**Developing a Land Governance Country Assessment for National Agricultural Plan (NAIP): Zimbabwe**.



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**July 30, 2019**

# ACRONYMS

ARDA: Agricultural and Rural Development Authority

AU: African Union

CAADP: The Comprehensive Africa Agriculture Programme

CFU: Commercial Farmers Union

DR: Deeds Registry

et al: and others

FAO: Food and Agricultural Organisation

FIPC: Free Informed Prior Consent

GOZ: Government of Zimbabwe

Ha: hectare.

IT: Information Technology

LA: Land Audit

LIMS: Land Information Management System

LSCS: Large Scale Commercial Sector

LTC: Land Tenure Commission

MC: Marginal cost

MLGRUD: Ministry of Local Government, Rural and Urban Development

MLAWCRR: Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement

MMMD: Ministry of Mines and Mineral Development

MR: Marginal revenue

NAIP: National Agricultural Investment Programme

%: Percentage

NGOs: Non-Governmental Organizations

PTO/Permit: Permission to occupy

RDC: Rural District Council

SLGA: Strengthen Advisory Capacities for land governance

SSCS: Small Scale Commercial Sector

t/ha: tones/hectare

ZAIP: Zimbabwe Agricultural Investment Plan

ZCFU: Zimbabwe Commercial Farmers Union

ZFU: Zimbabwe Farmers Union

ZMRA: Zimbabwe Revenue Authority

ZNFU: Zimbabwe National Farmer Union

ZPLRM: The Zimbabwe Peoples Land Rights Movement

# Definitions

**Land Tenure-:** rules, norms and institutions that govern access to land

**Land tenure security-:** enforceable claims on land supported by national legal, administrative and regulatory frameworks.

**Freehold title**-a freehold title or interest is one, which is held for an indefinite period by the proprietor. The owners of the freehold tittle have real right to land. In reality, the proprietor of freehold title and his/her successors in title hold for an indefinite period until there is failure of succession.

**Powers of eminent domain**-: in law, a freehold land holder is not an absolute owner. The state still retain the powers of eminent domain over land and holds the radical title to such land. The state can therefore promulgate such legislation to regulate freehold land as it deems fit.

**Customary freehold**-: is an interest in land which is acquired by a person by reason of his being a member of traditional community/clan. Such a person has a customary right to freely use part of community or family land if it is not occupied by another person. The customary freehold is not a mere right of occupation and use, but an interest in land which prevails against the whole world, including the state. The customary freehold is acquired as of right and a formal grant from the state is not necessary. In Zimbabwe, however, the position is different. The ownership of communal lands is vested in the President and therefore the concept of customary freehold is merely for academic purposes. Communities have usufruct rights and not customary freehold.

**Usufructuary title/Usufruct**: -this is a right of use subject to the reversionary /better right of the grantor. This is an example of a limited real right.

**Lease-:** this is an interest in land, which is created to last for a fixed period. In Zimbabwe, a lease of less than ten years is not required to comply with the normal formalities. But if it is for more than ten years, the lease can be registered. For a lease to constitute a real right, it must be registered against a title deed. A lease entails obligations as determined by the land holder, e.g. rental payment.

**Real right-:** land right that denotes land ownership, as formalized in the form of a deed of transfer (title deed)

**Large scale commercial sector: -**refers to a farming community dominated by comparatively large farm sizes. They operate on a commercial basis under freehold (title deed) tenure system.

**Small scale commercial sector:** -refers to a farming sector dominated by comparatively small land sizes in comparison with the large scale commercial farm. The sector operates on the basis of leasehold basis, with either an option to purchase or without an option to purchase.

**A2 resettlement**: -refers to the self-contained resettlement model. Planned farm sizes per household range from 20 hectares in natural region I to 2000 ha in natural region IV. A2 resettlement farmers lease land rights from the state for 99 years.

**A1 resettlement**:-refers to the village based resettlement model. Accordingly, settlers are allocated individual residential and arable plots but share grazing, woodlots and water points. Planned land allocations range between 12 ha in natural region 1 and 70 hectares in natural region V. Each family is allocated a minimum of 3 hectares arable land and the rest for grazing. Land holders operate under a permit (permission to occupy) tenure system.

**Devolution-**is the transfer of power and authority by central governments to legally established and locally elected political authorities. In a devolved system, local governments have clear and legally recognized geographic boundaries over which they exercise authority and within which they perform public functions.

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# 0.0 Land governance in context.

Land governance entails decision making on land and natural resources, with particular focus on land access/ownership, tenure rights, land use and land management. Decision making on land is done at two levels. The first level involves decision making at the national level. The second level involves decision making at the landholder level. Key rural land holders in Zimbabwe are government, traditional customary communities, corporates, churches and individuals.

Effective land governance at national level demands collective decision making. Chuenpagdee & Jentoft (2009) define governance as a “process of steering or guiding societies towards *collective* outcomes that are *socially* desirable”. The FAO perceives governance as the process by which citizens *participate* in decision making. Land governance at national level is reflected in a land policy. A land policy thus constitutes the *entry* point into land governance in many countries, including Zimbabwe. The key consideration at this stage (policy making) is *collective decision* making to ensure policy accountability and transparency, and in the process enhancing the achievement of outcomes that are socially desirable. Socially desirable outcomes are land equity, gender equity, land use efficiency and environmental management. Land governance is *complex* because it has to satisfy social (equity), economic (land use efficiency) and environmental management (environment) objectives. These objectives are inherently *contradictory*. Necessarily, land policy and governance decisions have to be participatory, accountable and transparent to ensure that all the three conflicting interests are taken “on board”.

Decision making at landholder level is concerned with how best to manage the land *rights* held, in accordance with changing social-economic and political conditions. Decision making is reflected in the level of freedom a landholder (individual, community, corporate, church) has to exchange/transfer land rights (occupation, use). Land rights are exchanged and transferred in many ways including inheritance, leasing, selling, mortgaging, bequeathing, hypothecating and donating. Cotulla et al (2016) are concerned that rural people have weak land rights, despite claiming that the land is theirs.

