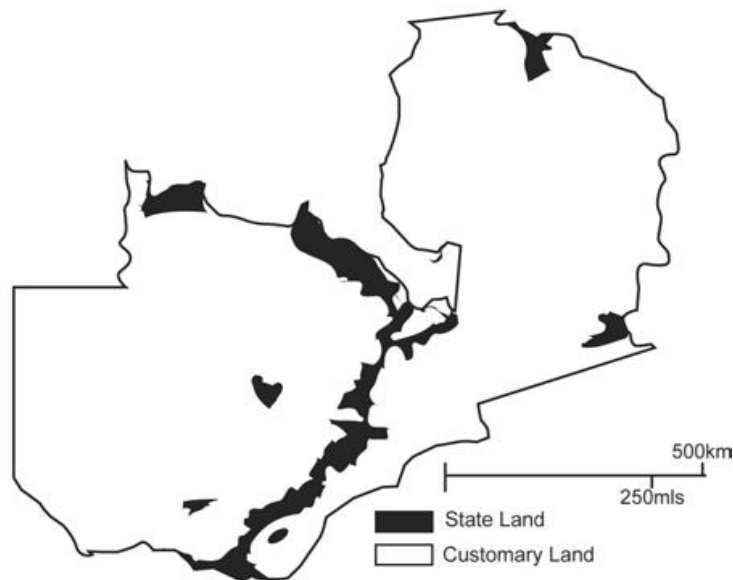


No Clear Grounds

The impact of land privatisation on smallhold farmers' food security in Zambia



Distribution of customary and state lands in Zambia.

Source: Brown (2005)

March 2014

A desk study on behalf of DanChurchAid (DCA)
Prepared by Peter Tygesen, Networking Consultants

Foreword

As a development organisation working to promote *the right to food* in some of the world's poorest countries, DanChurchAid (DCA) sees this report as an important contribution to the global debate about the links between food security and land governance, the pros and cons of land investments and privatization, 'land grabbing', and about the possible merits of individual vs. collective ownership of land.

A theoretical debate would easily divide development actors into rather predictable factions as to the political, social and cultural divides and priorities. Instead, DCA wanted a context analysis into the reality on the ground for smallholder farmers with this report.

Based on an in-depth analysis, the study documents the impact that investments have on the food security of Zambian smallhold farmers, when customary land is transformed to state/titled land.

As the study demonstrates, there are "no clear grounds" when land is privatized in Zambia. The liberalisation of land seems neither to have contributed to, nor decreased food security for smallhold farmers. Poverty remains widespread, especially amongst smallholder farmers on customary land, and the vast majority of Zambians live in poverty, mainly due to the lack of pro-poor agricultural policies.

Improvements in land governance are therefore required to ensure smallhold farmers' rights to land, food security and local development. DCA encourages governments, international donors and investors, international NGOs, and Zambian organisations to critically examine the findings and implement the recommendations contained in this report, with a view to promote these goals.

The study has been prepared in close collaboration with DCA's partner Zambia Land Alliance (ZLA). DCA would like to thank ZLA's Director Henry Machina for his contribution and valuable inputs to this report.

Birgitte Qvist-Sorensen, International Director, DCA

For more information about DCA's development work on the right to food, visit www.danchurchaid.org. Questions related to the report can be sent to Gitte Dyrhagen Husager (gdhu@dca.dk), Senior Advocacy Adviser at DCA.

The report's author Peter Thygesen, Networking Consultants, can be contacted at peter@tygesen.net

Table of Contents

Foreword	2
List of Abbreviations	4
Map of Zambia	5
Executive Summary	6
1. Introduction	7
2. The country	8
Soil and Water	8
Economy.....	9
Political.....	9
Corruption	10
3. Land and farming	10
Land categories	11
State Land	12
Customary land	12
Farming structure	13
Farmers' organisations	14
4. Poverty and food security	14
5. Investments in African agriculture and agricultural land	16
International investments.....	16
Local investments	17
6. Land liberalisation and land trading	17
Zambia's land liberalisation.....	18
The 1995 Lands Act.....	18
Procedures following the 1995 Lands Act	19
Acquiring State Land.....	20
Acquiring Customary Land.....	20
7. Key Findings	21
Amount of land converted from customary to state/titled land	21
Land administration and land use planning	21
Origin of investors driving conversion of customary land to state/titled land.....	22
Agro-Fuel.....	26
Chiefs.....	27
District Councils	28
Ministry of Lands, Natural Resources and Environmental Protection	28
Transaction conflicts, misunderstandings and misinformation	29
The Lands Tribunal.....	30
Environmental Impact Assessment.....	30
Enforcement and monitoring.....	30
"Security" in land holding, arguments for and against titling	31
Displacements	33
Lost common pool resources	33
Women.....	34
Corruption	35
Food security and poverty reduction amongst smallhold farmers	36
Analysis and consequences of conversions of customary land to state/titled land.....	36
Subjects to citizens	37

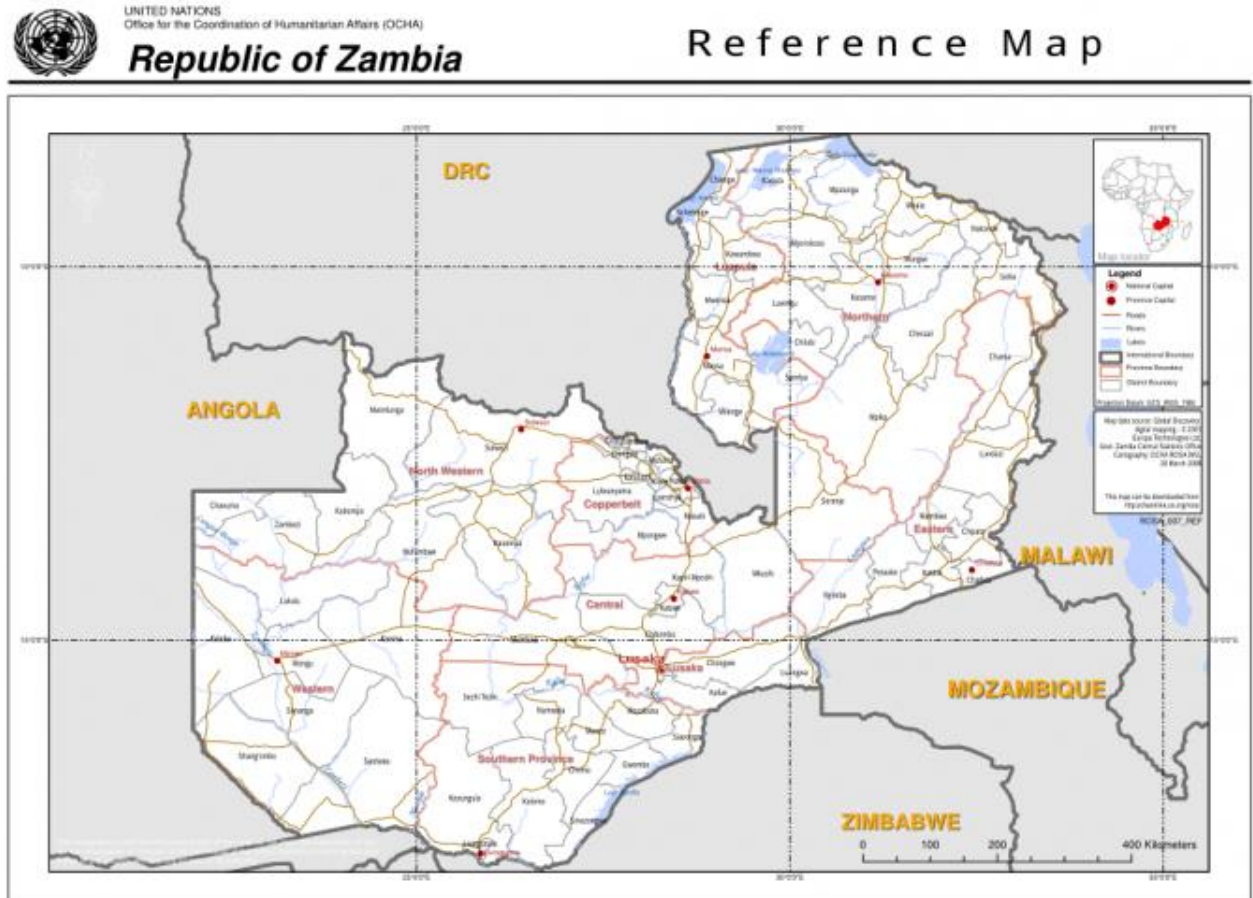
8. Conclusions	38
9. Recommendations	40
References	43
Appendix A: Formal mechanisms for investors to access customary land	45
Appendix B: Administrative Circular No. 1, 1985	46
Appendix C: ZLA's 2012 Memorandum to the Zambian Parliament's Committee on Lands, Environment And Tourism	51
Endnotes	58

List of Abbreviations

CCJPZ	The Catholic Commission's Justice and Peace Programme in Zambia
CoL	Commissioner of Lands
DIIS	Danish Institute of International Studies
ECZ	Environmental Council of Zambia
FAO	Food and Agricultural Organisation of the United Nations
FISP	Farm Input Scheme Program
MoL	Ministry of Lands, Natural Resources and Environmental Protection*
OI	Oakland Institute
OICR	Oakland Institute Country Report
UNDP	United Nations' Development Program
WB	World Bank
ZDA	Zambia Development Agency
ZLA	Zambia Land Alliance

* Please note that prior to the change of government in 2012 this ministry dealt only with land matters and was thus called the Ministry of Lands. In quotes below from before this date, 'MoL' is still used, although this does not refer to its current, expanded name and functionality.

Map of Zambia



Executive Summary

*“The opportunity is not difficult to understand,
the world needs food, and Africa has a lot of natural resources that can provide that.”*
Neil Crowder, Chayton Africa, investor in Zambian land.

The global finance, energy and food crises are fuelling a global rush for land in developing countries. In their search for land, political leaders and investors look to Africa as a potential food supplier for the rest of the world. However, the current trend of land liberalisation rarely offers a solution to sustainable food production and poverty reduction among smallhold farmers in rural areas, as shown by this case study.

Zambia was among the first African countries to carry out land privatization to commercialise land tenure. The – very unpopular – 1995 Lands Act opened for the transfer of Customary Land held in trust by traditional leaders to be transferred to State, i.e. titled and tradable Land. It also allowed foreigners to buy* Zambian State land.

Since then, conflicts about land have been rising in Zambia. Private investment in Customary Land is mainly encroaching upon smallholders near mineral deposits marked for mining and in agriculturally attractive areas close to water resources, near urban settings and in the vicinities of tourist attractions.

The study concludes on two important elements, which characterise land transfers in Zambia.

First of all, foreign private investors are few, but acquire large tracts of land. When foreign investors buy land, there are often no or very few consultations with local communities whose land they buy. As a consequence, local communities may be deprived of land in breach of internationally agreed standards on land acquisitions (i.e. ‘land grabbing’). They may also be deprived of access to water or non-agricultural food sources crucial for food security.

Secondly, local elites have shown a rapidly growing interest in taking ownership of Customary Land. Their acquisitions involve numerous but smaller pieces of land, mainly close to urban areas, generally in consultation with the concerned communities.

Although the 1995 Lands Act opened for holders of traditional tenure rights on Customary Land to title this, few have opted for this. Reasons vary, but the most commonly cited are lack of awareness of the option, unsurmountable economical costs or formalities, or resistance to such transfers from chiefs or headmen fearing loss of control over their area and subjects.

Regarding the consequences of land privatization on smallhold farmers' food security, two overall conclusions can be drawn from this study:

- a) **Land liberalisation per se has neither contributed to, nor decreased food security for smallhold farmers.** Poverty remains widespread in Zambia, especially amongst smallholders on Customary Land where the vast majority live in poverty, mainly due to the lack of pro-poor agricultural policies.
- b) **Land tenure administration in Zambia suffers from serious shortcomings in governance.** Administrative guidelines are long overdue. Too much power is vested with too few checks and balances in too few people, notably the chiefs, local councils and the Commissioner of Lands. This creates fertile ground for abuse and corruption, both of which

* The term 'buy' designates commercial transaction of a 99-year lease as all land is owned by the state.

mar the sector. Zambia still has an important distance to cover in the field of land governance and legal recognition of customary rights and institutions as enshrined in the FAO 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests' and the African Union's 'Framework and Guidelines on Land Policy'.

As investors flock to Zambia's 'underutilised' land, it is necessary to take effective steps to ensure that the rising global demand for food become *an opportunity* for African farmers – and not *a threat* to them. Appropriate policies and governance measures should be in place for them to access this market and thrive in it.

1. Introduction

Traditional African land tenure systems are regularly disputed, particularly whether they constitute obstacles to economic growth, gender equality and poverty reduction. For some time discussion has been isolated to the continent's struggle to feed itself. However, since the combined effect of increasing international demands for alternative energy and steep rises in cereal prices merged towards 2008, Africa's agricultural potential has also been posited as a solution to global challenges. This in turn has been reflected in perceptions of traditional land tenure across the continent. Subsequently, African agricultural potential has become a target for international investment.

As an integral part of the Washington Consensus strategies, debt relief schemes in the 1990s were conditional on improving the business climate in client countries. This included enhancing business opportunities and conditions in agriculture. Economists argued that by introducing private land tenure and releasing African farmers from their traditional custodianship of the land, conditions would be created for broad-based economic growth. In the mid-1990s the Zambian government liberalised its land market through the 1995 Lands Act, which facilitates private individual ownership* of land.

Since then, Zambia has been highlighted as an example of the consequences of such land liberalisation. A number of foreign investors have bought access to agricultural land. It is projected that this will increase owing to Zambia's abundant land and water supply, its relative political stability, and its efforts in investment-friendly economic reforms.

Since land liberalisation in Africa began, attention has been drawn to international acquisitions of land, negatively termed 'land grabbing'. After an initial wave of critical reports on 'land grabbing' some researchers now voice caution, citing a gap between what is said about land grabbing and what is occurring on the ground.¹ In his monograph on land grabbing, Cotula (2013) draws attention to the fact that for most people in rural Africa the squeeze on their landholdings is caused by a less visible, longer-term process of land acquisition by local and national elites. Other analysts take a critical view of reports assessing local farming communities "as a place of vulnerability, rather than a place of potential."²

The Zambian experience points to a complex reality and unclear conclusions about the consequences of external investors acquiring land from smallholder communities. Critics argue that poor land governance is of more urgent concern for smallhold farmers, highlighting the fact that land rights are more than 'a thing'; they are also a structure of social relations governing poor people's rights and access to food.

From this perspective, the Zambian experience is a useful case study as to whether the opportunity to develop Africa's natural resources to help meet global food needs is for elite and foreign capture only,

* i.e. ownership of lease of land, see below.

or whether the government's liberalisation strategy will also provide opportunities for smallhold farmers.

Based on the available relevant literature, this desk study will sketch a picture of the practical experiences of local farmers from the impact of private finance on smallholder agriculture in Zambia, paying special attention to its impact on food security and the right to food.

2. The country

Zambia is a large southern African country covering 752,614 km² (slightly smaller than Turkey and 17% larger than France, Europe's largest country), bordering Angola, DR Congo, Tanzania, Malawi, Mozambique, Zimbabwe, Botswana and Namibia. It is home to approximately 14 million inhabitants. In 1888, the prominent British politician and businessman John Cecil Rhodes obtained prospecting rights for his British South Africa Company, BSA, which soon controlled the territory later known as Northern Rhodesia. In the early 1930's, BSA ceded the colony along with Southern Rhodesia (present-day Zimbabwe) to the United Kingdom. Huge mineral deposits (mainly copper and cobalt) along the Kafue River and large tracts of arable land designated for European settlers made the colony attractive for outside investors. In 1953 both colonies, along with Nyasaland (present-day Malawi) were grouped into the Federation of Rhodesia and Nyasaland. In this semi-autonomous region, the mines of Northern Rhodesia produced capital for investment in the development of farms and industries in Southern Rhodesia, whilst Nyasaland provided labour for both. Popular resistance to white supremacy and the federation was strong in Zambia's mining districts. In 1963 the federation fell apart and in 1964 Zambia became independent under the leadership of its first, democratically elected president, Kenneth Kaunda. The country's economy has remained centred around mineral extraction.

Soil and Water

Though only 2% of the country is under cultivation at any given time³, and despite Zambia being endowed with 42% of Southern Africa's water⁴, Martin Adams in his seminal DFID report on the development of Zambia's agriculture warns that such statistics might be misleading as to its productive capacity. The country's soils:

... derived from the ancient penepain and the Kalahari sands are generally infertile and require large quantities of nitrogenous fertilizer. Because the planting season is short and the rains are uncertain, only one rain-fed crop per year can be harvested over much of the country. ... the rains may break late and delay planting or fail soon after sowing. The rain may fall in violent and erosive storms, or over such a period that weeds cannot be controlled, or there may be a mid-season drought or the rains may end early before the crop has matured. Zambia is well known for the year-to-year variations in the amount and temporal distribution of rainfall...⁵

Under such erratic conditions water conservation in dams and connected irrigation facilities are a crucial means to improving production and yield. This is however beyond the capacity of most of the country's farmers, who depend on cultivating an average size farm of less than two hectares⁶. The traditional *chitemene* slash-and-burn farming technique seek to overcome the obstacle of nitrogen-poor soil through fallow cycles and by converting 'virgin', uncultivated land into farm land.* Consequently, Adams (2003) notes that although at any given time only 2% of the country's land is under cultivation, "a much larger area (possibly 6 to 9 per cent of the country) is probably used for different arable systems, both commercial and traditional.

* In his field work in the land-abundant Kamena villages of the Northern Province, Chileshe (2005: 305) found that 52% of crop fields were acquired through clearing of uncultivated land.

Other major obstacles to growth in farmers' production are poor infrastructure (such as a lack of rural roads connecting farmers to markets), lack of animal traction and expensive inputs (notably fertilizers).

