though not a statute or statutory instrument, provides guidelines to local authorities on the process of land alienation. There is a requirement under the Circular<sup>27</sup> that the Commissioner of Lands should be satisfied that the approved layout plans are in order, and that the land is available. Under the Urban and Regional Planning Act<sup>28</sup>, however, any inquiry into techniques of physical planning is the role of the Minister responsible for Local Government and Housing or the Director of Physical Planning in the same Ministry. The role of the Commissioner of Lands is merely to check the records in the folios and ascertain whether encroachments would result if he proceeded to number the plots. The Commissioner of Lands is by law not required to inquire into the technicalities of planning, but merely to make land available and leave the aspect of planning to the City Councils, Municipal Councils and Provincial Planning Authorities. This scenario is undoubtedly a serious lapse in the system of land alienation in that the Commissioner of Lands should have a responsibility to ensure that the land being alienated is properly planned and alienated for the intended purpose (MD, nd).

When land has been identified, planned, numbered and surveyed, local authorities are required to provide services such as roads and water. The Circular provides that stands have to be fully serviced by the Council concerned, failure to which the District Council is supposed to give reasons to the applicants of its inability to provide the necessary services before any recommendations for allocation can be considered by the Commissioner of

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<sup>27</sup>384 Land Circular No. 1 of 1985

<sup>28</sup>Chapter 283 of the Laws of Zambia

Lands. The requirement for provision of services by local authorities is premised on the assumption that Councils have sufficient resources or can collect service charges to finance the exercise. In practice, however, plots are allocated to applicants and they pay service charges as demanded by Councils but in most cases the required services are never provided. Most local authorities in the country do not in fact have the technical capacity to provide services in their localities.

The absence of any provision for procedure in the Lands Act, or any subsidiary legislation has made institutions dealing with land alienation to continue relying on Land Circular No. 1 of 1985, which is merely an administrative document, for guidelines on alienation. The Circular does not bind the Commissioner of Lands as it has no force of law. However, some of the provisions of the Circular can be incorporated into legislation so that the relevant provisions are given the force of law and make the procedure for land alienation clear.

The absence of clear conditions or qualifications to be considered by local authorities when selecting successful applicants for land has led to local authorities applying different terms and conditions to be satisfied by the applicants for land. The tests applied are therefore can be subjective in that a council can recommend any person it considers appropriate since there are no conditions or criteria stated in the Lands Act or the Circular on land alienation. In addition, there are some uncertainties in the procedures of land alienation that are based on the Circular:

- first, the Circular does not make advertising mandatory and also state what the other means of selecting applicants could be other than advertising.
- Second, the Circular guides the local authority to select the 'most suitable applicants without stating or outlining the criteria or conditions to follow or consider in the process of identifying such applicants. In addition, there are no any statute or regulation for that purpose.

In practice, a suitable applicant is one who would prove before the Council or the Ministry of Lands that the person has the capacity and ability to own land and develop it, however, this requirement is not provided for under any law. Thus, the practice is nothing more than administrative (MD,nd).

## 2.4 Institutions

An evaluation of institutions involved in land alienation reveals that there are several institutions that play important roles in the process of land alienation. The institutional framework for land administration in Zambia is both at national and subnational (provincial, district and chiefdom) levels. At national level the Ministry of Lands is the principal institution for land administration together with its line ministries for Local Government and Housing, Agriculture and the Office of the Vice President (Department of Resettlement, DOR). The line institutions are responsible for spatial planning, land use management, valuation, revenue management and land allocation.

At provincial level, the lands ministry identifies, allocates and surveys land as well as collects geo-information and land-related revenue and charges. Local authorities allocate land at district level while planning authorities and councils do spatial planning. For agricultural lands identification and planning, the ministry of agriculture and the DOR are responsible. At local or chiefdom level, chiefs identify and recommend land to the Commissioner of Lands. The Forestry Department and the DNPW are also responsible for land in protected areas. Discussed below are each of these institutions that play a critical role in implementing various functions of land administration in their departments.

### 2.4.1 Ministry of Lands

Land in Zambia is administered through various statutes by established institutions in the country. One of such institutions that plays a significant role in land alienation is the Ministry of Lands. The Commissioner of Lands performs delegated functions. However, there is no statute in place defining the authority, jurisdiction and powers of the Commissioner of Lands. The ministry has several challenges presented below.

- 1) the Ministry of Lands in the land alienation process are linked to the lack of qualified personnel. Due to shortage of trained staff, the Ministry of Lands is unable to provide surveys timely. The inability to provide surveys efficiently is a major bottleneck in the land alienation system because for land to be registered, it must be surveyed first. To overcome this problem, the Ministry of Lands has adopted the issuance of 14 year leases in certain circumstances, for which it requires only a sketch plan instead of a survey diagram for a certificate of title to be issued. The effect of issuing title on a 14 year Lease is that the Certificate of title issued is provisional.
- 2) The **first hurdle** faced by this arrangement is that by establishment, local authorities fall under the Ministry responsible for Local Government and Housing and not the Ministry of Lands. This makes it difficult for the Ministry of Lands to supervise local authorities. Thus, in the event that local authorities committed a breach, there would be no direct sanctions from the Ministry of Lands. The sanctions can only be taken by the Minister responsible for local government on behalf of the Ministry of Lands under the circumstances.

In practice, the Ministry of Lands has been taking sanctions against local authorities when found at fault by suspending them from administering land or making recommendations to the Commissioner of Lands in their respective localities. This measure by the Minister of Lands is however, not legally provided for under any statute, statutory instrument or regulation. The agency relationship is based on the fact that the Ministry of Lands has no institutional structure at District level and therefore, local authorities act on its behalf. To curtail political whims and caprices, it is necessary that the regulatory and supervisory functions of local authorities by the Minister of Lands are provided for by law.

## 2.4.2 Office of the Vice President

There is a Resettlement office in EP located in Chipata. The institutional structure in the administration of Resettlement Schemes poses several challenges. The major challenge relates to the establishment of the DOR. The Office of Vice President, where the Department is established, is ill-equipped to perform land alienation functions. There is therefore a misplacement of Ministerial functions between the Ministry of Lands and the DOR, thereby contributing to the inefficient and ineffective delivery of land. The category of land for Resettlement is not a creature of statute. Further, most resettlement schemes are established in customary areas. However, the question of determining whether land under Resettlement schemes becomes State land, or remains customary land or becomes a hybrid category has been raised by some chiefs. In practice, institutions such as Provincial Planning Authorities, and the DoR believe that land under Resettlements is State land, while most chiefs contend that it is customary land. *This problem can only be resolved by clearly defining the status of land under resettlement by statute in order to avoid possible disputes with regard to land tenure and land alienation in these areas (MD).*

## 2.4.3 Local authorities

Other institutions that play a role in the process of land alienation are local authorities i.e. city, municipal or district councils. There are eight local authorities in EP<sup>29</sup>, which have delegated authority to discharge land alienation functions (on behalf of the Commissioner of Lands) in both State land and customary land. Councils are local planning authority with the following statutory, and any other planning and development, functions as are necessary for the implementation of the Urban and Regional Planning Act, 2015<sup>30</sup>:

- 1) regulate, control and plan for the development and use of land and buildings within its area;
- 2) prepare and implement integrated development plans, local area plans and sectoral plans;
- 3) receive and process applications for planning permission for the development of land;

This is important especially that the vast parcels of land in the country falls under the jurisdiction of local authorities. The involvement of the Provincial or Regional Planning Authorities should also improve coordination and governance of land use in EP and Zambia as a whole.

In relation to customary land, the Lands Act places emphasis on the President to consult local authorities whenever the President alienates land in a customary area. Local authorities do not get involved in circumstances where land is held and managed in a customary manner except where there is conversion of customary tenure to leasehold, and

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<sup>29</sup> Chadiza, Chipata, Katete, Lundazi, Mambwe, Nyimba, Petauke and Vubwi

<sup>30</sup> Section 13 (1) and (2)

their involvement is justified on the basis of the procedure on conversion of tenure into leasehold. The procedure is that:

- Any person who has a right to the use and occupation of land under customary tenure may apply to the Chief of the area where the land is situated, for the conversion of such holding into leasehold tenure.
- The local authority receives a form from the chief indicating that the chief has consented to the conversion.
- The local authority considers whether or not there is a conflict between customary law of that area and the Act before making a recommendation to the Commissioner of Lands.
- It is the duty of the council to ascertain any family or communal interests or rights relating to the parcel of land to be converted and specify any interests or rights subject to which a grant of leasehold tenure will be made before making a recommendation to the Commissioner of Lands<sup>31</sup>.

It is important to note that although the Lands Act has recognised the local authorities in the conversion of customary land to leasehold, the functions of preparing Site Plans, Sketch Plans, and land identification are also performed by the Department of Land Use in the Ministry of Agriculture in conjunction with Provincial Planning Authorities<sup>32</sup> (MD, nd.).

The local authorities' capacity to effectively participate in land alienation is constrained by lack of resources and qualified personnel to effectively carry out the functions like dealing with issues of land identification, physical planning and survey. This ultimately leads to inefficiency in the land delivery system. Yet, according to the surveys Act, it is a legal requirement that, "every general plan or diagram submitted for approval shall be prepared in accordance with the requirements prescribed, and the numerical and other data recorded thereon shall be within the prescribed limits of consistency."<sup>33</sup>

The function of physical planning is one important aspect that requires urgent redress. It is acknowledged that for the orderly alienation of land to be enhanced, physical planning and surveying are prerequisite functions of land alienation. It is important therefore, that these functions are coordinated under one institution to ensure the timely planning and survey of new areas. The department of Physical Planning, Provincial Planning Authorities, the Agricultural Land Use and Technical Services Unit in the Ministry of Agriculture and the Planning section in the DOR in the Office of the Vice-President are all engaged in planning.

#### **2.4.4 Department of National Parks and Wildlife**

The largest national parks in the EP are South Luangwa, Luambe and Lukusuzi national parks. West Petauke GMA in Nyimba District, the Upper and Lower Lupande GMs in Lundazi

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<sup>31</sup>Section 3(4)(b) and (d) of the Lands Act, chapter 184 of the Laws of Zambia

<sup>32</sup>Section 31 of the and Survey Act, Chapter 188 of the Laws of Zambia

<sup>33</sup>Section 31 of the and Survey Act, Chapter 188 of the Laws of Zambia

District are among the GMAs in EP. The alienation of land in National Parks and GMAs is equally well regulated by the Zambia Wildlife Act, 2015. However, due to tenure overlaps, there is a problem of institutional coordination in the alienation of land in GMAs. This is largely caused by the fact that GMAs are situated in customary areas and therefore, conflicts between villagers, Chiefs and the DNPW often arise. Local authorities also face difficulties in the course of performing land alienation functions in GMAs, because the governing statutes clearly state that the management of GMAs is a preserve of the DNPW. The occupiers of land in these areas, however, look up to the local authorities to provide all social services to them. However, the law is not clear on how to resolve problems of land alienation where the interests of the villagers, the District Council, the chiefs and the DNPW are at variance. An example is Mambwe District where very little progress has been made in land alienation in the district because of lack of clarity as to the jurisdiction and powers of chiefs, the local authority, and the DNPW. There are also uncertainties regarding the boundaries of State land, customary land and GMAs. Such challenges exist e.g. in Mambwe District that lies entirely in a GMA bordering Luangwa National Park which is managed by the DNPW. There are six Chiefs<sup>34</sup> in the area who administer the same land, and contend that the land in this area is customary land. The District Council is also expected to alienate the same land to applicants. The Chiefs complain that the DNPW has been encroaching in their areas. As a result of these misunderstandings, land alienation is slow and development is hindered.

Nevertheless, the Lands Act and the Zambia Wildlife Act require that whenever land is being alienated and converted to leasehold tenure in GMAs, the Director of DNPW, Chiefs, and the local authorities concerned or the people who have occupied land in these areas should be consulted. This approach is legally sound but it has and may not addressed the problem where these various interests are in conflict, and which interest should prevail (MD, nd).

#### 2.4.5 Forestry Department

There is a DFO in every district in EP responsible for forestry development. However, there is no representation at sub district level in the province. Forests Act, 2015<sup>35</sup> adequately covers the conditions of alienation of land in a forest reserve e.g. *the President may alter the boundaries of the National Forest or an area recommended to be declared a National Forest so as to exclude from it such area or part of such area*<sup>36</sup>.

Forest reserves are also areas created and regulated by statute. Once land is declared as a Forest reserve, the Commissioner of Lands cannot alienate or administer any part of the land without the consent of the Director of Forestry, thus, the Commissioner of Lands cannot alienate any part of a Forest without the consent of the Director of Forestry. However, in practice there are contestations especially from some chiefs that they have

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<sup>34</sup> Nsefu, Malama, Mnkanya, Jumbe, Chikuwe,

<sup>35</sup> Chapter 199 of the Laws of Zambia

<sup>36</sup> Section 13 (1) (6) of the Forests Act, 2015

powers over forest reserves and therefore allocate land in forest reserves or at least call for having the forests degazetted. *This is a clear indication that various institutions and persons interested in the occupation, use and management of forests should coordinate and the law should clearly stipulate the functions, jurisdiction and interests of the institutions involved in land alienation*(MD. nd).

#### 2.4.6 The institution of Chief

There are 50 traditional chiefs in EP and five major ethnic groups<sup>37</sup>. These Chiefs and their Ndunas (chiefs' advisors) and village heads play a very significant role and have power in customary land alienation in form of ensuring that the land in their localities is administered for the benefit of their subjects and according to the unwritten customary law based on their respective tribal customs and traditions (Box 2). However, the specific powers and authority of chiefs in land matters **are not defined** under the Lands Act, except for conversion from customary to leasehold tenure.

##### Box 2 Functions of the Chiefs

The Chiefs Act provides for the chiefs' functions as follows: "Subject to the provisions of this section, a chief shall discharge- (a) the traditional functions of his office under African customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality; and (b) such functions as may be conferred or imposed upon him by this Act or by or under any other written law." Source: The Chiefs Act, Cap. 287. Section 10(1)(a)

However, it should be noted that the chiefs have conditional discharge of functions, whereby their role is restricted to perform his or her functions under customary law in so far as such is not contrary to the Constitution or any other written law. This means that the state has the overall power to alienate land in the province and Zambia as a whole. It is also worth noting that the chief may recommend alienation of land, which only take effect upon the approval of the Commissioner of Lands who is not bound to approve the Chief's recommendation. However, under the Lands Act, chiefs have a statutory role to play by giving consent to the conversion of customary tenure to leasehold tenure<sup>38</sup>. A chief alone can validly make recommendations for allocation of land. This poses a serious threat to principles of transparency and accountability<sup>39</sup>. However, some Chiefs (e.g. Chief Ndale, of the Nsenga people in Nyimba District) have engaged in TLHCs with advocacy committees to act as units that govern land matters at local traditional community level. The membership of these committees does not include representation from any statutory organisations.

<sup>37</sup> Chewa (39.7%), Nsenga (20.3%), Tumbuka (15.6%), Ngoni 915.3%) and Kunda (3.3%) [Eastern Province, Zambia - Wikipedia. https://en.wikipedia.org/wiki/Eastern\\_Province,\\_Zambia#Culture\\_and\\_wildlife\\_parks](https://en.wikipedia.org/wiki/Eastern_Province,_Zambia#Culture_and_wildlife_parks)

<sup>38</sup>Section 3(4) and section 8 of the Lands Act, Chapter 184 of the Laws of Zambia

<sup>39</sup> Mr. Raymond Kaima (ZLA, Nyimba office) personal interview, 24<sup>th</sup> June 2017.



The limitation of the chief's functions and powers in the alienation of land may be justifiable for a number of reasons including the modern technical demands of land administration (e.g. physical planning, land use, zoning, surveying and land registration skills). Further, the concept of individual title to land in most customary areas is challengeable and most chiefs are reluctant to effectively participate in the alienation and conversion of land from customary tenure to leasehold. However, some chiefs in EP have engaged in securing tenure through customary documents, which include letters of transfer, traditional land holding certificates, village registers, farm permits, and any other document that confers authority over customary land (Kaima and Chewe, 2017<sup>40</sup>).

### Summary on institutions

The institutions responsible for land alienation are governed by the Urban and Regional Planning Act, 2015. It is therefore, hoped that there will be effective and efficiency in coordination of the land alienation and planning. The problems in the system of land alienation in Zambia can be attributed largely to institutional failure to plan and alienate land efficiently. Clearly, there are many institutions responsible for implementing the various functions of land alienation, but do not co-ordinate adequately among themselves. In such a situation and coupled with many laws that regulate land alienation, and overlapping powers, functions, and jurisdiction, there unquestionable need to clarify the institutional roles and responsibilities in the land alienation processes. In this regard, the Urban and Regional Planning Act, 2015 comes in handy in ensuring effective coordination of an efficient and orderly alienation of land through properly planned, surveyed, alienated and registered pieces of parcels of land.

## 2.5 Land transfer practices in Zambia: Eastern Province and other areas and programs

In Zambia land may be acquired in a number of ways. These include through direct leases from the republican president, from the ministry of agriculture through the Commissioner of lands, from the local authorities and purchase from individuals. These are outlined next under alienating state land and alienating customary land.

### 2.5.1 Acquisition through presidential powers

The President can alienate by declaration any land within the country for different purposes in the interest of public including for protected areas such as national forests, local forests, national parks, community partnership parks, etc. ([see section on community based protected areas](#)) and to Zambian and non-Zambian individuals. A non-Zambian can be granted land under many conditions including where a non-Zambia is a permanent resident, is an investor, has prior written Presidential consent, is company registered, is a statutory corporation created by an Act of Parliament, is co-operative society, registered company, is non-profit making, charitable, religious, educational or philanthropic organisation, or a

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<sup>40</sup> Kaima, R. H., & Chewe, M. (2017). *The legality of customary land documents within the existing formal legal system in Zambia*. Washington, DC: USAID Tenure and Global Climate Change Program.

registered commercial bank. The President can also grant land if the non-Zambian is inheriting the land, obtaining land under a lease agreement, or has been granted a concession or right under the Zambia Wildlife Act.

However, the President cannot alienate any land held under customary tenure without consulting the responsible chief, affected person, or if the applicant has not obtained prior approval of the chief and the local authority<sup>41,42</sup>. Aside from abuse of powers either by the president or by the traditional chief, the acquisition process is consultative and as such appears fairly secure. In fact, by law, the President cannot alienate land without consulting relevant institutions responsible for land administration notably the institution of Chief. A correct interpretation of the law entails that provisions of section 3(3) of the Lands Act are disjunctive. This means that a person need only establish any one of the eleven provisions in order to qualify for ownership of land in Zambia (MD, nd).

## 2.5.2 Acquiring customary land

Customary tenure is recognised under section 7 of the Lands Act. The greater part of land in Zambia is held under customary tenure. Since the enactment of the Lands Act of 1995, there has been an increase in the number of people who intend to acquire land under customary tenure and later convert it to leasehold. Investors are able to access land in customary lands through written consent from the chief to hold land under leasehold system. Though it is a *de facto* right, only traditional authorities (typically chiefs through headmen) have the right to allocate land under customary tenure. Land allocation is carried out by chiefs and the headmen of villages through *de facto* management. Therefore, although *de jure* ownership remains vested in the state, there is no formalized system of devolving management rights to villages, and the customary land market is therefore, unregulated (IDLO, 2011<sup>43</sup>; Robles, 2013).

In practice, insecurity of tenure and absence of formal use rights signify that forest resources are often vulnerable to exploitation and subject to deforestation. Unlike for state land, a chief's consent to a lease is required for customary land. In addition, the lease must be considered by the appropriate subcommittee of the local authority and then be approved by a meeting of the full council. In the case of State Land, there is no need for a chief's consent (Honig and Mulenga, 2015). In practice, however, people (including politicians) still allocate land illegally including in EP.

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<sup>41</sup> Gumbo, D., and Mudenda, C., 2009. Case Study: Large Scale Land Acquisitions Study in Zambia. Nansanga farm Block-Serenje District. Zambia land Alliance.

<sup>42</sup> Lands Acquisition Act, Chapter 189 of The Laws of Zambia.

<sup>43</sup>IDLO.2011. Legal preparedness for REDD+ in Zambia. Country Study.

As the legal custodians of customary land, chiefs control allocation and alienation of this land. However, the role of the headperson cannot be underestimated as village headpersons hold immense transfer power. Typically in studies by the TGCC in EP, people only go to the chief when they are coming from outside. Land allocations within the chieftom to individuals are often done to subjects by headpersons<sup>44</sup>.

Procedures for acquiring customary land are not uniform because this type of land tenure is guided by beliefs, customs and practices of each ethnic group<sup>45,46</sup>). The largest share of the country is administered largely through customary law by traditional authorities, which include over 250 chiefs and sub-chiefs, their advisors, and village headpersons. Chiefs and headpersons have legally recognized authority over land administration in these areas through the Chiefs Act and Village Act. However, there is little guidance available for chiefs and headpersons on the specific responsibilities and limitations associated with this authority<sup>47</sup>. However, the general procedures is as follows:

- A person approaches the village headman or woman in the area the person wants to settle in, indicating the reasons for the intention to settle or migrate
- If the headman is comfortable and willing to accommodate the individual, they proceed to introduce the individual to the chief. If the chief consents, the land rights are given to the one requesting.
- Land is then identified in that headperson's area and allocated.
- The individual is then entered into the village register. No title deed is given. In some areas, however, there are land holding certificates given to local people with conditions printed on them e.g. Chief Nyalungwe and Chief Ndakein Nyimba District and Chieftainess Mkanda in Chipata District. The traditional documents increase security of land tenure as the validity of traditional methods of securing customary land have been recognized in Zambia's formal system (Kaima and Chewe, 2017).

Under customary tenure, Zambians within a given chieftom receive land for no charge from the chief (or their village headmen), and the lands are managed by the chiefs (often through their village headmen). *Although this process should not involve cash transaction, in practice cash exchanges hands in form of gifts to both the traditional village leader and the chief* including in the EP (Mousseau & Mittal; 2011). However, some of these practices have started undergoing some transformations based on pilot interventions in eastern and other provinces under the ZLA to introduce titles under customary land that are aimed at

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<sup>44</sup>Comment by Matt Sommerville, 5 February 2017

<sup>45</sup> Land administration in Zambia. A guide to a corruption free acquisition of land. Transparency International Zambia/Ministry of Land.

<sup>46</sup> Statutory Instrument 89 of 1996. The Lands (Customary Tenure) (Conversion) Regulations.

<sup>47</sup> Sommerville, M., Stickler, M.M., Norfolk, S., Mothers, T. and Brooks, S., 2016. **Documenting Customary Land Rights in Zambia: A Low-Cost Open Source Approach**. [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_World\\_Bank\\_2016\\_Zambia\\_Open\\_Source.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_World_Bank_2016_Zambia_Open_Source.pdf)

enhancing land security. There are some challenges faced in the alienation of customary land:

- 1) Security of occupation. It has been emphasised under the law that customary tenure per se gives an occupier full security and recognition of his rights as enshrined in the Lands Act (Box 3).

**Box 3** Security of and recognition of rights of the land occupier

Section 7 (1) provides that “.....every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.” Section 7 (2) “..... the rights and privileges of any person to hold land under customary tenure shall be recognised and any such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law.”

However, despite the intent in the Lands Act that land users under customary tenure will continue to do so, some of the customary landholders have been displaced from the land they occupied to pave way for others including investors without their consent. Such practices can be curbed with strict enforcement of the law, especially the consultative provisions under section 3(4) of the Lands Act (Box 4).

Consultation in land alienation is important and at law, it is wrong for the President not to take into consideration the local customary law and consult on land tenure which is not in conflict with the Lands Act. Therefore, it is mandatory that the President consults the Chief and the local authority in the area in which the land to be alienated is situated, as well as any other person or body whose interest might be affected by the grant must also be consulted. In similar manner, an applicant for a leasehold title must obtain the prior approval of the chief and the local authority within whose area the land is situated.

**Box 4** Presidential alienation conditions

“Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure: (a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act; b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a GMA, and the Director of the DNPW, who shall identify the piece of land to be alienated; (c) without consulting any other person or body whose interest might be affected by the grant; and (d) if an applicant for a leasehold title has not obtained the prior approval of the chief, and the local authority within whose area the land is situated. **Source:** Lands Act, 1995:3(4)

Despite the seemingly sound law, there is a weakness with regard to formalities. The statutory forms used in the process of converting customary land to leasehold **do not** include particulars demonstrating whether any other person or body, whose interest might be affected by the grant, was consulted (MD). This omission in the law can render the whole process not to be transparent in effectively guaranteeing the rights and interests of customary land holders since this is not brought to the attention of the Ministry of Lands at the time of granting the land by the Commissioner of Lands. Some Chiefs have been engaged in providing TLHC to try and enhance security (Chief Nduke, etc.).

2) The law has ignored the formal acquisition of land through transfers. It has become common for people to get land through transfers from existing land holders in customary areas. Both the Lands Act and the Lands and Deeds Registry Act do not make provision for conveying, assigning or transferring customary land.

There are a lot of land transactions that had taken place on customary land for which there was no documentary proof that a person in possession or who sold land has rights in respect of the same.

Under the Urban and Regional Act, 2015, land use planning is mandatory in both under state and customary tenure. In such areas, the implementation of land use plans could be accompanied by adjudication and registration of granted rights. This could be the surest way of improving land use as opposed to advocating for the wholesome conversion of customary tenure to leasehold, which most chiefs are currently opposed to (MD,nd).

There is an argument that customary tenure does not afford the security of title or the facilities which a modern economic society requires if it is to function effectively. Customary tenure may satisfy the needs of a subsistence economy in an under populated country, but pressure of population growth, as seen lately in urban areas, will reduce its effectiveness. The population of the country is growing and the idea that every adult man should have a piece of land upon which to grow food and put some infrastructure on his or her land should take into account the need to increase leasehold land.

The categorisation of land into customary land and State land has continued to create an imbalance in terms of land and infrastructure development between the two categories of land. In as much as there is a high demand for land under State land, more land should be carved out of customary tenure and converted to leasehold. Failure: The present statutory law has not addressed the increasing demand for land and the problem of dual land tenure system.

### **2.5.3 Conversion of customary to leasehold tenure**

The law governing land alienation under customary land is basically customary law based on rules, traditions and customs practised by the tribes in each locality. However, a person who uses or occupies land in a customary area may convert it into leasehold tenure<sup>48</sup> and

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<sup>48</sup>as provided under the Lands Act, 1994

alter the nature of their rights to *de jure* control and thereby increase security of tenure in two ways: the conversion of customary to leasehold tenure under the Lands Act and lands regulations; or perpetual succession to land through incorporation under the Land (perpetual succession) Act. However, because customary tenure is already seen as legitimate *de facto* ownership of lands, many communities do not see the benefit of formalizing titles, which could leave them vulnerable to subsequent regulations by national authorities in the political administration<sup>17</sup> (IDLO, 2011). In this process of altering from *de facto* to *de jure rights*, chiefs play a significant role. The procedures, in form of a set of instructions, for applying for a lease are set out in *Administrative Circular No 1* of 1985 (i.e. non-statutory document) and also described in the Draft Land Policy:

- 1) Once land is acquired through the process outlined for acquiring customary land space, the process of conversion to state land or leasehold may begin (in cases where the chiefdoms do not restrict).
- 2) The map of the area is obtained from the ministry responsible for land, services of a land survey are also obtained and then the map is presented to the local authority to avoid conflicts in the details, and especially state land and customary land interests.
- 3) The map is then taken to the chief with an application for conversion, endorsement and form to fill. There are different requirements depending on the lease type. The registration of a 99-year lease requires<sup>49</sup> to conduct boundary survey as set out in the *Land Survey Act, 1960* and *Survey Regulations 1971*. An interim or provisional 14-year lease can be granted on the basis of a sketch plan.