Land policy is thus an arena of conflicting interests, punctuated by decisions that are skewed in the favour of those who have property rights to land and therefore own land. Such inequitable bargaining platforms worsen risks for outcomes that are not collectively decided upon and not inclusive. Non inclusive decision making provides fertile grounds for bad land governance. Bad land governance is characterized by non-accountable and non-transparent land policies reflected through land disputes, forced evictions, land grabs, compensation conflicts, limited observance of the rule of law, gender inequity and inaccessible administrative and legal systems and, at the worst, land battles. These and other bad land governance characteristics reflect high levels of tenure insecurity.

Tenure insecurity undermines investor confidence, discourages investment and in the process undermines food security in general and the achievement of the 2014 Malabo Declaration targets in particular. Tenure security, in particular *zero* eviction risks, provides incentives for banks and farmers to invest, being confident that the tenure duration is adequate for the recovery of investment costs incurred. Such *investor confidence* enhances capital investments on land (dams, bridges, irrigation infrastructure, orchards, and permanent buildings). These and other investments are critical *preconditions* towards the achievement of Malabo Declaration targets. Limited tenure duration encourages short term investments on land, in the form of seasonal input purchases. Short term investments are necessary but insufficient to enhance the realization of Malabo Declaration targets on a sustainable basis.

# 1.0 Introduction

The Comprehensive Africa Agriculture Programme (CAADP) is the African Union Policy framework for agricultural transformation of the continent. In 2014, the CAADP initiative was reviewed by African Heads of State and reaffirmed in the Malabo Declaration that repositioned agriculture as the priority on the continental development agenda. National Agricultural Investment Plans (NAIPs) are at the heart of this development agenda. A successfully implemented NAIP is expected to contribute to CAADP objectives to increase *investment* and *productivity* in Africa. NAIPs are thus expected to enhance the realization of commitments made in the Malabo Declaration.

In order to ensure NAIPs include activities and investments necessary to achieve the Malabo commitment, CAADP support process considers it necessary that land policy and land governance be mainstreamed into the NAIPs. The mainstreaming process involves a technical analysis to evaluate country status in land governance towards the end of the current NAIP, as well as the development of country specific goals, targets, and milestones to guide the development of a Malabo-compliant successor NAIP.

Accordingly, the GIZ programme “Strengthening Advisory Capacities for Land Governance in Africa (SLGA)” in collaboration with the GIZ CAADP Support Programme recruited a Land Governance Expert- Vimbai Vudzijena, to carry out an in-depth country assessment of land policy/ governance in Zimbabwe as well as elaborate *activities* necessary to mainstream land policy and land governance.

# 2.0 Background

This study comes in the background of a CAADP support process in Zimbabwe, as evidenced by the 2017-2021 Zimbabwe Agriculture Investment Plan (ZAIP) that is expected to contribute to the achievement of food security in general and the Malabo Declaration targets in particular.

## 2.1 The Malabo Declaration Targets

The Malabo Declaration has a number of targets, and key ones are elaborated below:

* agricultural productivity to be increased by 100%
* post-harvest losses to be decreased by 50%
* stunted growth in children to be reduced by 10%
* underweight reduction by 5%
* 50 % contribution to agriculture and poverty reduction
* 6% annual agricultural growth
* 5 PPP agriculture Value Chains established
* 30% households resilient to shocks

## 2.2 Zimbabwe Agricultural Sector Investment Plan (2017-2021).

The plan has an estimated total budget of $5 322 413 021. The plan has mainstreamed land governance elements to the tune of $53 000 000 as shown below.

|  |  |
| --- | --- |
| **Budget Item** | **Estimated cost** |
| 1.1 Enhance land tenure security through modifications to 99 years | 3 000 000 |
| 1.2 Surveying and demarcation of farms | 35 000 000 |
| 1.7 Strengthen law enforcement for fishery, forestry, and wild life management | 15 000 000 |
| Total | 53 000 000 |

Source: 2017-2021 ZAIP

## 2.3 Study objectives

The main objective of the study was to “carry out an in depth country analysis of the status of the land policy and land governance in the context of the Malabo Declaration to support the development of a successor (or second generation) NAIP in Zimbabwe, including a presentation on the status quo, possible shortcomings and recommendations to the country team responsible for NAIP development and formulation”. The key deliverable is a comprehensive country assessment report that includes information on:

* Shortcomings in terms of land policy issues in the current (or 1st generation NAIP) including a problem description, assessment of the existence and effectiveness of activities addressing land governance issues.
* Concrete recommendations for consistent inclusion of land governance issues into the successor (or 2nd generation) NAIP , including country specific goals and milestones, policy measures, and required actions as well as the needs for harmonization and synergies with related policy areas to ensure embedding of land at national policy levels.
* Lessons learnt and suggestions for future technical revisions in other countries.

This study is accordingly expected to determine and elaborate on land governance elements that need to be mainstreamed in the 2nd level ZAIP.

## 2.4 Study methodology

### 2.4.1 Study analytical framework

The land governance analytical framework adopted focuses on land governance elements and principles, with a special emphasis on the land policy and tenure security. The study accordingly reviews the Zimbabwe constitutional provisions, land policy, land tenure, land administration and the land legal framework. In particular, the study investigates the preconditions for *effective* stakeholder participation in land policy preparation, policy accountability and transparency and the *extent* of landholder decision making to manage land rights held (occupation, use, exchange, exclusion). This is particularly relevant in Zimbabwe where the State owns most of the agricultural land, making landholder decision making highly compromised and elusive. Table below shows that the State owns over 80% of rural land, including land accessed by traditional communities that the State owns in” trust” for the same communities.