Economy

With robust international prices for copper and a European-dominated large-scale farming sector*, Zambia at independence was categorized as a middle-income country blessed with national incomes spawning hopes of rapid development. However a combination of failed policies and severe reductions in copper prices led GDP per capita to fall and landed Zambia in deep and unsustainable debt. The majority of white commercial farmers left. Successive governments have laboured at reducing dependency on mineral extraction; an underdeveloped agriculture resource base has throughout the years been a key focus for such policies and remains so. The present *Sixth National Development Plan 2011-2015* (SNDP), aims for agricultural production to contribute 20% to GDP (presently it is 13,3%⁷).

Based mainly on high commodity prices, Zambia has enjoyed robust growth over recent years. In 2012 growth was estimated at 7,3% with a resulting GDP per capita of \$1,350⁸; mining still dominated exports by contributing 64%.⁹

According to the Human Development Index, Zambia ranks 163 out of 186 countries ¹⁰ and the inequality between rich and poor is amongst the worst in Africa with a Gini coefficient of 0.60 (in 2006).¹¹ Relatively egalitarian countries such as the Scandinavian have a Gini coefficient of around 0.30.

Poverty remains widespread with more than 60% of the population living below the poverty line (2010), the vast majority of these being smallhold farmers¹². The present government under president Michael Sata came to office in September 2011 and in the following year launched an Industrialization and Job Creation Strategy focusing on agriculture, tourism, construction and manufacturing.¹³ In August 2013, the government revised the inherited 2011-2015 Sixth National Development Plan, SNDP to "give prominence to investing in capital projects and programmes in agriculture, accelerate infrastructure development, and promote development in the energy sector."¹⁴ However, in its 2013 country report the ILO notes that economic growth continues to be "concentrated in highly capital intensive or urban-based sectors, such as mining, construction and services" and hence not contributing directly to improving the lives of the rural poor.¹⁵

In the area of establishing legal and regulatory frameworks conducive to business creation and growth, Zambia has improved but still does not perform well. According to the ILO, "considering the Ease of Doing Business Index, the country has improved from 2008 to 2012, moving from 116 to 94 in a ranking from 1 to 185. ... Physical infrastructure development is a key area where major efforts should be concentrated for economic growth and prosperity in the country. Roads and railways seem to be in particularly poor conditions."¹⁶

In addition investors will consider Zambia as having high labour costs but low productivity, making it difficult for locally produced goods to compete with cheaper imported goods. However a number of recent foreign investments in agriculture aim at producing food for the local market.

Political

In spite of increased economic hardships experienced by the population during the country's first four decades of independence, Zambia has had and still enjoys fairly stable governments of a democratic disposition. The one-party state under Kaunda's United National Independence Party (UNIP), was

* Adams notes that Zambia in 1961 had 1,185 European farms.

dismantled in 1991 and Kaunda stepped down after losing the ensuing elections to the reformist Movement for Multiparty Democracy (MMD). Promises to curb rampant corruption and improve living conditions did not materialise, along with other elections pledges. In 2011 the electorate had lost faith in the MMD and elected Sata's Patriotic Front party to lead the country.

Political scientists tend to view Zambia as an example of "transition without transformation", i.e. liberalisation is not followed by sufficient democratisation of political institutions (Nolte 2012, Nasong'o 2007). Authoritarian tendencies have persisted, legal changes have not been followed through administratively, and most markedly the introduction of multi-party democracy was not accompanied by a break with corrupt practices. On the contrary, notes Nasong'o, "it became even more endemic ... not just widespread, but systemic."¹⁷ All three expressions of 'transition without transformation' mentioned above have had pronounced influence on practices regarding Zambian land governance, as will be demonstrated below.

As seen in many other African countries the issue is complicated by the customary governance system of headmen and chiefs, still a very dominant factor, creating a 'parallel world' to the modern, national state governance system. The existence of parallel systems exacerbates tensions.

Corruption

Corruption is seriously affecting land governance in Zambia and impacts on the overall business climate. According to Transparency International's Corruption Perceptions Index, Zambia recorded a value of 3,7 (10 signifying zero corruption). In 2010 some donors, including the Dutch and Swedish cooperation agencies, the European Union, and the Global Fund to fight Aids, Tuberculosis and Malaria, withheld considerable funding due to corruption.

In its 2013 report on the business environment in Zambia, ILO note that "The World Bank 2008 Investment Climate Survey reveals that 14.3 % of surveyed enterprises expected to pay public officials to do business, and 27.4% of them expected to give gifts to secure government contracts."¹⁸

As with presidents before him, Sata has increased anti-corruption efforts. Some of these are, however, "reportedly characterized by political interference and selective prosecution targeted at the opposition party".¹⁹

The Ministry of Lands, Natural Resources and Environmental Protection (MoL) has been pointed out in other reports as being seriously infected by corruption.²⁰

3. Land and farming

Colonialists arriving towards the end of the 19th century found that African societies were centred on the cultivation of land. Land was neither traded nor tradable but regarded as being held in trust for future generations. A variety of traditional rules determined how families could utilise land and pass on such rights to their heirs.

Quoting Allan's classic study *The African Husbandman*, Adams furnishes us with a full description of the customary land-holding systems prevailing in Zambia in the early part of the 20th century. This still forms the basic rules for land tenure in most parts of Zambia. Wherever land was under customary rule:

Chiefs did not allot the land directly to their subjects who used it. Rather, land was allocated to sub-chiefs who in turn allotted shares to village headmen. At the village

level, the headman allotted land to heads of sub-sections or heads of families and they distributed land to their dependants.

'Each of the persons granted land in this way was secure in his rights and could not be expropriated without fault. He could transmit his rights to heirs, but could not transfer them to anyone else without the permission of his seniors. If rights were vacated they rested in the next senior in the hierarchy' .

These customary rules are, of course, unexceptional. They will be recognised across the vast savannah areas of Central and Southern Africa. In Zambia, they provide the basic framework of customary land law for the majority of tribes.

An important feature of the customary land tenure system is the right of avail that was shared by all people belonging to a particular tribe. This right did not depend on the discretion of the chief or headman. He was required to provide residential, arable and grazing land for all his subjects. A tribesman was entitled to land without giving anything for it, but he had a duty to protect and conserve it. Although the concept of individual ownership was unknown, the rights to residential land were exclusive and permanent. The holder could protect his rights by civil action against any person, even the chief, except when land needed to be acquired in the public interest. In this case the chief would allocate an equivalent piece of land in compensation. Customary law permitted tribesmen to transfer interests in residential land among themselves, but only with the consent of the chief. Although the concept of land sales was unknown, there was no rule forbidding payment for improvements. The free transfer of unimproved land was taken for granted. It was received free and was given free. It was not viewed as a commercial asset.²¹

Land categories

All land in Zambia belongs to the state, formally "vested in the President". Land tenure falls into two distinct categories, State and Customary land*. The former is often also referred to as 'titled land', the latter is held in trust by traditional authorities (see Fig. 1 below).

State/titled land can be 'owned' by individuals or companies in so far that they will own a 99-year lease† which can be bought and sold or used as collateral, as the lease is expected to be renewed as long as conditions are not breached. It is administered by the MoL (under the Commissioner of Lands, CoL) using common law‡ and is subject to taxation. The historical background for this distinction is rooted in the colonial era when most of what is now termed 'state land' was reserved for white settlers or investments such as mining.

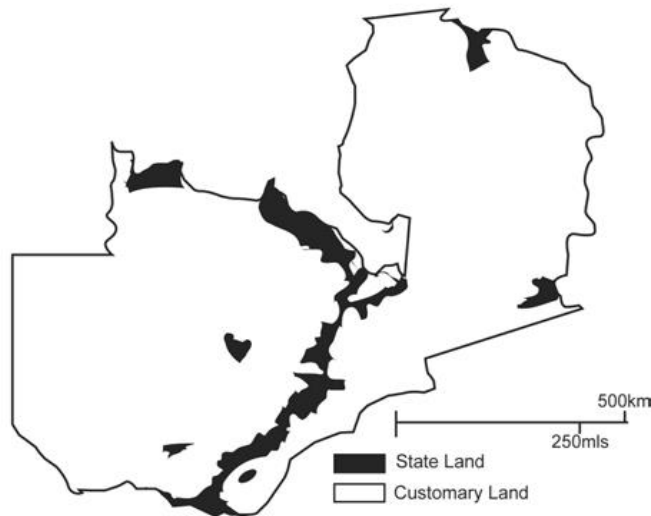
Customary land is the land historically 'left over' from that allocated as state land, to be used by the African population and generally distributed and held as described above by Adams/Allan. It is not titled and no land tax is paid. Allocation, security of tenure, transfer etc. is governed by 'customary law'.

* The draft Land Administration and Management Policy of 2006 establishes a third category of reserve land for public uses but the extent of this is minimal and of no substantial consequence for this study.

† The OICR notes that three other lease forms exist "(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. According to other sources, the former two are 'discouraged' by officials and in reality hardly obtainable and so of little consequence for the object of this study.

‡ Under the system of 'indirect rule', British colonialism employed 'common law' for the white and urban population, whereas the rural, African population were ruled by 'traditional' law, in legal terms designated 'customary' law. This distinction has been upheld by the post-colonial governments. The social and legal implications of this 'bifurcated' society outside of the consequences for land tenure is discussed in the section below titled 'Subjects to Citizens'.

Fig.1: Distribution of customary and state lands in Zambia²²



State Land

Zambia's most agriculturally productive land is held as state land, distributed as approximately 2,000 large farms or held in reserve for investors.²³ The majority is located along the major infrastructural developments, railway lines, roads, markets and, cities, which bisect the country diagonally from Livingstone in the South West to the mining centre of the Copper Belt in the North. Smaller pockets have been established near Chipata for cotton and soybean, and in the North around Mbala for coffee production.²⁴

As state land is well defined, and as most of this land has been outside the access of rural Zambians for generations, conflicts over existing state land are rare.

Customary land

The vast majority of Zambians* live on and rely upon customary land, almost all of them as smallhold farmers cultivating in average less than two hectares. However the amount of land available for upholding or improving their livelihood is unknown as figures for the extent of the two land types are unreliable. Distribution is often quoted as 94% customary land and 6% state land, but these figures date from Independence in 1964²⁵. The 1995 Lands Act opened for the transfer of customary to state land but once again no reliable figures exist for the exact amount of land that has been transferred. The only given fact is that the extension of land under the control of traditional authorities (chiefs, headmen) has shrunk since Independence. In light of the poor national statistics of actual land tenureship, the Zambian government has indicated its intention to initiate a land audit from 2014.²⁶

Rights to customary land are permanent and proven by oral evidence, witnessed by neighbours, elders or others of influence in the village. Disputes are resolved in the village by summoning the above persons of standing. Van Asperen notes that, "a share in village land is regarded as a birth right ...

* 63% of the economically active population were 'active in agriculture' in 2011. (UNDP Human Development Report 2012: 66)

migrant workers may come back to the village and are entitled to land."²⁷ Land may only be lost due to non-utilisation or if the rights holder is proven guilty of witchcraft and subsequently expelled from the community. It may also be transferred to the State.

On the demarcation of land, Mudenda notes that "common identifying marks as regards boundaries in customary land include streams, hills, large trees or footpaths. These have often helped in demarcating or identifying boundaries between chiefdoms. ..."²⁸ Boundary disputes are occurring with increasing frequency due to increased pressure on the land. The umbrella land organisation, Zambia Land Alliance, ZLA, notes that, "the unavailability and sometimes non-existence of chiefdom maps and unmarked boundaries creates uncertainty and is one of the major causes of boundary disputes. Furthermore, territorial boundaries of chiefdoms were imposed in 1958 under colonial rule and are clearly out of date considering that the maps are either unavailable or disputed by concerned chiefs."²⁹

Traditional Zambian peasant societies make widespread use of land not directly cultivated, such as forests, meadows and commons, for hunting and foraging (insects, mushrooms, nuts, fruits, mammals, vegetables, birds, etc.). The Oakland Institute Country Report (OICR) also notes that "the sale of forest products supplements rural incomes (including edible caterpillars, mushrooms, bush meat, etc.) acting as an additional buffer against food insecurity. The majority of rural industries are based on forest resources, either as a raw material or as an energy source (including honey production, carving, carpentry, basketry, weaving and other craftworks that generate incomes). The importance of forest resources to rural households cannot be understated and can play a crucial role in poverty reduction."³⁰

Though Zambia is considered as a country with an excess of available agricultural land, land pressure is being felt by a number of communities. Sitko's research in Nkandanzovu, a recently (1960s) settled Tonga-speaking region in southern Zambia, provides an example of how this is experienced by the villagers:

Fathers are finding it difficult to allocate land to their sons after they marry; headmen claim they no longer have land to give to needy community members; families are dividing as an increasing number of people leave the region in search of new land; and a growing number of people suggest that a lack of land contributes to their food insecurity. The days of free access to customary land in Nkandanzovu are drawing to a close.³¹

Otherwise, such pressure is mainly felt in areas near urban or peri-urban settlements (Chileshe 2005).

Farming structure

Adams notes that, "national crop area and production statistics published by the Central Statistical Office, CSO, are not considered to be reliable. Extreme caution should be exercised in using them to inform policy." Regarding crops produced, he states:

For the commercial sector on State Land, maize dominates the cropping system but has decreased over time with a shift to burley tobacco, wheat, soybeans and cotton. In the traditional sector, maize again dominates the cropping system and accounts for just over half the arable area. Provincial-level data from the CSO reveal that the bulk of maize, tobacco, sunflower and seed cotton produced by smallhold farmers is planted in Eastern, Central and Southern provinces. This is the primary agricultural production region of Zambia, with traditional cultivation based on hand-hoe farming, with oxen used in some areas. Maize is the chief staple followed by sorghum, while relish crops are vegetables, beans and groundnuts. Cash income for most farmers comes from sales of beer, fish, chicken and the surplus of the maize harvest.³²

Historically, Zambia has relied on large-scale commercial farms on state land to feed the inhabitants of the cities as well as the mining workforce. This sector declined after independence but has seen some growth recently, notably (at least judged by anecdotal evidence in the absence of reliable statistics) since the arrival of farmers who lost their land in Zimbabwe*. Chu notes that the Mkushi farm block (originally set aside in the 1950's for European tobacco farmers) in recent years has become Zambia's breadbasket and is hailed as a 'showpiece of agricultural development' by Zambia's former President Rupiah Banda. Referring to Sjaastad et al (2010), Chu notes that a total of 31 farmers from Zimbabwe have taken over underutilised farms in Mkushi alone.³³ The farm block now produces the largest proportion of Zambia's wheat (40%) and soybeans (21%), and is the sixth largest maize producer.³⁴ It should however be noted that commercial farmers only produce approximately 5% of the national maize harvest, tending to shy away from this crop citing government interference in the market.³⁵

The peasant sector occupying customary land generally records poor yields, but the vast majority of the country's poor depend on this. This sector has not contributed significantly to the economic growth of recent years.

Finally it should be noted that as in most African countries, land is not just a piece of earth. Traditional and cultural attachments make land an emotive issue carrying with it the identity and heritage of those who live upon it. As the UNDP notes in its briefing on key features of a pro-poor land policy, landed property rights are "not just 'things'; they are *social relations* between people"³⁶.

Farmers' organisations

As in most neighbouring countries, Zambia's smallhold farmers are not robustly represented by any dedicated organisation. German and Schoneveld note the following:

According to some civil society actors engaged in the biofuel sector, there is no institution in Zambia that is effectively representing the needs of smallhold farmers. The Biofuels Association of Zambia and the Zambia National Farmers' Union reportedly have a lot of political muscle, yet this is primarily leveraged in support of the interests of commercial farmers ... The Peasants and Smallhold Farmers' Association of Zambia, organized to represent this constituency, is largely absent from key debates.³⁷

It is obvious that poor political representation will negatively impact smallhold farmers in their endeavours to improve production capacity.

In the absence of a proper representative organisation for smallhold farmers, the Zambia Land Alliance, ZLA provides advocacy in this field. The ZLA is a network of civil society organisations that include NGOs, CBOs and Faith Based Organisations working with poor rural and urban men and women to ensure that land policies, laws and administrative systems take their interests into consideration (see Appendix C).

4. Poverty and food security

Zambia has shown worrying - if not outright alarming - trends in food insecurity during the past decades. The number of undernourished people has more than doubled over the past 20 years,

* No exact figure exists but Brown (p. 90) notes that the Ministry of Agriculture reports "that over the past several years, more than 130 Zimbabweans have purchased farms in Zambia."

although the figure has stabilised recently at six million, with the proportion of the entire population undernourished declining to 43% from its peak of 48% in 2005-2007.³⁸

This trend is similarly reflected in the number of Zambians living in poverty, declining from 69% of the population in 1996 to 64% in 2006. However, these gains have mainly been in urban areas and 80% of Zambia's working poor are smallhold farmers³⁹.

As more than 80 % of the rural population depend upon agriculture-related activities for their livelihoods⁴⁰, these figures reflect the crucial importance of improving conditions for the country's smallholder communities. These depend on cultivating an average size farm of less than two hectares, according to the latest World Bank figures. The Bank notes that "technology changes that enhances yields, particularly of cereals, would be the desired policy."⁴¹ Most important 'technology change' is likely the utilisation of oxdrawn ploughs instead of hoes.

However, this is not strongly reflected in Zambia's present Sixth National Development Plan, SNDP, where the strategic focus of the crop production sub-sector will be to develop large-scale irrigation schemes and farm blocks, enhance research and extension services, and promote utilization of improved seed varieties. It further states that:

The thrust of the reforms in the sector will continue to be the creation of a conducive environment to promote private sector led agricultural development. Given the fact that poverty is most prevalent in rural areas and that the majority of the rural households are involved in agricultural-based activities, investments particularly in agriculture infrastructure and agro-related industries will offer an effective means to make a significant impact on the country's rural development and overall poverty levels.⁴²

Thus it appears that the government is continuing a strategy of emphasising large farm and agro-industrial development as the main instrument for increasing food security.