Should the application be approved by the chiefs' council/district council, the applicant is interviewed and the council inspects the land to ensure that there are no issues with the land, which may not always actually happen in practice. Further, planning authorities are required to draw site plans for the areas and the committee interviews the applicant. Upon success, the Council Secretary recommends the allocation of the unnumbered plot to the ministry of lands<sup>50</sup> (Muleba, 2012). Chiefs see the gradual erosion of their authority over land as seriously undermining their power and a harbinger of landlessness and social disintegration. They react in very different ways, and it is worth reviewing their comments on these issues (Roth and Smith, 1995).

- 4) A recommendation is then made to the provincial lands office for an offer letter to the applicant
- 5) An application is then made to the ministry responsible for lands for a formal title from the Commissioner of Lands, within the allowable limits.
- 6) The ministry responsible for lands then sends a surveyor to survey the land (private surveyors may also be engaged). The surveyor then makes recommendations to the Commissioner of Lands whether the applicant should be given the title or not.

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<sup>49</sup>under the Lands and Deeds Registration Act,

<sup>50</sup> Martin Adams, 2001

7) If the recommendation is favourable, the title (or conversion) is given. Once the procedure is complete, the land immediately changes from customary to state land<sup>51</sup>.

a) Acquiring state land

For state land acquisition, the scenarios are elucidated thus, covering acquiring land for largescale agricultural investment under the farm block development (FBD) schemes, and purchases from the land banks. There is a point of contention regarding that the land does not/cannot revert to customary land tenure. However, in practice there are cases in EP e.g. Nyimba District where forest reserves have been degazetted and land given back to customary tenure after which land was transferred to local community members.

1) Transfer of land for FBD schemes

Both contract farming and 'block' farming in Zambia started in the late 1940s (e.g. Mkushi Farm Block established in 1947) with prominence in the 1960s and 1970s under the government's parastatal companies, where quasi-government institutions provided small-scale farmers with extension, credit and market outlets for cotton and maize respectively. The block farming developed during the era of land consolidation and investment in infrastructure was used to promote commercial agriculture, often linked to 'settlement schemes', and as a large-scale block farming model, it involved mainly commercial farmers with no smallholder relationship. In recent times, there has been a drive to link smallholders with large-scale capitalist agricultural 'estates', largely through private-sector-managed outgrower schemes. The current government-led FBD initiative involves the acquisition of blocks of land in customary management areas of not less than 100,000 ha (Matenga, 2017) .

In Zambia, government development objectives have prioritised the commercialisation of the smallholder sector through outgrower schemes as a way to integrate poor farmers in rural areas into the national economy (Matenga, 2017). As of 2008, the FBD concept has been the most promoted method by the GRZ, and is being accelerated (Box 5).

**Box 5** GRZ prioritizes acceleration of development of farm blocks

Minister of Agriculture and Livestock, Given Lubinda, says he will seek intervention from Cabinet to accelerate the development of all the remaining nine farm blocks in the country to enhance agricultural development in the country. The Minister said the ministry will strategise on how to hasten the development of the farm blocks to improve agricultural activities countrywide. I am personally not happy with the slow pace of the development of farm blocks. In 2006, Government identified areas countrywide that will be turned into farm blocks. Each farm block was designed to have at least one core-venture large-scale farm of

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<sup>51</sup>Honig & Mulenga, 2015.

10,000 hectares several farms of 1,000 to 5,000 hectares, and small-scale farm holdings of between 30 to 3,000 hectares, preferably out-grower schemes. The minister said the farm blocks provide both local and international investors ready access to already surveyed land for agro-product processing. Agriculture is one of the largest employers in Zambia, hence the need to develop the sector to its full capacity. The farm blocks which have remained undeveloped, or are being developed include the Mwase-Mphangwe in Lundazi District with 100,000 hectares<sup>52</sup>.

Farm blocks have been identified in each of the nine provinces for large scale agricultural investment, with Chikumbilo farm Block in Zumwanda Chiefdom, Lundazi District. The farm blocks are at different development stages as implied by the Minister of Agriculture (Figure 7).

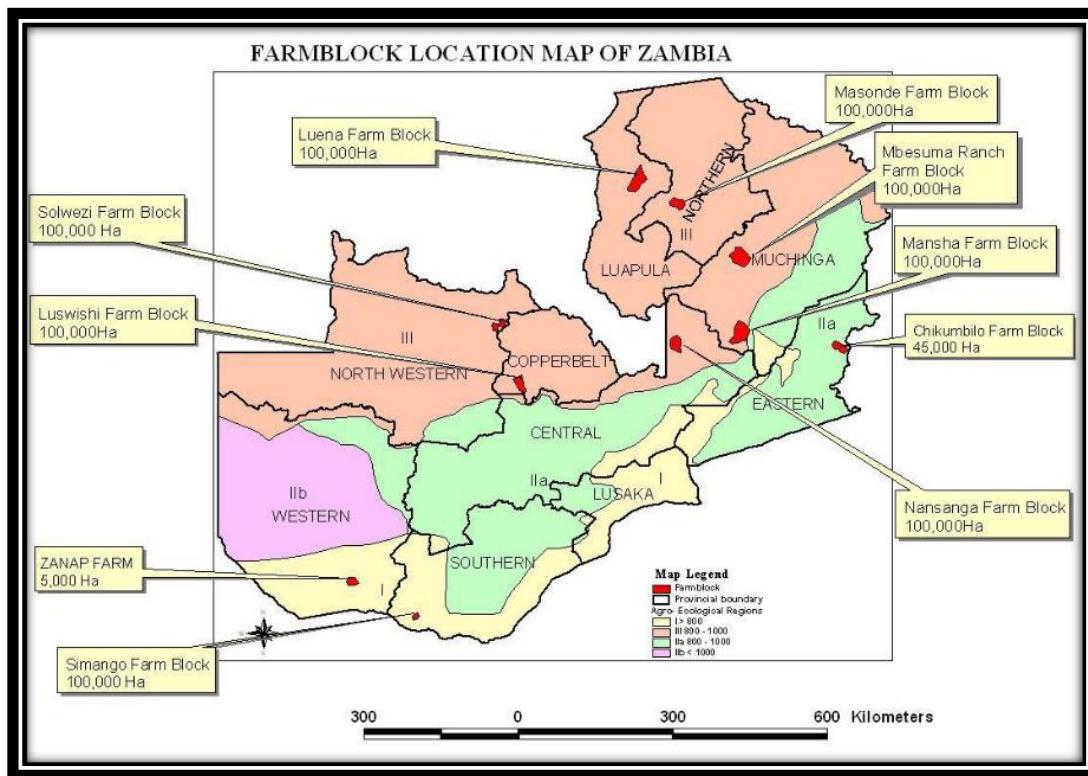
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<sup>52</sup>Nkweto Mfula, Chingola. Undeveloped farm blocks worry Agriculture minister. May 15, 2015. <https://www.daily-mail.co.zm/undeveloped-farm-blocks-worry-agriculture-minister/> accessed June 10, 2017.



The FBD programme objectives (MAL, 2015) are to:

- commercialize agricultural land and exploit its full potential in order to attain economic diversification and growth
- enhance food security through production of adequate food
- open under developed rural areas, reduce poverty and minimize rural-to-urban migration
- add value to agricultural products by processing them into products ready for the market



Source: MAL, 2015<sup>53</sup>.

**Figure 7** Farm Block Location in Zambia showing Chikumbilo Farm Block in Eastern Province

There are a number of challenges associated with the FBD process:

- Financial Resources –Due to limited financial Resources, it has been a challenge to put up infrastructure like power, roads, bridges, dams etc.
- Some investors want to acquire land for speculative purposes. They acquire land for other purposes other than farming

<sup>53</sup>Investment opportunities in agriculture. Ministry of Agriculture and Livestock. March 2015.

In Eastern Province there is Chikumbilo Farm Block in Chief Zumwanda's Chiefdom. The block is underdeveloped, (MAL, 2015; Cheelo pers. com) has about 54,000<sup>54</sup> ha land secured and soil feasibility studies done. The remaining 46, 000 hectares are in principle acquired from Chief Magodi. However the Chief awaits to see developments in the Zumwanda block for him to release the land. The environmental impact and land capability assessments have been conducted.

Many institutions handle the processes associated with land transfer for the farm block. For example, the ZDA awards core venture land parcels and commercial farms, while the Ministry of Lands handles the process for awarding the small outgrower farms (Mousseau and Mittal; 2011; ZDA, nd.<sup>55</sup> ). Under the FB, the two main stages of land acquisition are:

- Stage I, pre-qualification where prospective investors are asked to pre-qualify for the bidding stage, based on both technical and financial criteria<sup>56</sup>. The technical aspects involve investors with experience in development of agricultural infrastructure, large-scale agriculture, commercialization and management of out-grower schemes, including agri-business operations. Financial requirements for the commercial farms are similar, but prorated based on farm size and whether public or private, and for the core venture they include market capitalization if publicly traded, and in shareholder's equity if private.
- Stage II, provision of a detailed proposal by bidders successful in the first stage and selection/awarding of land.

The land transfer process is consultative whereby when land is earmarked for alienation as farm block or resettlement schemes, discussions are held with the chiefs' council (in some cases) and individual chiefs. In the process of providing land in the resettlement, the DOR in the Vice President's Office selects those going into resettlement schemes through the use of a committee comprising chiefs. The purpose of the committee is to secure the right of local people who want to go into this settlement area, and to ensure they are not discriminated against (Muleba, 2012). For details on the process, refer to section on **Resettlement, Settlement and Relocation Experiences**.

## 2.5.4 Acquiring state land

### Acquisition from land bank

Land acquisition for new investments in Zambia involves the state allocating leases on land held under the land bank (Matenga and Hichaambwa, 2016). The ZDA, in anticipation of the increased demand for agricultural land from foreign investors, has been quietly assembling

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<sup>54</sup>Mr. Joseph Cheelo, pers. com. 19 June 2017(Land husbandry Officer, Ministry of Agriculture, Chipata, Eastern Province)

<sup>55</sup> Zambia Development Agency. Investment Opportunities. Projects Dossier, *Promoting Economic Growth and Development*

<sup>56</sup>This includes a non-refundable application fee for core venture, for commercial farms) which was USD 5,000 and USD 1,000 for the Nansanga Farm Block in Central Province.

land that is ready for lease. As of 2011, there was 500,000 ha of state-owned land available in the land bank throughout the country. In 2016, the land bank has xx ha. Of which xxx in in eastern Province. The land is converted from customary land before inclusion in the land bank. To avoid speculation, the lands in the bank are not actively marketed (Mousseau & Mittal; 2011). However, there is scanty information on this land category. It appears it is the same as the FBD concept. Inquiries at ZDA indicated unclear position on this<sup>57</sup>. Therefore, it is was not established how much land is under is reserved for development under this initiative at both national and EP levels. It is not clear whether this land can be assessed for forestry initiatives as well.

### Acquisition other state land from government

The Lands and Deeds Registry Act, 185, provides for the transfer and transmission<sup>58</sup> of registered land. The three scenarios here are:

- Investors may identify specific parcels of land they wish to acquire.
- Investors may approach the ZDA who may match up their needs with available state land. Parcels of state land are issued through a competitive bidding process.

Under 64(1) of the ZDA Act, 2006, the ZDA Board, in consultation with the Ministry responsible for land, shall assist an investor in identifying suitable land for investment and shall assist the investor in applying to the responsible authorities for land, in accordance with established procedures. However, the investor bears all the costs and fees associated with the land investment. Depending on the nature and complexity of the proposal, the processes may last from several months to several years.

### 2.5.5 Purchase from other owners or individuals

There are land transactions involving the direct sale of lands from a legal land owner. These seem to be from medium-size farmers to large-scale investors (Mousseau & Mittal; 2011). However, land is also sold privately by small-scale farmers. The process of acquiring land in this category is outlined below (TIZ, nd.):

- *The seller.* Before any transaction, the seller has to request for consent to sell the land from the ministry responsible for lands using a statutory form. In essence, the seller is requesting for 'consent to assign land from the state. The seller is supposed to pay property transfer tax at the Zambia Revenue Authority.
- *The buyer.* The buyer needs to conduct a search with the Registrar of lands and deeds in the ministry responsible for lands to ensure the land is really there and verify that the person selling the land is the legal owner.

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<sup>57</sup> Discussions with Mr. Mwanakatwe, June 2017.

<sup>58</sup>the Lands (Fees) Regulations, Schedule (Regulations 2) sets out Fees for transactions in land

- *The registrar.* The registrar will issue a *non-encumbrance certificate* if satisfied that all is in order.
- *The buyer and the seller.* The two then complete the deed of assignment. The buyer takes the deed of assignment for registration at the lands and deeds registrar and pays the registration fees, presenting also the following documents: seller's title deeds, transfer tax payment receipt, tax clearance certificate and Form DR 53 (which captures more details on: the buyer, property number, etc.) and the receipt of payment of registration fees.

The number of such cases in EP and Zambia as a whole were not accessible.

## 2.6 Experiences and practices

Pressurized with the current trends of commercialization and privatization of land, chiefs are releasing customary land for conversion to state land. In conversion of customary land to state land, there are many recorded cases where chiefs have given out land without prior consultation or considering the interest of their subjects, thereby weakening tenure security in customary landholders and increasing conflict in rural communities, in the process causing conflict and poverty (Muleba, 2012).

The continued ability to use the land depends on the chief, and the chief has limited accountability to his subjects as most chiefdoms are hereditary in nature (although there are considerable variations between different chiefdoms in terms of land management practices). However, security of tenure may exist in that there are no ground rents, and there are opportunities for redistribution, noting also that being non-elected persons chiefs may not mean limited accountability.

Many chiefs dramatically underestimate the value of the land that they give to investors (foreign or local) largely because technically, the land has no value until converted to state land i.e. becomes a saleable commodity. The land value is usually a fraction of the cost of going through the ZDA sanctioned process. For example, all it may require to secure land from a chief is a new car, upgrade to the palace or chief's house, or other gifts. Some chiefs also respond very positively to some of the promised benefits that would accrue to their chiefdom from the development including jobs, infrastructure development, etc. (Mousseau & Mittal; 2011).

Under the current land tenure system, there is no provision for land that has been converted to state land to be reconverted to customary land and so all customary rights attached to the land are expropriated (Honig and Mulenga, 2016). However, unlike other categories of state land, forest reserves can revert to their initial land tenure type. There are a variety of current cases of both chiefs and state authorities (particularly for townships) making requests to have forestland degazetted so that it can return to their control e.g. Chimaliro forest reserve in Lundazi where Chief Magodi is asking for its excision. This is the condition upon which land is converted under the reservation to a forest

reserves, local or national. These alienation decisions have high stakes for the community (Honig and Mulenga, 2016).

In Eastern Province, the Chipata District Land Alliance (a Non-government organizations (NGO), has piloted and facilitated land certification processes with support from the USAID, with 6305 traditional land holding certificates issued. There are similar cases in Nyimba District in Nyalugwe and ndake chiefdoms. The Petauke Land Alliance is being supported by USAID to document an entire chiefdom<sup>59</sup>. Under this project the two hallmark principles of Customary Land Certification applied were:

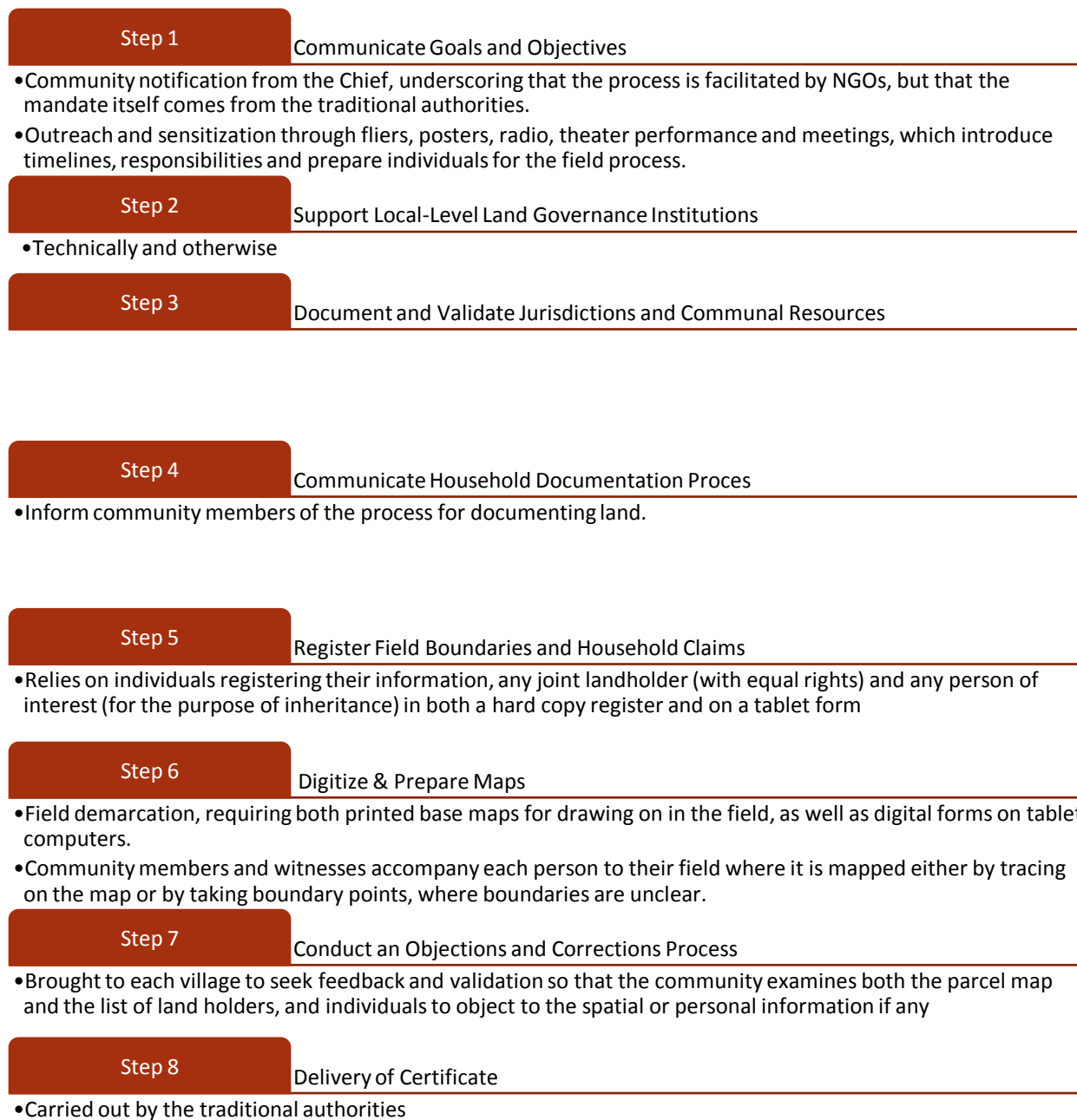
- To provide a replicable, low-cost, locally legitimate, transparent, sustainable and flexible process to support traditional authorities in systematically documenting village boundaries and household land.
- Support a simple, but comprehensive system for long-term spatially-explicit data management.

Through the project, the eight land certification steps in [Figure 8](#) were found to satisfy the two principles above (Somerville, 2015<sup>60</sup>; Mulenga and Miti, 2016). Based on the evidence from Chieftainess Mknada in Chipata during the field visit, this pilot process has been successful and may be adopted and scaled up. The experiences shared by Chief Nyalungwe and Chief Ndake in Nyimba District as well as Raymond Kaima, are also in favour of such an innovation.

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<sup>59</sup> Matt Somerville, comment to the first draft of this report

<sup>60</sup> Low Cost Land Documentation Technical Workshop Summary. 11 August 2015. Cresta Golfview Hotel, Lusaka Zambia. Tenure and Global Climate Change (TGCC) Project



**Figure 8** Pilot process for the Traditional land holding certificates by TGCC/USAID

## 2.6.1 Security of Tenure

The dual land tenure systems (customary and state land) are often times in conflict with each other. Argument borders on which tenure system offers more security<sup>61</sup>. For Zambia, the case has been that of legality versus social legitimacy in land ownership especially with regard to the law that recognizes customary law in tandem with privatization of customary land, thereby presenting challenges in its interpretation (Mushingi and Mulenga, 2016). Based on the box below, further assessment is recommended to under the situation at provincial level.

In my chiefdom, we have started putting wives and children as the next of kin in land issues; this has helped us to keep track of land owners. The practice is also discouraging the indiscriminate sale of land, we only give up to 20 hectares even if people involved have enough money to buy more than that, Chief Ndake said. He said more than 50 percent of land in his Chiefdom is owned by women. Source: Mwape Mwenya, Lusaka, September 2, 2015<sup>62</sup>.

**The debate on security of tenure in customary land** has continued to date without conclusive evidence that customary areas hinder the development of markets and lessen the ability of rural development to take place (Brown, 2002). This has led to the call for land tenure reform. The customary tenure encumbers commercialization; it is insecure, lacks certainty and frustrates rural land markets, but it supports the rights of smallholder farmers. The perception of the Zambian government has been that in order to develop, there is need to open up customary land for foreign investors (ZLA, 2005; Mudenda, 2006). Other arguments are that lack of title in customary lands brings about insecurity because rights are not recognized and protected by law. The implementation of the 1995 Land Act was driven by these and other arguments.

The major argument on customary tenure has been security in land holding (Honig and Mulenga, 2015). Land tenure security is often associated with Land titling<sup>63</sup> and land registration. Secure individual tenure, and a free land market, has been promoted in the belief that they will lead to higher levels of agriculture investment and productivity and thus provide a firm basis for national growth and development (Quan, 2000). Access to land, or purported insufficiency thereof, does not appear to be an immediate and significant constraint on farm output. In a study in Southern Province, 48% of respondents confirmed that they did not cultivate all of the arable land available to their household in some seasons among the major reasons being: lack of animal traction (38%), seed (19%),

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<sup>61</sup> [http://www.un.org/esa/dsd/dsd\\_aofw\\_ni/ni\\_pdfs/NationalReports/zambia/Land.pdf](http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf)

<sup>62</sup> **Introduce customary land certificates.** September 2, 2015. <https://www.daily-mail.co.zm/introduce-customary-land-certificates/> accessed: 10 June 2017

<sup>63</sup> Smith (1999) defines title as the degree of control, use and enjoyment that are recognized and protected by law.

fertiliser (16%) and intentional fallow (13%). Land tenure security, or purported insecurity, was not cited by most respondents as an immediate and major constraint on agricultural performance. Other factors appear more significant in the short term, especially: reduced access to credit (which constrains use of intensifying inputs like hybrid seed and fertiliser); loss of livestock (which constrains area under cultivation and also access to credit, livestock being useful collateral); inadequate household labour for cultivation (exacerbated by loss of animal traction), and unfavourable recent weather patterns (*Smith, 2001*<sup>64</sup>).

However, conflicts exist that have been exacerbated by the process of economic reform, such as liberalization of land markets. As a result, wealthy Zambians and foreign investors have been buying land previously held under customary tenancy by the rural poor (Mudenda, 2006). The growth of emergent farmers in Zambia is primarily attributable to land acquisition by salaried urbanites and by relatively privileged rural individuals, larger land holdings being concentrated among those with title to their land. These conversions are heavily concentrated in the areas close to urban areas with relatively good access to markets; 73% of the acquisitions occurring in the relatively urbanized provinces of Lusaka, Central, and Copperbelt (Sitko and Jayne, 2014<sup>65</sup>).

***Recognition and respect for existing rights and their enforcement.*** The majority of rural people, hold land under customary tenure. Rural people's right to access, use and administer such land is well recognized by the Lands Act, 1995. Despite the customary law recognizing the rights of customary land holders, in practice individual rights are often open to abuse largely because they are not recorded. The law in Zambia allows individuals to hold land under customary tenure with their rights protected within the limits of custom and tradition, and grants rights to customary authorities to administer such land in their areas. However, there is no legal instrument that limits the chiefs' discretionary powers in the administration of land (Mulolwa, 2016).

The recognition of customary tenure does not bring about the registration of ownership rights, but only the protection of use and occupancy rights. Customary land is controlled by the chiefs and their headmen but act with the consent of their people (Van Loenen, 1999<sup>66</sup>). Recognition and social legitimacy as Mushinge and Mulenga (2016) put it, is in the sections 7(1) and 8 (1) of the Lands Act, 1995 as the excerpt in **Box 6**. There are interpretation challenges of these two sections among the lawyers and government staff. What appears to be the conclusion is that section 7 (1) merely takes account of the *welfare of the people in a customary area and not necessarily providing security of tenure through ownership*. There is no contradiction between the two sections as it is clear that to convert customary land

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<sup>64</sup> "Land Tenure, Title Deeds, and Farm Productivity in the Southern Province of Zambia: Preliminary Research Findings (Outline)" *Robert Smith*

<sup>65</sup> Sitko N. J. and Jayne, T.S., 2014. Structural transformation or elite land capture? The growth of "emergent" farmers in Zambia. *Food Policy* 48 (2014) 194-202

<sup>66</sup> Van Loenen, B., 1999. Land tenure in Zambia. University of Maine. Department of Spatial Information Engineering. may 1999.



to leasehold title one must first have rights under the customary tenure, therefore consultations with the chiefs, local authority (and DNPW in case of GMAs<sup>67</sup>) are mandatory under section 3 (4) (a-b) of the Lands Act. The real emerging issue is that people are ignorant of the provisions of the law on procedures of land alienation, which costs them their rights. Individual title ownership are taken care of by the conversion from customary to leasehold tenure. However, the lack of a legal provision for the leasehold to convert back to customary tenure indicates the *supremacy* of the state (i.e. sec. 8(1) to customary (i.e. sec. 7(1) tenure. Thus, even if the customary tenure is recognized under section 7(1), it cannot provide security of tenure because it does not provide entitlement. This is a clear case of legality taking central space and supremacy over social legitimacy: recognition without legal protection. There are arguments that to some extent the chiefs are to blame the loss of the vested rights (Section 4) as they do not consult their subjects on matters of land conversion to leasehold tenure (Mushinge and Mulenga, 2016). Once land tenure slides into leasehold, the rights enjoyed on previously customary tenure practically no longer hold as private entity owners discourage them, for example, some the game ranchers in Nyimba's Nyalungwe chiefdom who even refuse the traditional leader entry in their property. The recognition without legal backing could be a risk to community forestry under ZIFLP, as CF is by forestry law practiced and thus based largely on customary rights. In this case, as put by Adams (2003:20), it *may be appropriate to incorporate some essential elements of customary law in amendments to the Lands Act 1995*. This could restrain high-handed chiefs and make them more accountable, but at the same time recognise their essential role in land administration. Amendments should provide for *quid pro quo* under which common law leases could be held on Customary Land. Government is contemplating amending the Lands Act, which might be an acknowledgement that, according to de Nobel (2016), the 1995 Land Act that was meant to privatise land rights and reinvigorate a land market has failed as it disadvantages the rural population who live under customary tenure arrangements. The recognition of customary tenure has implications for the ZIFLP with regard to the carbon rights and other major forest produce. The recognition of rights relating to forest produce could be important to a future definition of carbon for REDD+ (IDLO, 2011).