**Table 1: Percentage Rural Land Distribution**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Sector |  | | | | |
| Number | Area | % area | Ownership | Tenure System |
| Old resettlement(1980-1997) | 71 000 | 3 498 444 | 10.5 | State | Permit |
| Resettlement under the Inception phase (1998-2000) | 4 697 | 168 265 | 0.5 | State | Permit |
| Model A1 (2000-date) | **145 775** | 4 137 000 | 12 | State | Permit |
| Model A2(2000-date) | **18000** | 2 681 642 | 8 | State | 99 year leasehold |
| Small Scale Commercial Sector | 8 000 | 1 400 000 | 4.2 | State/private | Lease/freehold title |
| Communal areas | 1 100 000 | 16 400 000 | 49 | State( in trust for traditional communities) | Customary |
| Large Scale Commercial sector ( including state) | *To be verified* | *Being verified---* | - | *Private* | *Freehold title* |
| Unallocated Land | *To be verified* | *Being verified* | - | *State* | *State freehold* |
| **Total agriculture** | **1 351 154** | **33 300 000** | **85** |  |  |
| State( urban & parks) | - | 6 015 000 | **15** | State | Public good –*environmental conservation*. |
| Total | 1 351 154 | 39 315 000 | 100 |  |  |

Source: V.Vudzijena (2017)/MLAWCRR.

## 2.5 Research Questions

Six research questions guided the research work:

1. What is the status of land governance in Zimbabwe?
2. What is the level of land governance mainstreaming in the current ZAIP?
3. What land governance elements have to be mainstreamed in the 2nd generation ZAIP?
4. What actions are required to mainstream identified elements?
5. What are the outputs and outcomes of identified activities?
6. What is the cost estimate of envisaged activities?

## 2.6 Methodological approach

Required information and data was collected through desk review of secondary literature, complemented by interviews with key stakeholders within Harare. Key stakeholders consulted were government ministries, farmer unions and private sector. Institutions interviewed include the Commercial Farmers Union (CFU), Zimbabwe Commercial Farmers Union (ZCFU), Zimbabwe Farmers Union (ZFU), Zimbabwe National Farmers Union (ZNFU), Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement (MLAWCRR), Ministry of Finance and Economic Development (MFED), University of Zimbabwe (UZ), Food and Agriculture Organization (FAO) and Matanuska (a private company producing bananas and contracting farmers to do the same). A total of 30 respondents were interviewed as follows.

|  |  |
| --- | --- |
| **Organization** | **Number interviewed** |
| Ministry of Lands, Agriculture, Water and Climate Change | 6 |
| Zimbabwe Farmers Union | 8 |
| Zimbabwe Commercial Farmers Union | 2 |
| Commercial Farmers of Zimbabwe | 2 |
| Zimbabwe National Farmers Union | 6 |
| Food and Agricultural Organization | 1 |
| European Union | 1 |
| Matanuska Private Limited | 1 |
| University of Zimbabwe | 1 |
| Private individuals | 2 |
| Total | 30 |

# 3.0 Study Findings

The study reviewed and analyzed a number of land governance elements in Zimbabwe with a view to determine whether they meet principles of good land governance. The key elements reviewed and analyzed include the 2013 Constitution, land policy, land tenure, land administration, gender and land legal environment.

## 3.1. Constitutional provisions

Land tenure arrangements are guided by the 2013 Constitution, particularly with regards the nature of rights that should be accessed by people on land used for agricultural purposes. Section 289(e) provides for a land tenure system that promotes increased investment and productivity by agricultural land holders. Section 289(b), provides for *real (ownership)* rights to agricultural land. Section 289(b) thus empowers agricultural land holders’ *freedom* to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose, of agricultural land. Two landholders currently enjoy such tenure rights in the Zimbabwe agricultural sector. These are the government of Zimbabwe and the large scale commercial sector (LSCS). Other landholders, in particular A1 and A2 resettled farmers and the small scale commercial farmers(SSCF) lease state land and have *limited real* rights to land. The Constitution defines rural state as the agricultural land in Zimbabwe that should be used on commercial business models. Accordingly, the Constitution provides for a tenure system that enhances commercial production on State land. Rural State land is currently held and used by State institutions and individuals or corporates on lease basis. It is all this land that the Constitution expects to be used in a commercial business manner-hence the provision for a business oriented tenure system on agricultural land.

### 3.2 Land Policy

### 3.2.1 Policy Objectives

The Zimbabwe land policy has three objectives. These are to improve land access equity, land use efficiency and environmental management. Interviewed stakeholders were concerned that the criteria to assess the achievement of land policy objectives were not clear, making it difficult for stakeholders to monitor the realization of such objectives. This was particularly critical in all the three objectives. For instance, land equity indicators within and between different tenure systems are not clearly stated. Stakeholders were not sure as to whether equity was based on land size (ha) per landholder, or on income raised per ha of land held. This puzzle was raised given the huge average land size differences between agro ecological regions 1-5. Agro-ecological regions are differentiated by rainfall patterns, with rainfall per year increasing from region 5 to 1. Average farm sizes in natural regions 2 and 5 differ greatly, while farm sizes between livestock and wildlife conservancies also differ greatly within the same natural region. Risk is high that the non-clarity on equity indicators could influence land conflicts between those with comparatively large farm units and those with limited farm units. Such risks increase as population increases against the fixed total land size and non-expanding industrial employment. *Fears for such risks could limit investor confidence in the long term*.

Efficient land use is more complex conceptually. Clear land use efficiency indicators are important. Land use efficiency is an economic concept designed to indicate comparative land use efficiency levels between competing land uses. Land use efficiency is generally assessed on the basis of return per capital invested per given and competing land uses (cropping, livestock, agriculture, tourism, wildlife conservancies, irrigation, dry land farming). Limited information on land use efficiency indicators and targets is a source of tenure insecurity, particularly for farmers leasing state land. Similar concerns were raised for environmental management indicators; given the environment has many components, ranging from soils, water, wildlife, flora and fauna.

### 3.2.2 Land Policy Preparation Process

National land policy is the most fundamental level of decision making with respect to land. It therefore represents the entry point into land governance. Land policies in Zimbabwe are formulated in a “participatory” manner, involving all stakeholders with interest in land. Government has recently initiated a process to update the existing land policy. Key stakeholders have been invited to contribute towards this updated policy document.