Adams noted in his 2003 report that "successive governments have become preoccupied with intervening in grain and fertilizer marketing to reduce the burden on urban consumers and the risks of food riots."⁴³ The present government has continued this policy through heavy subsidies for chemical fertilizer in its Farmer Input Support Programme (FISP). In the SNDP, the Government notes that the FISP policy has significantly increased food production, especially in maize (from 834,980 Mt. in the 2004/2005 farming season to 2,795,483 Mt. in the 2009/2010 farming season), as the number of farmers benefiting rose from 136,000 in the 2004/2005 season to 500,000 in the 2009/2010 season. The SNDP also refers to improved extension service delivery as a contributory factor in increased national production.⁴⁴

However, the WB notes that "research shows that [maize subsidies] mainly benefit large farms" and that "it is suggested that the government ... reorient the fertilizer subsidies toward alternative public spending such as rural roads and small-scale irrigation and on targeting subsidies only to remote and small farms."⁴⁵

The SNDP lists constraints to growth in the smallholder farming sector as mainly inadequate extension services, high costs of financing, inadequate infrastructure, livestock diseases, overfishing and poorly functioning agricultural markets. In addition, the competitiveness of the sector has been adversely affected by poor road networks, inadequate storage facilities and limited access to electricity.

5. Investments in African agriculture and agricultural land

Investors in Zambian agricultural land are both international and local. As mentioned above, investments in state land are generally not viewed as a threat by local farmers. Transfers of customary land to state land might however engender conflicts. There is no reliable statistics on the number of such conflicts or the source of them. It is not clear either how many conflicts arrive from foreign or local investments in customary land or how much customary land is transferred to local versus international investors.

International investments

Several factors have influenced the recent interest in African land by outside investors. One such factor is graphically illustrated by Schiffman (2013):

If you were organizing dinner parties for the world, you would need to put out 219,000 more place settings every night than you had the night before. That is how fast the Earth's population is growing. But global agricultural production is currently failing to keep pace. A June 2012 report by the UN Food and Agriculture Organization (FAO) sees trouble looming ahead and warned that, "land and water resources are now much more stressed than in the past and are becoming scarcer."⁴⁶

A harbinger of such 'trouble' arrived during 2007/2008 when simultaneously world cereal prices doubled (since 2003) and fossil fuel prices rose considerably. These events turned international investors' attention to agricultural products (including biofuel) and thus to land. However, as Lorenzo Cotula (2013) points out in his monograph on international land acquisitions for agriculture, the so-called land rush or 'land-grabbing' "is not so much about feeding the planet." It is mainly about meeting demand for energy and consumption goods in richer countries and about speculation linked to rising land values. "Fuel, wood, fibre and finance, more than food, are the engines of the renewed interest in agricultural investments in the global South."⁴⁷

During the colonial era Africa was similarly a venue for foreign plantation investments. The attraction of tropical plantations waned however during the 1960's, as Western companies concentrated on activities upstream (agrochemicals, seeds and machinery) and downstream (processing and distribution) of agricultural production (Cotula 2013).

After independence, many post-colonial African states dispossessed farmers of their land in order to establish state-controlled plantations or farms, most of which ended up as 'white elephants', failed projects. Since the 1990's many of these have been privatised and thus a second phase of international investments in African plantations was initiated, including in Zambia.

Cotula offers the following reasons for renewed investor interest in plantations:

- long-term increases in food prices and thus better opportunities for attractive returns on investments, with a magnifier effect on this from a growing African middle class;
- rising prices on fossil fuels, exacerbated by a number of Western countries' policies promoting the blending of these with biofuels to reduce global warming and increase energy independence;
- the ability of a large plantation to serve as an investment vehicle providing investments in an increasingly scarce resource, thus serving as a risk diversifier and an inflation hedge;

- the need for global manufacturers to ensure future supplies from identifiable and controlled sources;
- the easy adaptation of a number of attractive crops/products to mechanised plantation production (e.g. for maize, sugar cane, palm oil, jatropha*, transportable tropical fruits);
- and for economies of scale ("fewer large investments are easier to assess and manage than many small ones").

The international economic downturn from 2008 put a dampener on biofuel production and globally many newly established plantations were abandoned, including in Zambia. (OICR 2011; German & Schoneveld 2012).† However as Africa displayed robust economic growth figures over following years, investors once again have found interest in land acquisitions on the continent, mainly for the establishment of plantations.

Local investments

Traditionally, urban Zambians can claim land in their village of origin but to uphold the claim they have to utilise it, either by returning themselves to the countryside after having spent time 'chasing money' in the mines or cities or by placing relatives on the land. However, land liberalisation further enabled urban Zambians to acquire customary lands and transfer them to state/titled land for speculation, housing development or agriculture. Most land acquired by urban Zambians is not in their own villages but rather in the near vicinity of their present residence. They are often not able to develop the land but feel a need to preserve land for their future generations.⁴⁸

6. Land liberalisation and land trading

An influential thesis behind modern third world land market reforms by De Soto (2000) states that land without clear private individual property rights is dead capital as it cannot be used for financial transactions. Proponents of land market reforms consequently argue that formal titling and a lightly regulated land market will activate this capital in such a way as to increase the efficiency of land distribution and boost agrarian productivity. They further argue that lack of title in customary lands brings about insecurity because rights are not recognized and protected by law.

It is further argued that this liberalisation will lead to improved food security at both the national and household levels and increased exports earnings.

The World Bank (WB) has been generally supportive of De Soto's thesis although its report on pro-poor benefits of liberalisation also points out that "legal recognition of customary rights and institutions ... is generally more effective than premature attempts at establishing formalized structures."⁴⁹ Later WB reports have emphasized this and similar cautioning points (Deiniger 2008, Nolte 2012)⁵⁰. Examining the Zambia case, crucial questions arising from the above WB conclusion are whether the Zambia initiatives might be termed 'premature' and how far Zambia has come in developing 'legal recognition of customary rights and institutions'?

* *Jatropha curcas* plants produce seeds containing 27-42% oil, which can be utilised directly in combustion engines or fairly easily processed into biodiesel or even aviation fuel. It is a hardy plant that thrives in poor soil, does not require pesticides and will produce around 400-600 liters of oil per hectare of up to 40 years on average soil. For reasons like these it has become a favorite crop in agrofuel plantations.

† Further corroborated by Henry Machina, ZLA, interview 23 sept. 2013: "There was an initial bang, but after that you could see that only very few were interested. They cleared land and planted, but now most have just abandoned their projects."

Zambia's land liberalisation

Impetus for Zambia's land liberalisation initiatives has mainly come from two interlinked sources: 1) internal pressure based on Zambia's recognised need to diversify its economy in order to diminish its dependency on mining income through, for instance, increased agricultural production and agriculturally-based exports; and 2) external pressure from donors arguing that liberalisation is necessary for improving agricultural production, and from investors promising to achieve such improvements.

The focus for liberalisation has been the transfer of land from customary control to private titling and the opening up of Zambian land for foreign nationals and companies to acquire.

Land market liberalisation was a key donor conditionality that the Zambian government had to meet in order to restructure its international debts. As the MMD came to power in 1991 and negotiated such debt relief, it simultaneously wished to break with Kaunda's policy of nationalisation and 'African socialism'. As a result, it signed into law a liberalising Lands Act in 1995.

The act was controversial from day one as the government passed it despite severe criticism from the country's civil society and traditional leaders, in a process so full of mistrust that the impact from this is still felt. Brown notes that:

...when the government first proposed the Lands Act, it proved so contentious that consultative and promotional meetings had to be abandoned due to protest and, in several cases, violence. Lack of support for the Act extended to the National Assembly where the government, despite its clear majority in the house, was only able to secure passage of the bill by threatening to expel any rebel MPs from the MMD. The provisions of the Land Act and the undemocratic manner in which it was drafted and passed into law, have led to continued and widespread animosity to the Act by many civil society organisations, opposition politicians and many traditional leaders.⁵¹

The 1995 Lands Act

The act upholds the national ownership of all land, the vestment of it in the president and a continuation of the 99-year tradable leasehold 'ownership' system. Consequently, when in the text below reference is made to land being 'bought', 'sold', 'property rights' etc., it designates trade in or rights conferred in such leases.

The act's main emphasis is on mechanisms for the transfer of customary land to state/titled land. In his examination of the act, Brown highlights the following points:

First, the Act significantly strengthened the property rights of titleholders on state land ... and made it possible for land *per se* – not just improvements on land – to be bought and sold... and made it much more difficult for the state to repossess undeveloped land. Moreover, the bureaucratic hurdles to acquiring and transferring titles (such as presidential consent for all land transactions) were reduced to mere formalities.

Secondly, it eased restrictions on land-ownership by foreigners.

Thirdly, it created a Lands Tribunal to protect leaseholders and customary rights* holders from abuse and to ease congestion within the High Court. ... The Tribunal was intended to be informal, low-cost and mobile so as to be accessible to rural and low income Zambians.

Fourthly, the Act ... explicitly recognised existing rights to land in customary areas. The Act, however, made it easier for both outside investors and indigenous Zambians living on customary lands to acquire private title to customary land. ... The Land Act also made it easier for indigenous Zambian to acquire private title to their lands.... The justification for this provision, according to the government, is that customary land tenure is 'insecure' and has 'severe limitations' compared to leasehold tenure. By converting their customary holdings to leasehold, the government argues, villagers will be able to use their land as collateral to secure credit to invest in farms and businesses.⁵²

Brown further concludes that "the Act is designed to permanently diminish the amount of land held under customary tenure" in order to open up more land for investment.⁵³

A crucial aspect of the 1995 Lands Act is that once land has been transferred from customary to state land it *cannot be reconverted back to customary tenure*. Conversion is a one-way street.

Procedures following the 1995 Lands Act

Investors seeking agricultural land in Zambia can obtain a leasehold of 99 years and are offered a choice between acquiring State Land or Customary Land (for the administrative procedures please consult Appendices A and B). Nolte notes the points of entry for investors:

First, they can contact the Zambia Development Agency (ZDA) who guides investors during the whole investment process in Zambia. They point investors to available land. Mainly this is state land, for instance land within one of the government-established farm blocks [but ZDA may also assist in acquiring customary land].

Second, owners of state land can be approached.

Lastly, investors can approach village headmen and chiefs directly in search of land.⁵⁴

Regarding the latter option, it is important to note the following points:

1. Traditional leaders (chiefs and village headmen) may authorise ('recommend') the transfer of land up to 250 hectares.
2. Land transfers up to 1,000 ha. require the consent of the Minister of Lands.
3. Land transfers above 1,000 ha. require the consent of the President.⁵⁵

Even though a traditional leader may not allocate larger tracts of land than the stipulated 250 ha., consent is still required from his side for transfers larger than this (although he might find it difficult to resist the 'wish' of the President). Consequently an investor might still find it more suitable to negotiate such transfers directly with him whilst simultaneously seeking consent from higher authorities as, according to the ZLA, "the minister or the president still have to make peace with the chief on the issue".⁵⁶

* Note however that the tribunal did not have jurisdiction over Customary Land before a new Lands Tribunal Act was introduced in 2010.

Acquiring State Land

Acquiring State Land has immediate benefits: it is generally the best land; procedures are quicker if the land is already titled; its extent is well-defined; it is likely to come with a certain amount of infrastructure installed and to be situated close to major infrastructural facilities such as roads, rail, power, water, markets, etc.

State land is correspondingly more expensive, so the market is limited; and investors might find it difficult to locate a piece of land ideal for their purpose.

The presence of investors on 'old' state land (transferred before the 1995 Lands Act) is generally not perceived as a threat by local farmers, as most of this land has been out of their communities' possession for generations. However, there are today a large number of smallhold farmers (often in reality urban dwellers) on state land, mostly around the larger towns.⁵⁷

Land Bank

The Zambian government through the ZDA holds approx. 500,000 ha. "ready for lease" in a 'land bank', most of which is recently converted customary to state land to be availed for investors.⁵⁸

Farm Blocks

ZDA has further embarked on a large project to avail land for investors in a coordinated and planned manner through so-called Farm Blocks, one in each of Zambia's 10 provinces. Each 100,000 ha. Farm Block consists of farms of various sizes situated around a processing facility (sugar, biofuel, horticulture, etc.). One 'core venture' of 10,000 ha. is directly linked to this processing facility. Investors tender for the core farm/processing facility and the winning bidder is expected to engage local farmers in outgrower schemes so as to integrate them into the scheme.⁵⁹ Almost a million (967,750) ha.⁶⁰ are intended to be transferred to Farm Blocks as the programme is fully rolled out.

As of September 2013, only the Nansanga farm block had the bulk of its infrastructure in place. Electricity is installed with roads and water points plus a few boreholes. Some of the smaller plots have been allocated to Zambians, the core farm/facility too, "but we don't know if a proper deal has been made, the investor complained there wasn't enough water", says the ZLA. The second Farm Block, Lena, in Kawamba district, has only reached the demarcation stage and in reality not much has happened there.⁶¹ Thus, though ZDA in 2011 informed the Oakland Institute (OI) that they desired at least half of the Farm Blocks to be developed and operational by 2015⁶², this goal seems unlikely to be met.

Acquiring Customary Land

In order to make customary land available for commercial farming it has to be transformed to state land, whereby it gets titled. Titles are issued by the Commissioner of Lands within the MoL.

Customary Land is cheap and investors might find this option attractive as an opportunity to acquire land of the quality and location best suited for their purpose. However investors will likely have to install all necessary infrastructure. In addition, enforcing the transfer might lead to conflict with local farmers.

Acquiring Customary Land from the Land Bank

Donors have financed a Land Bank Identification Programme to assist investors in identifying and acquiring customary land through the Land Bank (German and Schoneveld 2012). Investors approach this facility and the Land Bank through the ZDA.

Acquiring Customary Land directly from a Chief

According to the Administrative Circular No. 1 of 1985, an investor may reach agreement with a chief about acquiring land under his custody. The Chief is obliged to consult with village headmen who must be present during the physical demarcation.

The formal process of transferring the land to state/titled land is initiated in the local district council which is authorised to approve and recommend the agreement. It then goes to the MoL. Final approval is issued by the Commissioner of Lands. Nolte observes that, "he is the 'kingpin' in the whole process and holds a great amount of power ... The commissioner is the direct delegate of the President, representing the President."⁶³

7. Key Findings

During the past 15 years a number of reports have been produced examining consequences nationally and locally of land liberalisation and private investments in Zambian agriculture. This chapter collates key findings of these reports on the various issues of interest.

Amount of land converted from customary to state/titled land

No precise records have been kept in the Ministry of Lands, Natural Resources and Environmental Protection (MoL) of how much land it has converted since the passing of the Lands Act. *Trends* can however be observed, mainly that it has accelerated in later years. Adams noted 11 years ago in 2003 that, "conversion of customary land to leasehold has been taking place since 1985; yet the pace since 1991, when it reached something of a plateau, has remained steady at about two to four thousand [new leasehold titles] per year, the number being determined by the capacity of the Ministry of Lands."^{*}

Writing two years later, Brown (2005) found that title conversions have been concentrated in peri-urban areas and in those parts of Zambia where commercial agriculture and tourism have the most potential. In particular,

the greatest number of titles has been issued in rural districts surrounding Lusaka and the cities of the Copperbelt and in the vicinity of prime tourist destinations (Livingstone and Victoria Falls, South Luangwa National Park and Lower Zambezi National Park). There are title conversions in other, less commercially vibrant, parts of the country, although in these cases, local or domestic elites rather than foreign investors usually acquire the land. Some parts of Zambia have been largely untouched by privatisation. For instance, according to officials at the Ministry of Land, there have been few, if any, title conversions in Western Province in part due to the tight, hierarchical control over land and resource use that the Lozi Paramount Chief, the Litunga, exercises.⁶⁴

The number of transfers rose later. Nolte (2013) notes that, "despite the change in formal rule of 1995, there was a need for further pressure as to translate in actual changes. This further pressure was induced through rising food prices and increased mineral demands resulting in higher demand for land".⁶⁵

Land administration and land use planning

As Zambia markets internationally its large tracts of 'underutilised land', the OICR finds that the Government of Zambia does not have any clear definition of what constitutes 'underutilised'.

^{*} He further cautions that the statistics on leases issued are not broken down into residential and agricultural categories or type of land.

Although smallhold farmers on customary land practice shifting cultivation and utilise non-cultivated lands (forests, etc.) for foraging and as a source of income generation, many of these areas are considered “underutilized” and “available” by the government.⁶⁶

Similarly there is no plan for how much customary land should be made available for transfer to state/titled land. ⁶⁷ This might not in itself be detrimental to local or national interests, but this is yet to be proven. It does however seem to be safe to conclude, that the door is wide open for such transfers.

Further examining the government's administration of the country's land/agricultural assets and its planning for their optimal utilisation, the OICR concludes:

Land use planning in Zambia appears to be rather fragmented, focused on urban areas or areas of intensive development (i.e. copper-belt), and what land use controls are in place are not enforced or widely understood. ... Thus there is no mechanism in place to ensure that there is an appropriate mix and balance of land uses across the landscape. ... Despite the vast majority of land still under customary tenure and thus under the jurisdiction of the traditional chiefs, there are no resources available to manage these lands. There is no mechanism in place for [customary] land use planning, no land administration, or registration systems. Furthermore, there is little evidence to show that land is being allocated in an appropriate, equitable, and sustainable manner that would balance the needs of the people and the interests of the investors. Land use decisions by the chiefs appear to be made in an ad-hoc manner with land acquisition processes that are ripe for corruption. ... Government land administration systems are inefficient, fragmented, and do not seem to aid decision-making on land based issues. Different and incomplete land information is collected by local authorities, land tribunals, and ministries, and data is maintained in different formats, scales, accuracies, extents, is often damaged or missing, and is kept in poor storage conditions with inadequate indexing. Corruption is a concern regarding the administration of land, and it is widely perceived that political interference in the allocation of land is an increasing problem.⁶⁸

Capacity utilisation is thus driven by investors and their individual interests. Safeguards protecting the interests of present land dwellers, smallhold farmers, local communities and the nation appear to be placed second. In other words, although the legal base for land management and good land governance is provided, there remains a poor administrative base for good land governance.

For examining this area we will consider specific findings regarding actors, rights, practices and consequences.