**Box 6** Recognition and conversion of customary land: legality versus social legitimacy  
 7. (1) Notwithstanding subsection (2) of section *thirty-two* but subject to section *nine*, every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.

<sup>67</sup> ... §4 (b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;

8. (1) Notwithstanding section *seven*, after the commencement of this Act, any person who holds land under customary tenure may convert it into a leasehold tenure not exceeding ninety-nine years on application (Source: Lands Act 1995)

It is important to note that there are legal restrictions on land leases that include the size of customary land that can be converted to leasehold, duration of lease, and lease of land by non-Zambians. Lease of customary land is restricted to 250 hectares or to a 14 year-lease in the absence of survey diagrams. There also conditions under which non-Zambian individuals and entities may engage in lease transactions. The extent to which illegal transactions occur or whether the restrictions are widely accepted is not well known (Mulolwa, 2016) including under this study for EP.

Up to 250 hectares of land under customary tenure held by individuals land can be convert to leasehold, thereby providing opportunities for individualization of land rights, save in practice fettered by bureaucratic procedures and an over-centralized land administrative system to get title deeds. Although the law provides for it, customary land rights are rarely recorded and mapped especially by rural dwellers because of financial incapability to exhaust the process: site plan, consent from the chief, approval by local council where land falls, surveying, and registration (Roth and Smith, 1995; Mulolwa, 2016).

Under leasehold, the law provides for the registration of property rights including those of women. However, the law does not provide for registration of property rights under customary tenure, which affects women (e.g. 50% in Ndake chiefdom) who hold land under customary tenure in that their rights are not lawfully registered (Mulolwa, 2016).

For the rights to Forest and Common Lands and Rural use Regulations, Mulolwa (2016) provides the following scenario.

- Forest are clearly identified and responsibility for use is clearly identified but implementation is unclear.
- The tenure of most groups in rural areas is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced. The users' rights to key natural resources including fisheries are legally recognized but only some are effectively protected in practice or enforcement is difficult and takes a long time.
- Multiple rights over common land and natural resources on these lands can legally coexist and respected in practice but mechanisms to resolve disputes are often inadequate.
- Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist. However, mining rights override other land rights

In addition there are other regulations that are serving a public purpose but are not enforced, for example, most small scale farmers cultivate customary land held in common

ownership with the community although the rights of farmers are individualized even when it comes to transferring such land.

Based on the observations above, Mulolwa recommends adoption of the Customary Land Administration Bill (Act) to formalize customary land rights and protect women's rights to land, and providing for introduction of district land information systems as a policy measure aimed at reducing fraud against illegal land sales of customary and state land. The President named the Bill as a priority during last address to parliament and ministry is actively working on it<sup>68</sup>. The ZLA also called for the finalisation of the Bill to help limit powers of traditional leaders in giving out land, citing an increase in foreigners gaining access to traditional land at the expense of Zambians. The expectation by ZLA is that the Land Administration Bill would usher in order to the way traditional leaders were selling customary land. Different policies and laws guiding customary land was identified as the cause of insanity in selling of land by traditional leaders. There was need for a Land Act that would stop illegalities on land management and allow all Zambians access to land<sup>69</sup>.

*Cause of land the insecurity.* The major reasons for a sense of land insecurity in Zambia including the EP are:

- Having no titles, rights not protected and recognized by law, no increase in employment opportunities and no faith in customary land allocation. There are three main reasons that titles are currently inaccessible to Zambia's smallholder farmers in Eastern Province: the cost and access to information and the prohibitive long procedure. Lack of knowledge of the process, linguistic difficulties working with written English documents, and discomfort with bureaucracy are all real barriers for smallholder farmers to accessing title (Honig & Mulenga, 2015). However, according to Somerville (5<sup>th</sup> February, 2017) the biggest inaccessibility is that chiefs are hesitant to allocate titles to their subjects especially is if the persons are their subjects.
- High demand for agricultural land internationally, combined with the highly negotiable cost of customary land and land speculation.
- Customary system is less secure and predictable than it used to be (Adams, 2003). In EP (Chipata) and Southern Province (Gwembe) a number of land holding certificates have been issued villagers by some chiefs as a form shield against loss of land to leasehold. A number of initiatives are piloting new ways of securing land rights and ownership for the majority of Zambia's poor rural households through a project encouraging traditional chiefs to issue Customary Land Holding Certificates. The concept for such interventions is to empower the poor and marginalised communities to hold local leaders accountable in administration of customary land. (Moombe, 2016; Zulu, 2015<sup>70</sup>). A

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<sup>68</sup> Matt Somerville comment on the draft report

<sup>69</sup> Customary land administration Bill on card. Posted On: April 1st, 2017 | Updated On: April 1st, 2017. online: <http://ukzambians.co.uk/home/2017/04/01/customary-land-administration-bill-on-card/> accessed: 02/08/17

<sup>70</sup> New Models of Securing Customary Land Piloted in Zambia. 20.08.2015 by **Bellah Zulu**.

<https://www.danchurchaid.org/layout/set/print/news/news/new-models-of-securing-customary-land-piloted-in-zambia>

majority of respondents on both State lands (59%, or 91% of those who don't already have a title) and traditional lands (52%) expressed a desire for titles. The majority cited avoiding risk of dispossession (78%) as the major reason. Others indicated the desire to protect fixed investments (55%) and guarantee of handing down land to children (50%), while 7% wanted title in order to use land as collateral for loans (Smith, 2001).

- One of the telling sign that the current customary system is no longer effective and is only becoming more insecure is the frequency of chiefs converting customary land to personal titles for themselves and for their family members ().

*Impact of land insecurity.* Some of the impact include:

- Higher than assumed potential and actual level of insecurity among smallholder farmers(Honig & Mulenga, 2015).
- The conversion of customary land to state land has created conflicts in form of evictions, displacements, elite capture, land grabs, subdivisions and enclosures of common pool resources, etc. in many rural areas of Zambia. Traditional rulers are particularly at the centre of the land reform controversies. The chiefs are prepared to frustrate any efforts that seek to weaken their longstanding traditional role of ensuring that social peace and the traditional political structure are maintained through equal access to rural resources (Ng'ombe, n.d.; Mushingi and Mulenga, 2016). Chiefs resisted the 1993 Land Bill (which became law, anyway) precisely for this reason of avoiding their power being undermine (*ibid.*). Ignoring the traditional rules' perspective is evidence of weak appreciation of the customary tenure system.
- It has been observed in areas converted for tourism purposes, under the premise of market based land reform that local people have lost full access to common pool resources upon which they have depended for their livelihood, for example, for game ranching in Chief Nyalugwe's area, Nyimba district (Moombe, 2016) . Because of these reforms, for example, some villagers in rural areas become squatters overnight after investors convert their customary land to private land (Mudenda, 2006).
- Under this 1995 Lands Act, failure to develop land means repossession and lost to other contenders through the commissioner of lands instead of going back to the chief. Further, as part of the conditions for alienation of land, *where a person has the right of use and occupation of land under customary law and wishes to convert such right into leasehold tenure, no consideration shall be paid for such conversion*<sup>71</sup>. Under the forestry law, private forestry tenable on titled land, which may mean that for a person who intends to get incentives as provided under the Forests Act, 2015, will lose consideration under the Lands Act, 1995. Thus, benefits may have to be weighed under the ZIFLP in terms of which options will be popular and therefore attract investment.

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<sup>71</sup> Section 4 (1) of the Lands Act Chapter 184 of the Laws of Zambia

- For the villagers, especially the poor who benefit from the so-called secondary rights through access to natural resources for food and services; this has led to scarcity of land and natural resources as usually large tracts of land are allocated for conversion to outsiders (Mudenda, 2006; Moombe; 2016).
- While Zambia's customary authorities did not initially understand the implications of the Lands Act, now, 20 years later, even chiefs with lower levels of education and connectivity to Lusaka appreciate the permanency of titling customary land (Honig & Mulenga, 2015).

*Dissenting views on tenure insecurity.* Some chiefs and local people however object to the notion of conversions because for them, communal resources act as an important social safety net and people have equal access to the resources that nature has provided (Chinene et al., 1998). Some community members, while they appreciated the support of village boundaries for example in Chipata under the land holding certificate pilot projects, they preferred to continue to manage their fields through undocumented customary norms. This is because most of these parcels are non-contiguous and some community members have rejected the prospect of registering land under another village e.g. if their parcel falls within the boundaries of a neighbouring village (TCCG, 2015). For example, in Barotseland in Western Zambia, it is very difficult to acquire customary land because of cultural attachment to land, a more complex traditional hierarchy, no history of giving land to foreign investors, and a strong sense of ethnic identity. For Southern Province, it could be due to the agro-pastoral systems in southern province (Mousseau and Mittal, 2011).

Despite the lack of formal registration of customary land, recent findings from another USAID-supported study elsewhere in eastern Zambia suggest that overall, customary landholders perceive their (farm)land rights to be fairly secure from arbitrary and uncompensated encroachment or expropriation (Stickler et al., 2016).

The chief's own perspective on whether smallholder farmers should or should not have titles in the chiefdom has created a large variation in where smallholder farmers have accessed land titles. There are some chiefs who encourage and allow subjects to access title to their land and cite access to credit as a key reason behind this. Others attempt to preserve the uniformity of the customary area and allow only usage rights to their subjects.

## **2.6.2 Land cash transactions**

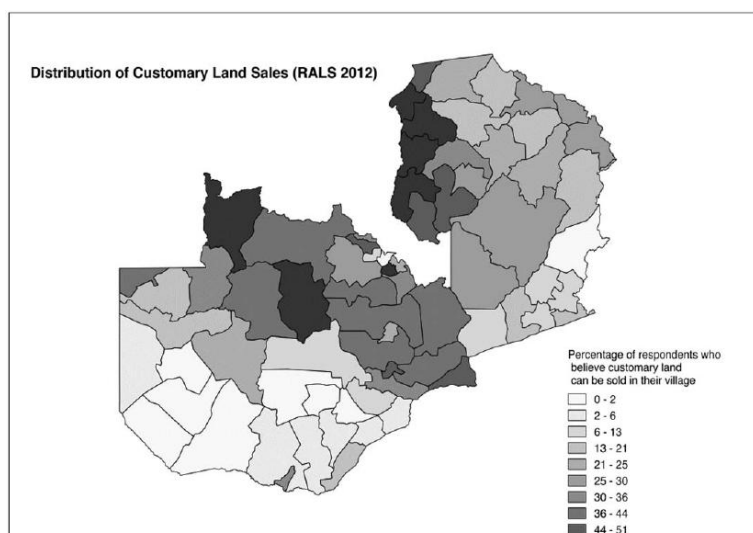
Land transfers, involve both non- and cash transactions. The initial endowments of property rights institutions have determined the current division of land into two basic categories: customary land and state land. While there are a variety of legal differences between these categories of land the differences with the most important practical implications are related to markets and ownership. Legally, customary land is a community resource that has no value because it cannot be sold. This lack of value for customary land is based on a theoretical system of community ownership and community access to the land resources. In comparison, state land is a commodity that can be bought and sold and so has value.

Based on this legal characterisation of land, displacement from titled land, requires compensation for the land and any improvements on it. Displacement from customary land value for compensation is only for the construction or improvement on it, regardless of how long that land has been in a family. Thus, depending on whether the land is titled or not, two similar parcels of land in the same location, may be worth differently in transaction value. This is regardless of having same access to infrastructure, water resources and soil quality (Honig & Mulenga, 2015).

In practice, customary land does have value and all stakeholders involved—from smallholder farmers, to chiefs, to investors—are aware of this. The current high demand for land in Zambia is in fact high demand for customary land. Land sales in Zambia are now far more common on customary land than on state land. About 24% of smallholder farmers cite that land can be sold in their villages, without first converting it to state land. Investors and commercial farmers argue that it is not possible to find as large a parcel as they need on state land, but that it is readily accessible on customary land. Entrepreneurial Zambians seeking land as an investment, retirement activity, or side project prefer customary land for its price. Moreover, since they are able to navigate through the conversion process, they obtain customary land with intentions of titling it in order to increase its value. They speculate on it.

The chiefs, headmen, and smallholder farmers who receive payment in exchange for customary land can only be considered to be accepting a gift and any transparency is undermined by the illegality of the exchange.

**Figure 9** shows the distribution and extent of these land black markets across the country. It is clear from the that land non-taxed [black] markets exist across the country, with the Western and Southern parts scoring relatively low in terms of percentage of respondents indicating the possibility of selling customary land in their area (Honig & Mulenga, 2015). The Eastern Province scores low as well.



Source: Honig and Mulenga, 2015.

Figure 9 Spatial Distribution and Extent of Customary Land Sales

### 2.6.3 Recordation and registration of rights transfers, agreements and cash sales

The potential scale of land documentation in Zambia is enormous. Estimates of the number of landholdings in the country vary from 12 million to 30 million individual parcels<sup>72</sup>. For the EP, most (50.9%) of the land parcels were acquired as new land by the owners, followed by through parents (20.6%) and 13.8% was acquired through inheritance. among the least means of acquiring land were spouse and maternal relatives with 1.4% and 1.1% respectively (De Nobel, 2016). The process of land alienation is completed by land registration. Registration is necessary to have a record of title holders, and the land which has been alienated. Land is registered in the Lands and Deeds Registry, which is the statute that governs the registration of title to land. Land which is required to be registered is land under State land. Land under customary tenure is not registrable. However, it becomes registrable when it is converted to leasehold. The advantage of registration is that security of tenure on registered land is assured.

When land has been allocated to a person, after it is planned, demarcated and surveyed, the interest or right which the person obtains is required to be registered in the Lands Register at the Lands and Deeds Registry. Under State land, land registration is compulsory and any unregistered interest is not recognised at law. Registration of documents in a public office provides some measure of security against loss, destruction or fraud<sup>73</sup>.

<sup>72</sup>Documenting Customary Land Rights in Zambia: A Low-Cost Open Source Approach. Matt Sommerville, M. Mercedes Stickler, Simon Norfolk, Terence Mothers, and Stephen Brooks. [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_World\\_Bank\\_2016\\_Zambia\\_Open\\_Source.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_World_Bank_2016_Zambia_Open_Source.pdf)

<sup>73</sup><http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/1910/Main%20Document.pdf?sequence=2>

The Land register in Zambia provides conclusive evidence of ownership of the land in question. A Certificate of title is conclusive as from the date of its issue notwithstanding the existence of any other estate or interest in any other person who could have derived it from the President by grant or otherwise<sup>74</sup>.

The Lands and Deeds Registry Act provides that; “Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or agreement for a lease or permit of occupation of land for a longer term than one year, or to create any charge upon land, whether by way of mortgage or otherwise, or which evidences the satisfaction of any mortgage or charge, and all bills of sale of personal property whereof the grantor remains in apparent possession, must be registered<sup>75</sup>.” All bills of sale must be registered within three months of their execution, whilst all other documents must be registered within thirty days, ninety days or one year, if within same district as the registry, within Zambia or outside Zambia, respectively. If such documents are not registered within the prescribed time, they become invalid. The effect of failure to register any document required to be registered by law and not registered within the time specified renders the documents null and void<sup>76</sup>.

Despite this, in practice according to Mulolwa (2016), less than 50% of individual land in rural and urban areas is formally recorded and mapped, while also the number of illegal land transactions is high and all ambiguously identified on a routine basis. The existing legal restrictions on land leases are clearly identified but not fully justified or accepted by land users, so that compliance is partial. Only less than 50% of the women’s property rights in lands as accrued by relevant laws are effectively recorded. Equality of women’s property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice.

Three types of registers are kept, as required by the Registrar and Deeds law:

- the lands register for documents relating to land other than land that is on common leasehold
- the common leasehold register for documents relating to strata titles and
- the miscellaneous register for any other document

Any document relating to land that is lodged for registration must describe the land by reference to a diagram, plan, or description of the land<sup>77</sup>, quoting the year and the Surveyor General’s number of the plan, diagram, or description. The interpretation of the

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<sup>74</sup>Section 6(2) of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia

<sup>75</sup>Section 4 of the Lands and Deeds Registry Act Cap 185 of the Laws of Zambia

<sup>76</sup> Lands and Deeds Regulations, rule 3

<sup>77</sup> A diagram means a diagram derived from survey measurements, drawn and approved as per Land Survey Act. A plan means ‘a plan of a piece of land which has been approved by the SG as sufficiently detailed, where the SG is satisfied that for the time being an actual survey is impractical’. A description means a ‘sketch plan of land, showing with reasonable accuracy the position of boundaries of the land in relation to the position of the adjoining land, approved by the SG...’



meaning of plan and description is left to the Surveyor General. The introduction of ‘plans’ and ‘descriptions’ was intended to circumvent cadastral surveys.

For priority of registration of interests, the base principle in the system of registration of deeds and title is that the time of registration determines the priority claim, which is important for dispute resolution in case several claims. In such cases, the date of registration shall be the date upon which the document shall first be lodged for registration in the Registry.

Registration does not cure defects in a document. Registration of a document comprises the filing of the document, or a certified copy, and entry in a register of the names of parties, date of the document, date of registration, and a brief description of the document. The registers and their related files are kept separately. Documents are filed consecutively. The registry may be searched and examined by anyone, and certified copies may be obtained, if required, upon payment of a prescribed fee (Mulolwa, 2016).

Mulenga and Miti (2016) observed that in Chipata district the rules and policies governing the allocation and use of customary land are informal and undocumented. The individual smallholders commonly have no documentation of their claims or right to land. This resulted in complex land disputes over boundaries, defense of rights in the event of divorce, death of a family member or arbitrary re-allocation of land by chiefs or headmen. Customary tenure systems are generally unwritten—most land held under custom has no formal documentation—with traditional rules passed orally from generation to generation. The land held by each chief, however, is documented and the information held by the government Survey Department. Some chiefs keep records of the land held by their subjects (Veit, 2012<sup>78</sup>) and have even issued land holding certificates with some conditions attached to them for example, no conversion of land from customary to state land (Moombe, 2016). A number of lessons have been learnt from a pilot systematic land registration intervention implemented by TGCC, CDLA and PDLA<sup>79</sup> (Table 1). In terms of lessons, key ones include enhanced governance of, lowering risks, strengthening rights for women and improved intra- and inter-community relations resulting in less displacements and conflicts. All these are critical in delivery on the goals of ZIFLP. Thus, the model of land recordation piloted would be a useful for the project. The challenges that may need to be addressed further under the ZIFLP include resistance to change from undocumented customary norms due to misconception, fear, lack of knowledge as well as inter- and intra-community conflicts.

**Table 1** Summary of lessons: benefits and challenges from a systems pilot intervention in Chipata and Petauke districts, Eastern Province. Zambia.

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<sup>78</sup>Veit, P., 2012. Placing land rights at the heart of development. Custom, Law and Women’s Land Rights in Zambia. Focus on land in Africa. Brief. <http://www.focusonland.com/countries/protection-for-womens-rights-in-zambia/>

<sup>79</sup> Low Cost Land Documentation Technical Workshop Summary. 11 August 2015. Cresta Golfview Hotel, Lusaka Zambia. Tenure and Global Climate Change (TGCC) Project

Benefits	Challenges
<ul style="list-style-type: none"> <li>▫ Better outcomes, lower risks and increased developmental effectiveness</li> <li>▫ Community mapping and land demarcation has enhanced good governance at village level and</li> <li>▫ Conservation and sustainable natural resource practices have been promoted.</li> <li>▫ End displacements without cause;</li> <li>▫ Improved relationships between citizens and their public agencies and fostered stronger ties with the traditional leaders and the local communities due to openness at every stage of customary land certification process</li> <li>▫ Increased transparency and accountability in decision making,</li> <li>▫ Land conflicts have been proactively resolved,</li> <li>▫ Protection of common property resources has been vested in the community.</li> <li>▫ Proof of field ownership and records of land allocations to chiefs available and resolve inheritance issues through the documentation of persons of interest</li> <li>▫ Reduced boundary disputes;</li> <li>▫ Rights of women and young people have been enhanced as joint landholder ownership was encouraged</li> <li>▫ Significant improvement in project design, quality of service and public support through CSO participation</li> <li>▫ Systematic registration of household parcels and communal resources</li> <li>▫ Women’s land rights have been strengthened,</li> </ul>	<ul style="list-style-type: none"> <li>▫ Addressing the interests of families to document group/family land instead of individual household parcels</li> <li>▫ Desire among chiefs to overcharge for land services</li> <li>▫ Fearful misconception by some communities about registration of their land parcels aimed at introducing paying taxes to government</li> <li>▫ Getting community leaders to use the processes;</li> <li>▫ Intensive labor required for any mapping process</li> <li>▫ Intervening in succession wrangles</li> <li>▫ Lack of knowledge among chiefs regarding how much land is under their custody</li> <li>▫ Some community members rejected the prospect of registering land under another village (e.g. If their parcel falls within the boundaries of a neighbouring village).</li> <li>▫ Some community preferred to continue to manage their fields through undocumented customary norms</li> <li>▫ The need for community members to agree on boundaries prior to outside facilitation, where possible;</li> <li>▫ Unresolved inter and intra chiefdom and village conflicts resulted in registration of less land parcels than had been planned</li> <li>▫ Unwilling villages to carry out the process</li> <li>▫ Variability of time required to demarcate fields</li> </ul>

## 2.7 Resettlement, Settlement and Relocation Experiences

In Zambia there are largely two settlement types, which are managed under different government organisations of DoR under the OVP and Department of Agriculture. Key to note is that the administration and purpose of the resettlement differs slightly although the ultimate target is livelihood enhancement. All this is outlined below.

### 2.7.1 Resettlement under the Department of Resettlement

The Land Resettlement programme (LRP) is an inter-ministerial activity executed by the Department of Resettlement (DoR) under the Office of the Vice President. Purpose of land alienation for resettlement schemes is “to make available farm land for the resettlement of the unemployed, retrenched and retired persons who wish to engage in agriculture as a means of livelihood.” The resettlement model or strategy of land alienation incentivizes rural development through being a safety net for the people who are economically vulnerable without other means of accessing land under any category in Zambia (MD). These schemes provide social services and as such target retired public servants, public servants serving on contract or within four years before retirement, unemployed youths and adults, empower the internally displaced communities with safer and secure land on which to settle and vulnerable groups since 1990. In the process of land allocation, the DoR targets persons with disabilities (various physical, etc.), retired and retrenched persons, the unemployed and youths including school leavers, orphans, and reformed street kids graduating from the Zambia National Service training camps. The category of retirees covers persons with 50 years of age or more who wish to retire, and undertake agricultural activities. Retrenchees comprise persons whose employment is pre-maturely terminated before they are ready for retirement.

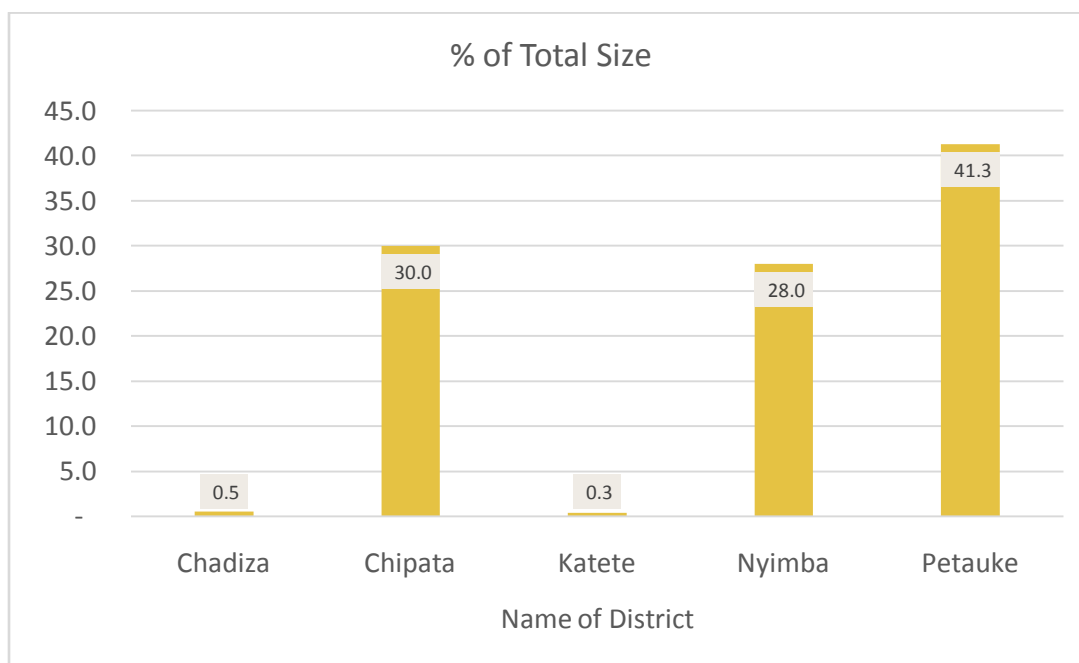
Resettlement schemes promote planned settlement, create opportunities for self-employment, and improve utilization and access to socio-economic infrastructure. The gist is to provide security to and bring the current idle arable land under cultivation by people who are willing to engage in productive agriculture. The broad concept for the LRP is to increase the food security, bringing about more efficient utilisation of social services in rural areas through the creation of viable settlements as opposed to unplanned scattered resettlements, devising a suitable land settlement policy and procedural guidelines and creating new focal points for rural investment and development (Makupa, 2014<sup>80</sup>; MD, nd).

According to the interviews and information from literature accessed from the Resettlement Department in Chipata, there are eight resettlement schemes in Eastern Province with a total land size of 75, 118 ha located in six districts with the largest being in Petauke at Ukwimi and biggest number in Chipata district (Figure 10 and Table 2). The first of these schemes

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<sup>80</sup> Government Led Resettlement: Experiences in Zambia – Challenges and Lessons Learned. Presentation to Resettlement & Livelihoods Symposium held from 20-24 October 2014 in Kruger National Park, South Africa. Presented by Jackson Makupa- Principal Resettlement Programme Officer, Office of the Vice President, Department of Resettlement, Zambia.

(i.e. Chipangali) was first established in 1950 and the latest scheme (Munukwa) was established two years ago to resettle some internally displaced people. The schemes are on state land that was alienated from customary areas.