Though happy with the consultation processes initiated by government, interviewed stakeholders were concerned with a number of issues:

* The extent to which stakeholder views are considered in the final policy document, in other words, stakeholders were not sure of “who controls the shots”. The fear was raised taking into account the differing views between the State and farmers on a number of land governance issues. A2 farmers, for instance, advocate for freehold tenure (title deeds in compliance with the Constitution) to enhance land use economic efficiency through bank financing. This is in contrast to government preference for non- tradable 99 year leases, to enhance social equity through administratively controlled land allocation mechanisms. Similarly, livestock farmers in dry natural regions prefer that land rentals be based on the Livestock Unit concept (Vudzijena, 2016). Government, on the other hand, has calculated land rentals on a different analytical framework, resulting in land rentals which farmers consider to be non-economic (marginal costs (MC) of production greater than marginal benefits (MB)) in the case of extensive livestock farming. Lessees on state land are expected to pay $5/ha. Extensive livestock farmers, holding 2000 hectare average farm size units, consider $5/ha non-economic. These farmers feel significantly insecure (Vudzijena, 2016) because of their potential inability to pay land rentals worth $10 000 per annum, risking eviction as per the terms and conditions of the leasehold contract. Under these conditions, the long tenure duration (99 years) becomes immaterial when farmers face eviction risks within the same 99 year tenure duration. The “low hanging risk” for eviction provides the worst tenure security threat to farmers leasing state land and operating under 99 year leases.
* The stakeholders are concerned with the extent to which stakeholder institutions (farmer, traditional, civil society, and war veterans) are organized for effective participation in the policy preparation process. Land policies tend to consider many issues, some of which are highly technical. For instance, issues of land use efficiency, compensation modalities and other issues, are highly technical in nature and not easily comprehended at some stakeholder levels. Limited comprehension of some of these issues reduce effectiveness of stakeholder participation in the policy preparation processes, resulting in policies that fail to reconcile (or partly reduce) the contradictions among the three policy objectives (equity, use efficiency and environment).

Farmers operating under freehold tenure (title deeds) access property (real) rights to land and are land owners, defacto and dejure. Land ownership provides incentives and confidence to participate in land governance discussions with an *equal voice.* Farmers under leasehold and customary tenure have limited rights to land and therefore “limited voices” in land governance issues. Lessees are “tenants” on state land, with limited freedom to make decisions on land held, particularly on the nature and quantum of rights to land. As already highlighted, resettled farmers’ demand for freehold tenure reflects this apparent conflict between social and economic objectives. Farmers, as well recognized by the 2013 Constitution, are business “entities” whose business aspirations are enhanced by business -oriented tenure arrangements. The state is concerned that freedom to transfer land on the basis of market forces could exclude those with less “financial entitlements”. While each of these two (state and farmers) arguments have some merit, the fact remains that limited real rights to land reduce farmer participation incentives, as clearly evidenced by the differing views on the most appropriate tenure arrangements on agricultural land and the rental issues. The state, in both cases, has been “calling the shots”, largely because it has ownership rights to agricultural land.

### 3.2.3 Policy monitoring and enforcement

Land policy is monitored by the Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement, the Parliamentary Committee on Lands and Agriculture (PCLA) and the recently established Land Tenure Commission(LTC). This is done through, among others, ministry monitoring visits, visits by the Parliamentary Committee and Land Audits (LA) by the Land Tenure Commission. Though apparently adequate, interviewed stakeholders still raised concerns that effectiveness of these institutions has remained below expectation.

* In particular, stakeholders that attended the land policy launch workshop in Bulawayo (Herald 2019) complained that Land Audits have not impacted positively on the land governance. Reporting at the same policy launch, the Newsday (March 18, 2019) highlighted farmers concerns with regards to land audits undertaken by government, in particular that several audits carried by government had failed to solve land disputes. The newspaper also reported that farmers called on government to do away with 99 year leases which they said were not bankable. This request by farmers to have property rights to land dates back to the start of the land reform process in Zimbabwe.

### 3.2.4 Policy accountability

Accountability refers to the ability of citizens to hold decision makers to account for their actions. Interviewed stakeholders were concerned with limited policy accountability, with particular reference to limited stakeholder institutional capacities to demand accountability from policy administrators. A number of reasons for limited policy accountability were cited:

* Limited land holder institutional capacity for advocacy and lobbying. Civil society that is normally expected to lobby on behalf of “voiceless” land holders was considered to have limited lobbying and advocacy capacities. As a result, findings by numerous Land Audits, such as the one chaired by Utete (2006) were claimed to” have gathered dust”. Risk that findings of the Land Audit currently being undertaken by the Land Tenure Commission would also “join the archives” was considered high.
* That there was limited political will to implement some policy recommendations. Cited policies included the “one man one farm” and “maximum farm size” policies, which are part of the current Land Policy, but are still to be implemented, years after the promulgation of the policy.
* Stakeholder limited knowledge on policy contents, limited clarity on policy monitoring and enforcement institution institutional framework, non-neutrality of monitoring institutions, evidenced by conflicts of interests as some politicians operate both as executives (ministers) and legislators as members of parliament (MPs).
* There were limited civic options to enhance governance accountability. Some countries have instituted Offices of the Ombudsman as part of the governance accountability institutional framework. Office of the Ombudsman is considered ideal as the office provides a link between landholders, the Executive and Parliament. It therefore provides a communication platform between citizens and public administration. The institution is expected to be effective as it is legally mandated to accept and deal with complaints against the public administration to safeguard human rights. When effective, the Ombudsman office is expected to promote transparency, integrity, accountability and stakeholder participation.
* Government has not domesticated the concept of “Free Informed Prior Consent” (FIPC). Adopting this virtue would force land authorities to get prior consent of affected people before they are evicted. The framework requires that communities are informed of the impending action before eviction and in the process elicit prior consent that is informed.