Origin of investors driving conversion of customary land to state/titled land

ZLA confirms that there are no reliable figures on either the national origin of investment bodies or the intended end use of land investments. ZLA is presently in the process of compiling a register of confirmed investments. Based on its assessment of available information ZLA ranks the investments according to their impact on smallhold farmers as follows:

1. Investments in mining.*
2. Foreign investments in land for agricultural purposes.
3. Local elite investments in land for building, farming, business or speculation purposes.⁶⁹

* For a chilling account of the dispute following one single mining investment resulting in the takeover of 519 km² (51,900 ha.) of land in the Musese Chiefdom, see Mwandawande, M. and van Wyk, D. (2012).

A crucial observation from the ZLA should be added. Although there are no figures as to how much land is transferred to local elite members, there seems to be a significant number of indicators leading towards a conclusion in line with Cotula's observations - that the largest amount of land transferred goes to members of the local elite, not international investors (see below). However, according to the ZLA the *impact* upon village communities from local elite acquisitions might presently be less than from international investors:

The Zambian elite take-overs are done piecemeal and each of them is not involving large pieces of land, usually 5-50 ha. However, the transfers will usually include some consultations, not in a public meeting, but a group of 10-12 local people usually from the village committee headed by the village headperson will discuss and authorise it. The investor will try to follow traditional rules and if the consultations point to the land being already used or wanted by locals, these will assist in finding another piece of land for the investor. Also, the new owners are likely to grow some food on the land, which they or their local relatives will consume or sell.

The foreign investors buy* up large tracts of land. They mainly consult a few big people in Lusaka. Locally, they are likely to talk only with the chief, they give him a big vehicle or do a road to his palace. Then they fence off the land and thus deny access to its food resources; they might even force people off the land."⁷⁰

ZLA further notes that the issue of whether local elites or international investors are transferring the larger parts of customary land is not static. As many local elites acquire small pieces of land on an ongoing basis, many months might pass with no international acquisition, but when it does happen it will usually involve large tracts of land.⁷¹

Local elite investments in customary land

Several studies of developments in Zambian land tenure undertaken for specific locations point to the local elite being the main drivers in transfers of customary land to titled land (Chileshe 2005, Sitko, 2010). There should be nothing surprising about the fact that private investors taking over customary land are mainly local. Zambia has a robust population growth, which leads to a steadily growing demand for land for housing, which will encroach upon agricultural land. Middle class expansion will further exacerbate the increasing demand in investments for old-age pensions, agricultural or industrial production, family aid and outright speculation (having seen how land values rise dramatically as soon as it is titled, offering an opportunity for a windfall income). Regarding the latter Adams notes that "this realisation has transformed the land market in neighbouring Botswana on both State and Tribal Land."⁷²

As will be detailed below, customary land is generally sold very cheaply and this puts the local elite financially on a par with foreign investors. The main constraint for taking over land is consequently knowledge of procedures and locations, and the connections required. For this, the local elite are well placed.

As an illustration Chileshe found in his field work in two different village locations (one remote, one close to urban encroachment) that it is mostly the local elite (shopkeepers, migrant workers and cash-crop farmers) rather than outsiders who usually convert tenure.⁷³

* Note that customary land is not 'bought' in the traditional sense, as this cannot be done legally. Rather a tribute is paid to the chief/headman - representing a monetary value way below the marketable price placed on the land as soon as this has been transferred to titled land (see below).

The local elite also have further 'privileged' access to the 'formalised illegal' markets that arise in areas under land pressure. Sitko illustrates the process in his fieldwork in Nkandanzovu in southern Zambia where pockets of state land 'settlements' have formed within the boundaries of customary areas:

Access to land in the settlement area requires that a significant payment, or 'tribute', be given to the chief, ... this tribute is viewed by the people of Nkandanzovu as tantamount to selling land ... many of the beneficiaries of these legal land transfers are outsiders from nearby urban centres, as well as prominent local residents, including the agricultural officer, several headmen, and the veterinary officer.

Why, the residents of Nkandanzovu ask, is it legal for the chief to sell land, while we cannot? ... People who participate in the land market often point to the fact that the chief is selling land in the settlement area to justify to themselves and others their participation in the illegal land market. Yet due to the continued illegality of the market for land, this emerging land market must be hidden from the punitive gaze of the chief. To accomplish this, land sales are funnelled through local, 'accepted' channels for transferring permanent usufruct rights to land. In particular, the institution of the village committee is mobilized to disguise land sales and to facilitate the illegal market for land ...

Consequently, alternative claims to the land must be silenced before a transaction can take place, as these alternative claims may find a receptive ear with the chief, and the mechanisms of permanent land allocation must be enrolled in order to enhance the security of the transaction. To navigate these dual demands, the land in question has to be considered under the exclusive and permanent control of the seller, and the transaction itself must be plausibly disguised within accepted norms of customary land allocation described above.

The formalization of these illegal activities through local institutions is often further solidified by writing contracts for land sales and transactions. These contracts describe the land in question and the participants in the transaction, and are signed by witnesses from the village committee. However, the contracts never mention the terms of the transaction itself, including the price and the mechanisms by which the land changed hands. This contract thus provides an additional form of security to an illegal land transaction, by providing material recognition of the transaction itself, while at the same time disguising the terms by which the land changed hands.⁷⁴

Whilst the above observations are obtained in studies of individual communities the ZLA has noted that nationally the buying and transforming of customary land to titled land by local elites has become "very common now, much more than just five years ago. People want to go outside of town and get some land."⁷⁵

In his report on land transfers Brown quotes the Commissioner of Lands - through whose office passes every single leasehold transferring customary to state land - for saying that "eighty per cent of the applications for land conversions are just council staff applying for land for themselves with which to speculate". Brown warns that this is undoubtedly an overstatement but it captures the scale of the problem.⁷⁶

The trend seems to be consistent also in the development of Farm Blocks. Only one core farm has so far been allocated, in the Nansanga block. This was not allocated to a foreign investor but to a local.⁷⁷ We don't know whether the reasoning behind this was based exclusively on the perceived business advantages of the winning operation or whether nationalistic, political or perhaps even corrupt imperatives influenced the decision but when the OICR researchers discussed the issue with ZDA for

their 2011 report they were told “that the successful bidder would be largely based in Zambia (through employment, business links, and ownership) and that it was not simply a case of “highest bidder wins”.⁷⁸

Foreign investments in land

There is an interesting discrepancy between popular notions of the origin of foreign investors and information about them found in research reports. Nolte found Chinese investors were predominant in popular perceptions, although people also cited Indians, Malaysians, Europeans and Zimbabweans.⁷⁹ On the latter, "one participant in a Focus Group Discussion with the WB researcher said that, 'when Mugabe was throwing them out of Zimbabwe, they just came in like water flowing downstream' "⁸⁰

Table 1: Pledged investments in agriculture 2000-2009 in Zambia

Investors Origin	Number Total	Number of those with joined investments
Zimbabwe	73	14
Great Britain	48	18
South Africa	34	9
Zambia	28	13
China	14	0
India	9	0
USA	7	2

*Source: Pledged Investment in Agriculture Sector 2000 - 2010 (ZDA, 2011).*⁸¹

In the latest examination of the issue Nolte reports that *estimations* of the proportion of Zambian land owned by foreigners ranges from 10% to 20%. In addition:

The only official information on the origin of investors available to us is the Zambia Development Agency's record of pledged investments 2000 - 2010. Zimbabwean, British, South African and Zambian investors lead the group of investors [with 73, 48, 34 and 28 respectively]. China, which is perceived as a major investor in the region only accounts for fourteen cases in the respective period. Nearly half the Zambian investments are taken in collaboration with another investor, whereas all Chinese and Indian investments are uniquely Chinese and Indian respectively. However, the ZDA data only provides information on investors who seek advice from the ZDA - and who intended a project in the period from 2000 - 2010.⁸²

However other reports document that many investors do not pass through ZDA but rather go directly to the president or to local chiefs. Brown notes that "the actual number of foreign farmers is likely much higher. The Ministry of Agriculture for instance reports that over the past several years more than 130 Zimbabweans have purchased farms in Zambia."⁸³

The Oakland Institute report lists several investment funds investing in Zambian land, but it is unclear if these are included in the numbers above and whether their planned investments actually took place. The list does however give some impressions of the scale and purpose of the investments:

Chayton Atlas is in the process of setting up a USD 50 million agribusiness venture and expects to develop up to 10,000 ha. of annual production cropped twice a year. Emergent Asset Management Ltd set up the African Agricultural Land Fund in 2008 as a private equity strategy that has as its long-term objective "to secure food production across a diverse range of soft commodities managed across sub-Saharan Africa and throughout the value chain", targeting returns of over 25 per cent annually. In March 2010, Emergent purchased the existing 1,710 ha. Kalonga farm in the Livingstone area that was initially acquired from the traditional chief (Chief Sekute) in 2005. According to Emergent an additional 1,020 ha. of the land is still in dispute with the local chief. Emergent's strategy at present seems to focus on the development of crops for export to neighbouring countries.

The Silverland Fund* aims to 'improve the management of farms by using a hub-outgrowers model.' They aim to provide inputs and extension services to 100,000 outgrowers in the next 10 years in each of the [six African] countries in which they operate.⁸⁴

It should be kept in mind that the above international investments have not necessarily involved the transfer of customary land to titled/state land. Chayton Atlas' investment for example is exclusively in unutilised state land and is as such an investment in the improvement of such land. The aim is to produce food for the local market (Chu 2013).

African countries often exhibit harsh environments in which to invest and the rush to acquire land 6-8 years ago seems to have been part of a boom economy before the bust. Cotula writes in his web blog on 'land grabbing' that "a synthesis of over 30 reports worldwide found that many investments have failed due to insufficient soil fertility, financing difficulties or over-ambitious business plans."⁸⁵

Some of the international investors in Zambia similarly seem to have experienced disappointments in returns on their investments due to higher than expected operating costs. In their extensive report on two such major investments established in the 1970's, Mujenja and Wonani point to poor returns to investments in agricultural projects compared to urban developments. The average return in 2009-2010 for these was 10,3% and 10% respectively, whereas "in contrast, the average return for Arcades Development, a newly established shopping mall in Lusaka, averaged 27% for 2010 and 2009."⁸⁶

Agro-Fuel

Though the Zambian government has been eager to attract investments in agro-fuel projects in order to reduce dependence on energy imports, the studies point to a significant lack of success. In their study on agro-fuel investments, German and Schonefeld note that in Zambia "only one investor was identified as having secured 10,000 ha. of land ... within a Farm Block." However, this operation was dependent on the processing facilities being utilised by a further 40 smallhold outgrower plots of 250 ha., but this showed to be "far beyond what smallhold farmers are likely to be able to afford."⁸⁷

Outside Farm Blocks, the OICR notes two main agro-fuel investors - UK based D1 Oils and Marli Investments. In 2006, D1 was allocated nearly 155,000 ha. of land and by 2007 had 2,411 ha. under jatropha cultivation. The OICR adds that, "despite the hype, yields thus far have been low, and have not delivered the returns that have been promised."⁸⁸

The OICR illustrates the contrast between prospected and realised production:

* In which the Danish pension funds PensionDanmark and PKA have invested.

One investor claiming that their planned jatropha operation will produce between 11.4 and 16.2 million litres of biodiesel at full capacity, which based on current prices, would “annually save the country on foreign exchange between USD 22.8 million and USD 32.4 million.” However, at present, given limited refining abilities, agro-fuel development does not contribute to Zambia’s energy security.⁸⁹

Chiefs

The 1995 Lands Act dramatically altered the jurisdiction and position of the country's 286 chiefs, as they had suddenly become the gatekeepers of new land to enter the market. Nolte describes the consequences of this:

The actors governing the system were not at all prepared to deal with the new demand in land being given to commercial farmers. Especially for traditional chiefs, usually as poor as their subjects, the immense increase in value of land changed their position in this ‘land game’. Before 1995, chiefs disposed over wide areas of land, which were typically used for subsistence agriculture. But the power they derived from this position does not compare to the international interest in land hitting the country thereafter. Suddenly, rich investors began offering money and valuable assets to chiefs. This changes the power chiefs have in the whole process; without their consent, land cannot be given away. Obviously, this leaves room for fraud and corruption.⁹⁰

From his field studies, Brown notes further:

When making any request to a chief, villagers and outsiders are expected to offer an honorarium – often a bag of sugar, maize meal, or a small amount of cash. In some cases involving requests for land conversions, however, this courtesy has mutated to the extent that recent ‘facilitation’ payments to secure a chief’s letter of approval have included new palaces*, vehicles, or cash.⁹¹

In their research the OICR found that "as the land technically has no value until it is converted into a sellable asset (i.e. until it is converted to state land), many chiefs dramatically underestimate the value of this land. More than once we were told that a new car, upgrades to the chief’s house, or other gifts, were all that was required to secure the chief’s blessing to the land. ..."⁹²

However, both surveys also found that many chiefs worry that the 1995 Lands Act undermines their authority as it eventually will reduce the amount of land under their control.

Brown concludes that,

chiefs are caught on the horns of a dilemma. They believe that they must attract investment to their areas if they are going to show leadership, improve the lives of their subjects, and ‘develop’ their areas. But to attract this investment, chiefs must grant investors title deeds, which with time will undercut their authority over the land and their subjects. Many chiefs feel betrayed by outsiders who acquire land title. Investors often promise that they will bring jobs, schools, clinics and other benefits to local communities if they are granted leases. In practice, however, investors seldom fulfil these promises once they are in possession of titles.⁹³

* He notes that "‘palaces’ tend to be modest; rarely more than glorified huts".

Villagers' views on the issue have been captured by the Catholic Commission's Justice and Peace Programme in one of the first major surveys on the consequences of the 1995 Lands Act:

Villagers expressed the need for chiefs to have more power over land as they felt chiefs were closer to them than the state President. Villagers expressed the need for more powers for control over land to be held by chiefs; Barotse Royal Establishment for instance had a tight grip on land and the villagers were determined to keep it that way.⁹⁴

Consultation

There are a number of legal requirements for consultations before customary land is converted to state land. Most importantly the chief is required to consult with his subjects before consenting to selling tribal lands. In reality this is often restricted to the chief discussing the matter with his closest confidantes. On the further practices of consultation within the land transfer system the OICR mention that, "very few examples were found where meaningful consultation was carried out. It seems there are regular 'consultation efforts' between different levels of government involved in land use or agricultural development, and that what is often touted as 'meaningful consultation' with local people, is merely a discussion with the chief. There are no clear or explicit goals for 'consultation' efforts. ... There is no evidence of consultation with other stakeholders, NGOs, etc. and consultation with women is virtually non-existent."⁹⁵

It is pertinent here to recall that once transferred to state land, customary land cannot be reconverted to its former status. Mudenda reports an example of the consequences of this: "At the MS Zambia Annual meeting 2003 ... chiefs ... gave an example of Nanga area in Mwanachingwala chiefdom where the chief gave consent to an investor to develop. Having failed to develop, the land was repossessed and advertised by the Commissioner of Lands instead of going back to the chief."⁹⁶

District Councils

The District Councils are the first line of safeguard against misappropriation of land. Brown notes that to recommend the conversion of customary land the council must ensure that the chief has been consulted (and that he in turn has consulted with his subjects), that a layout plan has been properly drawn up, and that the land has been physically inspected to "confirm that settlement and other persons' interests and rights have not been affected by the approval of the application". He concludes that, "in practice, however, some council secretaries and council members have used their positions of authority to allocate lands to themselves and to local elites or investors."⁹⁷

Nolte adds that "it depends entirely on the chiefs, whether they will negotiate for communal benefits or simply for their own benefits" and that "there is no incentive and no capacity to monitor what the chief is doing."⁹⁸

Ministry of Lands, Natural Resources and Environmental Protection

Any act should be supplemented by administrative guidelines specifying how the act is to be carried out in practice. This has not been the case with the 1995 Lands Act. For this reason an Administrative Circular dating back to 1985 is applied. This creates confusion over procedures amongst both local and central government officials. For strategically placed officials, such opacity can be an advantage. Adams notes that, "the absence of prescribed regulations hands too much discretionary power to the Commissioner of Lands and generates work for well-informed attorneys."⁹⁹ Writing two years later, Brown concurs and provides a number of examples of how opacity is abused by officials:

The conversion of customary to leasehold tenure is intended to be a bottom-up process. The applicant should first acquire permission from the chief and district council then move on to the Ministry of Lands for final approval. In practice, however, this process is often reversed and applicants start at the top, not the bottom of the administrative hierarchy. 'There are many examples of money talking', one highly placed official within the Ministry of Lands confided. 'People go directly to the top [to the Ministry of Lands or to State House, i.e. the presidency] to get permission rather than going through the proper channels – the balancing is done somewhere very high up'.

Chiefs complain that foreign investors and Zambian elites secure titles directly from the Ministry of Lands. 'Now when an investor wants land he starts in Lusaka and not here,' complained Southern Province's Chief Mweemba. 'They get the paper in Lusaka and then come and tell us what to do'. His neighbour, Chief Sinazongwe, reinforced this opinion: 'There is no respect for chiefs. When someone from outside wants land, they can bypass chiefs entirely and go to State House and get a title deed. They then show up with the deed in their hand and tell us what to do'.

There are also instances in which government officials have acquired title deeds to large areas of customary land and then subdivided it for personal gain. In the mid-1990s, for instance, an official within the Ministry of Lands secured title to several thousand hectares of customary land in Chief Mukonchi's area near Kapiri Mposhi. In the ensuing years, he has sold off this land to outsiders, including the sale of 347 hectares for five million kwacha and a vehicle in 2002. ...

What makes the Ministry of Land so 'soft' and prone to manipulation by elites and bureaucrats? The most obvious reason is that the Ministry's financial and human resources are inadequate.¹⁰⁰

In some cases, "individuals acting in the name of the state (ex-district commissioners, representatives of ZDA and the Ministry of Lands, ministers, and members of parliament) assist investors and influence negotiations by emphasizing the benefits over the risks and at times lobbying recalcitrant chiefs into accepting land transfers".¹⁰¹

Transaction conflicts, misunderstandings and misinformation

Such practices not only open up possibilities for corruption but also increase the risk of conflict over the transferred land. German and Schoenefeld conclude that, "where land is being acquired in customary areas for the first time, arguments over displacement and conflict between customary users and investors are common - many resulting from the failure of chiefs to consult their subjects on land allocation."¹⁰² Further reasons are limited awareness of what is actually being committed to by the chief or the district council, misunderstandings about the business models to be employed, and the boundaries of the agreed area.