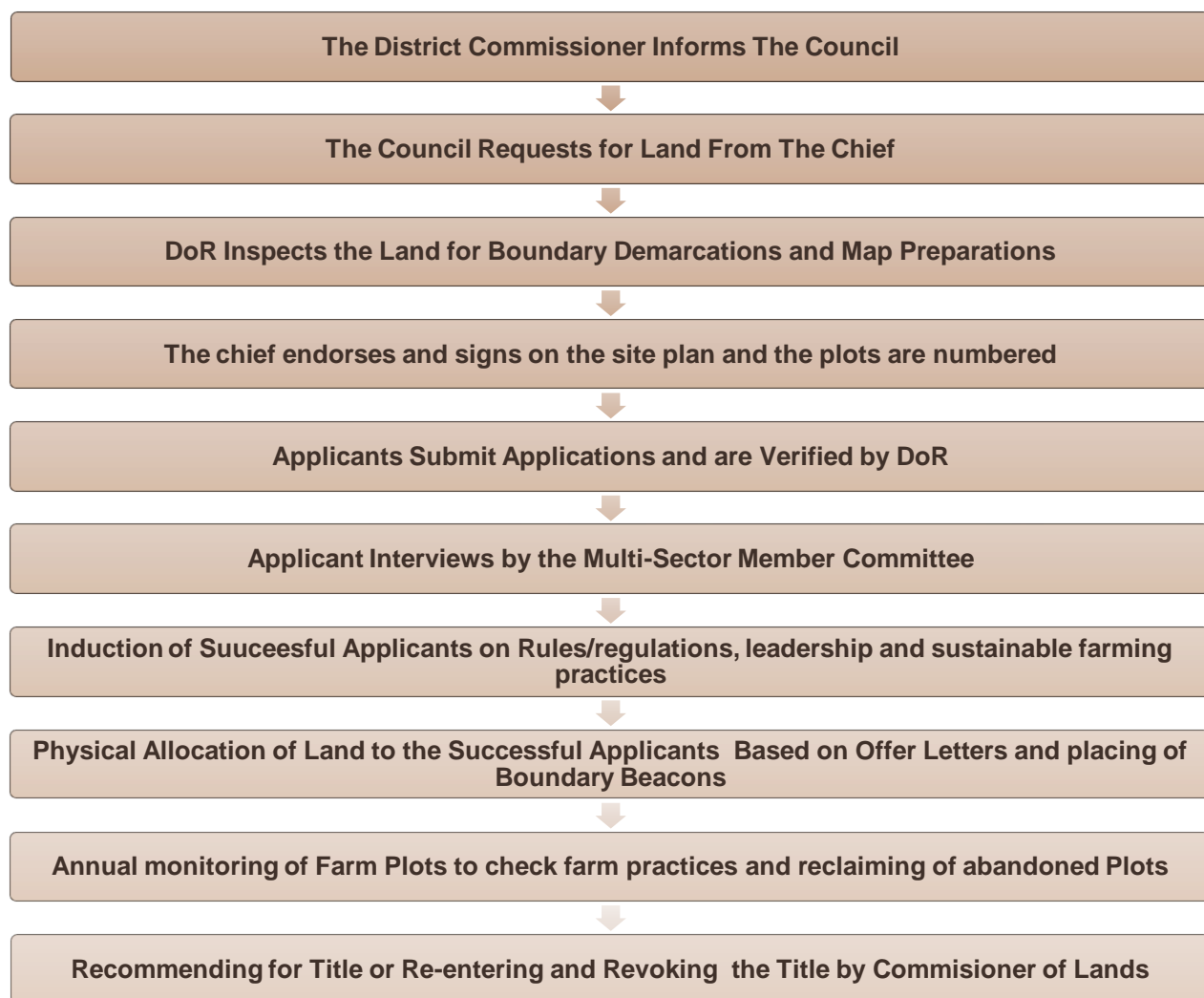
**Figure 10** Resettlement schemes by district, Eastern Province, Zambia

**Table 2** Resettlement schemes in Eastern Province, Zambia

Scheme ( <i>Constituency, Ward, Chiefdom</i> ), Ha	Ha
M sanzala ( <i>M sanzala, Chisangu, Kalindawalo</i> )	260
M lolo ( <i>Chadiza, Chadiza, Mlolo</i> )	350
M unukwa (?)	450
M isholo (?)	1,000
C hipangali ( <i>Chipangali, Chipangali, Sairi II</i> )	1,058
M adziatuba ( <i>Chinunda</i> )	20,000
M tilizi ( <i>Nyimba Central, Ndake</i> )	21,000
U kwimi ( <i>M sanzala , Mawanda, Nsandwe</i> )	31,000
Total, Ha.	<b>75,118</b>

The main activities on the schemes are agriculture and infrastructure development, and the DOR ensures that there are multi-disciplinary extension services provided to the communities. Aside from government, a number of faith based, marketing, and other institutions participate and support the schemes.

The resettlement schemes are on state land that was alienated from customary areas. A multi-sector nine-member provincial committee meets to interview the applicants to the scheme. The membership of the committee includes resettlement, lands, water Engineer, District Secretary or Council Secretary, chiefs and traditional affairs, community development officer, a representative of the Chief for the area within which the scheme is situated, area councilor and members of parliament. Land acquisition process for the LRP, which is consultative is as in [Figure 11](#).



## Figure 11 Land acquisition process for the Land Resettlement Programme

The making recommendations for title to the ministry responsible for lands is only done after a two-year or 18-month observation window (MD, Muleba, 2012). The criteria for recommendations include: consistence in participation in community projects (self-mobilisation), development done on the farm plots. Once title are given, the mandate of the DoR ends, and land department takes over. There has been no resettlement of people from state protected areas like national parks, forest reserves, etc. However, there have been many evictions as the respective laws dictate over the past 10 years ([Section 2.7.4 Evictions](#)).

### Institutional framework and Collaboration

The DoR is responsible for the general administration of the resettlement programme, and carries out the activities of land acquisition, and dispute resolution, monitoring of the national programme, inter agency and stakeholder collaboration, facilitation of multi-disciplinary extension services in resettlement schemes, farm plot demarcations; and socio-economic and physical surveys (MD). The Department also carries out scheme infrastructure development e.g. access roads, wells, and boreholes, rural health centres and storage sheds. If occupied, the people present are considered and offered space.

Institutional arrangements and infrastructure. The DoR organizes the settlers into self-managing communities. There are three categories of plots: 4-10 ha (50% of the land), up to 20 ha (35% of the land) and up to 50 ha (15% of the land). The following infrastructure is provided: schools, health centres, roads network, water services, etc. However, boreholes are provided only for up to 10 ha category of plots (Moombe, 2016).

The DoR is responsible for the monitoring of developments in form of inspecting land use and practices in farms as well as the general development. Where the land remains idle for a long time, or where farm plots are abandoned, the Department of Resettlement would withdraw the offer from the developer. In the event that a defaulting developer already has title, the Commissioner of Lands is advised to re-enter the property and revoke the title. The Department collaborates with a number of non- and government organisations, among the key being:

- The Ministry of Agriculture through provision of agriculture and other multi-disciplinary extension services to schemes, demarcation and mapping services.
- The Ministry of Energy and Water Development through joint identification and mapping of schemes most suitable for connection to the national electricity grid in the most effective way and the drilling of boreholes.
- The traditional chiefs at the stage of locating the land and acquisition for the purpose of converting customary into State land in order to establish schemes. The collaboration

further extends to selection of suitable applicants for settlements once schemes are established<sup>81</sup>.

Summary on common challenges for settlement and resettlement involves lack of social and financial capital capacity by the government to support resettlement initiatives tailored to land alienation. In some of the initiatives, local people are not included in land alienation, which creates tension between the government and traditional systems especially under the DoR's resettlement programme. Chiefs have allocated land in resettlement schemes against the programme norms. For example, there are encroachments in the resettlement areas in some attempt to benefit from the government support. This is some reflection of the 'looming' land scarcity as also evinced by numerous disputes over land some of which are fueled by government (Muleba, 2012<sup>82</sup>). Specific issues at national and subnational i.e. Eastern Province.

At national level, the challenges of administration of resettlement schemes include<sup>83</sup>:

- The Resettlement Department is not fully capable to handle the issues of land alienation as it has limited skills in physical planning, and surveying.
- Under resettlement Schemes, there is lack of clear guidelines on who should benefit from these schemes as the original concept of resettling the unemployed and retired persons has been lost, with the effect that any Zambian may acquire land under these Schemes regardless of whether they qualify or not. It is therefore, necessary that the target groups need to be clearly identified.
- Local people are denied plots in the Schemes, and for this reason the traditional rulers have become increasingly reluctant to transfer land for resettlement.
- The rules and procedures for obtaining title to resettlement schemes are the same as those in any other category of land, which makes the schemes less amenable to would be beneficiaries especially when compounded by lack of infrastructure upfront, the laborious and bureaucratic procedures of acquiring title to land in the schemes.

For the Eastern Province level, the DoR governed-resettlement schemes have the following challenges:

- Encroachments into resettlement schemes. The resettlement development is done in stages so people move in area without authority so that they are included for allocation of land. The resettlement scheme has no direct supporting law. Thus, law enforcement becomes difficult at times.

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<sup>81</sup><http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/1910/Main%20Document.pdf?sequence=2>

<sup>82</sup>Status of customary land in Zambia and how it affects the rights of indigenous local communities Michael Muleba, 2012.

<sup>83</sup><http://dspace.unza.zm:8080/xmlui/bitstream/handle/123456789/1910/Main%20Document.pdf?sequence=2>

- The scheme infrastructure is not developed up front. This creates some problems in access where settlers are impatient and move in willingly and knowingly that there is no basic infrastructure and later start complaining about the same, despite settling on their plots
- Insecure livelihoods (Makupa, 2014)
- Increased investment in Zambia's resources means displacement of rural poor exacerbated by poor consultation processes (Makupa, 2014)
- People refused to go to Mnutwa Resettlement scheme. Half of the scheme is still open for settlement. The families do not want to lose their business of crashing stones along the roadsides. They say they will no generate money if they moved to Mnutwa.
- Land for new resettlement schemes is becoming increasingly scarce due to competing demands by individual citizens and investors.
- Tenure of security for resettlers and processing of title deeds for settlers is still low at 6 % of resettled population.
- Slow rate of provision of key infrastructure in the schemes and remain socially and economically unattractive.
- Chief do resettle people in land offered for the LRP.
- Low budget (resources) for the programme
- Disputes over land e.g. in Madziatuba scheme
- Fund releases: e.g. 53.1% of the budget released in 2015

### 2.7.2 Agriculture settlement schemes (Agriculture Department)

In EP there are 20 settlement schemes in 113 camps with 1,089 plots covering a total of 66,743 hectares of land in six districts of Katete, Lundazi, Chadiza, Nyimba, Chipata and Petauke. The largest scheme is in Nyimba with 10,205 ha. The Mwasemphangwe scheme is in Lundazi and operational with a lot of land wrangles amongst the settlers.

For agricultural settlements, the challenges are as follows:

- Chiefs holding back land for settlement due to extended periods of not engaging in developing the areas. This may be attributed to non-availability of written agreements with Traditional Rulers on land acquisition has created disputes in some settlement areas. To minimize land disputes, a vigorous consultative process on land acquisition has been adopted. And all land acquired will have written agreements<sup>84</sup>.
- Non-support to follower farmers, which discourages adoption of Conservation Farming practices. At the start there was 100% follower farmer involvement but dropped due to non-support.
- Withdrawal of packs to lead farmers, thereby impacting negatively adoption

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<sup>84</sup>[http://www.un.org/esa/dsd/dsd\\_aofw\\_ni/ni\\_pdfs/NationalReports/zambia/Land.pdf](http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf)



- Untimely and inadequate funding [structures are ok, transport situation at camp level is that all camps have motorbikes]
- Boundary wrangles
- Low and poor release of funding, for example K12, 500 released against 256,000 for land husbandry budgeted for per year.
- Dependency syndrome of farmers, which results in extended demonstration of technological practices and no or delayed graduation of programmes from demonstration to upscaling.

### 2.7.3 Resettlement under COMACO Better Life Scheme

The Better Life Scheme (BLS) is spearheaded by COMACO in Chamilala area of Nyalugwe chiefdom. COMACO initiated the process to relocate the community (involving 55 households) from where they had been living before to Chamilala based on its Landscape Management Project as the activities undertaken by the villagers was assessed as being incompatible with the sustainable land use. Specifically, the relocation/displacement of the people occurred to try and reduce the destruction of trees for charcoal production that the people had been engaged in along the Great East Road starting from the Luangwa River Bridge. This practice is not compatible with the carbon management for which COMACO engaged communities and other stakeholders. Efforts to relocate and establish the scheme started in 2012, but some meaningful progress was made in 2013 when some people accepted to move voluntarily (after persuasion) even though the actual movement occurred in June 2015. At the time of the study, 69% (38/55) of the total households had been resettled.

Land alienation was through the customary tenure whereby the traditional custodian of the customary land, His Royal Highness Chief Nyalugwe, allocated the land for resettlement under the BLS initiative. Each household is allocated five hectares. The majority if not all of the livelihood activities at household level are supposed to be on this land. Since the land is customary, according to personal interview with HRH Nyalugwe, the land will never be titled to anyone. However, the settlers appear to think that titles will be given. COMACO has made applications for land allocation and result of this application is still awaited from community development. However, the situation is not clear as it appears to be in conflict with the land allocation and conditions spelt out in the certificate I accessed through HRH Chief Nyalugwe (during the interview at his own palace). There is minimal infrastructure development in the scheme e.g. tents are dwelling units at the time of the study, and a borehole.

Resettlement process involved:

- Initial discussions with the HRH Chief Nyalungwe and COMACO
- Search for land where to settle the people within the chiefdom. This included COMACO, traditional leaders or headmen/women.
- Inspection/assessment of the area by multidisciplinary team to check its suitability for human settlement. The team included government departments (agriculture, forestry, policy, education, community development, etc.). The area was assessed as having good soils and near social welfare facilities like a school, water sources, access road, clinic, etc.
- Resettling people. This was done after the chief's consent. It happened only four years after the idea was hatched with one of the headmen moving to the area. The others followed but others refused to move out saying that they would not want to move to a camp as if they were refugees. The implication is that the people who did not move perceive resettlement as dehumanizing. Associated with this perception, some people went and tried to settle in Chief Mpanshya's chiefdom. However, they were refused settlement because they did not follow the normal procedures for seeking settlement.

The institutional arrangement in the BLS is nontraditional and therefore, no traditional leaders (headmen/women) or indunas are involved in the governance of the settlement and its associated activities. Committees with chairpersons govern the residents in resources management, dispute resolution, etc. COMACO and the chieftaincy are also engaged in management of the settlers but at higher level and from different perspective. In EP COMACO is running an out grower/contract farming model and has also since recruited people under this project and is supporting the settlers through its model.

Livelihood activities. People just moved into the area in June this year (2015). At the time of the study, the settlers are engaged in the first agricultural season. They have planted various crops including maize, soybean, groundnuts, etc. They have also put up Top bar hive apiaries at individual level. The settlers have been given small ruminants (10 goats) and local free-range chickens are scheduled to be given (4/household). All these as part of the out grower scheme. Under this scheme, people are trained in conservation farming. Activities include soil ameliorating technologies like planting *Gliricidia*.

Challenges. There are what may be called teething issues that include:

- Lack of roads. Currently the plots are accessed through other people's plots. There is concern from the settlers that the five hectares, which they already think is not enough, may not be reduced to 4 when roads are constructed.
- There are some immigrants from Mozambique that have occupied land left by the BLS settlers. The structures were not destroyed at the time of relocation. However, the settlers said they have no idea about what is happening there because they have never returned there.
- Limited water. The place gets very dry in the hot season.
- Lack of entrepreneurial financial capital for stop gap measures as the out grower support is yet to mature.
- Even if beekeeping is one of the practices already adopted, managing the bees on the five hectare land is not only difficult but also of great risk from bee stings. They think the hives are too close to homestead and will be stinging people in the scheme.

Impact of resettlement. So far, COMACO says there is reduction in the unplanned and illegal use of natural resources especially trees for charcoal production. There are good access to roadside for, which offers a good opportunity for product marketing beyond COMACO.

Future outlook. There are plans to increase and improve the infrastructure in the scheme. The community Development Department will build permanent structures for the settlers. The exact position on this was not established at the time of the study. There will be two to three more boreholes to be drilled to adequately cater for the population. Roads are yet to be done. However, based on the discussion during the study, the settlers feel the future is bright. They are happy. They are optimistic about their settlement area and lives being a lot better in future than where they relocated from and now especially once the challenges highlighted above are addressed.

**Impact of settlement and resettlement schemes.** The oft-quoted benefits for Zambia from large-scale agricultural investment are an improved macroeconomic environment through direct investment and multiplier effects, increase in foreign exchange reserves, transfer of technology, infrastructure development, wage employment and other macroeconomic benefits. At the same time, there is little in the investment agreements that will ensure that these benefits are realized and maximized. The settlement schemes can have both positive and negative results on the human, physical and biological natural resources as summarized in [Annex 2](#). The impacts categories include environmental (deforestation/habitat loss, etc.), displacement (social changes, loss of identity, culture, etc.), food security reduction (temporary interruptions, diets, etc.), loss of access to land, markets and in some cases public services (Mousseau and Mittal, 2011; Muleba, 2012, Honig and Mulenga, 2015).

Through settlement and resettlement, people in customary land lose some or all of the rights that they would otherwise continue to enjoy. According to Muleba (2012), these include rights to:

- Access natural livelihood capital e.g. *natural forest products, open grazing land, etc.*
- Land Usufruct (i.e. land owned over a long period becomes one's land and should be compensated if repossessed, also those with such land must give consent for any change of use).
- inheritance and perpetual succession – free transfer of land to the next of kin on successful generations,
- Benefit sharing on the goods that come from the land (both surface and sub-surface)
- Biodiversity conservation and retention of livelihood assets

#### 2.7.4 Evictions from protected and other areas

By law, no illegal settlement is allowed in a protected area, which include national forests, local forests, national parks and wildlife and bird sanctuaries. Anybody who illegally settles in protected areas commits an offence and liable to a fine or/and imprisonment upon conviction and shall be evicted<sup>85</sup>. Prohibition of unauthorized occupation of land is clearly stated in the lands Act, 1995: *9. (1) A person shall not without lawful authority occupy or continue to occupy vacant land. (2) Any person who occupies land in contravention of subsection (1) is liable to be evicted.* There have been a number of evictions from protected areas at national and Eastern Province level. In Eastern Province, encroachment levels are estimated at 30% of the total area of the forests reserves (Siame, pers. com)<sup>86</sup>. Evictions have also been conducted in national parks with the most prominent one being in Lukusuzi National Park in Lundazi District where 198 villages and at least 2836 households were involved (**Box 11**). The exact number of evictions and displacements (and their associated impacts) due to evictions resulting from illegal occupation of space in in protected areas and vacant land were difficult to obtain. Thus, further assessment is required.

### 2.8 Key challenges in current land administration and management in Zambia

Zambia has been facing a number of challenges in its current land administration and management which need to be addressed in the new land policy<sup>87</sup>(ZLA, 2008). There is centralized state control over land matters, patronage and corruption within Government, local authorities and customary authorities in land delivery. The associated lengthy land

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<sup>85</sup> Section 16 (1)-(3) of the Forests Act, 2015.

<sup>86</sup> Extension Officer, Forestry Department, Chipata.

<sup>87</sup>Meanwhile, Outgoing House of Chiefs Representative, Chief Madzimawe urged the new Chief Representatives to critically debate the draft land policy that was rejected due to lack of consultation from traditional leaders. ource Chiefs in Eastern Province elect new House of Chiefs representatives. By [Editor News|February 9, 2016- 13:37](#) | February 9, 2016 [Community News. http://breezefmchipata.com/?p=6399](#)

delivery procedures cause breakdown in land administration. In turn these create a number of corruption vulnerabilities (Table 3) associated with the different systems of land administration and the transfer of land under each system in Zambia (TIZ/Ministry of Lands, n.d.). The challenges that may be categorized and outlined as below in Table 3 also apply to Eastern Province (Roth and Smith, 1995; Adams, 2003; Mudenda, 2006; Gumbo and Mudenda, 2009; Mousseau and Mittal, 2011; Muleba, 2012; Honig and Mulenga, 2015; Mulenga and Miti, 2016; Moombe, 2016): As highlighted further below, most if not all of these corrupting vulnerabilities form part of the challenges in the land tenure sector including in the Eastern Province. The key emerging challenge themes include:

**Table 3** Corruption vulnerabilities associated with different land transfer scenarios in Zambia

Acquisition process types	Corruption vulnerabilities
Direct lease/grants from the president	<ul style="list-style-type: none"> <li>▫ Abuse of powers since there are not specific guidelines on when the president can give land to a Zambian.</li> <li>▫ Arbitrary granting of land leaves room for abuse of legal provisions, especially if the occupant of the office has little integrity</li> </ul>
Leases from the ministry	<ul style="list-style-type: none"> <li>▫ Non advertising in and lack of a transparent advertising process</li> <li>▫ Lack of feedback to non-qualifying applicants with justification regarding application</li> <li>▫ Prohibitive fees for an average Zambia</li> </ul>
Transaction from individual sellers	<ul style="list-style-type: none"> <li>▫ Information gaps that may result from lack of conducting a search with the registrar of lands and deeds may result in paying none extant land or land belonging to somebody else</li> <li>▫ Lack of proper and complete documentation that may cause an individual to want to bribe officials to induce circumventing laid down procedures and processes</li> <li>▫ Unreasonable prices from the seller that take advantage of the demand for land</li> </ul>
Acquiring customary land	<p>Village heads can be bribed to:</p> <ul style="list-style-type: none"> <li>▫ vouch for individuals and recommend them to chiefs who are not qualified to be given that land</li> <li>▫ allocate land to powerful people/rich individuals which already belongs to their poor subjects</li> <li>▫ surveyors (including officers from other institutions mandated to manage natural resources: forestry, wildlife, agriculture, etc.) maybe bribed to look the other way</li> </ul>

**Source:** TIZ/Ministry of Lands, n.d.

## 2.9 Community Based Protected Areas: Broader Aspects of Management, Access to and Use of Traditional Resources

In Zambia, Forest Reserves, National Parks and Wildlife Sanctuaries, are among the major divisions of state land (Honig & Mulenga, 2015). **Table 4** indicates the extent of these divisions at national and Eastern Province levels. No data were accessed for mining licences in the province.

**Table 4** Area of various land uses in Zambia

Tenure division	Zambia	Eastern Province*
	Size [km <sup>2</sup> ]	
Mining licenses	11 035.23	
Forests		460.22
	75,716.76	
National Parks		12,024
	51,915.38	
GMA's	178,150.82	15,010
Un-captured uses	423,304.81	
	Total	
	729,087.77	

**Source:** Minango, 2015, Forestry Department, 2016\*; Chabwela, 2005\*

### 2.9.1 Protected forest areas: management, accessibility and resources use arrangements

Zambia is of interest to global debates on forest tenure and condition as a result of both the continued dominance of customary tenure systems in rural areas and its high annual rate of deforestation (Honig and Mulenga, 2015; Stickler et al., 2016)<sup>88</sup>. Clear ownership and tenure security have increasingly been recognized as essential pre-conditions for successful REDD+ implementation. In addition, central to alleviating conflicts over land in Zambia is clearer information on the availability and status of land. Forest reserves are included in the state land category (Mulolwa, 2016). As long as the forest is gazetted as National or Local Forest, it is part of the realm of state control, not customary control. However, (*ibid.*) unlike other categories of state land, forest reserves have in the past reverted to their initial (i.e. customary) land tenure type. The public has rights to protected forest areas, and the rights

<sup>88</sup>Does Secure Community Forest Tenure Affect Forest Condition? New Pre-Treatment Evidence From A Quasi-Experimental Evaluation of A REDD+ Project In Zambia1 M. Mercedes Stickler, Heather Huntington, Aleta Haflett, Silvia Petrova, And Ioana Bouvier The Cloudburst Group Paper prepared for presentation at the "2016 World Bank Conference on Land And Poverty" The World Bank - Washington DC, March 14-18, 2016

in National Forests shall, with necessary modifications, apply to any Local forest as they apply to a National Forest and thus exercised and enjoyed in similar fashion (Box 7). Additional rights may be enjoyed on condition that the government Minister responsible for forests identified legally permits acts that do not adversely affect sustainable forest management and conservation<sup>89</sup>. The control and management of Local Forests is the responsibility of the Director of Forestry, unless and until the Minister has by statutory instrument and after consultation with a local community in the area, assigned the responsibility to a local community or joint forest management committee on such terms and conditions as the Minister may determine<sup>90</sup>. The functions of the Department are to do all such things as are necessary for the rationalisation of the exploitation of forest resources and the promotion of sustainable forest management. This includes to control, manage, conserve and administer forests. In similar manner a local authority may apply to the Minister to assume responsibility controlling and managing a Local Forest which lies within its jurisdiction<sup>91</sup>.

**Box 7** Grant of right or interest in National Forest.

Nothing in this Act shall be construed as preventing or restricting the granting, under any other written law for any purposes consistent with the provisions of this Act, of any right or interest in, or in relation to, an area of land comprised in a National Forest, subject to any conditions which the Minister may determine, in consultation with the Director and the relevant regulatory authority under that written law (The Forests, 2015, Section 15(1)).

There are a number of activities done through collaboration by a number of actors in the forestry sector in Eastern Province. For example in Lundazi District, COMACO, Agriculture, Care, BioCarbon Partners (BCP), DNPW, chiefs and traditional affairs are involved in one way or another in forest management related activities. Under the Community Forests Program, BCP has managed to secure about 748, 000 ha for collaborative management with local communities, government and other stakeholders. There are participatory forest management plans developed. When the CFP started, local communities feared that BCP would alienate their land. However, according to the people interviewed during the field work this is beginning to change due to the promise the *social enterprise* has made in its operational areas. This assertion by the interviews is challenged (Box 8).

**Box 8** ... still an active perception by communities on land alienation

... under USAID investments Comment: *Fears by whom? This is still an active perception by local communities, including on the COMACO community conservation areas and other USAID investments in the area, but is untrue. There needs to be a consistent messaging that reflects the reality* (February, 2017).

<sup>89</sup>The Forests Act, 2015, Section 23(3)

<sup>90</sup> The Forests Act, 2015, Section 21(1)

<sup>91</sup> The Forests Act, 2015, Section 21(2)

Like land, ownership of all trees and forest produce on any land in the country is vested in the President. According to Section 3 of The Forests Act, 2015, *the ownership of all trees standing on, and all forest produce derived from, customary areas, National Forests, Local Forests, State Land, botanical reserves and open areas is vested in the President, on behalf of the Republic, until lawfully transferred or assigned under this Act or any other written law.*

The President may, on the recommendation of the Minister, compulsorily acquire under the Lands Acquisition Act any land for the purposes of a National Forest and Local Forest as may be necessary or desirable in the public interest. All land comprised in a National Forest and Local Forest shall be used principally for conservation of forest resources. In addition, there are provisions in the Forests Act, 2015 for other categories of land uses in the spirit of participatory forestry. The private forests, community forests and joint forest management area (JFMA) with clear provisions on the institutional arrangement and guidelines on how to go about setting them and accessing certain incentives associated with these categories of forest management. In terms of tenure, community forests are on customary lands, JFM are on state lands while the PFs is on private or leased land. Traditional chiefs are in charge of resource use on customary land using customs and tradition. Additionally, the institution of chief is engaged with the Forestry Department in the process of allocating areas for timber concessions.

Regulations associated with these categories of land use are still under active preparation or review at the Department of Justice. The Forests Community Forest Management Regulations, 2017 (draft statutory instrument, 2015) indicate that the forest areas eligible for Community Forest Management (CFM) include Open areas, Local Forests and Game Management Areas (GMAs). The draft regulations are closely aligned with the Forests Act, 2015 and identify clear roles for the community and GRZ. Under this proposed legislation, the Forestry Department may provide to the CFMG, information, training advice and management and extension services for community forestry management. In addition, the Director of Forestry shall not issue any licences or permits for the area identified in the Community Forest Map signed by local stakeholders. The Director shall return to the CFMG the confiscated goods or proceeds from the disposal of such confiscated goods disposed of at the discretion of the court; and where appropriate, raise awareness among buyers and consumers of forest products the benefits of buying community forestry produce; and facilitate the undertaking of forest resource assessments/ inventory/ research activities as necessary.