### 3.2.5 Policy transparency

Transparency refers to the availability of clear and credible information on land availability and transactions and the timely dissemination of public information on land rights and policies. Transparency minimizes corruption as it encourages civic engagement and stakeholder accountability by making the public decision making arena more accessible. Interviewed stakeholders were concerned with limited policy transparency due to:

* Lack of a central data base on land information. Land information is scattered across ministries responsible for Lands, Local Government and Natural Resources, each storing information related to its mandate. In particular, Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement (MLAWCRR) has a Land Information Management System (LIMS) that captures information on state land; the Deeds Registry under the Ministry of Justice, Legal and Parliamentary Affairs has information on farmers with property rights (title deeds) as part of its national data based on registered properties; Rural District Councils (RDCs) have information on landholders in communal areas; Ministry of Mines and Mineral Development (MMMD), has information on mining issues and Ministry of Natural Resources and Tourism (MNRT) has information on other natural resources (fisheries, water, forestry). The stakeholders are concerned with the non-integrated information system on land at national level and suggested the Land Information Management system should be integrated among all land and natural resource ministries.
* No information decentralization to district levels. Interviewed stakeholders suggested that land should be decentralized to District levels, and even better, be accessible on line.
* Land policy information, in particular land audits findings are accessible in English and not local vernacular.
* Landholders, in particular smallholder farmers, have limited information on land policy and land transactions, including various land “abuses” (corruption, grabbing, evictions, and underutilization).
* Limited access to land information creates a *“veil”* for corrupt activities and other land “abuses”

## 3.3 Security of tenure rights

Security of tenure refers to the degree of certainty that one’s land rights will be recognized by others and legally protected in case of specific challenges. Tenure is also secure if the tenure *duration* is adequate for the landholder to *recover* investments costs made on land .Tenure security status is reflected in the *frequency* of land evictions, land disputes, land grabs, compensation disagreements, farm forfeitures and others. It is also reflected through the easiness with which different land holders access finance for capital and input costs from the financial services sector, in particular banks. This is particularly critical for leasehold farmers whose tenure security depends to a large extent on satisfying lease production expectations, through on farm capital investment and access to funds for production purposes (seeds, fertilizers and other agricultural production services (extension, research).

A land tenure review done by V.Vudzijena (2016) found out that:

* Zimbabwe has a multi tenure system that includes freehold tenure, 99 year leasehold, and lease with and without option to purchase, permit tenure and customary tenure **(see definitions**).
* Freehold tenure rights are protected by law and are secure. The rights are also accessed on a permanent basis, enabling landholders to recover costs of investments done. Freehold land rights are acceptable as bank collateral security. *The tenure system accordingly promotes investor confidence, enhancing opportunities to achieve Malabo targets*.
* Customary tenure system has rights that are protected bylaw and is thus secure. The rights are accessible on a permanent basis, enabling the holders to recover investments costs (orchards, water wells, housing, traditional boundary fencing) incurred. Land is however owned by the President in- trust for traditional communities. The communities are not allowed to exchange these rights on the market. The rights have a zero market value. Thus, despite the landholders facing very low evictions risks, *banks are not eager to lend against a land property with zero market value and this undermines investor confidence for fixed on land investments.*
* 99 year lease-holding is not secure largely because majority of current lessees are not satisfying the production and productivity related conditions (V.Vudzijena, 2016). Such lessees face eviction risks if the land authorities intensify the enforcement of 99 year lease contract terms. This is despite the long tenure duration, adequate to enable the recovery of short, medium and long term investment costs. Banks have not yet accepted 99 year leaseholds as collateral security, fearing these farmers could be evicted before dues are paid. Banks risks are compounded by the fact that 99 year leaseholds are not tradable on the market. There is no leasehold market in Zimbabwe and 99 year leaseholds, as currently designed, have a zero market value. Banks therefore have no benchmark leasehold capital value, against which loans could be issued. Finally, bank forfeiture of 99 year leaseholds in the event of default has limited value in the absence of a leasehold market where banks could dispose and recover their loans. The leasehold system has undermines investor confidence and its contribution to the achievement of Malabo targets is low.

### 3.3.1 The extent of tenure insecurity.

The following selected evidence highlights the level of tenure insecurity in Zimbabwe:

#### 3.3.1.1 Land disputes

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The agricultural land sector is characterized by numerous land disputes as reported by many sources (The Herald. 16 May 2019, 2016 Annual Land Tenure Commission Report, Nyasha Chishakwe, 2018). Key disputes reported include overlapping boundaries, double allocations, double occupations, forced evictions, new farm invasions, illegal land allocations, inheritance conflicts, infrastructure sharing, competing land use, gender inequality, and compensation over acquired land, settlement in grazing areas, conflicts of shrines and cultural areas and others. In particular:

* Farmers are reportedly still facing challenges in securing ownership documents, in particular 99 year leases. Accessing 99 Year leasehold involves a number of steps. The first step is for the aspiring lessee to apply for an Offer Letter. Upon satisfaction of stated Offer Letter conditions, an offer letter can be upgraded into 99 year leasehold. The farming community is concerned with the time it takes between accessing an offer letter and its transformation into a 99 year lease.

Currently, the process is delayed by two factors. The Department of the Surveyor General (SG) has limited capacity to survey leased properties for the registration and issuance of 99 year leases. Basing on current capacity (Vudzijena 2016), it is estimated to take a couple of years to complete the issuance of 99 year leases to A2 farmers that currently hold Offer Letters. Issuance of 99 year leaseholds is also dependent on applications by the current Offer Letter holders, upon satisfactory farm inspections by the Land Tenure Commission. For a variety of reasons, farmer confidence to apply for leases has generally been low, in the process also delaying the registration and issuance of 99 year leases.

The total number of A2 farmers is estimated at 21 419 (2007 estimate). Between 2009 to date, about 3718 farmers are estimated to have applied for 99 year leaseholds, representing 17% of the total 99 year lease holders. A total of 166 leaseholds are estimated to have been registered to date, representing 5% of those who have applied and 0.8% of the total A2 farmers. Two key challenges emerge. In particular, farmers face limitations to comply with Offer Letter conditions-hence the low application rates. Capacity for land surveying is also constrained, hence the low proportion of registered A2 leaseholds.

* Land disputes continue unabated. For instance, between 7 July and 31 December 2016, the LTC received 62 disputes from eight provinces. However, only 25 of the disputes and complains were investigated during the same period.

#### 3.3.1.2 Land grabbing

Land grabbing, one of the worst cases of tenure insecurity, continues in Zimbabwe across all tenure systems. Selected land grabbing cases are highlighted below (Charity Sibanda and D.Makaza).

*a) Mutoko Granite mining*

The granite mining in Mutoko is reportedly shrinking communal farm land, without compensation. It is also reportedly reducing women space to collect firewood, worsening gender inequity in these areas.