Brown reports that, "in most of the field sites we visited, villagers engaged in 'everyday forms of resistance' against those who have acquired private title to customary land. In particular, villagers have cut fences surrounding privatised lands, released livestock on enclosed fields, destroyed or sabotaged commercial farm machinery and irrigation systems, and bewitched private land owners. In recent years, there have been a number of prominent cases in which pro-development chiefs and their subjects have collided over the titling of land".¹⁰³

The Lands Tribunal

The 1995 Lands Act established a Lands Tribunal with the aim to protect leaseholders and, from 2010, customary rights holders from abuse. It was designed to be an informal, low-cost and mobile institution accessible to rural and low income Zambians.

In practice however, the Tribunal is largely ineffective, inaccessible and costly. Brown concludes that, "few Zambians know that the Tribunal exists or what it does. Despite its mobile ambitions, the Tribunal seldom travels beyond Lusaka due to budgetary constraints and the preferences of its members. Those pursuing claims must therefore incur the costs of travelling to the capital city and supporting themselves while there. Since its inception, the Tribunal has also become increasingly formalised – so formal in fact that it is now difficult to distinguish its procedures from those of the high court (to which it was intended to provide a more approachable and efficient alternative)".¹⁰⁴

Environmental Impact Assessment

Before implementing an agricultural investment project an Environmental Impact Assessment (EIA) is mandatory for all commercial agricultural projects. However not all investors actually undertake one (Nolte, 2013). The OICR gives a chilling account of the lack of value some officials place in this requirement. Presuming to be a potential investor, the OI researcher had the following exchange with a high-ranking official in the Ministry of Land:

OI: "Is the investor required to do an Environment and Social Impact Assessment?"

Official: "Yes, but it is dealt with easily. We understand that you cannot do the green thing with 20,000 ha. You can do the Brazilian thing and burn it down."¹⁰⁵

Enforcement and monitoring

In her examination of the consequences from Zambian land liberalisation, Nolte reached two important conclusions regarding the governance of land:

First of all, there is a problem of *enforcement*. Even though formal rules order consultation of the local communities using the land, we have found alarming evidence of cases where this is not the case. Despite the obligation of the traditional ruler and the district council, it is not investigated whether the population was informed and agrees to the land acquisition. Actors in charge of this have incentives not to do so and can derive substantial personal gain from this behaviour. There is a lack of checks and balances.

Moreover, the monitoring through the Environmental Council of Zambia, ECZ is not thoroughly implemented. This is partly due to communication deficiencies of involved institutions (e.g. the MoL could inform the ECZ of concluded lease contracts), or shortage of personnel, and again a lack of checks and balances: An individual ECZ official might be better off not monitoring an investment.

Then, we find some actors to hold an enormous amount of power. Due to the lack of checks and balances, these actors can basically decide about who can obtain land without further consultation. Especially, traditional chiefs and the Commissioner of Lands are given a free hand. This obviously leaves a lot of space for rent-seeking and regulatory capture.¹⁰⁶

"Security" in land holding, arguments for and against titling

A crucial argument for land titling and thus for the transformation of customary land to state/titled land is based upon the presumption that increased security for land users will increase their willingness to invest in it. Presenting his findings from a study in Southern Province, Smith concluded otherwise:

With reference to ... tenure security's positive effects on agriculture (incentive to improve land, access to credit, and efficient land markets), this study so far finds evidence only for the first. The apparent under-utilisation of farmland in even this highly productive and commercialised study area suggests that problems of input supply and animal traction are more urgent in the short term than access to land and tenure security.

It is further assumed that title deeds provide a higher degree of security than customary rights. For these reasons the 1995 Lands Act provides holders of customary tenure the option to have their land transformed into titled land. It is however prudent to keep in mind what Ravnborg et al conclude from their examination of land liberalisation in Uganda, that "rather than any absolute feature of land tenure, such as holding a land title, it is the land-rights holder's *perception* of land tenure security – or insecurity – which makes him or her decide e.g. whether to undertake long-term land improvement investments."¹⁰⁷

What then, in the present Zambian practice is adding to perceptions of security and insecurity of tenure? Adams provides probably the most exhaustive examination of security in land tenure in Zambia. He points to the fact that since the passing of the 1995 Lands Act customary tenure is generally perceived to be insecure because governments continue to give it a second-class status. Titling of land in itself "can be a source of insecurity because chiefs consent to outsiders being granted leases, transgressing the rights of local rights holders and potentially denying the right of parents to bequeath land to their offspring. At the same time the prevailing sporadic tenure upgrading or titling system is susceptible to land grabbing by those with sharp elbows, dispossessing the poor and vulnerable members of the community."¹⁰⁸ In other words, titling as a means to enhance security may in itself breed insecurity.

This is in line with Smith's findings of many farmers expressing a desire to ensure titling of their customary land, "as a defensive measure".¹⁰⁹

Further, a host of concrete developments have made titling of customary land attractive to specific groups, and applications for titling continue to accumulate. Adams lists the following: "Customary Land may not be available in the area of choice. Ties between the urban population and chiefs have weakened considerably with time and the right of avail is not enjoyed for many people who have moved away."¹¹⁰

Chileshe adds another two groups. *Firstly*, wealthy newcomers and returning migrants from nearby mining towns. "Despite having been allocated land under customary tenure at no cost [they] still express a feeling of insecurity of tenure ... because they feel that the locals regard their land tenure as inferior and temporary, ... they feel that they occupy and cultivate land under the patronage of the chief, headman or the core matrilineal group of the village. In short they feel discriminated against on the basis of their descent as outsiders or strangers."¹¹¹

Secondly, people who are accused of witchcraft. As belief in witchcraft is deeply embedded in rural communities this might not be an insignificant group and it includes both marginalised poor and the opposite (i.e. successful cash crop farmers), as the general belief holds that success in any economic

field is viewed as evidence of involvement in witchcraft. Social tensions derived from this might lead to tenure rights holders feeling compelled to leave their land.¹¹²

Ironically, the poor land governance in Zambia also increases insecurity for those with titled land. Adams notes the following: "Holders of State Land also feel insecure because of the problems of surveying and registering interim (14 year) leases, the over-centralised and inefficient land administration, rent-seeking officials and the lack of information about the law and regulations, and the lack of transparency. ... When applications made according to formal procedures result in several years' delay, applicants are tempted to find ways of jumping the queue. The process then becomes overtaken by graft and corruption, undermining the integrity of the system. The result is that statutory title may be no more secure than unrecorded customary grants."¹¹³

Why do smallhold farmers not utilise the opportunity for acquiring land titles?

Few smallhold farmers have utilised the opportunity under the 1995 Lands Act to have their customary tenure land titled.

In line with Ravnborg et al's note on the 'perception of insecurity' we might interpret the lack of interest from smallhold farmers in obtaining lease of their land as a result of them not feeling these rights sufficiently threatened for them to take action. However there is no national data on the issue - and other factors at play, too. Firstly, a lack of knowledge about the option and secondly, lack of resources to capitalize on it.

Brown (2005) found that few rural villagers are aware of the Land Act and that conversion is possible, and also that most would not be able to afford the transaction costs. In addition, once land is transferred land rent must be paid, whereas holders of customary land pay no rent.

A number of smallholder communities and their traditional authorities also actively resist such transfers because they are against this *per se*. The complexity of the issue is illustrated in the following views collected by the CCJPZ from villagers in the catholic parishes:

- Most people's views on title deeds were that they did not want to have title because it was costly and people could lose their land if used as collateral. People still felt insecure because more wealthy citizens had become interested in owning land; land held under customary tenure was more secure as it would not be re-possessed simply because someone was not using it, as his children would need it in future.
- As most land is customarily owned most villagers also thought that if everyone had title some people would not have land access.
- Title deeds destroyed communal life and have led to rapacious behaviour such as the diversion of water courses even without water rights.
- Other informants wanted to have village friendly title deeds to protect their holdings from the power of traditional chiefs. They however expressed their fears that it was extremely costly for them to obtain title due to high survey and other related fees.¹¹⁴

Chileshe, in his field-work in two *Zambian* communities, found further evidence of the same, mainly that customary tenureship is valued as "a communal defence mechanism" against rich people's excessive accumulation "to the detriment of the livelihoods of the poor".¹¹⁵

Finally, one crucial point mentioned by Chileshe should be highlighted, that apart from the few Africans in 'pensionable' jobs, *for most Africans customary tenure rights is the only form of social security available.*¹¹⁶ This is of particular value to the poorest and most vulnerable members of society.

Displacements

There is no reliable statistics on how many people have been displaced by the conversion of customary land to state land. Brown offers evidence for displacements of four *households* near Lake Kariba and 2,000 *people* in Chief Mukonchi's area near Kapiri Mposhi by the Zimbabwean/British tobacco project, the Mulingushi Agricultural Development Corporation.¹¹⁷

ZLA also offers evidence of displacements:

In the Macha case, over 3,000 people were displaced by a church in Choma. Another on-going case is in Mpongwe district where two private companies acquired 55,000 ha. and another 137,000 ha. of land for cattle ranching and bio-fuels and displaced the local people. In Chambishi, 100 people are in danger of being displaced by Non Ferrous Company Africa (a mining company). In Chief Nkana's area it is expected that 109 households (400 people) will be displaced because of the Chibuluma Mine expansion. On a larger scale, 355 households (2,130 people) are likely to be displaced by the Reformed Church of Zambia in the Kadiba community in Chipata district. The Nansanga farm block is expected to displace about 44 households (264 people). ... In most cases it is the weaker members of society who are adversely affected by displacements such as poor women and people with disabilities.¹¹⁸

Although quite elaborate procedures have long been established for assisting families evicted from their land for mining purposes, and these seem to be fairly well respected, there are no similar formalised procedures for assisting families being evicted to make room for agricultural projects. This is not to indicate that such families are not assisted to new lands or compensated for their loss of material improvements on their land, but merely to draw light to the fact that this is often done according to random criteria which might lead to conflicts (OICR 2012).

Lost common pool resources

Smallhold farmers utilise non-farmed land for a variety of food security and cash income purposes from forests, commons, lakes and rivers. Brown notes the following complications arising from such non-titled, common pool resources:

During times of drought and crop failure, wild foods become a crucial component of household diets. Access to river water and riparian grazing is essential in dry times. ... During the past decade, much of the agricultural investment in Zambia has flowed to riparian areas where farmers can more easily irrigate their crops. At the same time, a growing number of safari lodges have been built on the banks of the Zambezi and Luangwa Rivers. ... Along the shores of Lake Kariba, near Victoria Falls (Livingstone) and next to South Luangwa and Lower Zambezi National Parks, villagers complain that they are losing access to riparian resources. The growth of tourism and the number of lodges in the Victoria Falls area, for instance, has led to the enclosure of more and more riverfront property in this particularly arid part of Zambia. As a result, some villagers now have a difficult time accessing the river to collect drinking water, to graze and water their animals, to fish or to gather thatching grass. As one villager reported to researchers from the Catholic Commission for Justice and Peace: 'We used to go to the river to pick reeds for mats and even fish but now we are not allowed to go there. Our children will be thieves because they will have no livelihood or skills to survive. Even though cattle are permitted to drink water at the river the Zambia Wildlife Authority confiscates them because, the guards are paid by these same investors who own lodges to beat and harass villagers. If they catch you with fish on the road they will beat you up. And yet you are not

even at the river but on the road. If it means paying we should also have the opportunity to pay for some rights.¹¹⁹

Women

The vulnerability of women in southern Africa is well known. This is compounded by the prevalence of HIV/AIDS, affecting approximately 14-15% of the population. As it is generally left to women to cater for the sick and otherwise vulnerable, this locks up crucial human resources that would otherwise have been invested in food production. This makes women's access to land a critical issue.

Women play a crucial role in smallholder agriculture, which is generally undertaken as a family enterprise. They generally gain access to land through male guardians, which leaves them further vulnerable when in conflict with them. Under the National Gender Policy women are supposed to receive at least 30% of land transferred to titled land. There is, however, neither clear guidelines on how to allocate that 30% of land nor any robust enforcement of this policy.¹²⁰

This has consequences. In its 2012 submission to parliament the ZLA pointed out that the 2009 Annual Fifth National Development Plan Progress Report from the Ministry of Finance and National Planning acknowledges that "according to the latest figures (2008) they are only receiving 18.6%¹²¹ (no later figures, according to ZLA)*. This is a decrease from 2006 when they got 21.7%. Some positive cases have been reported within certain communities. For instance, according to the Chipata District Land Alliance (DLA) report for the first quarter of 2012, after conducting awareness and training meetings at community level women were allocated over 33% of plots advertised."¹²²

As a woman's access to land is traditionally mediated through her husband, severe conflicts and impoverishment might arise especially for widows. The Women's Land Link Africa Zambia report notes that:

When a person dies without a will [which is by far the practice in rural areas], the Intestate Succession Act (1989) allows the surviving spouse to inherit 20% of the deceased's estate and, together with the children, a house where one exists. However, land under customary tenure is excluded from the law and cannot be inherited. Typically, the deceased man's relatives grab whatever property there is, including the land and the house, leaving the widow destitute.¹²³

In his study amongst the Tonga people in southern Zambia Sitko found that women, including widows, tended to be denied permanent control of land for several reasons:

First, the process of bride-wealth payment which is paid by the family of the man to the family of the woman formally separates women from their natal families. Any resources under the woman's control would be transferred to her husband and his family. Thus fathers rarely give land to their daughters because that land would ultimately wind up in the hands of her future husband.

Second, although women's rights to inherit land from their husbands were strengthened under new national inheritance laws promulgated in 1989, the land women inherit is thought to be for the benefit of their children and is not considered an individual asset. This has important implications for women's abilities to participate in the emerging [commercial] land market. For example, one widowed woman's attempt to sell her inherited land to a wealthy farmer was stopped by the

* Interview ZLA, Henry Machina, 10 October 2013, "Government doesn't disaggregate that information. It's not really a priority for them."

uncle of her children because, as he argued, 'that land is not for you to sell. That land is for your children'.

Third, clearing land is considered a man's job. This gendered division of labour prevents women from gaining access to fertile *chisaka*, or forested land, and denies them one of the most powerful mechanisms for obtaining and controlling land in Nkandanzovu.

Finally, with few exceptions, customary authorities give land to men as heads of households whilst assuming women will gain rights to land through the 'conjugal contract' with their husbands. Since women are denied access to the mechanisms for controlling land on a permanent basis, land under their control tends to fall within the broad category of temporary usufruct rights.¹²⁴

Sitko also notes that the 'formalised illegal' land market described above tends to privilege men, who have the social power to define their land as permanently and exclusively controlled whilst excluding women. He concludes that:

The most predictable result of the land market in Nkandanzovu is that women are denied access to it, although they control and farm significant portions of the land. It could be said that this protects women (and their dependent children) from loss of their land through distress sales, but equally they are prevented from expanding their land holdings and profiting from what land they control because of the social logic by which the market for land is regulated. ... This logic rests upon the fractured foundation of land governance regimes in Zambia, including local, customary, and national institutions of land administration, which actively compete over the appropriate modes of allocating resources, the definition of property rights, and the legitimate right to govern. It is within this murky context of governance that questions of development, and particularly ideas about achieving development through the expansion of private property rights, are subsumed.

This is not the outcome of traditional behaviour stifling the expansion of markets and private property, and thus development. Instead, it is the direct outcome of the fractured nature of the governance regimes through which development is instituted, and the local power differentials that become entrenched within the interstices of these fractures.¹²⁵

Corruption

Brown notes the following fundamentals regarding corruption in land governance, which are of concern:

Any system in which a valuable and scarce good is administratively allocated for free is prone to corruption. This is the case in Zambia, where customary land does not have a market value until it is converted to leasehold. As gatekeepers to this valuable – yet virtually free – resource, chiefs, district-level officers, and bureaucrats at the Ministry of Lands are in a position to exploit their strategic position within a 'soft system'. Lack of complete information at each level of the system exacerbates the problem. At all levels of land administration, administrators can bend or ignore the rules governing the conversion of customary land to leasehold.¹²⁶

ZLA regularly urges authorities to rectify this and to combat corruption in land governance. In its latest annual presentation to parliament it noted that "in the past few years we saw very unfortunate

scenes of political cadres indiscriminately taking over public or private land and selling to unsuspecting public members without adequate punishment mainly because of inadequacy in the law.”¹²⁷

Food security and poverty reduction amongst smallhold farmers

As noted above, national food production has risen considerably during the past years, especially in maize, the dominant staple food for urban and rural populations alike. The Government mainly ascribes this to the success of its Farm Input Scheme Program (FISP) which sees government involved in subsidising and distributing inputs, notably fertilizer. This is a costly way of improving production and is prone to abuse. Combined, the pro-poor programmes of FISP and the Food Reserve Agency (FRA) absorb more than 80% of the entire agricultural budget¹²⁸. This leaves only marginal means available for the ambitious goals as improvements to extension services, irrigation schemes, rural roads, market access, livestock development and protection (crucial also for traction power for peasant farmers to switch from hand-hoeing to ploughing as prime soil treatment method). However the revised SNDP (from August, 2013) forecasts the phasing out of the FISP, which will be substituted by a system of vouchers.

Just as overall national economic growth will not necessarily bring benefits to the poor (as we have seen already it fails to do in Zambia), food security is likewise not automatically reflected by national food production as it depends on other factors such as access, availability and affordability for the poor. Poverty and malnutrition in the rural farming areas has only been slowly falling during the past years despite robust economic growth and increased food production.

No survey seems to have specifically addressed the consequences of land liberalisation or commercial investment in agricultural land with regard to their impact upon smallhold farmer's food production and food security.

