**LAND GOVERNANCE AND NATIONAL AGRICULTURAL INVESTMENTS PLANS IN ZAMBIA**

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**Report compiled by**

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# **Introduction**

Land is a key resource and factor of development. Agriculture is a key driver of economic growth and source of livelihood for majority of the Zambians in particular and the African people in general. Transforming the agriculture sector and bolstering investments in the agriculture requires a national agricultural investment plan that carefully integrates land administration and agricultural investments and development. The Africa Union Assembly held in Maputo, Mozambique in July 2003, signed a declaration on Agriculture and Food Security. Recognizing the significance of land in agricultural development, in July 2009, the Heads of State and Government of the African Union (AU) endorsed the Declaration on Land Issues and Challenges in Africa. This declaration established the Framework and Guidelines on Land Policy in Africa as a unique reference to guide the land policy process in African countries. According to International Land Coalition (2014; Rulli, & D’Odorico, 2014), this declaration was based on the understanding that land administration processes and issues impact on agriculture investments and the overall development of the African continent.

Given that land is a core issue in agricultural growth and food security, the UN Food and Agriculture Organization (FAO) did a global consultation to develop the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. These globally applicable guidelines were adopted by governments through the Committee for World Food Security (CFS) in May 2012. This was the first time that such a detailed and internationally accepted guide to good practice in land governance had been drawn up and endorsed by the international community. At continental scale, these two documents have given direction and authority to both government institutions and civil society organisations (CSOs) seeking to improve land governance policy and agricultural development in Africa. The policy documents create an opportunity for stakeholders to work together to promote land administration that is people centred, sustainable and that responds to the development needs of Africa.

## **Structure and methodology of the report**

This report provides a review of land administration systems and how they impact on national agricultural investment plans in Zambia. The review seeks to assert the central role of efficient land administration in promoting agricultural investments. Thus, the report is based on critical document analysis governing land administration and how the existing land administration protocols inhibit or facilitate agricultural investments in Zambia. To link land administration to agriculture development, the report draws heavily on national land and agricultural policies and programmes. The review of national lands and agricultural policies and plans is guided by the Maputo and Malabo Declarations on agriculture. Further, the documents review process is augmented by key informant interviews based on land and agricultural development matters in Zambia. Key informants interviewed are from various departments in the Ministry of Agriculture, Lands and Natural Resources, National Development Planning. Among others. The report further draws on key informant interviews from civil society organisation working on land and agricultural development in Zambia.

The report is structured by five key sections. With chapter one providing introduction, purpose and methodology, chapter two discusses the Maputo and Malabo Declarations. Chapter three discusses land administration systems and processes in Zambia while chapter four analyses the link between land administration systems and National Agricultural investment opportunities and limitations in Zambia. Chapter five contains key messages on land administration system and generate recommendations for the second National Agricultural Investments Plan (2nd NAIP) for Zambia.

# **From Maputo to Malabo and beyond: Where is the land Issue?**

According to the African Union (2016), agriculture is the mainstay of most African economies and a major a source of employment for millions. Thus, Africa’s industrialisation potential could be actualised if adequate attention and investment is placed on Agriculture by African leaders. Appreciating the central role of agriculture in transforming the economic landscape of Africa, the Africa Union Assembly held in Maputo, Mozambique in 2003, signed a declaration on Agriculture and Food Security (African Union, 2016). This came to be called the Maputo Declaration and returned agriculture to the centre of the African development agenda. The Declaration called for the implementation of the new pan-African flagship programme of the New Partnership for Africa's Development (NEPAD) which was actualised via an investment programme called the Comprehensive African Agriculture Development Programme (CAADP). CAADP became the flagship agricultural development programme for the continent and was regarded as the vehicle to stimulate production and bring about food security among the populations of the continent. Today, the Maputo Declaration is remembered mostly for its commitment to allocating at least 10% of national budgetary resources to agriculture, to achieve 6% growth of the agriculture economy. After a robust review in 2013 by NEPAD, the report revealed that many achievements had been achieved because of the Maputo Deceleration.

The CAADP Results Framework provides guidance at various levels that include planning, performance and results (African Union, 2014). To this end, CAADP serves as a guide to developing, planning and implementing investments and fosters alignment and harmonisation of initiatives that are geared at developing the agriculture sector. Many countries have recorded a rise in agriculture production, agriculture is increasing a political agenda and over 40 countries signed a CAADP Compact with two thirds of those formulated a National Agriculture Investment Plan (NAIP) or a National Agriculture and Food Security Investment Plan (NAFSIP). Zambia is one of the 40 countries that benefited from the CAADP programme, having prepared its first NAIP in 2013. Thus, the Maputo Declaration guided strategic political and economic investments in agricultural sector which resulted in a steady growth of the sector.