**With regard to Forest Carbon management and Trading Regulations, 2016 (draft statutory instrument (SI), 2016),** Carbon stock management and trade will require authority from the Forestry Department. Eligible activities under Forest Carbon Management Projects (FCMP) may include afforestation (native and indigenous), forest regeneration and conservation. National project proponents shall comprise locally existing institutions registered under relevant legislation especially the Companies Act, Citizen Economic Empowerment Commission Act,



Environmental Management Act and Zambia Development Agency Act; which shall also form the compliance regulatory framework for any authorized dealer in carbon production and trade. The FCMPs may be undertaken in state land, customary or private land<sup>92</sup> and shall be subject to land-use planning for each land category, show user rights of the land where the project will be domiciled and state the benefit sharing intention and mechanism developed jointly with all interested parties (GRZ, community, project proponent, etc.) with an agreement; as well as demonstrate adequate management risks especially carbon stock permanence during planning and operation periods. Compliance i.e. monitoring and reporting mechanisms for FCMP shall be according to the national forest monitoring and reporting system. Under this proposed SI, there may be a risk in that the GRZ has a lot of powers to approve and terminate.

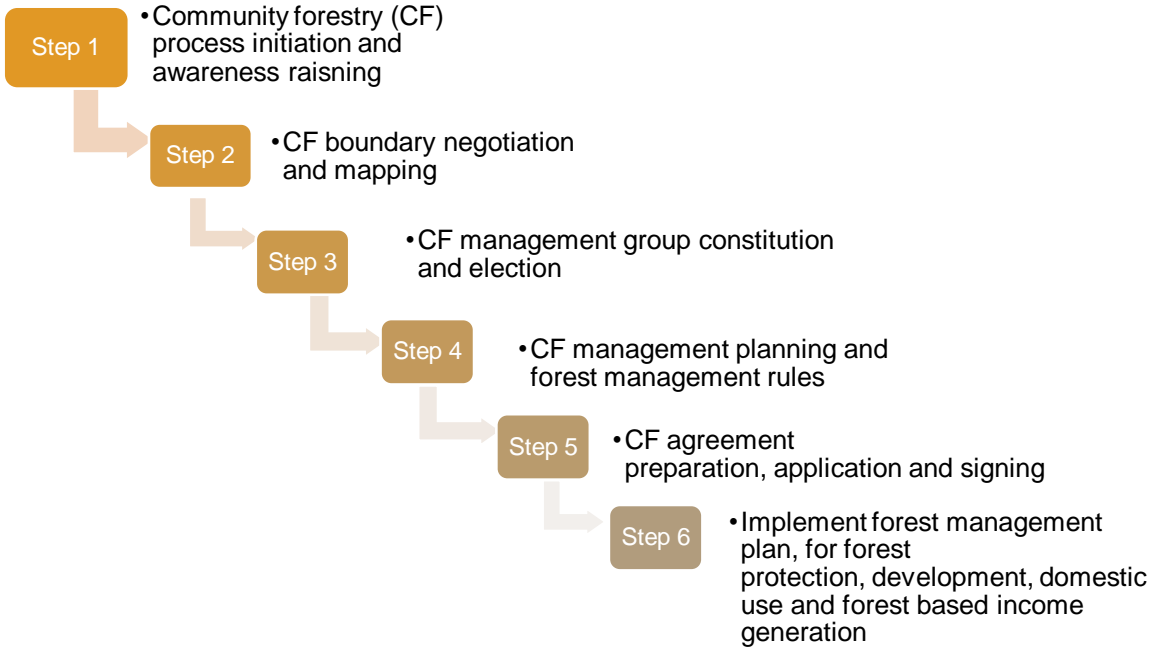
For Community Forest Management (CFM), a group of persons living in the vicinity of a forest may apply to the Department for recognition as a community forest management group with the consent of the Chief of the area in which the forest is located. The group can then enter into a community forestry agreement (CFA) with the Department in respect of an area or forest for which the community forest management group (CFMG) is formed<sup>93</sup>. Three principal establishment stages for community forests involves formation of community forest group, registration of the CFM group and CFA (Figure 12). The CFAs involve application to the Director of Forestry, determination of suitability of area and then registration of CFA. The entire process involves Consultation with and consent of the area Chief as well as local authority and other Government bodies that may have interests (Kashole, 2016<sup>94</sup>). However, in the event of non-compliance of the CF group, the management goes back to Forestry Department i.e. government.

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<sup>92</sup> depending on the provisions of the Lands, Zambia Wildlife, Urban and Regional Planning acts

<sup>93</sup>The Forests Act, 2015; Sections 29-35.

<sup>94</sup> Policy and Legal Context: Stakeholder Involvement in Forest Management. Presentation at Meeting of scaling up community participation in Forest Management through REDD+- Intercontinental Hotel, 22/11/2016.



Source: GRZ/Finland<sup>95</sup>

**Figure 12** Community Forestry Steps

Establishment process for Private Forests are such that an owner or lessee of any land or plantation who wishes to establish a private forest shall apply to the Director, in the prescribed manner and form, for the registration of the area which the person intends to comprise the private forest. In case of a JFMA, the area is declared by the Minister and the recommendation of stakeholders (Director, Community, owner or occupiers). Declaration requires consent of the land owner or local community.

Rights of key stakeholders. The forest legal instruments provide a very good and strong platform for community-based forestry including private ownership e.g. smallholder forestry.

<sup>95</sup> Community Forestry: rights, responsibilities, benefits, principles and steps. Poster produced by the Decentralised Forest and Other Natural Resources Management Programme. A collaboration between the Government of Zambia and Finland.

There are elaborate provisions on user rights and obligations in Section 32 (a) to (g) of The Forests Act No. 4 of 2015.

**Box 9:** Pack of rights under the community forest agreement

A CFA may confer on a CFMG that is party to the CFA any or all of the following forest user rights in the community forest concerned: Collection of medicinal herbs; Harvesting of honey; Harvesting of timber or fuel wood; Grass harvesting and grazing of animals; Collection of forest produce for community based industries; Eco-tourism and recreational activities; Scientific and educational activities; Plantation establishment through non-resident cultivation; and the right to enter into contracts to assist in carrying out specified silvicultural operations (The Forest Act, 2015(§32 (2)).

There are a number of relevant both operational-level and collective choice rights to the stakeholders under various systems of resource tenure. These rights are provided for in the forests water, wildlife and conservation and heritage sectors (Box 9). The rights are largely on:

- Access, and withdrawal: extraction and use of products like clean, safe and healthy forest and/or environmental products (timber, etc.) and services including eco-tourism, recreational, scientific and educational activities;
- Land rights: transfer, occupancy, use, exclusion,
- Management:
  - participation in decisions concerning resource management and regulation as well as the preparation of policies, strategies, plans, laws, regulations and programmes relating to the environment;
  - Plantation establishment through non-resident cultivation;
  - The right to enter into contracts to assist in carrying out specified silvicultural operations;
  - Development of community forest wood and non-wood based industries.

These rights are supported by the legal policy and legal framework as such could act as incentives and therefore influence decisions either to or not to engage in REDD+ by local communities. Thus, in Zambia, as elsewhere, REDD+ highlights the need to clarify who holds specific property rights to forest resources (access, use, withdrawal, transfer) and the respective roles and responsibilities of various customary and formal government tenure and management systems (USAID, 2015).

Extent of Forest Estates. Currently, the forest estate is ca. 9.1% of the total land area of the country (GRZ, 2016). For the spatial distribution of above ground biomass, Eastern Province is ranked five with 63.8 tonnes per hectare. It has 9.6% of the national total above and below

ground biomass (5,516.2 million metric tonnes) with 529.2 million metric tonnes<sup>96</sup>. There are 65 forest reserves in Eastern Province with a total coverage of 460, 216 hectares and 90 hectares of forest plantations representing at least nine per centum of total provincial land area (GRZ, 2015). The largest forest estate is in Lundazi District and Sinda District has the least share land under forest reserves (Figure 13). There are also plans to establish an additional 50, 000 hectares of plantations in the province (Siame, pers. com.<sup>97</sup>), which shall entail consultations and negotiation with the traditional leaders to alienate land for the purpose.

Human settlement in PFAs is not allowed by law. Entry and use of resources in these areas must be authorized by the Forestry Department through a system of nine permits and two licenses as mandated under the Forests Act, 2015. The permit types are conveyance, timber merchant, export, import, domestic user, cord-wood, fire and tree-felling, while the licence types are sawmilling and concession<sup>98</sup>. Thus by law, there should be no felling, cutting, working, taking, collecting or removing any major forest produce<sup>99</sup> in or from any State Land, customary area or open area; or failure to assist with extinguishing fire in forest area. It is important to note that forest carbon is classified as a major forest produce. This classification of carbon implies that for protected areas ZIFLP may work in, carbon should be considered as tradeable commodity and may have to be purchased. However, a person who intends to fell, cut, work or remove any major forest produce from any State Land, land under leasehold tenure vested in any person or customary area or sell, offer for sale, barter or deal in any major forest produce shall apply for a licence or permit<sup>100</sup>. For the communities managing customary forestlands, this acts as an additional incentive to engage and improve forest management.

Despite the existence of legal instruments for managing forest resources, forests still get converted illegally to other land uses. There is rapid change of land use from forestry to agriculture. This includes in the Eastern Province. Zambia's forests are significantly threatened by demand for charcoal as a primary energy source and agricultural practices that rely on slash-and-burn methods to access and clear land for farming (Wathum, 2016<sup>101</sup>). This is associated with the growing population and the changing economic and political environment.

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<sup>96</sup> Kalinda, T., Bwalya, S., Munkosha, J., and Siampale, A., 2016. An Appraisal of Forest Resources in Zambia using the Integrated Land Use Assessment (ILUA) Survey Data. *Research Journal of Environmental and Earth Sciences* 5(10): 619-630, 2013.

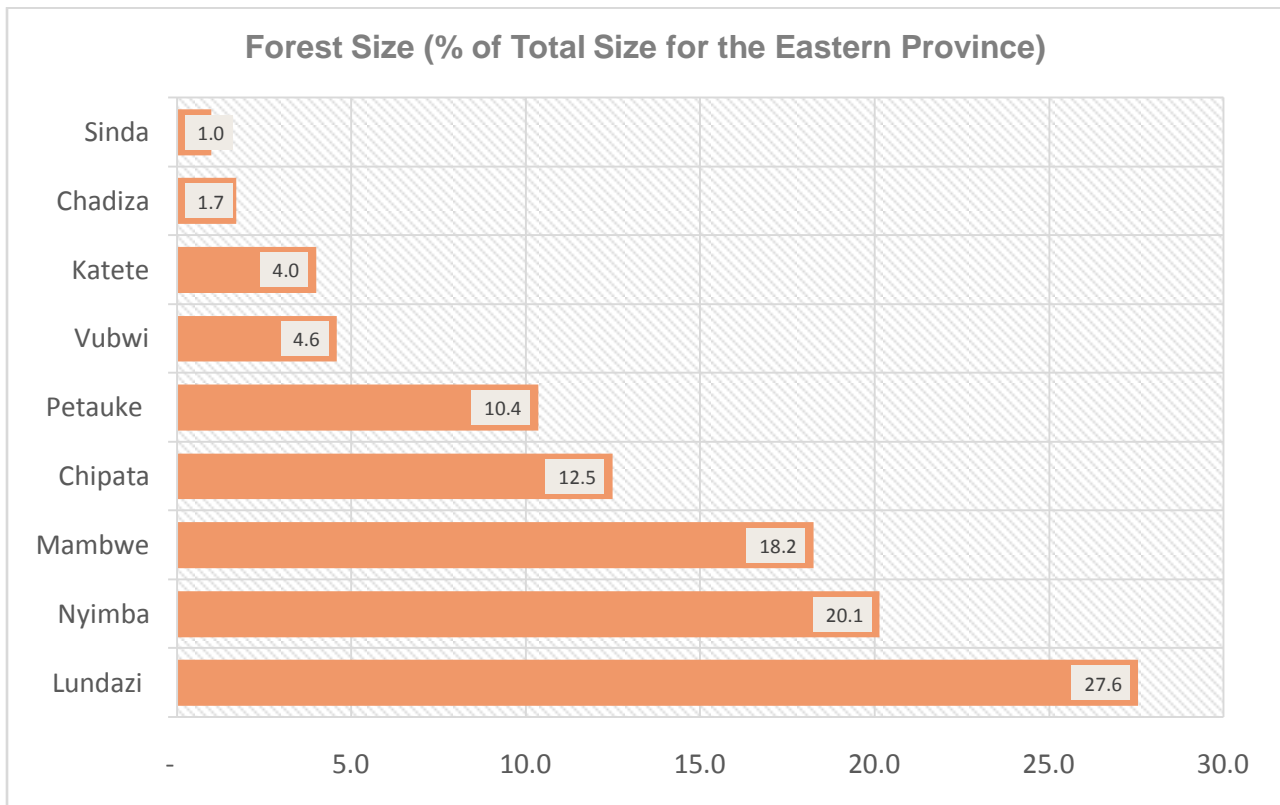
<sup>97</sup> Mr. Sylvester Siame, Extension Officer, Forestry Department, Eastern Province (communication occurred on ....2017).

<sup>98</sup> Forest Act, 2015, Part IV, Regulation of Forest Produce

<sup>99</sup> The Forests Act, 2015, Section 2 (emphasis on carbon is author's addition): "major forest produce" means a tree, part of a tree or derivative product such as timber, charcoal and **carbon**, other than leaves, flowers, fruits and seeds

<sup>100</sup> Section 50 (2) of the Forests Act 2015

<sup>101</sup> Wathum, G., Seebauer, M. and Carodenuto, S. 2016. Drivers of deforestation and forest degradation in Eastern Province, Zambia. Zambia Integrated Forested Landscape Program August 11, 20. World Bank.



**Figure 13** Distribution of forest reserves in Eastern Province by district (%)

The levels of encroachment in most of the forest reserves are on the increase as most forest areas lack clear forest boundaries and mainly due to the increased demand for land<sup>102</sup> (GRZ/FD, 2015; Stickler et al., 2016). In Chipata, as much as 30 percent of the forest land has been encroached. Ultimately, all of these drivers of deforestation and forest degradation are related to extremely high rates of rural poverty, which leaves households dependent on natural resource-based livelihoods, and high urban demand for charcoal in the absence of affordable alternative energy sources vulnerable (USAID, 2015). There is great need for a targeted effort to earnestly and honestly engage with the traditional leaders in the province to command efficacy in forest management.

Eastern Province has continued to lose large amounts of forest cover and forest resources in the reserves. These are being depleted due to human activities. This has left some forest reserves in the province in deplorable states. The situation has been worsened mainly by poor funding, shortage of manpower and lack of logistics coupled with political interference and lack of cooperation by most of the traditional leaders.

<sup>102</sup>Cover photo of this report indicates human settlement in Lundazi National Forest

This has incapacitated Forestry Department to curb illegal forest practices, which are currently taking place in almost every forest reserve in the province.

## **2.9.2 National parks, community partnership parks and bird and wildlife sanctuaries: management, accessibility and resources use arrangements**

Zambia's 20 National Parks, two wildlife sanctuaries, and one bird sanctuary contribute 6,367,200 ha to the country's stocks of state land, of which about 19% of this area is in Eastern Province and representing the three NPs (South Luangwa, Luambe and Lukusuzi), with a total land size of 1, 202,400 ha. This category of land in Zambia has been relatively stable. Eastern Province is one of the most important provinces in wildlife conservation<sup>103</sup>.

### **Ownership and Management**

*The absolute ownership of every wild animal within Zambia is vested in the President on behalf of the Republic, until lawfully transferred or assigned under prescribed conditions*<sup>104</sup>. The republican President also may declare an area of land within the Republic to be or cease to be a National Park or its boundaries be altered or extended for the purposes of this Act if the President considers that the conservation or protection and enhancement of wildlife, eco-systems, biological diversity and natural beauty so demands. Similarly, the president may declare any land to be a Community Partnership Parks (CPPs) and bird and wildlife sanctuaries (BWSs) area for purposes of conservation of biodiversity<sup>105</sup>. Nationals Parks are under the jurisdiction of the Ministry of Tourism and Arts and regulated by the ZWA of 2015 for conservation and tourism purposes, to which the Department of National Parks and Wildlife<sup>106</sup> is responsible on the following functions, inter alia:

- (a) control, manage, conserve, protect and administer NPs, CPP, BWS and GMAs and coordinate activities in these areas;
- (b) in partnership with local communities, share their responsibilities of management in CPPs and GMAs;

In addition, there are provisions for other institutions like the Wildlife Licensing Committee and Community Resources Boards (CRB) with secretariats. The CRBs are also recognized under the Forests Act for the purpose of community forests management<sup>107</sup>. This provision has been appreciated by BCP in Eastern Province by taking the CRBs as the default institutions under the CFM (REDD+) programme in the 748, 000 ha in customary areas particularly the GMAs.

### **Accessibility to wildlife protected areas**

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<sup>103</sup>Chabwela, H. N., 2005. Provincial environmental policy situation analysis. Eastern province. Republic of Zambia ministry of tourism, environment and natural resources

<sup>104</sup>Section 3 (1) of the Wildlife Act, 2015

<sup>105</sup>Section 11 of the Wildlife Act, 2015

<sup>106</sup>Section 5 (1) of the Wildlife Act, 2015

<sup>107</sup> Section 31 (4) of the Forests Act, 2015

A person shall not acquire a certificate of title in respect of any land in a National Park, Community Partnership Park or bird or wildlife sanctuary<sup>108</sup>. The law outlines instances when land may be alienated to a person in a National Park (**Box 10**). This means that a right, interest or leasehold title may be obtained in a National Park. In the case of a person applying for land for mining in a National Park, or an adjoining GMAs, it is a requirement that an environmental impact assessment is conducted in accordance with the procedures specified by the Environmental management Act, 2011<sup>109</sup>.

**Box 10** Granting of mining rights in wildlife protected areas

Nothing in this (WLA, 2015) Act shall be construed as preventing or restricting the granting in respect of any land within a National Park, CPP or BWSs—(a) of any mining right or other right, title, interest or authority necessary or convenient for the enjoyment of a mining right; or (b) for any purpose consistent with this Act of a right, title, interest or authority under any other written law. A mining right shall not be granted in a NP, CCP or bird or WS without an environmental impact assessment conducted in accordance with procedures specified by the EMA, 2011, and which procedures shall take into account the need to conserve and protect—(a) the air, water, soil, flora, fauna, fish, fisheries and scenic attractions in or on the land over which the right is sought; and (b) features of aesthetic, cultural, architectural, archaeological, historical or geological interest in or on the land over which the right is sought (**Source:** Zambia Wildlife Act, 2015, Section 16(1-2)). In alienating land the President shall take such measures as shall be necessary to—(a) control settlements, methods of cultivation and utilisation of land as may be necessary for the preservation of the natural resources on that land; and (b) set aside land for forest reserves and game management areas and national parks and for the development and control of such reserves, game management areas and national parks (**Source:** lands Act, 1995: 3(7 (a-b)).

Human settlers in this area are considered illegal squatters (and they get evicted, **Box 11**), although the DNPW has the rights to allocate small titles for tourism within this jurisdiction. Entry and use of resources in these areas must be authorized and with the following acts being among those prohibited:

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<sup>108</sup> Section 15. (1) of the Wildlife Act, 2015

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- Acquiring a certificate of title
- Entering into or residing in, or purporting to enter into or reside in a NP or CPP.
- Allowing or introduce the domestic animal into a NP, CPP or BWS
- Hunting, disturbing wildlife or fish or bird's nest
- Removing or damaging any material (wildlife, game, stone, an object of geological, pre-historic, archaeological, historical or scientific interest)
- Conveying fire arm etc.
- Introducing wildlife and any vegetation

**Box 11** Evictions from Lukusuzi National Park in Lundazi District, Eastern Province

Around 2011/2012 people started settling in the LNP up to about 40 km in the park. There were people from all neighbouring chiefdoms, and also from outside Lundazi district both from rural and urban areas. The squatters moved into the national park due to poverty and in search of better livelihoods especially through agriculture. The soils were degraded where they had come from. They said that soils in the national park are more fertile than those in the customary areas. The illegal settlers were involved in agriculture, stealing wildlife and had all kinds of social and physical structures like village heads, church structures, community schools, one well, fields for cotton, groundnuts, soyabeans growing, and even football grounds, where even tournaments were held among themselves. Livestock was also allowed to enter the park some of which was killed by lions.

The situation was getting out of control and unacceptable to government and so the eviction process was initiated by the DNPW in 2015. There were all kinds of challenges for the DNPW including being restrained by politicians who had been promising settlers that the national park would be given out to them as some way of winning their support for political office. When evicted, for those who were willing and found in the national park during the eviction operations, transport was provided to move them together with their belongings. However, most moved out of the park voluntarily and there has been no claims/complaints of being harassed in the process of removing them from the protected area. To manage grievances, sensitization meetings that involved other government departments including the district commissioner for Lundazi were conducted. None of the evictees moved to the areas that were proposed for resettlement in Mwasemphangwe chiefdom and so no further assistance was provided to them. However, the non-Zambians like the Malawians were deported. The two major reasons for refusing to move to areas offered are: 1) poor soils in the two places, and so agriculture productivity would be low 2) They did not want to settle or be regrouped in a crowded place. They wanted space to themselves.

As the squatters left the park, they were allowed to salvage their properties. The structures were destroyed, and some by the owners before they left. Some people tried to return to the park after sometime in late 2016. Operations to remove them ended in having 10 people



from this group being arrested, prosecuted and imprisoned. As of June 2017, there are reportedly people settled in the NP, again. These illegal settlers will be evicted again.

### 2.9.3 Game management areas: management, accessibility and resources use arrangements

Land status and management of GMAs is such that GMA is by statutory order, after consultation with the Minister and the local community, the President may declare an area of land within the Republic to be a GMA for the sustainable utilisation of wildlife including defining or altering or extending the limits of the area or order the area to cease to be a GMA. The declaration will exclude any land within any declared or extended GMA that is held under a leasehold title, except with the written consent of the occupier<sup>110</sup> (Honig and Mulenga, 2015).

Located within Zambia's customary land are 36 GMA on 17,270,400 hectares of land. This represents a third of existing customary land in the country. This category of land is relatively stable. In Eastern Province, GMAs cover about 29.2% of the total land mass. Like, for NPs, this land is overseen by the DNPW "for the sustainable utilization of wildlife"(Honig & Mulenga, 2015).

Most GMAs lie in close proximity with rural communities in customary areas. Unlike in National Parks, settlements are allowed in GMAs, provided that a person who settles there should conform to the provisions of the Management Plan developed by the CRBs. *Notwithstanding the provisions of any written law, a person may obtain leasehold title within a GMA in accordance with the provisions of the general management plan for the GMA.* Acquisition of leasehold title is also permissible in the GMAs subject to the approval of the Director, DNPW. The Zambia Wildlife Act, 2015 and the Lands Act contain provisions on the granting of land in GMAs on condition that the leasehold title the President may not issue it in a GMA without the approval of the DNPW. This entails that persons wishing to use and occupy land in a GMA, may be granted leasehold title in compliance with the governing statutes (MD) i.e. Lands, Lands Acquisition, Survey and other acts. GMAs (unlike NPs and Forest Reserves) are semi-protected areas where human settlement and small-scale agriculture can continue. However, large-scale investments occur e.g. Zambeef Chiawa Estate, a 10,000 ha farm located in Chiawa GMA along the Lower Zambezi Valley cultivating largely irrigated soybeans, wheat and maize, with a 99 years lease (Matenga and Hichaambwa, 2016)<sup>111</sup>. Within these GMAs, CRBs assist in managing the wildlife and negotiating any economic activities related to the wildlife, particularly hunting contracts. Recently, the CRB in Chikomeni in

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<sup>110</sup> Wildlife Act, 2015

<sup>111</sup> Matenga C. and Hichaambwa, M., 2016 Effects of Large-Scale Land and Agricultural Commercialization on Local Livelihoods in Africa: Insights from Three Models in Zambia. 2016 World Bank Conference on Land and Poverty. Paper prepared for presentation at the "2016. WORLD BANK CONFERENCE ON LAND AND POVERTY " The World Bank - Washington DC, March 14-18, 2016. Scaling up responsible land governance.

Eastern Province has been re-established. However, CRBs are facing operational challenges including in the Eastern Province.

The West Petauke GMA in Nyimba (declared in 1991) has two hunting blocks (HBs) and five camps (three in open areas and two in HBs): the Nyalugwe (27% of the GMA) and Luembe (73% of the GMA) HBs. There is no HB in Mwape chiefdom even though there are prospects with the recent adjustment of boundaries between Mwape and Luembe Chiefdoms. There are concession agreements and entitlements in the HBs in Nyimba District. The CRBs partners with government and through these community based natural resources management (CBNRM) receive benefits from non-consumptive use (NCU) of wildlife resources. The agreements are up to 15 years. There is no hunting including resident hunting quotas (RHQs) allowed in the time the agreement is valid. During this period the investor commits to pay K200, 000/year into the DNPW account and K200, 000 into the CRB account (which is like buying a hunting quota). In addition, the investor employs 20 village scouts (VSs) and equips them for law enforcement, etc. the NCU/Tourism concession is signed by the DNPW, the CRB headed by Chief Nyalugwe, Luembe, etc.).

There are GRs on leasehold title in Nyimba District i.e. Munyamdzi and Kazumba, while Nkalamu is on MoU that is subject to evaluation every five years. In Luembe HB, there is Mopani Hunting Safaris operating. There are a couple GRs in Petauke, too<sup>112</sup>.

The BCP's CFM project targets and has secured land in GMAs including in Nyimba District. For its REDD+ programme it has the following land coverage: Nyalugwe HB has 74,526.70 ha with ca. 60,302 ha under the REDD+ programme and ca. 14, 223 ha under social development zone. In Luembe HB has 353,486.64 ha, with the social development zone covering ca. 75,516 ha, while the REDD+ zone is ca. 277,970 ha. There is a draft letter of consent from chiefs but no agreement yet for the community forests. However, there are investments for local development through what is called PIP (participatory impact project) like K81, 000.00 in Nyalungwe for school infrastructure and K140, 000 for a medium size house to be handed over after the rain season. There have been viability training and assessments involving communities. The PIP was initiated from the Fly FPIC (free, prior informed consent) exposure flights for deforestation/resource status assessments, resources mapping together with communities. There are community mobilisers who collect data on households and act as links between with the communities. Twenty local community members have also been trained in muzzle loading guns to blast chilly to protect hippos and bush pigs, elephants eating damaging crops in fields. Because of this, farmers in Mwape have in the last two years harvested agriculture crops and are very happy (Goods Andrew Nkhoma<sup>113</sup>, pers. Com.).

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<sup>112</sup> Matt Sommerville, comment to the first draft report

<sup>113</sup> Mr. Nkhoma is the former Community Liaison Officer, now (June 2017) Extension Officer

The Minister may grant concession agreements within a GMA and land user-rights fees shall be payable to the Ministry by an investor within the GMA which shall be shared between the Ministry and the local community, on such terms as may be prescribed. Settlement or living in GMAs requires compliance with the provisions of a general management plan for the GMA. While access to GMA for mining purposes is possible, there is restriction on exercising such rights. Prior written notice to the Director (DNPW) of the person's intention to enter the GMA for mining right holder in, over, under or in respect of any land comprised in a GMA to enter and exercise their mining right within the GMA. Failure to compliance is punishable offence by fine or imprisonment. Further conditions may be imposed relating to the exercise of any mining rights in accordance with the measures specified under an environmental impact assessment approved by the Zambia Environmental Management Agency, including the number of persons to be employed within a GMA and the conditions to be observed by such persons. There is restriction on hunting wild animals in GMA, which may only be done with hunting licence, capture permit or hunting concession failure to which attracts a fine or imprisonment.