Analysis and consequences of conversions of customary land to state/titled land

Anyone searching for academic research supporting the view that the conversion of customary land to state/titled land has benefited smallhold farmers in Zambia will be hard pressed. On the contrary, researchers present ample evidence for the opposite. Brown concludes that his study “demonstrates that the conversion of customary to leasehold land tenure has led to social and economic exclusion, elite capture, displacement, intra-community conflict, and the enclosure of common pool resources.”¹²⁹ And further:

The benefits of market-based land reform have accrued to local elites and outside investors – not to poor and middling villagers - and the system has proved to be highly malleable; it is subject to perversion by local elites, traditional rulers, outside investors and local and central government officials. *De jure* institutions such as the Lands Tribunal are intended to prevent such abuse. In practice, however, these institutions are easily co-opted or ignored. The study shows that this malleability stems partially from the state's limited human, financial and technological capacity.¹³⁰

Researchers also generally agree that the cause for this state of affairs is not so much the liberalising 1995 Lands Act *per se* as the administration of the act and of the land. As Sitko notes, land governance is:

...being fractured between local, customary, and national institutions of land administration, which actively compete over the appropriate modes of allocating resources, the definition of property rights, and the legitimate right to govern. It is within this murky context of governance that questions of development, and

particularly ideas about achieving development through the expansion of private property rights, are subsumed.¹³¹

In his PhD thesis examining the consequences of the 1995 Lands Act in two different rural communities, Chileshe observes that it is not so much the Act *per se* which drives individualisation of rural land tenure but the increased commercialisation and expansion of money economies:

The relative proximity of village communities to towns, for instance those of St. Joseph, appears to hasten the commercialisation of dealings in land and labour than in more remote rural communities like Kamena. ... Consequently, under the money economy and accompanied by population pressure, individualisation of land and sales of land even to outsiders is bound to occur. Thus the land act of 1995 is just facilitating individualisation of land rather than being the main cause [of it].¹³²

This is not to say that the act does not have consequences in itself. Chileshe presents two conclusions that are important for this study. Firstly, “the focus on conversion of customary tenure to statutory leasehold seems to be flawed because it focuses on issues of agricultural productivity without concern with mounting inequality in access to land and natural resources”.¹³³

Secondly, and consequently, it “disadvantages village communities, especially the poor and women, and unfairly empowers the wealthy and educated”.¹³⁴

Subjects to citizens

As land governance in customary areas is closely linked to the entire legal structure, the 'bifurcated' characteristic of the Zambian state is worth touching upon (common law for citizens, traditional law for subjects in customary areas, see note on page 10). Mahmood Mamdani (1996) has alerted us to 'decentralised despotism' as a crucial relation between the populace and the state resulting from a bifurcation of the post-colonial state vis-à-vis its subjects in terms of law and the ramifications of this. As people living in customary areas are ruled by non-democratically elected 'traditional authorities', two major consequences arise. Firstly, they are denied the transformation into *citizens* but rather remain *subjects*. Secondly, traditional rulers' appointments have to be confirmed by the state; this reinforces the state elites' capacity for developing patron-client relationships which form the basis of patrimonialism, adding yet another complex layer to the issue of governance in customary areas.

The change in land governance introduced by the 1995 Lands Act seems to have exacerbated complications arising from this bifurcation. Interviews with villagers by the CCJPZ reveal a number of such cases:

Many Chiefs did not allow their subjects to hold title to land because leasehold tenure would undermine their power over their subjects. The Chiefs also refused to allow villagers to take land disputes to Court; all land disputes were adjudicated locally.

In some parts of the country households were required to give specified royalties to the chiefs, the *chilolos* – traditional counsellors, head men – failure to which one would lose one's rights to land. Many villagers of such societies wanted title deeds so as to protect their holdings from the power of *chilolos*. However, they could not obtain title due to costly survey fees.¹³⁵

Sitko's observations in southern Zambia point to the same growing conflict between villagers and 'their' traditional authorities. The responses to the CCJPZ's survey indicate that villagers felt torn between a wish to preserve their traditional ways of life and a simultaneous desire to escape the grip

of non-democratic practices blocking their personal ambitions to be recognised as citizens with full democratic rights.

8. Conclusions

Concluding on the findings of the various reports represents a conundrum. One clear finding is that hard data is lacking and assessments of the consequences of private investment in land are subsequently estimates. How then to align the assertion by the local organisation on the ground (ZLIA) that private investment has given rise to 'many conflicts' with the conclusion of one of the most critical reports that "land use conflicts have been, relatively speaking, fairly minor so far"?¹³⁶ What constitutes 'many conflicts', or 'fairly minor'? Obviously, for the individual smallhold farmer who has lost land or who is involved in a conflict over land, one is too many.

It is, however, clear that conflicts are arising and that these have some general characteristics. As the main objective of this report is to study the impact of private investment on smallhold farmers on customary land, we will limit our scope to conflicts arising from private investments that involve the transformation of customary land into state/titled land.

From the reports, especially the very detailed studies of specific rural communities, it *seems* that private investment in land is mainly encroaching upon smallhold farmers near urban or peri-urban settings, near tourist attractions, near mineral deposits marked for mining and in agriculturally attractive areas close to water resources. It is similarly documented that this is a growing problem and that the land transfers do not benefit the poorest, perhaps not even medium-size smallhold farmers in customary land areas.

Furthermore the reports *seem* to suggest that the threat to smallhold farmers of losing land or access to important land resources originates from the *Zambian elite* as well as from foreign investors.

Whether or not displaced smallhold farmers or those involved in conflicts have experienced reduced food security is not documented by the reports. It is, however, obvious that there is nothing to suggest that food security for smallhold farmers on customary land has improved following land liberalisation. If the present tendency of encroachment continues in an unfortunate synergy with poor land governance it is likely that more people will be marginalised on poor lands, and this will in turn - all things being equal - lead to increased food insecurity.

In answer to the questions raised in the introduction to the section on land liberalisation, there is sufficient research to suggest that liberalisation was indeed implemented too hastily, or rather that the supporting circulars, instructions and adjustments are long overdue. Further to conclude, that Zambia still has important ground to cover in the field of 'legal recognition of customary rights and institutions'.

Regarding increased national food production, Adams concluded 10 years ago that "State Land has the best agronomic potential. It is also best located with regard to communications infrastructure. Smallhold farmers are more evenly distributed throughout the country on Customary Land, on soils with lower potential and in areas more remote from markets for inputs and outputs. For the purpose of improving production and income from agriculture, an investment in the resolution of land related problems on State Land is expected to be more crucial than on Customary Land."¹³⁷

This is of course not to suggest that nothing should be done about securing land tenure rights for farmers on Customary Land. But lack of land titling does not appear to be an important constraint on

productivity. Smith observed that, "problems of input supply and animal traction are more urgent in the short term than access to land and tenure security"¹³⁸

For an alternative strategy to achieve increased production, ZLA makes four important points:

1. Let us first identify who is growing the country's food. Zambians mainly eat maize. Smallhold farmers produce 95% of Zambia's consumption. They also produce the bulk of the vegetables that most people eat with their porridge. Only a few people are shopping in the supermarkets.
2. A lot of people depend on the markets created by this production. Small trucks bring the produce to the popular markets where women buy and sell at roadsides all over the country. It creates income.
3. We need to increase this production by promoting irrigation, building infrastructure (especially rural roads), and increasing access to machinery. Most important is information to smallhold farmers on what types of crops and which type of small livestock to produce for the market: What will it buy? Information on packaging is another issue.
4. A final point is of course whether smallhold farmers feel secure that they can have their land for the foreseeable future. What kind of security can they afford? Should they have title or some other documents? It is not clear who should issue this, whether it be traditional leaders or the government.

Reports finally highlight the crucial point that land governance is flawed and the responsible authorities lack the necessary capacity to perform their duties effectively. Given that smallhold farming communities in general perceive land transfers as a growing problem, solving the deficiencies in land governance is perhaps the most pressing issue regarding land tenure.

Regarding land governance the following key lesson from the Zambian experience cannot be overstated:

Administrative capacities in most African countries are extremely weak. Policies that do not fully acknowledge and accommodate these limitations are bound to fail. Donors and government policy-makers, in other words, should not assume that the existence of state administrative structures implies that these structures are functional or that they function uniformly across space.¹³⁹

One may add that investors should take heed of the same warning too.

ZLA advocates to maintain the dual land tenure system but with strong emphasis on reforming it. This reformation should not be radical, but gradual so as to avoid further disadvantaging poor people and especially women, children and vulnerable groups - the very category of people that need to be empowered.¹⁴⁰

This is in line with the thinking of a number of international researchers. The Danish Institute of International Studies (DIIS) in the mid 2000's undertook a study entitled *Land Rights and Land Conflicts in Africa*. The coordinator of the study, Rie Odgaard concluded that, "in most rural areas the customary laws work at the local level, and many of us who have worked with land rights and conflicts for many years warn against forcing the formalisation processes. Many experiences show that those with most money and influence have the greatest benefit from formalisation – and that vulnerable groups loose out, so we propose alternative solutions"¹⁴¹

Specifically studying Zambia, Smith concluded that the perceived insecurity of land tenure deserved to be remedied - but noted that,

a system as well-evolved, egalitarian, and self-regulating as African customary land law should not be tinkered with lightly. Also, it should be remembered that titles and inheritance statutes are legal instruments that are only as good as their accessibility, predictability, and enforcement.”¹⁴²

Finally it should be underscored once again that the global demand for food should present an *opportunity* for African farmers - not a threat. Appropriate policies and governance measures should be in place for them to access this market and thrive in it. Similarly, African governments might find better results from enticing international investors to invest in African farmers rather than African farming land.

9. Recommendations

In 2012, the Committee on World Food Security endorsed a set of guidelines aimed at safeguarding the rights of people to own, manage and access land, fisheries and forests. The FAO *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Security* (hereafter the ‘Voluntary Guidelines on land tenure’) serves as a guiding instrument for governments, donors and investors to ensure sustainable investments in land and agriculture. Other important frameworks include FAO’s Right to Food Guidelines¹⁴³, the African Union’s Framework and Guidelines on Land Policy, and the EU Food Security Policy Framework and implementation plan. States have specific obligations under applicable international human rights instruments, including the UN Covenant on Economic, Social and Cultural Rights. Several soft law frameworks also establish the responsibilities that non-state actors, including business enterprises, have to respect human rights and legitimate tenure rights.

Based on the *Zambian example* regarding the consequences of land privatization, the following is recommended:

UN Member States and International Donors should:

- Recognize and respect all legitimate tenure right holders and their rights, and take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights (in accordance with General Principle 3.1.1. in the Voluntary Guidelines on land tenure);
- Safeguard legitimate tenure rights against threats and infringements, and promote and facilitate the enjoyment of legitimate tenure rights (in accordance with General Principle 3.1.2-3 in the Voluntary Guidelines on land tenure);
- Respect the rights of people to decide for themselves the form of land tenure and land governance they find appropriate for their particular circumstances;
- Support programmes which strengthen good land governance in partner countries; in particular, the strengthening of mechanisms and institutions which safeguard people’s right to food through transparent, consultative and affordable mechanisms for securing farmers’ land tenure rights;
- Recognise the need for an expanded knowledge-base about existing land tenure rights and land governance through supporting relevant research in partner countries; this should include support to research on the consequences of changes in land tenure rights and of local and international investments in agriculture;
- Specifically target resources towards strengthening and securing land tenure rights for both poor women and men;

- Strengthen African farmers' capacities to market agricultural products locally and internationally, both directly and also through facilitating their cooperation with international investors;
- Promote the need for a comprehensive land audit in Zambia to determine the extent of customary land and, until this is finalised, advocate the restriction of any large-scale transfer of customary land to state land;
- Recommend the Zambian Government to revise the national regulations concerning security of land tenure, with particular emphasis on strengthening the security of traditional land tenure systems whilst simultaneously embarking on a comprehensive awareness programme to inform the public of their rights.

International Investors

As stated in the Voluntary Guidelines on land tenure (General Principle 3.2.), non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.

International investors should:

- Act with due diligence to prevent land grabbing and avoid infringing on the human rights and legitimate tenure rights of others. This includes ensuring appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights.
- Acknowledge that responsible private investments are essential to improve food security. Responsible governance of tenure of land, fisheries and forests encourages tenure right holders to make responsible investments in these resources, increasing sustainable agricultural production and generating higher incomes (in accordance with General Principle 12.1. in the Voluntary Guidelines on land tenure).
- Engage, consult and work with local smallhold farmers' organisations to ensure that their rights are respected and endeavour to include them in their investment plans.
- Recognise that administrative capacity in some target countries is extremely weak, especially in ensuring peoples' rights, and thus recognise that the onus is on themselves to ensure peoples' rights are respected in investment target areas. Specifically, they should ensure that meaningful consultations take place with the population in investment target areas as well as to ensure proper compensation in land, kind and/or cash is delivered in cases where people are being dispossessed of land and/or property as a result of their investment;
- Endeavour to facilitate local farmers' access to local and international markets for their products by investing in African farmers rather than in African land.

International NGOs and partner organisations should:

- Support local partner organisations in strengthening local land governance to ensure the right to food security, including:
 - strengthening the capacity for local farmers' voices to be heard in local and national fora, especially where formal decisions regarding their livelihoods are made;
 - strengthening affordable, accessible and representative dispute-solving mechanisms regarding security of land tenure rights;
 - establishing information flows to smallhold farmers about their rights regarding food security, not least regarding land tenure rights and dispute-resolution mechanisms;
 - strengthening the research and information collection capacity of partner organisations regarding the consequences of changes in land tenure rights and of local and international investments in agriculture in their country;
- Acknowledge that international and local investors can contribute decisively to improving food security for smallhold farmers and poor people, and engage and work with investors towards achieving this goal.

Zambian organisations representing the interests of smallhold farmers

Recognising the dedicated pursuit of advocacy on behalf of Zambia's smallhold farmers in their attainment of food security rights through the past many years, local organisations could strengthen their advocacy by:

- Seeking to establish cooperation platforms with other Zambian organisations to strengthen information gathering concerning the consequences of land liberalisation and land individualisation and the consequences of local and international investors' land acquisitions that transform customary land to state/titled land;
- Rallying support for the introduction of minimum standards to be followed whenever customary land is sought to be transformed to state/titled land;
- Advocate for the establishment of a complaints and counselling mechanism for smallhold farmers and other poor or marginalized people whose ownership of or access to use of land is being threatened to be taken over without due consultation or compensation;
- Endeavouring to develop concrete alternative security of land tenure rights policies and regulations wherever they see that land tenure rights and the right to food are under threat by present policies and regulations, and rallying support for such alternatives from relevant interest groups, partner organisations and authorities in order for such alternatives to be adopted and formalised;
- Endeavouring to engage with chiefs and local communities to facilitate better consultations wherever investors tend to encroach on local land; key areas for such developments should be identified;
- Engaging other land user organisations with improving public education on land rights and gender rights with regards to land; schools should be involved in such endeavours.

References

- Adams, Martin (2003): *Land tenure policy and practice in Zambia: Issues relating to the development of the agricultural sector*. Mokoro, Oxford.
- Brown, T. (2005): 'Contestation, confusion and corruption: Market-based land reform in Zambia'. In: Evers, Spierenburg and Wels, eds. *Competing Jurisdictions: Settling Land Claims in Africa*, 79-107. Leiden: Brill, 2005).
- CCJPZ - Catholic Commission for Justice and Peace in Zambia (2003): *Impact of The Land Act 1995 on the Livelihoods of the Poor and Peasants In Zambia: Executive Summary*. Lusaka.
- Chileshe, Roy A.: *Land Tenure and Rural Livelihoods in Zambia: Case Studies of Kamena and St. Joseph*. PhD, University of the Western Cape, March 2005.
- Chu, Jessica M. (2013): *Creating a Zambian Breadbasket. 'Land grabs' and foreign investments in agriculture in Mkushi District, Zambia*. LDPI Working Paper 33.
- CIA World Handbook 2013. <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html>. Accessed 26.9.2013.
- Cotula, L. (2013): *The great African land grab? Agricultural investments and the global food system*. Zed Books, London, N.Y. (e-book version).
- Deiniger, K. (2005): *Land policies for growth and poverty reduction: Key issues and challenges ahead*. DAC Paper, March 1, 2005. <http://www.oecd.org/development/povertyreduction/36562720.pdf>
- DIIS (2007): *Annual Report 2007*. Copenhagen.
- FAO (2013): *The State of Food Security in the World 2013*. Rome 2013.
- German, L.A. and Schoneveld, G. (2012): *Biofuel Investments in Sub-Saharan Africa: A Review of the Early Legal and Institutional Framework in Zambia*. Review of Policy Research, Volume 29, Number 4.
- ILO (2013): *The enabling environment for sustainable enterprises in Zambia*. Employment Report No. 22, ILO, Geneva, p. x. http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_215291.pdf. Accessed 26.9.2013.
- JASZ II, *Joint Assistance Strategy for Zambia 2011-2015*. Lusaka, 2011.
- Kuteya, A. (2012): *Analyzing Zambia's Agricultural Sector Budget 2013*. Presentation at the ACF/IAPRI Budget Meeting, Lusaka, 1st November, 2012.
- Lusaka Times, Aug. 23, 2013.
- Mamdani, M. (1996): *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism*. Princeton University Press, Princeton.
- Ministry of Finance and National Planning (2009): *Annual Fifth National Development Plan Progress Report*. Lusaka, Zambia.
- Ministry of Finance and National Planning (2013): *Sixth National Development Plan (revised)*, August 2013. Lusaka, Zambia.
- Mudenda, M.M. (2006): *The Challenges of Customary Land Tenure in Zambia*. paper presented at 'Shaping the Change; XXIII FIG Congress, Munich, Germany, October 2006.
- Mujenja, F. and Wonani, C. (2012) *Long-term outcomes of agricultural investments: Lessons from Zambia*. IIED, London.