*b) Marange Diamond*

Land grabbing in Marange is reported to have started in 2008, with the first wave of people being relocated to make way for diamond mining. This is said to have happened despite resistance from some people as reflected in the following statement by some of the relocated people, “ we were dumped at animal sheds and told this is our new home”(Charity). Charity reports that households lost land for grazing and cultivation and reports that “one family described the reduction of holdings from 7 hectares to one hectare, which now had to be shared with all the co-wives and children”. *This is one of the many cases where government needs to adopt the” Free Informed Prior Consent” principle.*

*c) Chiredzi sugar cane ethanol plant*

Large tracts of land belonging to “local communities” are reported to have been leased to privately owned Green Fuel, in joint venture with the state owned Agricultural and Rural Development Authority (ARDA), for sugar production against the wishes of the local communities. A total of 5000 ha was involved. This study was not able to establish the owner of the 5000 hectares in question. The local community claims it owns 90 % of the land with the balance being owned by ARDA. Despite these conflicting ownership perceptions, an estimated 3000 households are reported to have been displaced from the area they consider to be theirs. It is reported that by the time of writing this document, the case had been presented to courts for litigation

**3.3.1.3 Land corruption**

Land corruption exists in Zimbabwe. Manase Chiweshe (2017) reports that traditional leaders in Seke and Domboshava communal areas sold land illegally for personal gains. Tendai Mafure (Herald, May 24 2019) also reports that ZANU PF at its 17th Annual National People’s Congress received 200 reports on double allocations and other corrupt activities done by MLAWCR officials.

#### 3.3.1.4 Land evictions

The Zimbabwe Peoples Land Rights Movement (ZPLRM-2019) cites a number of cases of rural land evictions. For instance, 1000 families from Mzaro farm (Masvingo) are reported to have received eviction letters on the grounds that they had occupied land without lawful authority. This is despite the fact that they had lived on the farm since 2000 at the height of jampanja (land reform related land evictions) and had built permanent structures. It is reported that they received 7 days to vacate without compensation.

The Zimbabwe law provides for the eviction (without compensation) of people who illegally occupy property. The above persons were thus evicted for having illegally occupied land in 2000. This, similar to many invasions that occurred in 2000, is a complex case. It is complex because the events leading to the 2000 land invasions have to be understood within the socio-political environment then. Year 2000 was characterized by extensive “illegal” land invasions, most of which, in the interests of the land reform objectives, were later to be legalized. Without necessarily justifying all land invasions that happened in 2000, it was important for government to adhere to the principles of “Free Informed Prior Consent” in this case. This would have given the affected community an opportunity to freely respond to government charges. This community is reported to have built permanent structures, a clear testimony that the community believed that it had secure land tenure rights, with minimal eviction risks.

## 3.4 Land administration

Land administration institutional frameworks differ by tenure systems. Best practice land administration involves a number of tasks. Key tasks are land allocation, land surveying, boundary demarcation, land subdivision, boundary dispute resolution, land registration, land transfer, land tax collection, land compensation, land use monitoring and land information storage and distribution. A recent review of land administration by Vudzijena (2016) revealed that:

### 3.4.1 Land allocation

Freehold land is allocated through the market (demand and supply); leasehold land is allocated by the MLAWCRR; customary land is allocated to the community by the state and to community members by traditional institutions. Majority of lessees received land at the height of the land reform. Understandably, not all holders of the A2 resettlement land have adequate “tools of trade” (skills, finance) for farming as a business. These, among other factors, continue to undermine investment, productivity and production, limiting the realization of Malabo Declaration targets.

### 3.4.2 Land surveying and boundary demarcation

Freehold tenure provides for the registration of land rights. For land to be registered, it has to be surveyed, boundaries identified and cadastral maps prepared. This is done by private surveyors, under the supervision of the Surveyor General, who heads the Surveyor Department under the Ministry of Lands, Agriculture, Water, Climate and Rural Resettlement.

99 year leaseholds are surveyed by the Surveyor General and registered at the Deeds Office. A1 Permits undergo non-title surveys to minimize boundary disputes. Progress on the registration of 99 year leaseholds is rather slow as already discussed above, with only 5% of the applicants having been registered.

Communal lands are not subjected to formal surveys. Consequently, administration information technology (IT) remains very basic in communal areas with limited use of computers, GPS technology, cadastral mapping, among others. Rural assets (land) have thus remained outside the property realm in Zimbabwe, undermining capital formation in communal areas. Rural areas are thus characterized by “sleeping capital” referred to as “dead capital” by some authors. This has undermined on -land investment among communal area landholders. On farm investment is currently dependent on government and donor subsidies, largely because traditional communities have no property rights to land.

### 3.4.3 Land registration

Once a piece of land has been surveyed, it is sent to the Register of Deeds (Deeds Registry Office) for registration. Property registration enhances capital formation for investment purposes. Capital formation is currently limited to freehold (title deeds) land sector held by the large scale commercial sector. Limited capital formation occurs in other tenure systems (leasehold and customary) because land rights are not tradable on the market. Land market restrictions have largely “dwarfed” investments on state land held by communal and resettled farmers, a big blow to the achievement of Malabo Declaration targets.

### 3.4.4 Land information storage and dissemination

Land information is processed and stored at two levels. The Surveyor General stores information on all land surveyed in Zimbabwe, including freehold land and leased land. The Deeds Registry Office stores information on registered properties in Zimbabwe. General Information on leased agricultural land is stored at the MLAWCRR. General information on natural resources access and use is stored at Ministries responsible for the administration of these natural resources. There is no mechanism for on-line sharing of such information, and this has partly caused conflicts between farmers and miners, causing significant investment delays on both sides. In particular, farmers continue to pay rentals on land reserved for mining activities out of their farm land, simply because information for such land transfers from agriculture to mining is not timely shared between the ministries responsible for lands and mines. This happens because information on land users is located in different ministries, inhibiting transparency on who uses land at what time. Mining laws in Zimbabwe allow miners to operate within “farms and communal areas” provided the affected land will not be under use for agricultural purposes at the time of registering the mine. The Mining Act supersedes farm land related Acts, a key factor undermining tenure security.