### ***Resources use arrangements***

The DNPW oversees the management of wildlife in the country. However, the wildlife law provides for other institutions to engage in the management and consumption of wildlife; principally CRBs. Thus, a local community along geographic boundaries contiguous to a chiefdom in a GMA, an open area or a particular chiefdom with common interest in the wildlife and natural resources in that area, may apply to the Minister for registration as a CRB. The functions of a CRB are to promote and develop an integrated approach to the management of human and natural resources in a CPP, GMA or an open area falling under its jurisdiction. In return for their participation in wildlife management, communities through their respective CRBs receive a share of revenues that accrue from wildlife utilization. In June 2002 the communities and DNPW agreed that communities would receive 45% while the Chief, as patron of the CRB, receives 5% (ZAWA, n.d.<sup>114</sup>) of these contracts while DNPW earns 50% and the remaining 45% is used for community activities by the CRB (Honig and Mulenga, 2016). These are subject to change with the concert of all concerned parties. The funds should be used on projects that are of benefit to the majority of the community members such as infrastructure development, transport, training, agriculture, administration, etc.

There are some challenges faced in the alienation of land under GMAs. These challenges arise from lack of institutional coordination and inadequate legal provisions on the procedure. Most GMAs are located in customary lands which fall within the Chief's administrative boundaries. The villages within the GMAs are subject to administration by the chief. However, the Lands Act and the ZWA state that the President shall consult the Director, DNPW in

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<sup>114</sup> Guidelines on the use of community funds accrued from wildlife management. Zambia Wildlife Authority.

granting land in a GMA. Both statutes do not provide for the role of traditional chiefs in the alienation of land in these areas.

It may be concluded however, that for purposes of orderly land alienation, and development, the traditional chiefs, CRBs, District Councils in the area concerned, and the Director of the DNPW should all play a consultative role, and be involved in the management and alienation of land in GMAs. The Lands Act, the ZWA, the Chiefs Act<sup>115</sup>, and the Local Government Act<sup>116</sup>, do not provide for the coordination of different institutions in the administration and alienation of land in GMAs. There is need for appropriate legislation in respect of the roles of chiefs, Local Authorities and the ZWA in the administration, management and control of land rights and interests in GMAs. The existing legal provisions are inadequate in this respect (MD).

Issues/challenges in GMAs in the Eastern Province include (Nkhoma, 2017; pers. com.):

- Legally, no land in a GMA can be converted to a title without the permission of DNPW. However, this provision has largely been ignored with the more contentious customary land management regimes where private titles of over 1,000 ha in addition to the many small leasehold titles for tourism along the Zambezi River. In GMAs, it is common for land to pass through the conversion process from customary to state land without any consultation from DNPW. Thus, GMA land is spotted with individual titles in the same way that non-GMA customary land is.
- Community may not understand the implications of some clause in the agreements. For example, community think they can still have RHQs under the current agreements; which is not the case as the case is in Nyalugwe Chiefdom.
- Limited manpower e.g. in Nyalugwe there are 11 VSs when 6 per camps are needed and 8 camps are needed. No patrol kits e.g. engine boats, since all camps are not on the side of the GMA thereby posing challenges to cross the Luangwa River for patrols. For the Nyimba sector, at present (2016) there are 23 (less than half of the required number of ) wildlife police officers (WPOs) when 50 is considered adequate
- No communication equipment (radio network systems)
- Depletion of soils in areas where the illegal cultivators came from resulting into encroachments into national park for farming and cultivation in dambos (i.e. type of wetlands), which are water sources for wildlife. Therefore, human-wildlife conflicts (HWC) occur.
- There is theft of baits (for lions, leopards, etc.) for hunting thereby disturbing the hunting industry

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<sup>115</sup> Chapter 287 of the Laws of Zambia

<sup>116</sup> Chapter 281 of the Laws of Zambia

- Displacement of people by wildlife especially in Mwape chiefdom, so wildlife is viewed as retarding progress in such areas. There are also active conflicts between communities and companies/chiefs attempting to set up game ranches in some areas<sup>117</sup>.
- In Mwape Chiefdom, the CRB is not active since 2007 due to lack of HB (discussion are going on to establish one since there has been some adjustment of the chiefdom boundary between Luembe and Mwape).

The issues associated with national parks include:

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<sup>117</sup> Matt Sommerville, comment to the first draft of the report

- Encroachments by people from the neighbouring community as well as from a far as far as copperbelt and including having fields even by some government officers
- Allocating and selling land in parks
- Unstable river water flow
- Decreasing resources: minerals, trees, reeds, fish,
- Soil excavation
- Fires
- Poaching

#### **2.9.4 Other “PAs” zones: management, accessibility and resources use arrangements**

There are several categories of community based natural resources management models other than the PAs and provided for under different legislation. There are community forests under the Forests Act, and Water Resources Protection Areas provided for under the Water Resources management Act, 2011. There are also Community Conservation Areas (CCAs) whose establishment is spearheaded by COMACO (but the CCAs have no direct legal backing save under the Forest Act, 2015).

##### **Community Forests (CFs)**

The Forests Act, 2015 provides for the establishment of community forests (CFs). This is a land tenure system whereby communities have, after following all the procedural actions, rights to manage forests on customary lands. The tenure acquisition arrangements are clearly outlined in sections 32 of the Act, 2015 and involve local communities with interest making a formal request to the Director of Forestry through the local traditional Chief who should give consent. The CFs are being piloted in Muchinga and Northwestern Provinces as provided for under the Forests Act, 2015. At the moment 15 applications have been completed and await approval by the Director of Forestry (Anton, pers. com., 2016<sup>118</sup>).

##### **Community Conservation Areas**

The CCAs development is being spearheaded by COMACO in Eastern Province. The CCAs are located in customary or open areas. Under the Forests Act, 2015, they are provided for under sections 26-32 and legally called Community Forests. However, community forests, CCAs, etc. are all yet to be legally recognized as they have not been granted the community forests status that is provided for in the Forests Act, 2015 as the subsidiary legislation providing for them is under active development with the Ministry of Justice.

In Eastern Province, COMACO has facilitated formation of CCAs as a community-based conservation strategy (CBCS) to restore or maintain through protection, the pristine

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<sup>118</sup> The Chief Technical Advisor for the Decentralised Forest and other natural Resources Management Programme

condition of habitats<sup>119</sup>. The legal category for the CCAs is Community Forests and not protected areas. The CBCS is a mechanism of integrating improvement to the socio-economy of local people while conserving areas through the creation of parks or wildlife refuges. Its scope includes joint management of a PAs between COMACO and the community through a Committee consisting of the Indunas, headmen and volunteers from the surrounding communities. This co-management platform combines local peoples' traditional knowledge of the environment with modern scientific knowledge of managing trees and degraded areas, with the expectation of increased biodiversity and better management of the protected area.

So far in Eastern Province, only COMACO has some functioning CCAs under its REDD+ component of the Landscape Management Project (LMP). However, the development of the concept is yet to mature to institutional benefit sharing levels. There are 29 CCAs located in 17 chiefdoms, 5 districts with a total size of 550,664 ha (Table 5). One of the areas, The Nyalungwe Conservancy, borders the BLS area and the settlers there are members of the CCA. In Zumwanda, there is already functioning law enforcement and whereby charcoal production has since been banned.

**Table 5** COMACO community conservation areas in Eastern Province, Zambia

District	Chiefdom, #	CCAs, #	Area, Ha	% of Total
Chipata	4	10	94,657	17
Lundazi	4	8	212,749	39
Mambwe	1	1	52,709	10
Nyimba	2	3	75,775	14
Petauke	6	7	114,754	21
<b>Total</b>	<b>17</b>	<b>29</b>	<b>550,644</b>	<b>100</b>

[Source: prepared based on data from Makungu, 2016<sup>120</sup>]

The CCAs are formulated through participatory procedures. The process begins with formal knowledge sharing meetings and engages with traditional leadership that then propose the best (depleted or intact) CCAs either in or outside a PA. Once agreed by the community, then participatory community conservation mapping of the CCA boundaries is done. Titles will then be obtained [Type of title not confirmed yet]. Once the CCA is marked on the ground, there is need for the communities within and surrounding the PAs form a Community Protected Area Committee (CPAC) whose

<sup>119</sup> COMACO, Community Conservation Areas

<sup>120</sup>Angel Makungu Chishimba Asst. Geographical Information Systems Officer, Community Market for Conservation. Luangwa Valley Ecosystem

members will be the Chief's Indunas, headmen and community members. The objective of this committee is to enforce by-laws as stipulated in the Community Conservation Plan (CCP) i.e. a document which highlights the conservation practices that should be adhered to as communities live within and around the CCA.

### **Accessibility to CCAs**

Three principles for identifying a CCA are:

- A strong relationship exists between the local community, and a specific site (territory, ecosystem, species habitat). This relationship is often embedded in the community's sense of identity and/or dependence for livelihood and well being
- The local community is the major player in decision-making and implementation regarding the management of the site, implying that a local institution (Community Protected Area Committee) has the capacity to develop and enforce by-laws and management decisions concerning the CCA
- The community's management decisions and efforts lead to the conservation of habitats, species, genetic diversity, ecological functions/ benefits and associated cultural and spiritual values.

Once the CCA and the committee are in place, there is formalization of CCAs by signing the agreements for a CCA between the chief, the communities through a representative, COMACO and a government representative. This CCA agreement clearly describes the spatial extent, location by corner coordinates.

### **Traditional use of resources from CCAs**

COMACO's core business is conservation including watershed management. Under the carbon LMP, nine chiefdoms are participating, while others have made requests to be included. The main livelihood activity in the CCAs is beekeeping, and other non-wood forest products like mushroom harvesting. There are 700, 000 beekeepers working with COMACO in Eastern Province. COMACO provides the market for honey, including other products mangoes which it dries.

There are already some benefits in form of products in the CCAs. For example, the Kabinga CCAs in Lundazi was reported to have 27 apiaries with 5 top bar hives/apiary that produces 15-20 Kg of comb honey per hive. The current price when sold to COMACO is K7/kg. The CCA has offered loans from the K1000 (ca. US\$100<sup>121</sup>) with some small interest (not disclosed). Aside from this benefit, there is no large financial sharing of benefits with COMACO. The agreed sharing arrangement once benefits start

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<sup>121</sup> US\$1=K9.80



accruing and being shared is COMACO – 30%, CCA development committee – 40% and chief – 20% for plan implementation oversight.

Under the LMP, the World Bank (and not COMACO) is yet to conduct assessments for the carbon credits, and so there is no sharing of proceeds from the project, yet. The conservation efforts under the CBCS will lead to more socio economic benefits such as mushroom harvesting, honey, wild fruits, medicines, etc.

### **Joint forest management areas (JFMAs)**

The Forests Act, 2015 provides for JFMAs with clear guidelines on how to establish joint management arrangements. However, there are no active JFMAs in Eastern Province.

### **Private forests**

There are hardly any data or information on private forestry in Eastern Province. What is clear is that people plant trees and this is done mostly on an individual basis promoted both by the government, NGO and private entities. There are a number of woodlots of both indigenous and exotic tree species. The extent of this subsector of forestry in the province is not widely known and as such information is difficult to come by.

## **CHAPTER THREE | SYNTHESIS OF EMERGING ISSUES**

The study focus is on land rights issues applicable to REDD+, major challenges affecting the use of customary and state lands as well as a synopsis of the resettlement and relocation experiences in the Eastern Province of Zambia. The result is two principal outputs: 1) land transfers and cash transactions, 2) policy and legal framework adequacy and appropriateness for the ZIFLP. This synthesis articulates the energy issues within the above study scope of outputs. Therefore, what is covered are processes from some pilot initiatives and the weakness and strengthens of the legal and institutional framework screened against enabling the ZIFLP concept and vision.

### **3.1 Enabling Environment**

The environment presented in this section covers the institutional and legal framework, the private sector engagement and technical framework for REDD+. Under the legal and institutional framework a number of themes are covered which include its relevance, provisions and content, livelihood restoration principle, stakeholder engagement and sustainable land use investment. The legal provisions review covers the use, transfer, and exclusion rights in addition to tenure security, benefits and incentives, governance, representation and advocacy.

### 3.1.1 Institutional and regulatory framework

#### 1.4.1.1 *Relevance*

There is a PALF (policy and legal framework) with a number of policies and laws that are relevant to the ZIFLP because they contain structural, synergetic, representation and principles appropriate for the proposed intervention elements in Eastern Province. These include policies and laws on land, forestry, agriculture, energy and mining; as well as wildlife, water, local government, resettlement, development, traditional affairs, planning, corruption, etc. The key principles include inclusiveness, transparency, accountability and sustainability. However, the multiplicity of these laws may complicate their effective and efficient application under the ZIFLP, unless mechanisms exist within the design to harmonized and ward off such issues. Roth and Smith (1995<sup>122</sup>) noted that the institutional coordination is one of the reasons for the poor performance of the land administration system in Zambia. The reliance of the Ministry of Lands on numerous other government agencies creates untold difficulties that account for considerable delay and confusion. The list of themes are further elaborated below.

#### 1.4.1.2 *Provisions and content*

The existing PALF covers the leasehold and customary land tenure systems the only two types in Zambia with the associated practices of transfer. There are significant and enabling provisions for the land envisaged resources administration and management. The outstanding thematic content across the relevant policies and laws that would greatly benefit the ZIFLP comprise, but not limited to, the ones below (Roth and Smith, 1995; Moombe, 2016):

- Land use planning in terms of processes and involvement of sectors is well presented in the laws (e.g. under the Urban and Regional planning Act, 2015). However, in practice there are challenges of limited unfairness, lack of comprehensive inclusiveness and consultative processes including at chiefdom and sub-chiefdom levels.
- Rights to use, transfer, access, control, and manage land and other natural resources as well as receiving technical support. There are also obligations for and compensation to stakeholders as well agreements establishment (forestry, wildlife, etc.). Examples here include in the forests, water, wildlife, planning, land and heritage subsectors. The land rights are clearly articulated in the laws and policies. However, they may require good coordination among sectors for effectiveness under the ZIFLP. The most common element of traditional tenure is free access to land by all members of a community. In customary areas individual ownership (more rights and interests than others and ownership in perpetuity), concurrent interests (i.e. other

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<sup>122</sup>Roth, M and Smith, S.G., 1995 (Eds.). Land Tenure, Land Markets, and Institutional Transformation in Zambia. LTC Research Paper 124. Madison: Land Tenure Center

persons can use someone's land for their own purposes) and communal interests (use of land which is not individually owned) are recognized in Zambia (Van Loenen, 1999).

*Rights to use.* In Eastern Province, the rights to use land are highly privatized and include cultivation, use of inputs, planting and cutting trees (Roth and Smith, 1995). This is evident from the experiences under the farming, tree growing and other activities e.g. under the outgrower schemes and other programmes. Land may be transferred to another person either as gift, inheritance, etc. or sold. However, selling is not allowed but it happens except that it is difficult to account. According to Roth and Smith (1995), household heads have more rights over land use than their spouses, with wives usually having to seek permission to use land from the head of the household. However, women are active in land use decisions in the province, including planting trees without permission.

*Transfer rights.* Rights of transfer are the least common of all types of rights. Roth and Smith reported in 1995 that about 77 percent of households in Eastern province claimed to have rights to give land to other family members. Land alienation outside the family is the most restricted right. Even though wives are consulted, it is very rare that they have unilateral right to alienate land outside the family. Land sales happen but rarely. However, it is difficult to assess this as people are not open to provide information and records on are scarce. Customary laws forbidding sales might be more strongly enforced, and the lower population density of customary areas may create little demand for purchases (Roth and Smith, 1995). The land holding certificates (LHCs) issued in the province have conditions of no sale, and processing for title and associated penalties printed on them, in addition to others like no misbehavior or practicing witchcraft. These conditions provide a sense of land tenure security that would be useful for most if not all activities proposed under ZIFLP. Current pilot intervention in Eastern Province and elsewhere in Zambia to improve access to land information through certification of customary land title and accessible land registries are commendable, especially if they can enhance the information on land-related investment decisions available in the public domain (Ng'ombe, n.d.).

Land rights conveyance is under the only two land administration (State and Customary), which have several different characteristics. The State tenure has security via documentation and titling of land, while under the customary tenure security is not certain precisely because there is no documentation and registration of land parcels. However, probably due to lack of titling of land, rights transfer under the customary tenure are less strenuous than the state tenure. What is common for both systems/options of transfer of rights is the existence of malpractices. To improve security of land rights, traditional land holding certificates (TLHC) have been introduced in Eastern Province (just like in Southern Province). There is contestation here though: the valid of the TLHC may greatly improve security of rights only if the interpretation of the logic of recognizing customary land tenure by the Lands Act is in its favour and

evinced by titling the rights. Recognition with title may be a mere mockery and strong weakness of the customary tenure of land option of land rights transfer.

*Exclusion rights.* Farmers can exclude others on their farmland parcel. In Eastern Province (Roth and Smith, 1995) the ability to exclude others from using one's farmland was relatively common, which suggests a high degree of individualized property rights. The lands law provides for opportunities to individualize land rights through conversion to leasehold although this rarely happens due bureaucratic encumbrances (Mulowa, 2016). Farmers claim to have the right to fence off land. Fencing of property was observed during the current study. In general, non-HH members are not permitted to use a HH's land for crop or tree cultivation without prior permission of the HH head. The traditional systems have, in addition, established penalties for crop damage and unauthorized tree cutting by others on farmers' own fields. For example, in Zumwanda chiefdom, no cutting of trees for charcoal production is allowed under whatever circumstances. For grazing, there appears to be an exception as farmers may graze their livestock on other land parcel without (72%) permission (Roth and Smith, 1995). However, uncontrolled grazing is one of the factors causing disputes over land in the province, as they cause damage to other people's property like crops and trees.

*Tenure security.* Tenure security is associated with the number of rights, the duration and the respect by others of the rights held. It is therefore a difficult concept to measure precisely. The laws provide tenure security via titles to land. Further, recognition of customary tenure may provide security to some extent, although recognition without title weakens the security. In Eastern Province, farmers feel quite secure in their ability to use their land, as evidenced by the use, transfer and exclusion scenario above. Some of the activities like planting trees present an impression that the rights are long term in nature (Roth and Smith, 1995). This was observed during the just ended rapid social assessment in the province<sup>123</sup>. The conditions on the LHCs could also be interpreted as proffering long term security, with the holder virtually having a responsibility on when this security is severed to by breaching the conditions. Farmers on the overall, as does the land law, respect and recognize the rights of others. Farmers may develop their farms as they like, including fencing it off against open grazing effects of damage to crops such in dambo gardens (Roth, et al., 1995; Mulolwa, 2016; pers. obs.<sup>124</sup>). However, this increases the cost of land investment. In the province, security of tenure seems high based on the long term rights to land, although there could be issues like no being able to keep land idle or in fallow for long periods (Roth and Smith, 1995). Forestlands are generally not considered as developed land. This is may be a serious challenge for ZIFLP and other initiative whose vision is to reduce forest loss through e.g. community forestry.

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<sup>123</sup> Rapid social assessment was under from 18 to 27 June 2017 by the author

<sup>124</sup> The author worked in Lundazi (under the LNP/KNP transboundary project) and Nyimba districts (participatory forest and socio-economic assessment for the NRS development).

*Land rights transfer and options.* Under the existent legal and institutional framework, the rights to investors may be conveyed according to the Lands Act, 1995. Land may be acquired through compulsory means by the state president, the commissioner of lands, the chief, or individuals with title depending on the purpose for which land is sought. Equally, the procedures from acquiring land are different depending on the tenure system. For customary land, management is guided by culture and as such may differ from area to area. For state land, the acquisition process is pretty standard across the country and province.

The weaknesses of the transfer system are the vulnerabilities of the processes that are compounded by many challenges. The level of transparency surrounding investments in agriculture are low. For example, it was very difficult during the current assessment to obtain full versions of investments in Eastern Province or Zambia, similar to what Mousseau and Mittal (2011) observed. There have also been cases without a basis in law, whereby substructures (a committee) had been created chaired by bureaucrats to review and authority to make allocations (Bruce et al. nd)<sup>125</sup>.

The practices in land transfer in Eastern Province and elsewhere in Zambia include cash transaction for both state and customary lands. Under customary tenure, land is usually not sold as it is assumed to be valueless by the state and, at traditional level, a gift of God that should not be commoditized. There are claims that there are conscious alienation of customary to state tenure. By Sitko and Jayne (2014), it appears that much of the growth of the emergent farming sector can be explained by a legislative and public spending framework that favors both the alienation of large tracts of agricultural land by non-smallholder farmers, coupled with the disproportionate capture of agricultural public spending by a rural minority. The continuation of current policies encouraging the alienation of customary land at a quite rapid pace runs the risk that it will foreclose the potential for crop land expansion in the remaining customary areas. Such a scenario, in turn, would erode the potential for a broadly based smallholder-led agricultural development path (Sitko and Jayne, 2014).

The land administration system in Zambia is not without challenges. There are vulnerabilities (abuse, prohibitive fees, weak documentation, chiefdom level political economy, etc.) associated with the different acquisition processes (compulsory, leases, transactions, etc.), which require attention to avoid being disincentives to investment under ZIFLP. Roth and Smith (1995) conceptualized a number of other problems (some of which Mulolwa (2016) and Mulenga and Mushingi (2016) also identifies: 1) Over-centralisation and over articulation whereby there are too many separate stages and decision makers thereby causing difficulties to resolve confusion once it kicks in. They recommend decentralisation as some solution. However, decentralisation would call for

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<sup>125</sup>Chapter 2: Land Administration: Processes and Constraints by John Bruce, Fortune Kachamba, and Michelo Hansungule

good efforts to coordinate and harmonise the multiplicity of legal mandates. 2) Widespread public ignorance of the correct procedures, for which they recommend sensitization and popular education on leaseholds and titling. Informal institutions like the Zambia Land Alliance are needed. 3) Both chiefs and the council have a virtual veto over any application for a lease, and there is a difference in perspectives about the future of leasehold tenure.

While the legislative framework for agricultural and related sector investment outlines procedures for adequate consultation, and protection for traditional land users, the practices on the ground are quite different and marked by: a lack of meaningful transparency especially in protecting small-scale farmers and traditional land users (Mousseau and Mittal, 2011), non-inclusiveness or limited participation of local people, and power skewness, conflicts in land allocation, limited land use planning, limited information management and sharing including cadastral surveys data, and weak coordination, dispute resolution mechanisms, and registration. The ZIFLP shall have to address these to improve its chances of effective delivery on its purpose.

**Consistency with the impacted livelihoods restoration principle.** Within the legal framework, there is acknowledgement of property ownership. In cases where the national benefit outweighs the individual benefit on a piece or pieces of land, the legislation provides for compensation (Mulolwa, 2016). In case of expropriation of rights to land and related resources, there are clear provisions for compensation that explicate sufficiently the applicable processes, procedures and conditions of recompense. Consultation is one of the *sine qua non* principles of land acquisition. The Lands Acquisition Act guides on the principles of assessment of compensation and clearly indicates when compensation is not applicable including timing, which should not be within six months of title acquisition, approval by commissioner of land to dispose of the property and scheme development. The basis for assessment of compensation includes: 1) Enhancement of value of land by reason of proximity of any improvements or works made or constructed on part acquired; and 2) Damage if any, sustained by the person having an estate or interest in land by reason of severance of such land.

For example, when there is compulsory acquisition of land, compensation amount ought to be equivalent to open market value, and only consider developed and utilization before the publication of notice to acquire land. It also defines what developed and utilized mean. For example, ancillary use, or hedging/hedging is not use worthy compensating for, just like non-good estate management if in rural areas. Equally, the conditions on alienation of land by the President state that *provided that where a person has the right of use and occupation of land under customary law and wishes to*

*convert such right into leasehold tenure, no consideration shall be paid for such conversion*<sup>126</sup>.

While, the legal and policy framework may be adequate, the practice is riddled with unfairness, lack of transparency and inconsistency in administering land and related resources. There are practices contrary to the law provisions, whereby land resources rights are alienated without due regard to the PALF.

- Benefits and incentives, which are in form of use, representation and participation rights, ownership of and access to natural resources and finances, free educational or capacity development, extension and technical advisory services (e.g. in the forests, urban and regional planning, wildlife, environmental management, economic empowerment and fisheries sector laws). There are also provisions for agreements e.g. the Bilateral Investment Treaties (BITs) and Investment protection and promotion agreements (IPPAs), which are the ways Zambia generally grants rights and protection to foreign investors (e.g. under the ZDA Act, 2006). Examples, include 0% import duty on machinery, secure access to finance at reduced prices, treatment of certain products as a priority products including within the food processing sector and reduction in its national and local tax burden (Sambo et al, 2016).

For the provisions for the negotiation and implementation of agreements, there are permits and agreements required for all commercial operations. For example for larger investments (10+ million) an IPPA is required that outlines a Local Business Development Program (LBDP), employment statistics, and reporting requirements. Some of the terms are specific to particular investments. Other non-legal instruments (e.g. an investment license) allow investors to access the lucrative incentives provided for in ZDA law. The agreements are fairly similar, with seemingly most terms standard but with some discretionary terms. The agreements can be renewed if both parties agree, and the lease is transferable to another investor with the new investor's show of capability financially and technically. Once the lease is transferred the original investor becomes free of all future liability. In such agreements, there are clauses about transferring relevant skills to Zambians. For example an LBDP (Mousseau and Mittal, 2011) contained details on the out grower programs, including expenditure commitments on inputs and training, outlining direct contributions with profit projections for out growers, and infrastructure commitments, clinic expenditure, levies payable to council, staff housing, and community services. In addition to the LBDP, employment targets are included in the agreement with very basic salary information. Agreements in other sectors like forestry, wildlife, etc. may be subject to the type of business being conducted, e.g. under the various outgrower and CFM schemes.

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<sup>126</sup> Section 4 (1) of the Lands Act, 1995

Creation of incentives is a highly effective method for attracting private investments and therefore, attract the investment required through private sector mobilization. The need for public incentives is particularly pressing with regard to low-carbon technologies, many of which are (perceived to be) more risky and expensive than traditional investments. Effective incentives work to lower the risk of low-carbon, sustainable technologies, making them more competitive (Sambo et al., 2016).

Lack of sustainable incentives in the legal framework, insecurity of customary land tenure, weak enforcement of environmental and social safeguards and low public participation and awareness are the four common challenges to sustainable land-use investments in the forestry, energy, agriculture and mining sectors. They form a key barrier to the equitable distribution of benefits and wealth from investments in Zambia and the development of Zambia into a climate resilient country. These challenges are particularly relevant to the legal framework, the institutional structure and to their effective implementation (Sambo et al., 2016).

However, in Eastern Province, the situation around customary land tenure is starting to change. Based on influence from some isolated pilot interventions, local people the majority of which are small-scale farmers, are beginning to access TLHCs from their chiefs, which in some way improves their sense of tenure security. In turn, planning of resources use is enhanced. This could be an incentive for the local people to engage in land based investment under the ZIFLP especially with regard to low-carbon technologies, many of which are (at least perceived to be) more risky and expensive than traditional investments (Sambo et al., 2016).