- Mwandawande, M and van Wyk, D. (2012): *Memorandum: Situational Report on the Impact of Kalumbira Minerals (First Quantum) operations on Musele Community*. Report on visit 20 October - 25 October 2012).
- Nasong'o, Shadrack Wanjala (2007): *Political Transition without Transformation: The Dialectic of Liberalization without Democratization in Kenya and Zambia*. African Studies Review, Vol. 50, No. 1 (Apr., 2007).
- Nolte, Kerstin (2012): *Large-Scale Agricultural Investments Under Poor Land Governance Systems: Actors And Institutions In The Case Of Zambia*. Giga Working Papers no. 221. http://www.giga-hamburg.de/en/system/files/publications/wp221_knolte.pdf. Accessed: 21.1. 2014.
- OICR, Oakland Institute (2011): *Understanding Land Investment Deals In Africa. Country Report: Zambia*. Oakland.
- Ravnborg, H. M., Bashaasha, B., Pedersen, R. H., Spichiger, R. and Turinawe, A. (2013): *Land Tenure under Transition - Tenure Security, Land institutions and Economic Activity in Uganda*. DIIS Working Paper 2013:03. Copenhagen .
- Schiffman, R. (2013): *Hunger, Food Security, and the African Land Grab*. Ethics & International Affairs, Fall 2013. Accessed 26.9.2013 from <http://farmlandgrab.org/post/view/22591>
- Sitko, N. J.: (2010): *Fractured Governance and Local Frictions: The Exclusionary Nature of a Clandestine Land Market in Southern Zambia*. Africa 80 (1).
- UNDP (2008): *Land Based Social Relations: Key Features of A Pro-Poor Land Policy*. OGC Brief 2, May 2008.
- UNDP (2013) *Human Development Report 2013*. Internet version, accessed 20 October 2013.
- van Asperen, P. and Mulolwa, A. (2006): *Improvement of Customary Tenure Security as Pro-poor Tool for Land Development – A Zambian Case Study*. Paper delivered at 5th FIG Regional Conference, Accra, Ghana, March 8-11, 2006.
- White, B and Dasgupta, A. (2010): *The international political economy of the global land rush: A critical appraisal of trends, scale, geography and drivers*. Journal of Peasant Studies, 7.4, pp593-607.
- Women's Land Link Africa (2010): *The Impact of National Land Policy and Land Reform on Women in Zambia*. Lusaka.
- World Bank (2003): *Land Policies for Growth and Poverty Reduction*. Washington, executive summary.
- World Bank (2010): *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* Washington
- World Bank (2013): *Zambia's Job Challenge. Realities on the Ground*. Zambia Economic Brief, Issue 2, Oct. 2013. Link: <http://www.worldbank.org/content/dam/Worldbank/document/Africa/Zambia/Report/zambia-economic-brief-october-2013.pdf>. Accessed Nov. 4, 2013.
- ZLA (2010): *Submission To The Committee On Agriculture And Lands Of The National Assembly*. 26th February, 2010.
- ZLA (2012): *Memorandum to the Committee on Lands, Environment And Tourism: "Building Pro-poor Land Reforms"*. Lusaka, 25th November 2012.

Appendix A: Formal mechanisms for investors to access customary land¹⁴⁴

Formal mechanisms for investors to access customary land include the following (RoZ, 2006b):

1 *Negotiating with chiefs the transfer of customary land to leasehold tenure* (Statutory Instrument 89 of 1996): involving consent from the chief (with prior consultation of village headmen), physical demarcation of the area in the presence of village headmen, and (depending on the land area) approval by the district council, Commissioner of Lands and the president.

2 *Accessing land through previously established land banks*: in this case, the ZDA holds land in trust on behalf of the state and may sublease land to investors. Given the reported prevalence of land speculation by investors, in 2009 the ZDA began giving investors provisional usufruct rights pending evidence of productive use of the land.

3 Through compulsory acquisition by the president:

This is subject to consultation of the chief, local authority, and any other person whose interest might be affected, and to financial or in-kind compensation (RoZ, 1995, no date).

While the government is encouraging the formal titling of customary land (RoZ, 2006b), the Zambia Land Alliance is advising against it due to the cost, the subsequent application of land rents, and the risk of landlessness (Zambia Land Alliance, 2007).

Appendix B: Administrative Circular No. 1, 1985

Procedures regarding the transfer of customary land to state land is set out in the *Administrative Circular No. 1, 1985*. Adams (2003) has the following comments regarding the Circular and its relation to the 1995 Lands Act:

The Act is, by any standards, a very brief piece of legislation, covering only eleven pages. Part V 31. (1) (p. 279) of the Act states that 'the Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act'. Surprisingly, however, no regulations have ever been drafted. The regulations still in effect are those of Circular No. 1, 1985, 'Procedure on Land Alienation'. Although a reasonably well-drafted and well-conceived piece of legislation, because of the absence of clear regulations setting out the required procedures and the prescribed forms for routine transactions, it is not as effective as it could be. It does not provide the 'coherent, simplified and relevant land law code' promised in the MMD manifesto of 1991.¹⁴⁵

The procedures for applying for a lease are set out in *Administrative Circular No 1* of 1985 (Appendix 5). These precede the current *Lands Act* 1995 and must be read with the Act in mind. The circular is a set of instructions addressed to all provincial permanent secretaries and district executive secretaries. It includes the forms to be used in applying for land.¹⁴⁶

... an interim or provisional 14-year lease can be granted on the basis of a sketch plan. Due to the shortage of land surveyors, holders of 14-year leases face great difficulties in upgrading 14-year interim title to one of 99 years and therefore have only very limited security of tenure.¹⁴⁷

MINISTRY OF LANDS

Administrative Circular No 1, 1985

PROCEDURE ON ALIENATION

INTRODUCTION

This Circular is intended to lay down general policy guidelines regarding the procedure all District Councils are expected to follow in the administration and allocation of land.

2. Your attention is drawn to the fact that all land in Zambia is vested absolutely in His Excellency the President who holds it in perpetuity for and on behalf of the people of Zambia. The powers of His Excellency the President to administer land are spelt out in the various legislations some of which are; The Zambia (State Land and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 and 1964 and the Land (Conversion of Titles) Act No. 20 of 1975 as amended. His Excellency the President has delegated the day-to-day administration of land matters to the public officer for the time being holding the office or executing the duties of Commissioner of Lands. Under Statutory Instrument No. 7 of 1964 and Gazette Notice No. 1345 of 1975, the Commissioner of Lands is empowered by the President to make grants or dispositions of land to any person subject to the special or general directions of the Minister responsible for land matters.

3. Pursuant to the policy of decentralisation and the principle of participatory democracy it was decided that District Councils should participate in the administration of land. To this effect, all District Councils will be responsible, for and on behalf of the Commissioner of Lands, in the

processing of applications, selecting of suitable candidates and making recommendations as may be decided upon by them. Such recommendations will be invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.

4. Accordingly, the following procedures have been laid down and it will be appreciated if you shall ensure that the provisions of this Circular are strictly adhered to.

A. PREPARATION OF LAYOUT PLANS

- (i) The planning of stands for various uses is the responsibility of the appropriate planning authority of the area concerned. Once a chosen area has been properly planned, the planning authority shall forward the approved layout plans to the Commissioner of Lands for scrutiny as to the availability of the land.
- (ii) Upon being satisfied that the layout plans are in order, the Commissioner of Lands shall request the Surveyor-General to number and survey (or authorise private survey) the stands.
- (iii) Thereafter, a copy of the layout plan showing the order of numbering, shall be sent back to the District Council and the planning authority concerned.

B. ALLOCATION OF STANDS

- (i) Stands recommended for allocation to the Commissioner of Lands will be assumed to have been fully serviced by the District Council concerned. If the stands are not serviced, the District Council shall give reasons for its inability to provide the necessary services before the recommendations can be considered.
- (ii) Before stands are recommended, the District Council concerned may advertise them in the national press inviting prospective developers to make applications to the District Council in the form appended hereto and numbered as Annexure A.
- (iii) On receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make its recommendations in writing to the Commissioner of Lands giving reasons in support of the recommendations in any case where there may have been more than one applicant for any particular stand, or where an applicant is recommended for more than one stand.
- (iv) On receipt of the recommendation(s) from the District Council(s), the Commissioner of Lands shall consider such recommendation(s) and may make offer(s) to the successful applicant(s), sending copies of such offer(s) to the District Council(s) concerned.
- (v) Where the District Council is not the planning authority, an applicant whose recommendation has been approved by the Commissioner of Lands shall be directed, in a letter of offer in principle, to apply for and obtain planning permission from the relevant planning authority before a lease can be granted.
- (vi) If the District Council is aggrieved by the decision of the Commissioner of Lands, the matter shall be referred to the Minister of Lands and Natural Resources within a period of thirty days from the date the decision of the Commissioner of Lands is known, who will consider and decide on the appeal. The Minister's decision on such an appeal shall be final.
- (vii) No District Council shall have authority in any case to permit, authorise or suffer to permit or authorise any intending developer to enter upon or occupy any stand unless and until such developer shall have first received the letter of offer, paid lease fees and the development charges, and has obtained planning permission from the relevant planning authority.

- (viii) Prior to the preparation of the direct lease, the District Council concerned shall inform the Commissioner of Lands the minimum building clause to be inserted in the lease.
- (ix) Prompt written notification of the relevant particulars upon the issue of a certificate of title shall be given by the Commissioner of Lands to the District Council concerned.

C. UNSCHEDULED AGRICULTURAL LANDS

- (i) Any State Land required for agricultural use shall be notified to the Commissioner of Lands so that its status and availability can be determined. Once the Commissioner of Lands is satisfied that the land in question is available the Department of Agriculture in consultation with the District Council shall be requested to plan the area into suitable agricultural units. The layout plans duly approved by both the Department of Agriculture and the District Council concerned shall be submitted to the Commissioner of Lands for survey and numbering.
- (ii) Once the District Council is in possession of information from the Commissioner of Lands regarding the numbered farms or small-holdings the procedure outlined in paragraph 4B(ii) (iii) (iv) and (vi) above shall apply. And the application form to be completed by the applicants shall be as per Annexure 'C'.
- (iii) No District Council shall have authority in any case to permit, authorise, or suffer to permit, or authorise any intending developer, to enter upon or occupy any agricultural farm or small-holding unless and until such developer shall have first received the letter of offer and has paid the lease fees.

D. RESERVES AND TRUST LANDS

- (i) In the Reserves and Trust Lands, the powers of the President, in making grants or dispositions of land, are limited by the requirement to consult the local authorities affected by such grants or dispositions of land.
- (ii) Local authority, in the Orders, has been administratively understood to mean the Chief and the District council. This means, therefore, that the consents of the Chiefs and District Councils shall continue to be the basis for any approval of applications for land in the Reserves and Trust Lands.
- (iii) As has been the practice before, to ensure that a local authority has been consulted, the Commissioner of Lands will insist that each recommendation is accompanied by the following:
 - (a) written consent of the chief under his hand;
 - (b) extracts of the minutes of the Committee of the Council responsible for land matters embodying the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary;
 - (c) extracts of the minutes of the full Council with the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary.
 - (d) four copies of the approved layout plan showing the site applied for, duly endorsed and stamped by the Chief, Chairman of the Council and the District Executive Secretary.
- (iv) The preparation of the layout plan showing the area applied for, should be done by persons possessed with the cartographic know-how. At Annexure 'B' of this circular is a model layout plan which provides the necessary details for an acceptable layout plan.

- (v) It has been decided, for the time being, not to allocate more than 250 hectares of land for farming purposes in the Reserves and Trust Land areas. The District Councils are, therefore, advised not to recommend alienation of land on title in such areas in excess of 250 (two hundred and fifty) hectares as such recommendations would be difficult to consider.
- (vi) In each case recommended to the Commissioner of Lands, the recommending authority shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights have not been affected by the approval of the application.

E. APPLICATION FOR LAND BY NON-ZAMBIANS

- (i) You are now aware that under the Land (Conversion of Titles) (Amendment) (No. 2) Act of 1985 no land can be alienated to a person who is not a Zambia. However, under the same Amendment, a non-Zambian can be granted a piece of land if his application has been approved in writing by His Excellency the President.
- (ii) To obtain the approval of His Excellency the President, a non-Zambian wishing to own a piece of land will be required, in the first place, to submit his application to the District Council concerned for scrutiny. In considering the application, the District council will be at liberty to solicit for as much information as possibly from the applicant about the intended development.
- (iii) When recommending the application to the Commissioner of Lands, the District Council shall be required to give full back-up information in support of or against the applicant in addition to the following:
 - (a) extracts of the minutes of the Committee of the Council responsible for land matters, embodying the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and the District Executive Secretary;
 - (b) extracts of the minutes of the full Council, with the relevant resolution and showing who attended the meeting, duly authenticated by the Chairman of the Council and the District Executive Secretary; and
 - (c) four copies of the approved layout plan, showing the site applied for, duly stamped and endorsed by the Chairman of the Council and the District Executive Secretary where the site has not been numbered.

5. *Consultations* – Development projects of great significance both to the district and the nation, shall be referred to the Provincial Authority for guidance before communicating the decision to the Commissioner of Lands.

6. *Decentralisation of Lands Department* – Necessary plans to further decentralise the various aspects of land administration and alienation to the Provincial Headquarters have been made. These plans will be operational as soon as funds are available.

7. *Reserved Powers* – The Minister responsible for lands shall have the right in any case or cases or with respect to any category or categories of land, to modify, vary, suspend or dispense with the procedure outline above or any aspect of same as he may see fit in the circumstances.

F. Chela,
Minister of Lands and Natural Resources

cc The Rt Hon. Prime Minister
cc Hon. Chairman of the Rural Development Committee

cc Administrative Secretary, Freedom House
cc All Hon. Members of the Central Committee in charge of provinces.
cc Hon. Minister, Ministry of Decentralisation, Lusaka.
cc Hon. Minister, Ministry of Agriculture and Water Development, Lusaka.
cc Hon. Minister, Ministry of Legal Affairs, Lusaka.
cc All Chairmen of District Councils.

Appendix C: ZLA's 2012 Memorandum to the Zambian Parliament's Committee on Lands, Environment And Tourism

Each year ZLA deliver a memorandum on land issues to the above committee.



ZAMBIA LAND ALLIANCE

126E, Kudu road, Kabulonga,

P O Box 51156, Lusaka, Zambia

Tel: +260-1-260040 Fax: +260-1-260041 Email: land@coppernet.zm

MEMORANDUM TO THE COMMITTEE ON LANDS, ENVIRONMENT AND TOURISM

“Building Pro-poor Land Reforms”

25th November 2012

1.0 What Zambia Land Alliance is and Does

The Zambia Land Alliance (ZLA) is a network of civil society organisations that include NGOs, CBOs and Faith Based Organisation in Zambia working with poor rural and urban men and women to ensure that land policies, laws and administrative systems take their interests into consideration. A list of members is attached at the end of this submission.

ZLA received a request to make submissions on Land Administration in Zambia. In this particular paper, ZLA highlights the challenges, identified gaps in the Zambian laws and recommendations on land how the land tenure system can be improved.

2.0 Land in Zambia

Zambia has abundant land resources. According to Central Statistics Office, Zambia has a population of just over thirteen million and most of the land is governed under customary tenure. Despite the existence of a dual system of land administration (statutory and customary) customary land tenure still receives second class status in preference to statutory tenure, and this has been a source of infringement on people's rights to land. In particular, whenever there is a conflict of laws with regard to land, state law prevails because it backs formal institutions at the expense of traditional ones thereby making customary tenure more insecure. The violation of people's rights to land is further exacerbated by the bureaucratic procedures for acquiring state land which delays the process of obtaining title, and subsequently leads to corruption. Pressure for market-led land administration practices is mounting and poor subsistence farmers are not benefiting from these investments. Without this land, communities' sense of belonging and only source of livelihood will be lost and they risk becoming destitute. According to Machira (2011) customary tenure has enabled land access to many poor rural Zambians but is at the crossroads; to ensure that this access and right to land by the poor is not diminished following pro-market approaches to land allocation, equitable and transparent customary land administrative systems need to be developed and promoted across the chiefdoms.

The Lands Act of 1995 recognizes customary tenure as a means of administering land under traditional leaders' jurisdiction. However, the law does not provide for regulatory guidelines or standards to be agreed and adhered to by the chiefdoms in the country. In the light of historical and prevailing cultural practices which discriminate against women and other vulnerable groups, the law could have been more assertive. Given that Zambia has 73 tribes with 286 chiefs inclusive of 38 senior chiefs and 4 paramount chiefs, lack of national guidelines on customary land administration coupled with unwritten customary laws means that each chiefdom administers customary land according to prevailing traditional norms, customs and cultural practices without a standardized method that can be adopted by law.

3.0 The Land Issue in Zambia

Land issues in Zambia arise from one major problem- insecurity of land tenure. The majority of poor Zambians live under constant threat of losing their land because of inadequate laws that ensure their security on their land. Land in Zambia is more than just a piece of earth; it is a source of livelihood. Above all it carries the identity and heritage of people who live on it. This makes the land issue very important. Therefore if not handled well land tenure insecurity may be a source of a huge conflict. Some of the areas of concern are as follows:

3.1 Large Scale Land Acquisitions and Insecurity of Tenure

Large scale land investments in Zambia are on the rise. These are evident in areas such as mining, tourism and agriculture. The government encourages investment as a source of employment and a means for national development in general. Customary landholders sometimes find themselves dispossessed of their land because of major investments without tangible benefits. Due to the insecurity of customary land it is difficult to prevent this or attain adequate compensation. Even when there is compensation people lose access to sources of livelihood such as forests and land to grow crops. In many instances, local people and traditional leaders are not consulted or there is very little consultation before large scale land acquisition occurs.