### 3.4.5 Institutions for land administration.

Administrative institutions differ by tenure system. Land administration of state land is done by the MLAWCRR, which is decentralized to the district levels for this purpose. Freehold land is administered jointly by government (Surveyor General, Deeds Registry Office and Zimbabwe Revenue Authority (ZMRA) and private sector (private surveyors and conveyances- lawyers); customary land is administered by Ministry responsible for Local Government, with the support of locally elected Rural District Councils (RDCs) and traditional institutions. Key challenge facing state land administration relates to financial shortages, though rentals have recently (2016) been raised for this purpose. Key challenges in communal area administration include the informality of most land transactions, limiting administrative transparency. In particular, household land rights are not mapped and formalized.

## 3.5 Legal framework

Two legal systems operate in the land sector. The statutory law operates in freehold and leasehold tenure systems. Customary law operates in communal areas, inhabited by traditional communities. Statutory law is the law of the country and thus supersedes/overrides customary law where the two systems clash. Customary courts provide justice in communal areas, though restricted to civil disputes at the local village level. Criminal and land matters are held by statutory courts.

## 3.6 Gender equity

Gender equity remains one of the most unresolved issues in Zimbabwe, particularly in communal areas inhabited by traditional customary communities. In many customary societies, land is accessible to male adults, and women are not entitled to land. The situation is slightly improved on state land occupied by resettled farmers since tenure documents are written in the names of both husband and wife/s.

This is in direct contrast to communal areas where land is not formally recorded and/or registered but is known to be accessible to males in compliance with customary norms and values of many traditional communities in Zimbabwe. Accordingly, women have no claim to land when the husband dies or upon divorce. Widows who are relatively young, face numerous challenges upon the death of their husbands particularly if they intent to remarry. Such widows find it unacceptable to remarry outside the male clan while staying at the family home. Young women tend to have two options. The first option is to stay on the family home and accept to remarry within the husband clan. The second option is to stay on the family home with children and avoid remarrying. The third option 3 is to vacate the family home and remarry outside the husband clan. Such decision making is pretty unpleasant, particularly for widows left with children.

# 4.0 Conclusions

Land governance in Zimbabwe has characteristics that denote bad land governance. Key characteristics are land disputes, land grabs, land evictions, non-transparent and non-accountable policies. These characteristics continue to worsen tenure insecurity levels, particularly in resettlement (A1and A2 resettlement) areas where landholders operate under leasehold tenure systems. Risk remains high that poorly performing farmers/lessees will be evicted for failure to fulfill lease-holding terms. Farmers under the resettlement areas are expected to invest on the farms in order to raise agricultural productivity and production. The majority of these farmers face difficulties to invest because banks are not accepting leaseholds as collateral security. In the absence of a leasehold market, leaseholds have a zero market value, making it risky for banks to loan to resettled farmers. Lending risks are high in the smallholder farming systems, which depend mostly on dry land agriculture. Dry land agriculture is vulnerable to natural disasters and climate change, and in seasons where droughts occur, smallholder farmer capacity to repay loans is undermined.

High tenure insecurity levels, particularly in A1 and A2 resettlement, continue to undermine on farm capital investment and in the process limiting the achievement of Malabo Declaration targets. Achievement of Malabo Declaration is preconditioned on capital farm investment and access to production finance. In the absence of significant bank finance, such investment will remain highly minimal. A number of business models (e.g. contract farming) now operate in agriculture sector. While these provide a good substitute to bank finance in the case of smallholder farming, they are focused on seasonal financing (seed and fertilizer inputs) and not on- farm capital investment (irrigation, dams). This undermines sustainability of productivity gains in the event contract input support is withdrawn.

# 5.0 Recommendations

There is need to mainstream land governance issues that currently undermine short and long term tenure security and in the process undermine investment potential in the agricultural sector. Key issues to be mainstreamed are those considered to undermine *investor confidence:*

1. Land policy participation, accountability and transparency
2. Tenure insecurity, particularly for A2 farmers operating on 99 year leaseholds.
3. Non effective land administration, particularly on state land, occupied by A1 and A2 farmers.

## 5.1 Land Governance Mainstreaming Results Chain

Below is the recommended Land Governance Mainstreaming Results Chain (impact, outcomes, outputs, indicators and activities).

Impact: To improve land governance in Zimbabwe

*Impact Indicators*.

* Percentage of tenure systems that use land efficiently-with Internal Rate of Rate (IRR) greater than 10%
* Percentage of women out of the population accessing land
* Land size (ha) under desertification risks (forestry, wildlife, water, soils,)

Outcome 1: Improved Policy Accountability

Outcome 1 Indicators:

* Number of farmers adhering to the “one man one farm” and “maximum farm size” policies.
* Number of complaints received by Ombudsman office
* Percentage of complaints brought (by Ombudsman) to the attention of public administration and Parliament
* Percentage of disputes resolved by the Land Tenure Commission
* Percentage of Land Audit recommendations implemented.
* Percentage of evicted landholders enjoying FIPC facility (Free Informed Prior Consent)

Output1: Institutional framework for policy accountability enhanced

Output 1 Indicators

* 1. Ombudsman Office established
  2. Land Governance Capacity Building Fund established
  3. Number of Civil Society Organizations at district and sub-district levels capacitated
  4. Number of stakeholder institutions, including government and parliament trained.

Output 1.1 Activities

* + 1. Meet and lobby for the establishment of the Ombudsman for land governance
    2. Solicit finance for a Land Governance Capacity Building Fund
    3. Identify appropriate stakeholders (village- national) for land governance participation
    4. Train key stakeholders on land governance
    5. Review the enabling environment for civil society operations
    6. Plan a capacity building programme for land governance institutions, including Civil Society

Output 2: Stakeholder knowledge on land policy issues enhanced

Output 1.2 Indicators

* Number of government officers trained on land governance
* Number of civil society organizations trained on land governance
* Number of Parliamentary Committee members trained on land governance.
* Number of farmer organizations trained on land governance
* Number of traditional institutions trained on land governance

*Output 1.2 Activities*

* + 1. Educate and sensitize various stakeholders on land governance- government ministries, parliament, traditional institutions, village associations, farmer associations, politicians, NGOs.