Many stakeholders have planted a lot of trees in Eastern Province. However, according to Roth and Smith (1995), there are considerable disincentives to grow trees for some important products in the province for those products (bulk of firewood, poles, and medicines) the commons provide. Although it is difficult to state how much change has occurred since this was observed in 1995, there definitely could be change in the province as evidenced by the huge number of trees and/or hectares reported to have been planted e.g. the Forestry Department planted a total of 21.5 ha of plantation in 2015. The province has some deforestation hot spots for which people are mitigating against by planting trees and protecting forests under different arrangements (e.g. alley agroforestry for soil and sustainable land use) and support.

Under the resettlement schemes, depending on the category of settlement, the incentive package includes title in addition to farm plots survey and demarcation; infrastructure (access roads, clinics, schools, communal water supplies); access to multi-disciplinary extension, credit, supply, and marketing services.

In 1995, Roth and Smith, found that 1) in the province there was a wide variation among households as to whom they believe is the rightful owner of their land. Some households believed that the farmland is their own, the extended family, the community,



or the chief. 2) The legal position, that land is owned by the State, is simply not felt by rural households. The current perceptions may need to be assessed under the ZIFLP work.

- Governance, Representation and Advocacy: explicit articulation of structures, composition, representation, functions, mandates/powers and appointment of/prescriptions for governance/management (e.g. community forest groups, CRBs, councils, boards, associations, committees) and reporting relationships (in some cases) at both national and subnational (provincial, district, chiefdom, ward and village) scales.

This plethora of governance structures within the PALF that cut across spatial and sector themes forms a sound platform for land management under ZIFLP and should be taken advantage of. The civil and political structures at national, sub- and district levels are relevant for ZIFLP vision. These governance units are also augmented in the new decentralisation structure that comprises four levels, namely: National, Provincial, District and Sub-district, where the provincial and district development committees (PDCC, DDCC), etc. feature for governance. At the sub-district level there are Ward Development Committees (WDC) with full-scale linkage to and participation of village and traditional councils where appropriate. The Chiefs are represented on WDC and are part of the district council. These structures are provided for in the respective laws, and structural composition. The structures form the main framework for representation and advocacy. The laws acknowledge this and to improve representation and advocacy for different interests and preferences there are provisions for (especially at ministerial and directorate level) constituting sub-governance structures especially committees.

- Financing in which case there are provisions for Development Funds (e.g. at national scales there are funds for forests, water, lands, tourism, fisheries and aquaculture, economic empowerment; at district scale there are integrated funds and budget; at village scale there are funds for productivity; and at natural resources management unit level there are funds for joint resources management and community resources boards, etc.). However, some of these funds like the Forestry Development Funds and village productivity funds are not yet accessible to the general public due to lack of subsidiary guidelines and inability to generate them respectively.

#### ***1.4.1.3 Sustainable land use investment***

Land-use investments are increasing in Zambia including in Eastern Province, led by both foreign and domestic private investors. The economy of Zambia relies significantly on land use and natural resource capital. The investments in land-use can activate development, boosting the economy and creating direct benefits such as local employment and infrastructure. The government has identified land-use investments as

essential to the development of key economic sectors of energy, forestry, mining and agriculture. (Sambo, et al., 2016)<sup>127</sup>.

Therefore, a programme such as ZIFLP, addressing the issues that mar the administration of land and related resources needs to be a priority to avoid below par delivery on the proposed investment. This will require use of holistic and multi-stakeholder participatory approaches that acknowledge the value of firm vertical and horizontal linkages among various actors including local communities, civil society, private sector and government. One of the priority issues to tackle, in this case, should be integrated planning as it offers a platform for a holistic management and administration of land resources, especially in a situation where there is overlap. The advantage is that the PALF provides adequately for this e.g. under the Urban and Regional Planning Act, 2015, Wildlife Act, 2015; Forests Act, 2015.

The intent of government for concerted management of land resources is exhibited also in the various synergies across PALF especially in the following thematic areas:

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<sup>127</sup> Sambo PT, Haywood C, Wardell DA, Kibugi R and Cordonier Segger M-C. 2015. *Enabling legal frameworks for sustainable land use investments in Zambia: Legal assessment report*. Occasional Paper 141. Bogor, Indonesia: CIFOR.

- Acquisition of land for development under different sectors e.g. forests, planning,
- Business development e.g. tourism
- Collaboration and joint management and planning e.g. for regional planning, water, forests, fisheries, wildlife,
- Decentralisation of mandates
- Enforcement, regulations and rights: forests, water, environment, land, wildlife, fisheries, tourism,
- Governance structures and instruments and resources mobilization
- Impact assessments e.g. wildlife, environment
- Sectoral development interventions and incentives: tourism,
- Strategic planning, management / conservation and administration of natural resources including assessments (impact, etc.): water resources, etc.
- Planning requirements and content,
- Prevention of offences,
- Limitations of licences and offences

A sustainable investment promotes public participation and local decision-making, engages closely with local communities to ensure buy-in and acceptance by all concerned stakeholders. To facilitate effective public participation, a sustainable investment is also transparent; information on its activities, structure, financial situation, performance, ownership and governance is made readily available to interested persons in a clear and comprehensible form (Sambo, et al., 2016). A number of challenges by way of inadequacies such as limited transparency, involvement of local community members in the process of land rights transfer, insecure land rights and but a few of the many issues the ZIFLP shall have to address and to succeed.

**Stakeholders.** There are a number of government (forestry, agriculture, wildlife, resettlement, planning, administration, etc.), civil society (Land alliance, SNV, Total Land Care, etc.), and private (COMACO, BCP, NWV Agri Services, Agro Dealers, etc.) and community (CRBs, chiefs, headmen, community mobilisers, para surveyors) organizations involved in use and management of land, with diverse practices and experiences in the sectors supported by land tenure PALF.

### 3.1.2 Private sector engagement

**Partnerships.** In Eastern Province, the private sector is engaged in programmes associated with land tenure. The private stakeholders (*ibid.*) like COMACO, BCP, NWV Agri Services, Agro Dealers, etc. are involved in a number of land use investment schemes in various models, scope and focus. For example, there is contract farming with huge recruitment of out-grower apiculturists and farmers of legumes, cotton, tobacco, etc. While these actors are competitors in some way, they are already engaged in some collaboration and partnerships amongst themselves and around their clients, the small scale farmers, as well as along production, market and trade chains. For example in Lundazi, SNV under its SILMS project is working with

Sedia Agro Dealers to test soils, make recommendations for the necessary land husbandry improvement measures, and as an agent for agroforestry and other seed for outgrower farmers while benefiting from the demand for the products or inputs. However, except with the SHFs, the collaboration in the majority of cases are mere loose arrangements with no firm contractual arrangements.

Clearly, some of the investments are anti-REDD+ as they contribute to either deforestation or forest degradation for example tobacco and cotton production. However, some of the companies (like JTI<sup>128</sup>) promote tree planting to mitigate the effects of their land use investments. Nonetheless, they could still be targets for *REDD+-vised* technology sharing.

### **Community partnerships with private sector and/or civil society organizations.**

Under the contract farming schemes, there are private sector players like NWK Agri services and COMACO that have experience in working with a large number of smallholder farmers with functioning structures. Structures and institutional arrangements present in the province under partnerships include COMACO cooperatives with hierarchical membership composition of village action groups (VAGs), principal and lead farmers, producer groups, individual farmers. Such and many other entities that may still be learning the ropes or just getting into Eastern Province, may be targets for partnership establishment and development. Target sectors could include apiculture, mushroom production and other pro-REDD+ land based investments and practices like forest/habitat restoration for the hospitality industry particular servicing eco-tourism. The PALF provides, under different laws/mandates, for partnerships with local communities and other stakeholders where private investments partnerships would be established e.g. private forestry.

### **3.1.3 Technical framework for REDD+**

**FREL and Benefit Sharing mechanisms.** The government through its Forestry Department has been involved in forest resources assessment in Eastern Province under the FAO supported ILUA programme, and contributed to the FREL<sup>129</sup>. There are other government departments (3.1.1 above) that are relevant for REDD+. The Centre for International Forestry Research (CIFOR), has also been involved participatory resources assessment at subnational (villages, 8) level in Nyimba to contribute towards the national REDD+ strategy development. In addition, there are two private institutions that are currently engaged in REDD+-related programmes though at different scales and levels of development: COMACO and BCP. The former runs The COMACO Landscape Management Project whose development objective is to reduce emissions of Greenhouse Gases (GHG) through the sustainable management within 270,698 ha of land traditionally devoted to community led agricultural and non-agricultural activities. The delivery of the ERs according to the delivery schedule agreed upon in the Emission Reduction Purchase

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<sup>128</sup> Japanese Tobacco International

<sup>129</sup> Forest reference emissions level

Agreement (ERPA) is the results indicator that is being monitored by the World Bank over the ERPA duration<sup>130</sup>. It is practicing the concepts under the CCAs with a total of 55,664 ha spread over 17 chiefdoms in five districts of Chipata, Lundazi, Mambwe, Nyimba and Petauke. Some of the CCAs are adjacent to COMACO resettlement areas guided by a resettlement policy framework (RPF). No assessment has been done yet, and so no benefit sharing has taken place, too. Under this intervention there is a requirement for an agreement that requires the Chiefs to submit a benefit sharing plan that will ensure fair distribution or usage of revenue channeled through the sale of Emission Reductions generated from the Project (WB, 2016). Based on the current findings, the agreed sharing arrangement once benefits start accruing and the shares (for the various roles the parties play or are envisaged) will be as follows: COMACO – 30%, CCA development committee – 40% and chief – 20%. For BCP, 75% of net moneys will go to communities and 25% to BCP for tax and management, in addition to the \$5000 to be given once as a contribution to communities for the projects of their choice<sup>131</sup>. Such pilot arrangements would make sound starting stage for ZIFLP activities.

The Forests Act and the ZWA provide for sharing of benefits generated from joint initiatives (e.g. JFM) but the sharing is should be according to management plans. This gives a leeway to negotiate terms and conditions of benefit distribution. Such sharing should include carbon trade/credits as carbon is a major forest product under the Forests Act and hence may be traded.

**Monitoring, Reporting and Verification (MRV).** The Forestry Department, COMACO, BCP and other institutions like Land Alliance in Eastern Province have relevant skills (although the capacities of the majority are weak) like in GIS necessary for resource tracking and information management. Most stakeholder institutions use participatory approaches in their development programmes, which is an essential element for the social and environmental safeguards for REDD+. There are also previous interventions that have tested approaches and developed models and contributed towards the National REDD+ Strategy development. For example, CIFOR developed a prototype MVR model using participatory forest resources assessments approaches working in and with eight villages in four chiefdoms (Luembe, Ndake, Mwape and Nyalungwe) in Nyimba district. Together with communities, CIFOR produced village maps and participatory village forest action plans. However, these plans have not been implemented due to limited capacity as well as political weakness (especially) at village level. Such planning products offer lessons and clear opportunity to connect with local communities and move forward, hopefully, quickly. The BCP has drawn lessons from these and is building on the works based on the products.

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<sup>130</sup>The World Bank (WB) Implementation Status & Results Report Zambia COMACO Landscape Management (P144254). 27-Jun-2016.

<sup>131</sup> Godfrey Phiri, BCP Engagement Coordinator, Mfuwe (7<sup>th</sup> November 2016).

## 3.2 Livelihoods and low carbon investment

### 3.2.1 Climate smart agricultural practices

A number of government, CSO and private organisations (both development and research) in the province are engaged in CSA interventions and practices at various in various schemes, scales, models and capacities. The CSA is practiced under out grower schemes by many organisations and cover thousands of smallholder farmers. SNV has the SILMS, which includes integrated soil fertility management (promoting *Gliricidia*, etc.) and is collaborating with ZARI (Zambia Agriculture Research Institute) and ICRAF (The World Agroforestry Centre). COMACO has the sustainable agriculture land management (SALM) activities where it is promoting *Gliricidia* based agroforestry practices, the Ministry of Agriculture has CASU (Conservation Agriculture Scaling Up Project). The Eastern Province has been host to the extensive programme called SSAFE (Soil Conservation and Agroforestry Extension), which still has some positive impact remnants in the province. A lot of agriculture and apiculture crops are produced with marketing and value chains within and outside the province, including amongst the local players themselves.

For livestock, COMACO has poultry (using local bred chickens) and small ruminants (goats) support programme for the resettled group in Nyimba and elsewhere in the province. There is Katopola Farmer Institute that breeds chickens, and participate in such programmes.

### 3.2.2 Community based forestry management

**Community Forest management groups.** The National Forestry Policy, 2014 and the Forests Act, 2015 provides clear guidelines on participatory forestry (sections 29-35: CFM); 36-39: FM and 26-28: private forestry). There are procedures for registration of the local management institutions like CFM groups and rights and obligations are also outlined in the Act. There are no legal CFMGs or any other agreements from any organization as provided for under the Act yet in the province, as the subsidiary legislation including Carbon Management Regulations are still under drafting<sup>132</sup>. The implementation of the policy on participatory elements is currently being piloted under the DFNRMP. So far, 15 CFMGs from Northern Western and Muchinga Provinces have been submitted for consideration by the Director of Forestry (noting that this is behind regulations drafting). BCP also has drafted some (10 out of the 11 planned) agreements with communities. However, all such agreements and requests will wait for the due legal process to complete before they can be considered. The ZIFLP will be benefit from the lessons based on the pilot initiatives like the DFNRMP.

**Forest management plans.** Under the USAID-supported CIFOR Nyimba Forest Project, eight participatory village forest management action plans were developed and are available with the respective communities. CIFOR has also conducted studies on charcoal production and timber

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<sup>132</sup> Mr. Bwalya Chendauka, principal forestry Officer (responsible for the process)

trade in Nyimba and recently in Luangwa and Mkushi (in addition to Kaoma) districts for timber. The DFNRM has developed forest management plans for its working sites (it is a requirement under the forest law for the CFMGs) in Muchinga (Chinsali, Nakonde, Shiwang'andu) and North Western provinces (Kasempa, Mwinilunga). COMACO has conservation plans for its CCAs. By the urban and regional planning law, there must be integrated regional, sectoral, and local area plans with clear guidelines on how these should be prepared in a consultative manner and their respective minimum contents. Section 44(1) stipulates that *the management plan to be registered in such register as the Minister may prescribe and publish a notice of the registration in the Gazette*. None of the plans have been registered yet since the law enacted on 4<sup>th</sup> August 2015. These efforts provide a very good leap point for the scheduled ZIFLP.

**Community forestry enterprises.** COMACO is supporting a number of these under the outgrower schemes. However, capacity development is needed to expand the current base for existing ones and establish others under different institutions. What may be very important for the ZIFLP is to understand the schemes and avoid holistic adoption of the practices.

**Fire management and prevention.** Fire is a commonplace issue in the province and is among the drivers of forest degradation. Despite this, there seems to be no meaningfully planned and implemented activities beyond previous studies<sup>133</sup> (which recommend essential formal training and community sensitizations on fire) to effectively manage fire in the province. Managing fire would decrease its potential negative impact on communities, wildlife, soils, and air quality in tandem with allowing for fire to be used in a prudent manner (Hollingsworth et al. 2015).

**Forest management near PAs.** The Forestry Department is mandated by law to establish and manage forestlands both in state and customary areas. There are 65 forest reserves in Eastern Province (but all of them have no management plans) including the Lundazi National Forest that is adjacent to Lukusuzi National Park (Zambia) and Kasungu National Park (Malawi). The Lukusuzi National Park also has no management plan<sup>134</sup>. Most of the PAs are degraded from anthropogenic activities including encroachment and charcoal production especially along the Lundazi-Chipata Highway. The GIZ project whose operations are situated in Mwasemphangwe area will support capacity building towards resources management. A number of other players in forestry and other natural resources sectors, as outlined already elsewhere, could be engaged in planning and implementing forest management plans for and near PAs.

### 3.2.3 Wildlife management

The DNPW is mandated under the Zambia Wildlife Act, 2015 to manage wildlife and national parks in Zambia, and is managing a number of these in Eastern Province, in amid huge

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<sup>133</sup> Like: Hollingsworth, L. T.; Johnson, D.; Sikaundi, G. and Siame, S. 2015. Fire management assessment of Eastern Province, Zambia. Washington, D.C.: USDA Forest Service, International Programs. 88 p

<sup>134</sup> Ms Sinyala Nyirongo, Planning Officer for ELAMU (East Luangwa Management Unit).

human, financial and physical challenges (like many other players in the sector and province). The province has a total land size of 12,024 Km of national parks (Lukusuzi, Luambe and South Luangwa) and 15, 010 km of GMA network like the Upper and lower Lupande around Luambe NP. The parks have great potential for tourism. Lukusuzi National Park is located in an area of biological significance (Moombe, 2009). There is a network of fragmented and other habitats and forests types on state and customary within the Miombo and other associated ecosystems both in and outside the national parks; some of which are degraded and require restoration. Good examples are Chimaliro and Lundazi forests, which are among the most degraded in the province (FD, 2015). However, the forests/woodlands have great potential for restoration. There are myriad challenges around these resources among the major ones being lack of management plans resulting in untold encroachments and subsequent degradation in some cases.

### **3.3 Project management**

While the legal and institutional framework provides for incentives like funds under different sectors, the funds are not accessible by most decentralized units in various provinces and districts. The Forest Fund for example is not yet established beyond the principal law. Therefore, the majority of governance institutions at provincial and sub-levels are not functional or at least not effectively. At community level for example the CRBs in Chikomeni are hardly functional due to lack of funds in addition to having no access to a GMA. Some of the community based plan and strategies for wildlife, forest and other natural resources that were developed some five to six years ago have not been implemented. The WDCs and other structures provided for under the local government law cannot functions well due to fiscal limitations. With such a scenario, there cannot be any effective monitoring and (including impact) evaluation. With such deplorable scenarios, the rationalization of ZIFLP becomes straight forward.



## CHAPTER FOUR | CONCLUSION AND RECOMMENDATIONS

There is sufficient and relevant information about Eastern Province concerning land, forest tenure and land rights issues that is relevant to REDD+ project objectives and activities. In this province of assessment, there are two topical areas important under this study. These are land transfers (and transactions) and the legal and institutional frameworks beneficial to the ZIFLP activities. Both the formal and traditional sectors are engaged in land transfers and cash transactions, as provided by the various complementary laws. The information on these includes major challenges associated with state and customary lands in terms of occupancy, acquisition and management as well as resettlement and relocation experiences over the past decade. There is also information on the process for recording or documenting the land and resource rights as provided by laws and in practice at both provincial and sub-provincial levels like chiefdoms. In addition, information is available on benefits of engagement with various actors in the province.

Despite this scenario, there are information gaps, thus information is either scanty or absent all together particularly in annual increases in benefits and revenues resulting from activities taking place in Eastern Province, and on cash transactions and agreements on land.

In terms of PALF, there are relevant, adequate and appropriate enabling elements for the broader aspects of community based protected areas management, access to and use of traditional resources across protected forests, national parks and other “restricted” resource zones. The rights, which include use, transfer, occupancy, education and financial, etc. are spelt out clearly, alongside investor requirements under different set ups. However, there are overlaps and ambiguities in some cases that make coordination among the institutions associated with land alienation difficult.

Unfortunately, this plethora of information reveals glaring issues that need attention with respect to ZIFLP, and are outline below with suggestions on how to address them.

- Deforestation and forest degradation and harmonization of relevant laws: among the most prominent and leading factors causing resources degradation in Eastern Province are agriculture, fire and bio-energy production and use. Thus, the sectors to address may be largely outside the forestry sector, further suggesting that the legal and policy framework associated with land administration and management that the ZIFLP needs to address as cross-sectoral and wide as the causes of degradation. **This suggests a multi-or cross sector interests and therefore management and planning. Further suggesting that any planning especially land use, should strategically acknowledge a mix of rights at customary and state tenure levels. It is also important that the laws are harmonised and one of the best ways would be to adopt a human rights approach to the implementation of the ZIFLP.** This will also require a coordinated institutional framework to lessen conflicts among the actors on the program. There should also be strategic land use planning (as provided for under the Urban and Regional Planning Act, 2015) to effective manage the potential and

existing conflicts in land use associated with forestry, human settlement, agriculture, mining, fisheries, etc. Instituting a cross-sectoral coordination framework that covers the national and local level to manage conflicts in institutional mandates and roles will also be of great value and use in harmonizing different sectoral priorities. Implement the PALF in a holistic manner and improve on harmonization of mandates and roles. Integrated planning would be hallmark towards guiding efficient land use investments. Harmonising the various legislations at functional level would also be good especially to address the lack of co-existence of multiple rights on the same land parcels e.g. forestry and mining.

- Benefit sharing and incentives for investment under the ZIFLP: Clearly, the report highlights some political and land tenure issues, which may constitute one of the major risks for investment in REDD+ under the ZIFLP. The political risks revolve around unfair and non-transparent alienation of land at both national (state land) and traditional (customary tenure) levels in some cases. To be of great impact, the ZIFLP should guard against this as it supports investment in Eastern province, for example under the community forestry subcomponent that may involve alienation of land for communal management by interested groups. Of paramount importance here is the recognition of customary tenure. While the Lands Act recognizes customary land tenure, its interpretation especially with regard to whether such recognition means security of customary land rights as well. This also important when viewed from the perspective that unclear land tenure rights will make benefit and cost distribution complicated. There are draft laws in the forestry sector, which should be standardized and ensure consistence with the FPIC principles. **Further, any rules and regulations to be crafted under the ZIFLP must be clear enough to promote and sustain engage in the components by various stakeholders.**
- Recognition of customary tenure and hence rights: One of the key issues that is relevant for REDD+ revolves around recognition of customary rights (mentioned in preceding paragraph). The recognition of customary tenure without security has implications for REDD+. For REDD+ implementation at the local level to be successful, customary land owners must participate (they form the largest share of land in Zambia and the Eastern Province) and their involvement would be consistent with the principle of free, prior and informed consent. **What this begs for the ZIFLP, therefore, is development of regimes (mechanisms, rules, regulations, structures, etc.) that will reflect clearly and transparently how the benefits and costs of engagement will be distributed, how much, when, by who and for what.**
- Decentralisation of land and other natural resources management. There are efforts to devolve natural resources management in Zambia including the Eastern Province. However, the progression to remarkable decentralized mandates is yet to be achieved especially in land administration. Under the DFNRP initiative, processes are ongoing that are testing the devolution concept. Some lessons would be valuable for the ZIFLP: processes of mobilizing communities are relative quick if strategic mechanisms are used (unified district and other planning, implementation and monitoring teams), but these are encumbered by the

extremely slow legal reforms. The statutory instruments to support community forestry at local level are yet to be law and as such nothing may happen including under the ZIFLP. **This calls for interest by the ZIFLP to check and establish the implications and options that may be available to effectively incentivize participation of the forest-dependent communities.**

- Public and local participation: The policy and legal framework is anchored on principles of participation. However, in practice this is without challenges of lack of accountability, lack of transparency, lack of consultation and inclusiveness. **It cannot be argued that participation is the bedrock of sustainable development and as such should be promoted by the ZIFLP.** The benefits are many, for example, lessens conflicts among stakeholders especially under unclear rights frameworks such as those surrounding recognition and security of customary tenure/rights.

This study is not exhaustive and therefore, further assessment is need in the areas identified in the previous bullet paragraphs (decentralisation, harmonization of laws, public participation, recognition of customary rights, etc.) during the implementation of the program.

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## Annex 1 Contract farming and out-growers experiences

Contract farming or outgrower scheme has the potential of being truly inclusive business models (Glover, 1984; Baumann, 2000) that support smallholder led agricultural growth. In the 2003/2004 up to 40% of all smallholder farmers in Zambia were organized in out grower schemes. COMACO, World Bank, 2012). Cotton, tobacco and paprika are nearly 100 per cent produced through a smallholder contract farming system, while for sugar cane an estimated ten per cent is grown through smallholder contract outgrower schemes (Matenga, 2017). There are several success stories of outgrower schemes in Zambia, but current figures are difficult to access. Contract farmers have user rights to the land they grow crops. The land has been allocated to them under the customary tenure.

Zambian commercial agriculture is characterized by numerous out grower schemes, and the farm block development (FBD) has the out grower concept as a key component. While out grower schemes are promoted as enabling smallholders' participation in the agricultural development of the country through realization of some of the benefits that would otherwise be unavailable to them, one of the drawbacks is the over-reliance of the out growers on the investor (Mousseau and Mittal, 2011).

Despite this broad participation, contract farming is usually just a supplementary source of cash income and farmers continue to rely on the production of other crops and subsistence farming as well.<sup>135</sup> While contract farming schemes can have a range of benefits (ibid, Table 7), there are disadvantages related trade-offs between socio-economic and environmental goals. Thus suitable models need to be found that enhance advantages and mitigate risks.

The status of contract farming in Zambia clearly points to the great potential for expansion and commercialization of contract farming. However for this to be realized, the issues of government's role, the regulatory framework, the enforcement issues, the land tenure systems and the strengthening of the small-scale farmer organizations require attention. Further the general constraints/problems being raised by both the agribusiness firms and the small-scale farmers must be addressed<sup>136</sup>.

### Stakeholders/Partnerships

Several companies are involved in out grower schemes in the Eastern Province: NWK Agri services, COMACO, SNV<sup>137</sup> (Katate, Mambwe, Lundazi), Cargill, JTI (Japanese Tobacco International), China-Africa Company aka Chipata Cotton Company, Manjet, etc. involving a number of cash and non-cash crops like groundnuts, cotton, soyabeans, beans, and rice. Cargill buys soybeans and conducts strong consultation with COMACO. It also supports with beehives for women. The honey produced is bought by COMACO. The out grower schemes under some companies like COMACO work with seed companies. Seed is obtained from the companies and distributed to farmers. In the case of COMACO, the seed is distributed to its centres and from there to the farmers. Farmers receive inputs as loans with interest. For COMACO, the interest is 30-33% (e.g. for 20 kg of seed, the farmer returns 26 kg). The returned input is given to new recruits into the out grower scheme. COMACO encourages a spirit of asset ownership. It supports establishment of bulking sheds, and other income generation activities like poultry

<sup>135</sup> IAPRI papers; Schuepbach (2014): FOREIGN DIRECT INVESTMENT IN AGRICULTURE. THE IMPACT OF OUTGROWER SCHEMES AND LARGE-SCALE FARM EMPLOYMENT ON ECONOMIC WELL-BEING IN ZAMBIA . Dissertation ETH Zuerich, Switzerland.

<sup>136</sup> Gumbo, draft. "Do outgrower schemes improve rural livelihoods? Evidence from Zambia"

<sup>137</sup> The Netherlands Development Organisation

production. The farmers are free to sell the surplus to other markets (China Africa) only after COMACO has bought, and recovered its investment.