The Macha case is an on-going case that involved the displacement of large numbers of people. In this, over 3,000 people were displaced by a church in Choma. This is despite the fact that over 100 years the church had developed only 10% of the land in question. Most community members lost their land and some crops were burned down by the evictors so those who had produced crops had no source of livelihoods. Another on-going case is in Mpongwe district where two private companies acquired 55,000 ha and another 137,000 hectares of land for cattle ranching and biofuels and displaced the local people. In Chambishi, 100 people are in danger of being displaced by Non Ferrous Company Africa (a mining company). In Chief Nkana's area it is expected that 109 households (400 people) will be displaced because of the Chibuluma Mine expansion. On a larger scale, 355 households (2,130 people) are likely to be displaced by the Reformed Church of Zambia in the Kadiba community in Chipata district. The Nansanga farm block is expected to displace about 44 households (264 people). These are only a few examples but there are several other cases of displacement that need to be dealt with. In most cases it is the weaker members of society who are adversely affected by displacements, such as poor women and people with disabilities.

3.2 Corruption in land administration

Corruption in land administration has been a source of concern for some time now especially in urban areas. In the past few years we saw very unfortunate scenes of political cadres indiscriminately taking over public or private land and selling to unsuspecting public members without adequate punishment from the land mainly because of inadequacy in the law. These occurrences only benefitted a few selfish individuals at the expense of poor Zambians. We had widows coming to report to our office that the land they had bought belonged to other people or that they had been swindled. Double land allocation by local authorities is equally a major source of conflict among land seekers. In some cases individuals seeking to maximize the amount of money obtained from land sales sell to more than one unsuspecting

buyers. Speculative buying individuals are buying many pieces of land waiting for it to gain value so that they can resell at higher prices.

Corruption in the land sector has been fuelled mainly by bureaucratic procedures of acquiring title coupled with centralisation of the administration system. Further, lack of knowledge among land seekers on the actual procedures involved when acquiring land has seen a lot of individuals succumb to corruption in the hope of getting land more quickly. Corruption is a serious issue that threatens the rights to land of especially poor Zambians. As such it must be fought by all well-meaning Zambians.

3.3 Boundary disputes

Boundary disputes among chiefdoms have been reported throughout the country and specifically in the following districts: Gwembe, Petauke, Chingola, Mansa, Lusaka and Chipata. The unavailability and sometimes non-existence of chiefdom maps and unmarked boundaries creates uncertainty and is one of the major causes of boundary disputes. Another issue is that territorial boundaries of chiefdoms were imposed in 1958 under colonial rule and are clearly out of date considering that the maps are either unavailable or disputed by concerned chiefs. Other disputes occur between individuals, families and chiefdoms. These disputes can cause serious conflicts and divide communities if not well addressed.

The Lands Tribunal Act is a progressive piece of legislation but has a serious gap in regard to dispute resolution under customary tenure. For example, the Act does not promote the strengthening of mechanisms that are currently used to resolve disputes. Instead it emphasises resolving disputes using the state institution which in fact would still have major capacity inadequacy if compared to the current demand.

3.4 Women's limitations to access, ownership and control of land

Most of the subsistence farmers in Zambia are women, yet these women mostly have access to land through male guardians such as husbands. So despite the fact that women are mostly responsible for food production, they often have limited means to realise their rights to the land they use to produce this food. In both rural and urban areas women do not have equal access, ownership and control of land when compared to men. Women are more aware of their rights today and some traditional leaders have become more open to allocating land to women through the use of customary land certificates but more still needs to be done. Women are often denied the right to inherit property, including land. This means that despite being able to access land through husbands or fathers, once these guardians die most women still have challenges own land, which in turn limit their source of livelihood. Denying half the population of their rights will hinder development but allowing women to access land rights empowers them and their communities as well as families.

Under the National Gender Policy, women are supposed to receive at least 30% of land but according to the latest figures (2008) they are only receiving 18.6%¹⁴⁸. This is a decrease from 2006 when they got 21.7%. Some positive cases have been reported within certain communities. For instance, according to the Chipata District Land Alliance (DLA) report for the first quarter of 2012, after conducting awareness and training meetings at community level women were allocated over 33% of plots advertised. In the first half of the year Gwembe DLA reported 20 cases of women being denied the right to access or control land. All these cases were resolved with the help of traditional leaders and the women were all given back their land.

3.5 Discrimination based on HIV and AIDS, and Disability

There is still a great deal of stigma attached to HIV and AIDS, so much so that people believed or known to have the virus are often denied land. There have been reported cases where a traditional leader has denied subjects ownership of land based on their actual or perceived status. With an HIV prevalence rate of about 14% in Zambia, it is a serious issue affecting a significant portion of the

population. So far in 2012 Chipata DLA has reported one case of discrimination based on HIV and AIDS status.

There is also stigma attached to people living with disabilities and this denies them equal access to land rights. Land administrators do not yet fully acknowledge the need to allocate land to people with disabilities. Chipata DLA reported one discrimination case based on disability.

The small numbers of cases of discrimination based on HIV and AIDS status and disabilities is not a sign that there is little discrimination. It is more likely that people are less likely to speak out and seek help because of the prejudice/stigma attached to these conditions.

4.0 Recommendations

- 4.1 The government should develop a new constitution that protects land rights of people, particularly rural and urban poor women and men
- 4.2 The government should review the Lands Act of 1995 and enact a law that provides for customary land administration. The new law should provide for Customary Landholding Certificates issued by a traditional leader to an individual who has user rights to a prescribed piece of land. In this light, the law should provide for minimum standards to guide administration of customary land. Traditional leaders should take the lead in this.
- 4.3 Government should embark on developing a comprehensive policy which should accord parity between the customary and statutory land thereby promoting and protecting customary land holders
- 4.4 Government should conduct a land audit that should be comprehensive and participatory to determine the extent of statutory and customary land. The Government land administration institutions should embark on a comprehensive programme to inform the public on land policy and legal changes in a manner that is easily understood
- 4.5 The government should put on hold all large scale land acquisitions in customary areas until it puts in place an appropriate land policy and legal framework that provides for, among other things, transparency and accountability in land acquisition.
- 4.6 Strengthen capacities of traditional leaders: All those holding positions in customary land administration structures should be trained on their roles and responsibilities. Emphasis will be on that they are to serve the people: honestly, efficiently and effectively and fairly without discrimination.
- 4.7 Land Conflict management: There is need for the law to clearly recognize traditional dispute resolution mechanisms for the government to support and strengthen so that local communities can access justice in a more accessible and cost effective way. The new Constitution, the new Land Policy and the revised Lands Act need to provide for identified existing land dispute resolution mechanisms and improve upon them. The Lands Tribunal should simply link together with such mechanisms, which in turn will be more effective and less costly.
- 4.8 There is further need to establish village land committees and village land tribunals at that level. Such committees elected by local communities should be the ones to sign the required documents such as the letter of consent for land seekers, after wide consultations with affected communities.

- 4.9 The need for communities to benefit from mining in their areas through royalties, social amenities and employments.

5.0 Conclusion

After meetings with various stakeholders on this issue for many years, ZLA resolved a number of issues with all concerned stakeholders in land in Zambia. Clearly, traditional leaders must devise a local mechanisms designed to issue customary land certificates to their subjects and communities as documentation for security that is recognised by the government is important for the community. A review of the amount of land and its use must be done by government through a land audit that should be comprehensive and participatory to determine the extent of statutory and customary land in Zambia. This will also enhance the government's ability to implement laws on land efficiently and transparently. To ensure tenure security on customary land, the traditional land holding certificate should be recognized and honoured by government, who should devise relevant legislation to cater for them. And lastly, issuance of title deeds under statutory tenure should follow laid down procedures and government should not by-pass traditional and local authorities in favour of investments that displace people without compensation or are a health risk to areas of dwelling. Where such has happened, the government should ensure the title deed should be rendered invalid for the protection of the community.

RERERENCES

Machira, S. (2011) Options For Strengthening Customary Land Tenure and Administration in Zambia, Action Aid Zambia.

Zambia Land Alliance (2008), *Land Policy Options for Development of Poverty Reduction: Civil society Views for Pro poor Policies and Laws in Zambia*

Mbinji, J. (2005), *Getting Agreement on Land Tenure: The Case of Zambia*; in CAPRI/UNDP/ILC, Land Rights for African Development: From Knowledge to Action

Government of Republic of Zambia (1995) Lands Act

ANNEX 1

Land Offers Issued, by Gender of Recipient¹⁴⁹

Year	Number of offers issues	No. Of offers issued to women	%
2006	7,456	1,623	21.7
2007	5,011	1,001	19.9
2008	5,752	1,074	18.6

Source: Ministry of Finance and National Planning (2009)

ANNEX 2: ZAMBIA LAND ALLIANCE MEMBERS

NATIONAL LEVEL MEMBERS

1. Association for Land Development
2. Caritas Zambia
3. Integrated Rural Development Initiative
4. Justice for Widows and Orphans Project
5. Law and Development Association
6. Women for Change
7. Zambia Alliance of Women
8. Zambia Civic Education Association

DISTRICT LAND ALLIANCES

Chipata District Land Alliance

1. Breeze FM Radio
2. Caritas Chipata
3. Chalaka Development Project
4. Chipata District Farmers Association
5. Evangelical Fellowship of Zambia
6. Mthuzi Development Foundation
7. Zambia National Women's Lobby

Petauke District Land Alliance

1. Anti-Voter Apathy (AVAP)
2. Boarder Farmers Group
3. Caritas Petauke
4. Chikhande HIV/AIDS Project
5. Children in Need Network (CHIN)
6. Nyampande Country Grouping
7. Petauke District Farmers Association
8. Women's Lobby
9. Zambia National Agency for person with Disabilities (ZNAPD)
10. Zambia Red Cross Society

Monze District Land Alliance

1. Family Hope Community Initiative
2. Law and Development Foundation (LADA)
3. Lushomo Community Based Organization (LCBO)
4. Monze District Business Association (MDBA)
5. Monze District Women District Association (MDWDA)
6. National Organisation for Agricultural Development in Communities (NOCAD).
7. People's Action Forum (PAF)
8. Zambia Red Cross Society
9. Zambia Youth Development Project (ZAYODE)

Gwembe District Land Alliance

1. Caritas Gwembe
2. Development Aid from People to People (DAPP)
3. Evangelical Fellowship of Zambia (EFZ)
4. Kubeleka Aba Muchala (KAMU)
5. Law and Development Association (LADA)
6. World Vision - Gwembe

Kitwe District Land Alliance

1. Anti – STIs AIDS Youth International (ASAYI)
2. Anti Voter Apathy (AVAP)
3. Citizens for a Better Environment
4. Concerned Kitwe Residents
5. Conflict Resolution and Management
6. Copperbelt Land Rights Centre
7. Institute of Planners -CBU Students Chapter
8. Sustainable Agriculture Programme (SAP)

Chingola District Land Network

1. Caritas Chingola
2. Children in Distress (CINDI)
3. Chingola District Farmers Association
4. Farmers Association
5. Kapisha Development Network (KADENE)
6. Luano District Land Alliance

Mansa District Land Alliance

1. Caritas Mansa
2. Civil Society for Poverty Reduction (CSPR)
3. Mansa District Farmers Association
4. Mansa District Women District Association
5. Non Governmental Coordinating Committee (NGOCC)

Endnotes

- ¹ Chu, p. 2
- ² Chu, p. 5
- ³ Adams, p. 2.
- ⁴ OICR, p. 49.
- ⁵ Adams, p. 1.
- ⁶ WB (2013), p. 27
- ⁷ Kuteya, slide 1
- ⁸ World Bank Country Data, <http://data.worldbank.org/country/zambia>. Accessed 7.10.2013.
- ⁹ CIA World Handbook.
- ¹⁰ UNDP (2013)
- ¹¹ JASZ II, p. 4.
- ¹² ILO
- ¹³ ILO, p. x
- ¹⁴ Lusaka Times, Aug. 23, 2013
- ¹⁵ ILO, p. x
- ¹⁶ ILO, p. x
- ¹⁷ Nasong'o, p. 103
- ¹⁸ ILO, p. 5.
- ¹⁹ ILO, p. 5.
- ²⁰ OICR, p. 6
- ²¹ Adams, p. 10
- ²² Brown, p. 83
- ²³ OICR, p. 20.
- ²⁴ OICR, p. 14
- ²⁵ Nolte, p. 9
- ²⁶ ZLA, Manchina, interview 18.12.2013
- ²⁷ van Asperen, p. 4
- ²⁸ Mudenda, p. 7
- ²⁹ ZLA (2012), p. 3
- ³⁰ OICR, p. 18
- ³¹ Sitko, p. 36
- ³² Adams, p. 3
- ³³ Chu, p. 12
- ³⁴ Chu, p. 1
- ³⁵ ZLA, Henry Manchina, interview 28.10.2013.
- ³⁶ UNDP (2008), p. 1.
- ³⁷ German and Schoneveld, p. 482
- ³⁸ FAO (2013), p. 43
- ³⁹ WB (2013), p. 19.
- ⁴⁰ SNDP, revised, August 2013.
- ⁴¹ WB (2013), p. 27.
- ⁴² SNDP, p. 111.
- ⁴³ Adams, p. 2.
- ⁴⁴ SNDP p. 109.
- ⁴⁵ WB 2013, p. 27
- ⁴⁶ Schiffman.
- ⁴⁷ Cotula, location 324.
- ⁴⁸ ZLA, Henry Machina, interview 28 October 2013
- ⁴⁹ World Bank (2003), p. xxvii.

- ⁵⁰ Deiniger
⁵¹ Brown, p. 86
⁵² Brown, p. 87
⁵³ Brown, p. 87
⁵⁴ Nolte, p. 14-15
⁵⁵ Henry Machina, interview 10 October 2013.
⁵⁶ Henry Machina, interview 10 October 2013.
⁵⁷ ZLA, Henry Machina, interview 28 October 2013.
⁵⁸ OICR, . 32
⁵⁹ Nolte, p. 24
⁶⁰ OICR, p. 20
⁶¹ ZLA, interview Henry Machina 23 September 2013.
⁶² OICR, p. 21
⁶³ Nolte, p. 14
⁶⁴ Brown, p. 88
⁶⁵ Nolte, p. 18
⁶⁶ OICR, p. 21
⁶⁷ OICR, p. 21
⁶⁸ OICR, p. 13
⁶⁹ Interview, Henry Machina, ZLA, 23 September 2013.
⁷⁰ Interview, Henry Machina, ZLA, 23 September 2013.
⁷¹ ZLA, Henry machina, interview 28 October 2013
⁷² Adams, p. 13
⁷³ Chileshe, p. 320
⁷⁴ Sitko, p. 49-51
⁷⁵ Interview, Henry Machina, ZLA, 23 September 2013.
⁷⁶ Brown, p. 100
⁷⁷ ZLA, interview Henry Machina, 23 September.
⁷⁸ OICR, p. 30
⁷⁹ Nolte, p. 23
⁸⁰ Nolte, p. 23, note 27
⁸¹ Nolte, p. 23
⁸² Nolte, p. 23
⁸³ Brown, p. 90
⁸⁴ OI, p. 25
⁸⁵ Cotula, web blog comment, <http://www.iied.org/invest-farmers-not-farmland> accessed 7.10.2013.
⁸⁶ Mujenja and Wonani, p. 25.
⁸⁷ German and Schoneveld, p. 482
⁸⁸ OICR, p. 28
⁸⁹ OICR, p. 39
⁹⁰ Nolte, p. 19
⁹¹ Brown, p. 98
⁹² OICR, p. 33
⁹³ Brown, p. 98
⁹⁴ CCJPZ, p. 2
⁹⁵ OICR, p. 35-36
⁹⁶ Madunda, p. 6
⁹⁷ Brown, p. 100
⁹⁸ Nolte p. 14
⁹⁹ Adams 2003: 94
¹⁰⁰ Brown, p. 102
¹⁰¹ German and Schoneveld, p. 485

- ¹⁰² German and Schoneveld, p. 484-85
- ¹⁰³ Brown, p. 96
- ¹⁰⁴ Brown, p. 91
- ¹⁰⁵ OICR, p. 26
- ¹⁰⁶ Nolte p. 18-19
- ¹⁰⁷ Ravnborg et al, p. 37
- ¹⁰⁸ Adams, p. 12
- ¹⁰⁹ Adams, p. 13
- ¹¹⁰ Adams, p. 13
- ¹¹¹ Chileshe, p. 319
- ¹¹² Chileshe, p. 325
- ¹¹³ Adams, p. 15, 12-13
- ¹¹⁴ CCJPZ, p. 2
- ¹¹⁵ Chileshe, p. 307
- ¹¹⁶ Chileshe, p. 311
- ¹¹⁷ Brown, p. 93
- ¹¹⁸ ZLA 2012, p. 2
- ¹¹⁹ Brown, p. 94
- ¹²⁰ Women's Land Link Africa p. 5
- ¹²¹ Ministry of Finance and National Planning (2009), p. 24.
- ¹²² ZLA 2012, p. 3
- ¹²³ Women's Land Link Africa, p. 7
- ¹²⁴ Sitko, p. 47
- ¹²⁵ Sitko, p. 51-52
- ¹²⁶ Brown, p. 97
- ¹²⁷ ZLA 2012, p. 2
- ¹²⁸ Kuteya, slide 3
- ¹²⁹ Brown, p. 81
- ¹³⁰ Brown, p. 104
- ¹³¹ Sitko, p. 51-52
- ¹³² Chileshe, p. 324
- ¹³³ Chileshe, p. 318
- ¹³⁴ Chileshe, p. 320
- ¹³⁵ CCJPZp. 2
- ¹³⁶ OICR, p. 50
- ¹³⁷ Adams, p. 3
- ¹³⁸ Adams, p. 13
- ¹³⁹ Brown, p. 105
- ¹⁴⁰ ZLA. Interview w. Henry Machina, September 23, 2013
- ¹⁴¹ DIIS, p. 41.
- ¹⁴² Adams, p. 13
- ¹⁴³ Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (2004)
- ¹⁴⁴ German and Schoneveld, p. 476
- ¹⁴⁵ Adams, p. 9
- ¹⁴⁶ Adams, p. 14
- ¹⁴⁷ Adams, p.14
- ¹⁴⁸ Ministry of Finance and National Planning (2009): Annual Fifth National Development Plan Progress Report. Lusaka, Zambia. Page 24.
- ¹⁴⁹ Ministry of Finance and National Planning (2009): Annual Fifth National Development Plan Progress Report. Lusaka, Zambia. Page 24.