Outcome 2: Improved Policy Transparency

*Outcome 2 Indicators*:

* Number of people and institutions requesting for policy related information at district levels
* Number of requests for information at quarterly basis
* Percentage of information requests satisfied
* Number of adverts to enhance the public access to land governance information at national and district levels

Output 2.1 : Access to land policy information at district levels improved

*Output 2.1 Indicators:*

* Number of districts with land information management systems
* Number of district officials trained on land information management.
* Number of districts equipped with land management information technology
* Number of district with land information translated into vernacular

*Output 2.1 activities:*

* + 1. Establish land management information systems (land cadaster) appropriate at district level
    2. Publish land access terms and conditions by tenure system
    3. Design integrated land data collection systems at district level for all tenure systems
    4. Computerize land records at district centers
    5. Create maps of land access and ownership at district and sub-district levels
    6. Publicize land audit findings at district levels in vernacular
    7. Engage communities through sensitization meetings and sharing maps to visualize land use plans
    8. Update the land policy monitoring systems to comply with the Results Based logical framework

Outcome 3: Improved Tenure Security

*Outcome 3 Indicators*

* Number of A2 farmers accessing bank loans
* Number of land disputes reported
* Number of land grabs reported
* Number of land forced evictions reported
* Number of compensations disputes reported
* Number of land corruption cases reported
* Number of land related court cases held

Output 3.1: Conditions for tenure security enhanced

*Output 3.1 Indicators*

* Nature of rights and obligations clarified
* Number of stakeholders trained on tenure and tenure security issues
* Number of meetings/workshops held to discuss A1 and A2 resettlement tenure issues

*Output 3.1 Activities*

* Train stakeholders on land tenure issues (security, administration, legal protection)
* Publicize nature of tenure rights and obligations per tenure system
* Publicize land administrative systems in local languages
* Publicize steps necessary to access land justice in local languages
* Recalculate land rentals per farming systems (cropping livestock, conservancies, agroforestry, fisheries, tourism)

Outcome 4: Improved Administrative Efficiency in resettlement areas

*Outcome 4 Indicators:*

* Number of A1 and A2 leases surveyed per year
* Percentage of surveyed leases registered
* Number of farmers paying expected rentals
* Number of boundary and other land disputes resolved

Output 4.1: Knowledge on administration efficiency and effectiveness improved

*Output 5.1 Indicator:*

* Number of institutions (supply side)trained on land administration
* Number of landholder institutions (demand side) trained on land administration

**Output 5.1 Activities**

* Identify institutions and officers to be trained
* Train identified institutions and officers on land administration

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5.2 Land Policy and Governance Mainstreaming Budget Estimate The land governance budget is estimated at US$75 395 850, constituted by activities to improve land policy accountability and transparency and land tenure security, particularly in resettlement areas and communal areas. | | | |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  | **Activity** | **Item** | **unit** |  | **Frequency** | **cost (US$)** | **total** |
| **1** | **Land Policy Accountability** |  |  |  |  |  |  |
| 1.1 | Establishment of the Ombudsman Office for land governance in ten provinces | Toyota Hilux double cab | 10 |  |  | 100,000.00 | 1,000,000.00 |
| **Office furniture** |  |  |  |  |  |
| office desks | 10 |  |  | 600.00 | 6,000.00 |
| office chairs (the other 2 are visitors' chairs) | 10 |  | 3 | 700.00 | 21,000.00 |
| file cabinets | 10 |  |  | 400.00 | 4,000.00 |
| Handsets | 10 |  |  | 40.00 | 400.00 |
| Stationery (bond paper, box files, staplers etc.) | 10 |  |  | 4,000.00 | 40,000.00 |
| **Computer Hardware** |  |  |  |  |  |
| Desktop | 10 |  |  | 1,500.00 | 15,000.00 |
| Laptop | 10 |  |  | 2,500.00 | 25,000.00 |
| Photocopier (4 in 1- printer, copier, scanner, fax) | 10 |  |  | 15,000.00 | 150,000.00 |
| 1.2 | Identify appropriate stakeholders (village- national) for land governance participation | Adverts in the local paper 3 times | 1 |  | 3 | 250.00 | 750.00 |
| 1.3 | Educate and sensitize various stakeholders on land governance- government ministries, parliament, traditional institutions, village associations, farmer associations, politicians, NGOs. | 3 day workshop for 100 participants | 100 |  | 3 | 50.00 | 15,000.00 |
| 2 | Land Policy Transparency |  |  |  |  |  |  |
| 2.1 | Establish land management information systems(land cadaster) appropriate at provincial and district level | Setting up a land cadaster at provincial and district levels | 69 |  |  | 100,000.00 | 6,900,000.00 |
| 2.2 | Publish land access terms and conditions by tenure system | printing/page | 100 |  |  | 2.00 | 200.00 |
| 2.3 | Design integrated land data collection systems at district level for all tenure systems | Networking information systems between/across Ministries - quoted for 10 Ministries | 10 |  |  | 500,000.00 | 5,000,000.00 |
| 2.4 | Computerize land records at district centers | Computerize land records at district level (including hiring a consultant to train the staff, purchase of software to use) | 59 |  |  | 100,000.00 | 5,900,000.00 |
| 3 | Tenure security |  |  |  |  |  |  |
| 3.1 | Create maps of land access and ownership at district and sub-district levels | Production of maps/survey diagrams for all districts | 59 |  |  | 950,000.00 | 56,050,000.00 |
| 3.2 | Engage communities through sensitization meetings and sharing maps to visualize land use plans | Meeting for 100 people at district level to view maps | 59 |  | 100 | 40.00 | 236,000.00 |
| 3.3 | Meetings to review and finalize A2 tenure systems at national levels | 3 day workshop for 50 participants | 50 |  | 3 | 50.00 | 7,500.00 |
| 3.4 | Translate land tenure documents into vernacular | TRANSLATION/Page | 1 |  | 1000 | 25.00 | 25,000.00 |
|  | **Total** |  |  |  |  |  | **75,395,850.00** |

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