**Table 6** Some key features of contract farming in Zambia

Theme	Outline of the key features
Land tenure	<p>Both from customary areas, private and state land. The source of land for out growers is from both customary and resettlement. In some cases farmers rent land from elsewhere to grow food. In case of Jatropha, some interventions are in GMAs. However, there appears to be limited privatization of the commons. Land amount under contract farming varies depending on businesses, farmer category<sup>138</sup> and whether core of out grower space. For example, a core-venture may range from 250 to more than 155,000 hectares. Similarly, land assigned to a commodity per out grower various but may be as small as 0.25 ha. Under the FBD programme there will be about 100, 000 hectares per province. There is one FBD area in Lundazi district of eastern province. Commodities include non- and cash as well as non- and food crops: Groundnuts, Cotton, Tobacco, Jatropha, Maize, Soy, Sugar cane, Honey, etc. In terms of rural livelihoods and out growers in Zambia, there is a general consensus that cotton, tobacco, sugar and paprika give good returns to out growers., even though cotton and tobacco production cause conflict with forest conservation as they require use of chemicals and a lot of wood for processing respectively.</p>
Other key features	<ul style="list-style-type: none"> <li>• Other than Eastern province, contract farming is practiced in Muchinga, Southern, and Central provinces</li> <li>• Type of institutions: there are both multinational (e.g. Cargill, Olam, NWK agribusiness, Alliance One, Dunavant) and national (COMACO, Chipata Cotton Company) that drivers of the contract farming in Eastern Province. Ownership of land for contract farming is largely by individual farmers. Some companies like JTI, Alliance One and Zambia Sugar do own the land. However some out-grower companies maintain a monopolistic grasp over the product pricing structure.</li> <li>• Existence period: engagement in a contract farming schemes started as early as 2000 (NWK) with COMACO and OLAM engaging in 2006 and 2007 respectively. These organisations are in a Better Life Alliance<sup>139</sup> with a focus on Eastern Province</li> <li>• Models: Core venture without growers, with individual contracts in some cases engaging seasonal labour. The models are still under evolution where applications for individual and block titles are encouraged e.g. some districts in southern province. The outstanding tenet of the Zambian contract farming model is the reliance on the investor whereby the sustainability of the out grower schemes depend on the investors. The investors usually set the prices for the products and controls all aspects of input provision and the product must be sold to the investor company. Poorly administered out grower schemes do not guarantee a market for the farmers.</li> </ul>

<sup>138</sup>**Farmer Category:** large-scale commercial ( $\geq 40$  ha); semi-commercial farmers (20 to 40 ha); emergent farmers (5 to 20 ha); small-scale farmers (by energy to managing 0 to 5 ha)

<sup>139</sup><https://www.devex.com/impact/partnerships/better-life-alliance-779> . The Better Life Alliance improves agricultural extension services and helps farmers obtain inputs, such as fertilizer and pesticides for diverse commodities. The Alliance also trains farmers in conservation farming techniques and offers farmers incentives to use sustainable farming practices. USAID’s partnership in the Alliance enables COMACO, a local business, to extend its outreach from 15,000 to 40,000 farming households and launch new products, such as locally-processed peanut butter and rice under its wildlife conservation branding, “It’s Wild.”



	<ul style="list-style-type: none"> <li>• Social and organizational benefits from contract farming include access to extension services including on new and innovative technologies, inputs and guaranteed markets for products. Based on such benefits, contract farming has potential to increase food production. Contract farming also includes loan advances that have allowed some very poor households to participate, build up new institutions, and out growers realize relatively higher incomes in comparison to non-out-grower households.</li> </ul>
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**Sources:** Mousseau and Mittal, 2011; Gumbo, Mudenda and Machina<sup>140</sup>; ILC<sup>141</sup> ; Matenga and Hichaambwa, 2016.

The out grower schemes have agreements with sharing arrangement for example for the SALM (sustainable agricultural land management) under COMACO, 40% for COMACO for project /scheme management, 55% for the COMACO producer groups/cooperatives and 5% to the chief. Despite competition in the industry, there are partnerships like between COMACO and Cargill whereby the later supports COMACO farmers with beehives (for women) and the former trains the producers and buys the honey. The COMACO scheme started around 2004 but established in 2005 giving some 11 years' experience in the development model. Currently, COMACO says there are 80, 000 farmers in eastern province engaged in its out grower schemes producing and/or growing rice, soybeans, cowpeas, maize, honey, groundnuts. The maize is used in protein supplements at the rate of 30% soybeans to 70% maize per supplement product produced.

#### **Institutional arrangements under out grower schemes**

*COMACO.* There are producer cooperatives made up of scheme members that include principal lead farmers, lead or role model farmers (responsible for 20 producer groups), there are producer groups (PGs) with chairpersons (20 PG chair persons report to or are supported by a lead farmer), and individual farmers. Cooperatives supervise VAGs (Village Action Groups). In Lundazi District, there are 8 CCAs of which 2 are in Chikomeni chiefdom (Kabinga and Chamkoma), where there are 2 cooperatives, and 5 VAGs. One principal lead farmer (PLF) is responsible for many PGs (for example in the PLF in Chikomeni has 140 PGs). COMACO also works with multi-sector task forces as strategies to for enhancing conservation efforts. There are round tables where other partners also participate for example the TLC (total land care), CFU (Conservation Farming Unit, ICRAF/WAC. Institutional task force members include government and non- and government actors: district commissioner as chairperson, resettlement, agriculture (DACO<sup>142</sup>, forestry), chiefs and traditional affairs, DNPW, community development, health,, churches, Zambia police, etc.. There is also planting of trees especially for intercropping agriculture (agroforestry) like *Gliricidia* (25 million planted so far in individual woodlots on customary land parcels/field, homesteads)

*SNV.*The organization runs a SILMS (sustainable integrated land management solutions) project in Lundazi that develops gender and business inclusive climate-smart agricultural business model within a sustainable natural resources framework of income generation in rural areas. The SILMS component include integrated soil fertility management, agroforestry and deforestation-free supply chains. 50,000

<sup>140</sup> Technoserve; D.Gumbo, C. Mudenda and H Machina. Land Acquisitions in Zambia: Social and Environmental Impacts. DRAFT

<sup>141</sup>International Land Coalition, *Agrofuels in Zambia*, [http://www.commercialpressuresonland.org/wp-content/uploads/case\\_studies\\_16.pdf](http://www.commercialpressuresonland.org/wp-content/uploads/case_studies_16.pdf)

<sup>142</sup> District Agriculture Coordinators

trees have been raised: *Faidherbia albida*, *Gliricidia sepium*, *sesbania*; trained 10 lead farmers. The project involves working with agro dealers like the Sedia Agro services of Lundazi. The agro dealers have been trained to test soils and make recommendations on what type of inputs are to improve productivity. This is to avoid blanket recommendations on soil management. Because of difficulties, the farmers are encouraged to participate. For example, as motivation 200 farmers given 200 euros as motivation for first adopters; there is a 10,000 farmer target. Market based incentives are also given to farmers. A number of crops are grown with the SILMS project catchment areas (i.e. Mwase Lundazi and Kankumba, Zumwanda, Kapichila) that include

SNV collaborates with the ministry of agriculture, ZARI<sup>143</sup>, ICRAF/WAC<sup>144</sup>, NutriAid Trust (agro-dealers, experts in training), COMACO. COMACO collaboration is in Mfuwe against deforestation where it has helped purchase 50 tonnes from farmers to help them shift from cotton growing to other crops. Input suppliers help increase local availability of ISM and agroforestry technology and modern farming inputs to farmers, and in turn get increased sales from the resulting demand. Processors/trader help in increasing smallholder farmer (SHFs) access to market, that then benefits processors/traders through stable and increased quantity and quality of bulked produce from the SHFs. Agro dealers help to increase local availability of ISFM and agroforestry technology and modern farming inputs, and access to extension services (soil testing, and finance to SHFs). SNV works with farmers to establish seed multiplication enterprises and tree nurseries. Incentives are provided to SHFs to use sustainable production practices and to join or establish farmer associations for bulking purposes. SHFs benefit from market access and increased yields. Their institutional structure: at local level there is CAC (camp agriculture committee), zones, villages, leader farmers and then field. In terms of market linkages: the major output markets for SNV include Mt. Meru (Lusaka), Cargill, NWK Agri Services, ETG (Export Traders Grower). There is a biogas programme under SNV.

*NWK Agri Services* finances small scale farmers in growing cotton since 2000 with a 50/50 spread in the valley and plateau (Mwasemphangwe, Chikwa, Chilupula, Nabwalya (Mpika). All chiefdoms on up land are covered. About 15,000 farmers are under NWK out grower schemes. The company uses what it calls a Distributer Model. The model uses shed. There 11 sheds. Each shed has distributors who work on commission. There are 139 distributors for the Lundazi catchments. Distributors have agents, who recruit farmers.

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<sup>143</sup> Zambia Agriculture Research Institute

<sup>144</sup> International Centre for Research in Agro-Forestry/World Agroforestry Centre)

## Annex 2 Impact of Resettlement and settlement schemes

AREA OF IMPACT	COMMENTS
<p><i>Technology/ knowledge transfer</i></p> <ul style="list-style-type: none"> <li>▫ Extension services and training provided to out growers</li> </ul>	<ul style="list-style-type: none"> <li>▫ Seems like a fairly limited transfer of technology and know-how</li> </ul>
<p><i>Infrastructure improvements</i></p> <ul style="list-style-type: none"> <li>▫ Provided infrastructure for their workers (schools, clinics, housing, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>▫ Most agreements seem to provide for that requirement.</li> <li>▫ The small and medium size investors relied primarily on state infrastructure</li> </ul>
<p><i>Food Security</i></p> <ul style="list-style-type: none"> <li>▫ Interruption of food production</li> </ul>	<ul style="list-style-type: none"> <li>▫ Most of the communities and respondents had not yet seen widespread food security impacts on smallholders from commercial agricultural activities.</li> <li>▫ In many cases yields return to near normal levels after one season</li> <li>▫ People’s concern: long-term food security should rates of commercial agriculture continue to increase as projected</li> <li>▫ The sources of food that comprise a food secure household become more insecure as the scale of agriculture increases</li> </ul>
<ul style="list-style-type: none"> <li>▫ Displacement of local people from their ancestral land to marginal areas</li> </ul>	<ul style="list-style-type: none"> <li>▫ When land pressure increase and more awarded leases are cleared and developed</li> <li>▫ Local people become squatters in some cases.</li> <li>▫ Displacement appears to be seen as “a cost of doing business” or “for the greater good of the country</li> <li>▫ Displacement seems to occur primarily when investors convert customary land to state land</li> <li>▫ Compensation is usually through resettlement with assistance with inputs, support with community projects, for crops or dwellings,</li> <li>▫ Compensation risk: No compensation for land without formal title or development</li> </ul>
<p>Migration</p> <ul style="list-style-type: none"> <li>▫ an increase in poaching and the resultant decrease in fish/wildlife populations,</li> <li>▫ Increased deforestation e.g. through increased charcoal production to supplement incomes),</li> </ul>	<ul style="list-style-type: none"> <li>▫ One documented case of agriculture labor migration is the cotton ginneries in and around Katete, where the labourers come from eight different Zambian provinces, as well as from Malawi, Zimbabwe, and Mozambique</li> <li>▫ Probably most critical for Zambia, an increase in the rates of HIV/AIDS</li> </ul>

<ul style="list-style-type: none"> <li>▫ increased conflict between local people and laborers,</li> <li>▫ greater stresses on ecological systems (including water),</li> <li>▫ Loss of Access to Land, Markets, and Public Services</li> <li>▫ Gravesites and cultural/historic places of importance are lost. Yields drop in the interim period where planting and/or harvesting seasons are disrupted</li> <li>▫ Loss of cultural identity</li> </ul>	<ul style="list-style-type: none"> <li>▫ Migration is often associated large-scale commercial agriculture</li> <li>▫ Connections to the land built up over generations are lost and families</li> <li>▫ Loss of infrastructure (usually not in place at new locations)</li> <li>▫ Forced adjustment to farming and other practices to a new location/land</li> <li>▫ Farm block approach seems to emphasize economic benefits e.g. GDP growth,</li> <li>▫ Farm block concept seems to gloss over the expected negative social and cultural dislocation that accrue to the local people for generations into the future</li> </ul>
<ul style="list-style-type: none"> <li>▫ traditional buffers against food insecurity will also be eliminated</li> </ul>	
<ul style="list-style-type: none"> <li>▫ diminishing levels of food security</li> </ul>	<ul style="list-style-type: none"> <li>▫ food insecurity will emerge from changes to microclimate, increased soil erosion, and hydrological changes brought about by deforestation</li> </ul>
<ul style="list-style-type: none"> <li>▫ expected that rural-urban migration will increase</li> </ul>	
<ul style="list-style-type: none"> <li>▫ No increase in local food supplies</li> </ul>	<ul style="list-style-type: none"> <li>▫ Since government policy and land agreements focus on the growth of cash crops for export</li> </ul>
<ul style="list-style-type: none"> <li>▫ The lack of tenure security makes it virtually impossible for smallholders to access credit and improve their farms.</li> </ul>	
<p>Environmental impacts</p> <ul style="list-style-type: none"> <li>▫ Carbon emissions increase</li> <li>▫ Deforestation</li> <li>▫ Loss of fish and wildlife habitat and populations</li> <li>▫ Loss of non-forest timber products</li> <li>▫ Reduces biodiversity</li> <li>▫ Soil fertility decrease and erosion increase</li> </ul>	<ul style="list-style-type: none"> <li>▫ Land clearing due to agriculture; large-scale commercial agriculture usually involves large-scale clearing</li> <li>▫ Smallholder agriculture and largely intact-forested areas often exist side by side</li> <li>▫ NTFPs can supplement and sustain livelihoods during times of food insecurity</li> <li>▫ Wildlife and large-scale agriculture are incompatible e.g. elephants destroy crops and thus animal-farmer conflicts including in Eastern Province</li> <li>▫ Reduction in the unplanned and illegal use of natural resources especially trees for charcoal production.</li> </ul>

Sources: Muleba, 2012, Mittal, 2011; Moombe, 2016; Moombe, 2016

## Annex 3 Key Challenges in Land Administration in Zambia

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### Key Challenge (Source of Information)

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#### 1) Corruption (TIZ, n.d.; Gumbo and Mudenda, 2009)

- Centralized state control over land matters, patronage and corruption within Government, local authorities and customary authorities in land delivery.
- lengthy land delivery procedures also cause breakdown in land administration
- Fears of mounting corruption at Deeds Registry are good reasons for improving transparency of conversion of customary land to leasehold

#### 2) Conflicts in land allocation and weak resolution mechanisms (Mudenda, 2006<sup>145</sup>; Mousseau and Mittal; 2011<sup>146</sup>; ZLA, 2008; Honig & Mulenga, 2015<sup>147</sup>; Muleba, 2012; Mulenga & Miti, 2016<sup>148</sup>)

- Some chiefs assert that traditional rulers were losing land (Mudenda, 2006) and as such powers
  - The causes of these disputes are numerous including lack of boundaries, ownership claims, or inheritance/succession issues.
  - Chiefs have very little accountability towards their subjects, and almost complete autonomy over their lands.
  - land conflict resolution mechanisms are decentralized, costly, discriminatory and inefficient
  - Distribution of land, among small-scale farmers, being non-reversible is a source of concern to traditional leaders.
  - Limited options on how to safeguard tenure of customary land by many resource poor families and individuals.
  - lack of protection of smallholder farmers' interests in terms of land access and security under the current system
  - Existing formal (e.g. lands tribunal) land dispute mechanisms are generally beyond the reach of most ordinary Zambians due to:
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<sup>145</sup>TS 50 - Conflicts and Land Administration. Mweembe Muleya Mudenda. The Challenges of Customary Land Tenure in Zambia Shaping the Change. XXIII FIG Congress. Munich, Germany, October 8-13, 2006

<sup>146</sup> FINAL DRAFT REPORT ON RESEARCH SYMPOSIUM ON ZAMBIA'S CUSTOMARY LAND MANAGEMENT HELD AT MULUNGUSHI CONFERENCE CENTRE, LUSAKA. ON 6-7<sup>TH</sup> APRIL 2016.

<sup>147</sup> Honig, L. & Mulenga, B.P. 2015. The Status of Customary Land and the Future of Smallholder Farmers under the Current Land Administration System in Zambia. Working Paper 101. October 2015. Indaba Agricultural Policy Research Institute (IAPRI). Lusaka, Zambia

<sup>148</sup>Lessons Learned from CSO-led Systematic Registration of Customary Land in Zambia. Christopher Mulenga and Noreen Miti TETRATECH and CHIPATA DISTRICT LAND ALLIANCE. Paper prepared for presentation at the "2016 WORLD BANK CONFERENCE ON LAND AND POVERTY" The World Bank - Washington DC, March 14 - 18, 2016. [https://www.land-links.org/wp-content/uploads/2016/09/USAID\\_Land\\_Tenure\\_World\\_Bank\\_2016\\_CSO\\_Customary\\_Land.pdf](https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_World_Bank_2016_CSO_Customary_Land.pdf)

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- Lack of knowledge about the processes, centralized nature of the process (i.e. Lusaka), high costs, and poor funding.
  - Lack of statistics and other disaggregated data on issues linked to security of tenure.
  - Lack of formally recognized administrative mechanisms to resolve indigenous land claims.
- 3) Non-inclusiveness or limited participation of local communities (Honig and Mulenga, 2015; USAID, 2016; Mousseau and Mittal, 2011; Muleba, 2012; Mulenga & Miti, 2016)
- inadequate participation by communities in the governance of land and natural resources
  - the best land is increasingly and opaquely being transferred out of the customary domain without clear engagement of the local communities
  - weak consultation with women is virtually non-existent
  - inadequate consultation with the local communities who are often affected
- 4) Limited information management and sharing including cadastral surveys data (Mudenda, 2006; Mulenga & Miti, 2016)
- land surveying profession lacks financial capacity to carry out efficient cadastral surveys all over the country
  - most maps are outdated ( villages also shown as dots only)
  - Limited capacity by CSOs and Government to manage the written records and a digital data base to an adequate standard coupled with poor network and internet connectivity.
  - Resistance to open sharing of data among government and traditional authorities
  - Ignoring participatory methodologies which affect local communities
- 5) Limited land use planning (ZLA, 2008)
- lack of viable land market regulation and disregard for land use planning
- 6) Multiplicity of land administration laws
- Overlaps in the land tenure for different natural resources pose a coordination problems in land administration (Mulolwa, 2016)
- 7) Transparency, access to information, scanty land records and data sharing (extent of land available) (Muchima, 2006; GRZ 2011: 7; USAID, 2016; Mulenga and Miti, 2016)
- unreliable land information management systems
  - lack of decentralization and collaboration among different stakeholders
  - limited records on customary land conversions to leasehold
  - lack of comprehensive National Land Audit resulting in lack of knowledge on land available under customary management and inefficient land management
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- Administrative or bureaucratic inefficiencies linked to lack of necessary staffing and state resources,
  - lack of political will, and other institutional obstacles to carry out large-scale systematic processes
- 8) Skewed balance of power (ZLA, 2008; Muleba, 2012; USAID, 2016; Mudenda, 2006; Mulenga and Miti, 2016)
- the status of rights of land holder and users under the customary land tenure system, discrimination against the vulnerable in society and disparity in entitlement
  - The poor losing land to the rich/wealthy due to land purchases, long term leases as well as large investments sanctioned by government
  - capacity constraints to negotiate with local communities
  - weak/limited participatory processes in large scale land acquisition
  - Customary practices such as inheritance systems contribute to the inequality of land distribution (Cultural beliefs have not ceased to sideline women in terms of access to land
  - land grabbing, lack of security of tenure, forced evictions and displacements, lack of legal recognition for collective and community-based property rights and land concentration
- 9) Unclear land and jurisdictional boundaries (Mudenda, 2006; ZLA, 2005; ZLA, 2008; ZANIS, 2013<sup>149</sup>; Mulenga and Miti, 2016)
- encroached into KNP, forest reserves
  - Chiefs have complained of encroachment by districts into their land
  - Poorly mapped jurisdictional boundaries in Zambia cause conflicts within and outside the Eastern Province
  - several boundary disputes including international neighbors, which has tended to affect livelihoods in rural areas as most of these areas are in customary land as well as leads to insecurity of tenure since the villagers are often not sure whether they are actually on the Zambian side or not
  - Land conflicts e.g. in Chipata there are Succession and inheritance disputes, Boundary disputes and conflicts between headmen; chiefs, farmers regarding livestock grazing on crop/trees and farmers and investors over conversions of land tenure and status and farmers.
  - chiefs allocating land in another chief's area and even in protected areas
  - Allocations of land already claimed or used by others to new users
- 10) Weak coordination/harmonization of functions/duties (Minango, 2015; Sommerville, 2015<sup>150</sup>)
- Disputes are not uncommon, whereby district councils are frequently selling land that is under customary administration and
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<sup>149</sup>Chipata, February 25, ZANIS. Government and traditional leaders to relocate villagers. <http://lusakavoice.com/2013/02/25/zanis-copy-government-and-traditional-leaders-to-relocate-villagers/>

<sup>150</sup> Matt Sommerville. Land Tenure Security and Economic Development in Zambia: Background and Donor Opportunities. USAID Tenure and Global Climate Change Project. 21 January 2015

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management (refer).

- Fragmented system, with inadequate collaboration and cooperation among stakeholders; resulting in land speculation, racketeering, Mushrooming of squatter settlements and poor urban development, Environmental deterioration
- Underlying challenges include flawed information base, limited transparency in land allocation on state or customary land, no communication between the two administration systems, lack of clear tenure framework on customary land to protect rights of smallholders

11) Weak land administration (Gumbo and Mudenda, 2009)

- significant increase in the amount of land in Zambia owned by foreigners but without readily available exact figures
- Some investors going directly to State House or to chiefs if they desire to acquire customary land.
- Lack of a land valuation system that reflects adequately the different land values in different parts of the country for the purpose of guiding land transactions
- Inadequate land information lack including for land seekers; the information base does not address needs of different land interests
- a limited clarity in roles for stakeholders in land delivery

12) Weak land registration (Gumbo and Mudenda, 2009)

- Poor land delivery system by the Ministry of Lands, which is widely perceived to be inefficient and its staff highly susceptible to corruption.
- Inadequate capacity of the Ministry for Lands to service the public. Due to the
- Deeds Registry's limited capacity and very slow processing to the issuance of title

13) Opposition to the lands Act, 1995 (Gumbo and Mudenda, 2009; Moombe 2016)

- Perception that the Act seeks to place customary land in a subordinate position to statutory tenure
- Traditional authorities have opposed the provisions of the law and draft policy that allows for further usurpation of their authority and land

14) Accelerated land individualisation (Gumbo and Mudenda, 2009)

- the costs of surveying to define the property boundary and cost of registration are set beyond the capacity of many poor people
  - considerable interest in conversion of customary land to leasehold tenure by smallholder commercial farmers
  - Those opposed to individualisation of land are anxious that individualisation of ownership through leasehold tenure would accelerate marginalisation of the poor, work to reduce further their access to land and pave the way for their land deprivation
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and in the end result in undesirable loss of livelihood sources without compensation.

**15) Unequal land allocation (Gumbo and Mudenda, 2009)**

- commoditization of customary land is transforming social and political relations between chiefs and villagers, between villagers and one another and between locals and outsiders
- widespread suspicion that leasehold tenure is benefiting the elite at the expenses of the majority of citizens
- People are concerned that land alienation is not being done in a transparent manner especially that it is fairly easy to gain consent from a chief and convert customary land to private title
- a great deal of intra-community conflict and resistance

**16) Loss of discipline in land allocation (Gumbo and Mudenda, 2009)**

- local councillors and party leaders long encouraged illegal allocation of land for residential purposes
- Spreading to rural areas where enclosures of common pool land resources are now common.

**17) Land Markets (Gumbo and Mudenda, 2009; literature under this study)**

- A growth of informal and unregulated market where even ‘estate agents’ are not registered and tend to run outside the law.
- Speculative behaviour and informal land markets are driving land values to levels where access becomes impossible to the general public except a few elites and private capital
- Very old/outmoded legislation: Some pieces of legislation being relied on go very old and may not adequately provide for the principles of a market economy

**18) Women’s’ Land Rights and Gender (Gumbo and Mudenda, 2009; Moombe, 2016)**

- the low level of knowledge about their rights and the lack of resources to pursue them often narrow women’s possibilities of accessing their rights to land and housing
- The relationship of women to land is mediated by several key conditional factors such as class, marital status and age, changing marriage patterns and household dynamics and uneven processes of social change.

**19) Agricultural commercialization (Gumbo and Mudenda, 2009;**

- the development of out grower schemes and farm blocks causing displacement of local people

**20) Insecure Tenure (Adams, 2003<sup>151</sup>; ; Gumbo and Mudenda, 2009; Zulu, 2015)**

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<sup>151</sup>Adams, M. (2003) “Land tenure policy and practice in Zambia: Issues relating to the development of the agricultural sector”, Draft document for DFID, Mokoro, Oxford.

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- property rights under customary tenure are deemed to be poorly defined
  - Chiefs consent to outsiders being granted leases, transgressing the rights of local rights' holders perhaps denying the right of parents to bequeath land to their offspring
  - informal institutions do not have any form of planning decision making, resource mobilization, enforcement and administration of all matters regarding land
  - the Customary Tenure is subordinate to Statutory Tenure and is not legally documented.
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## Annex 4 Stakeholders Consulted

Name	Title	Organization	Mobile number	email
<b>Chipata</b>				
Joseph Cheelo	Senior Agriculture Specialist, Land Husbandry,	agriculture department	0967/5-846270	
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Mable	Ranger	DNPW (Dept. of National Parks and Wildlife)		
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White Daka	Project Manager	COMACO		
	HRH Chieftainess Mkanda	Own Palace		
Noreen Miti	Coordinator	Chipata District Land Alliance		
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Namenda Kaonga	Director of Planning	Chipata Municipal Council	0979167207	<a href="mailto:namenda2000@gmail.com">namenda2000@gmail.com</a>

Chanda Kasolo	Permanent Secretary	Office of the President	0963675653	<a href="mailto:chanakasolo@hotmail.com">chanakasolo@hotmail.com</a>
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Adneddie D Kamoto	Community rep	Dimbani Gen Dealers	0979729401	<a href="mailto:dimbano009@gmail.com">dimbano009@gmail.com</a>
Sylvester Siame	Forestry officer	Forestry Department - Provincial office	0978074991	<a href="mailto:slsiame@yahoo.co.uk">slsiame@yahoo.co.uk</a>
Emma Sakala	District Forestry officer- Chipata	Forestry Department	0977318359	<a href="mailto:kachies82@yahoo.com">kachies82@yahoo.com</a>

#### Lundazi

Moses Mbewe	Park Ranger, Lukusuzi National Park	DNPW	0974433695	<a href="mailto:mosesmbwe187@gmail.com">mosesmbwe187@gmail.com</a>
Rabson Mbewe	Wildlife Police Officer,	DNPW	0977356310	
Yoram Phiri,			0979059604	
Clara Mwale,	Secretary	Chikomeni Community Resources Board (CRB)	0973310462	
Francis Kamanga,	Chairperson,	Resources management committee (Chikomeni CRB)	0973584583	
Boyd Banda	Chairperson	Chikomeni CRB		
Peter Zulu	Community Representative	Mugaya village	0975393120	
Andrew Mbewe	Community Representative	Chikomeni Village	0977967646	
Lyson Nkhata	Wildlife Police Officer	DMPW		
Timothy John Phiri	Extension Manager	COMACO	0979835455, 0974670998	<a href="mailto:timothyjphiri@gmail.com">timothyjphiri@gmail.com</a>
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Japhet Banda	Principal Lead Farmer		0974104954/0969025183	
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Precious Mudenda	Agro Dealer	Sedia Agro Services	979572861/0968636124	

#### Lusaka

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