However, while there is recognised progress in the agricultural sector in many African countries, the sector still faces many challenges and the scope for improvement is massive. Further, under the Maputo Declaration, agriculture growth rate of 6% was achieved, but there was a lot of variation between countries and persistent food insecurity and poverty remains a major development issue for many African countries, including Zambia. Reports and findings show that it is very difficult to prove that CAADP has resulted in increased private investment in agriculture (Poulton, eta al, 2014). Information on private investment is often scant and scattered, especially concerning investments by small and medium enterprises, the kind of investment needed for equitable growth. Another major realisation from the Maputo decade has been that it takes more than the Ministries of Agriculture to sustainably grow the agricultural sector. Implementation of the CAADP and the Maputo Declaration policies, including the first generation NAIP show that Ministries of Agriculture cannot force Ministries of Finance to commit 10% of public funds to agriculture; nor can these Ministries of Agriculture force ministries responsible for land administration and management to increase land allocation for agriculture. Thus, major gaps exist and the need to consider the land question in agricultural investment plan (NAIP) as a major factor in the Malabo Declaration is established. The consideration of land issues in NAIP preparations and implementation might be a game changer for small holder farmers and for increased private sector investments (Poulton, eta al, 2014). Creation of favourable conditions for agricultural investment conditions cannot be created by the Ministry of Agriculture alone. This recognition was made by the Head of State during the 23rd African Union Assembly in 2014 when they adopted the Malabo Deceleration in Equatorial Guinea. The Heads of State cast their view on the agricultural sector beyond the Ministries of Agriculture, in the hope of more effectively addressing the obstacles that continue to beset agricultural growth in Africa. In this declaration, the issues of land have been placed as central to the formulation and implementation of NAIPs for African countries.

## **The Malabo Declaration: land in agriculture development**

The 2014 Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods specifies land tenure as one of the commitment areas in agriculture. The declaration recognises that land is not (completely) under the mandate of the Ministry of Agriculture (African Union, 2014). The recognition of land issues is premised on the argument that good land policies and management are key to achieving agricultural transformation with equitable access to land and secure land rights being critical to investment and sustainable land management. The key performance targets 3.1 seeks to ensure that Africa achieves a 100% land security for framers or farmland by 2025. The Malabo Declaration reaffirms the core commitment of the Maputo era, namely to allocate 10% of public resources to agriculture but to expand the reach of the approach and ensure a multi-stakeholder approach to agriculture investments and development. The Malabo commitment is broader in character as it addresses specific questions on land, irrigation and mechanisation and curtailing post-harvest losses among others. So, in contrast to the Maputo Declaration, it contains many more commitments in areas like infrastructure, natural resources, land tenure, trade and nutrition (African Union, 2014). These areas are important to agriculture, but they are not (or not completely) under the mandate of the Ministry of Agriculture. Thus, the Malabo Declaration is wider than its predecessor; at the same time though, it continues to view CAADP as the main vehicle for implementation of its commitments, as was the case in Maputo. A Malabo Declaration that is wider than that of Maputo changes the scope of the CAADP agenda. The CAADP agenda must move from being a single-sectoral to multi-sectoral process and planning approach to agricultural investment and development.

## **Factors for success in the Malabo agenda: Integration and coordination of roles**

CAADP and the NAIP process will need to continue to focus on the agricultural development sector but needs to take account of areas in related sectors that are required for agriculture growth to happen. This requires effective coordination of the sector so that the various components can be well integrated and complementary during planning and implementation process. Interview data from the Ministry of Agriculture shows that to succeed in the second NAIP and the Malabo objectives, there is need to learn from the limitations faced in the first NAIP process by creating an inter-sectoral cooperation programme for CAADP to increase the role of relevant central government agencies in in the CAADP and NAIP country implementation programme (Interview, Ministry of Agriculture Senior Official, January 2019). Of importance, is the coordination agenda that must include Ministries of Agriculture, Lands, Finance and Cooperatives, the private sector, development planning and the local government. The NAIP remains a key vehicle towards achieving the Malabo Declaration targets, but a sectoral NAIP can no longer be regarded as the only vehicle for achieving these targets. The emphasis on implementation, results and impact is increased by ensuring effective coordination among relevant sectors that include land administration.

The success of the second generation NAIP and CAADP agenda for member countries, there is need for a mechanism that provides a definition and division of roles and responsibilities. For this to happen, there must be clarified relationship between relevant ministries and agencies, including role of the private sector and civil society organisations. This is to be measured based on results area “3.4 on number Improved multi-sectorial coordination, partnerships and mutual accountability in sectors related to agriculture” (African Union, 2014:8). The Ministry of Agriculture should not try to be responsible for everything, and the relationship between the national and subnational levels being clear and specific on their roles and contributions to the development of the agricultural sector. This call for a shared responsibility and well-coordinated agricultural investment and development agenda is based on historical experience where the sector has been overburdened for too long under a government that believes it should do everything everywhere. Coordination has to be driven by the need for an effective action and programme implementation and measuring results for an increased agricultural sector and productivity. The coordination programmes have to include capacity development for sub-national levels involved in land administration and local governance. For agricultural sectors to be driven by private small/medium scale producers and entrepreneurs, these actors need to be informed, empowered, aware and articulate on matters to do with agricultural investment and the role of effective land administration and tenure security for increased investment inflow in the sector. The second CAADP and NAIP processes seeking to actualise the Malabo Declaration will have to focus on leveraging increased private investment by improving land administration and increasing land tenure security for farmers (African Union, 2014). Having set clear, the points of departure of the second generation NAIP from the first generation NAIP, the following section focuses on land administration based on the Malabo Declaration inspired land-agriculture integration aspirations for improved agricultural investments.

## **Land administration and the NAIP goals**

If agricultural development in Zambia is to grow as expected in the Malabo Declaration, the land administration question must be factored in the second National Agriculture Investment Plans (NAIP) process and CAADP agenda. The Land Policy Initiative (LPI) was formed in 2006 as a joint programme of the African Union Commission (AUC), the UN Economic Commission for Africa (UNECA), and the African Development Bank (AfDB) to prioritize land issues in the development of the African continent. The aim was to develop a joint framework for land policy and land reforms in Africa, with a view to strengthening land rights, enhancing productivity, and securing livelihoods. The framework called for land-based and on land resources to be managed in a way that ensures sustainability, that respects the tenure rights of existing land users, including customary and informal rights, and that brings benefits to all stakeholders (International Land Coalition, 2013; German, Schoneveld, Mwangi (2013). The framework guidelines recognise the importance of promoting investment in agriculture, fisheries, and forestry, and note the key role that smallholders play in such investments.

The draft national lands policy has recognised the need to move towards an integrated land administration framework for Zambia (Ministry of Lands, Environment, Natural Resources and Environmental Protection, 2017). There are multiple institutions involved in land administration in Zambia, and these do not work in unison all the time. The Ministry responsible for land administration surveys land and registers leasehold titles. The Ministry responsible for lands has offices in each province, but decision-making and record keeping are not fully decentralised. It also collects land related revenues but does not have presence at district level. Other institutions perform functions of spatial planning, land use management, valuation, revenue management and land allocation. The spread of functions across several ministries hinders smooth functioning of land administration and management processes. At provincial level, the Ministry responsible for land administration performs the functions of land identification, land allocation, land surveys and geoinformation and revenue collection of land related fees and charges. However, as of 2017 land registration was only done at Lusaka and Ndola offices. The land administration services are centralised as they are not suitably represented at district level. Provincial Planning Authorities carry out the spatial planning functions. Local authorities, city and municipal councils, identify available land. The Land valuation is a function that falls under the Ministry responsible for Works and Supply.

The Ministry responsible for agriculture and the office responsible for resettlement also identify and plan land for agricultural use and resettlement and similarly, the Ministry responsible for national parks and wildlife has spatial planning functions in national parks and Game Management Areas (GMAs). However, coordination between agencies involved in the land allocation is weak and information about land for agriculture is not easily accessible. Land administration at local level is delegated to local authorities and on customary lands to the chief. The chiefs are expected to participate in land identification for various public uses and make recommendations to the Commissioner of Lands. However, the functions of a chief in land administration are not clearly defined and need institutionalisation. Land administration in Zambia is highly fragmented and this renders protection of land for agricultural investment, especially for small scale farmers, a difficult undertaking (Interview, Director of Planning and Information, Ministry of Lands, Environment, Natural Resources and Environmental Protection, 2017).

## **Mainstreaming land governance in the Malabo declaration**

In the African Union (AU) Declaration on Land Issues and Challenges (AU Declaration on Land), the Heads of State and Government resolved to take ownership of and lead land reform processes by strengthening institutions for effective land governance and allocating adequate budgetary resources for policy development, implementation and tracking of progress (Union, African, 2009). The Declaration requires mainstreaming land governance issues in common development frameworks, policies and protocols, and to convene platforms for disseminating knowledge and sharing good practices for inclusive and sustainable development on the continent (African Union, 2009). The AU Declaration urges for establishment of an appropriate institutional mechanism for coordination, a monitoring framework for tracking progress, and a fund to support activities in the implementation of the AU Declaration on land. The AU Declaration resonates with the Malabo Declaration and the interest assumed to guide the second generation NAIP. The AU Declaration and guidelines on land are in tune with the provisions provided for in the Malabo Declaration which recognise land as a major component of agricultural transformation in Africa and a factor in attracting private sector investments in the sectors. The AU and Malabo Declarations on both land and agriculture respectively show the interweaved nature of land administration and agricultural development in Africa. Thus, the CAADP and NAIP process must consider the role of various actors in reforming the agricultural sector in Africa. The thematic areas of intervention on land aspects are guided by the key commitments and existing decisions on land governance and include: Land policy development, land administration and land information systems, land data, statistics and monitoring, gender, women and land, land investments and agriculture, land, natural Resources management and conflicts, land, settlement and urban development, land, youth, migration and employment. Thus, the issues of land in agricultural development are well recognised and prioritised in the Malabo Declaration.

## **Implementation of land governance commitments in agriculture**

For land administration to be integrated in agricultural development, land and agriculture development programmes need to be well integrated and planned (African Land Policy Centre (ALPC, 2018). Investment plans and development frameworks need to be devised with clear guidelines that guide implementation. The AU Declaration on land issues and challenges in Africa invites national and regional authorities to promote learning and innovation in land integration in national development programmes. Planning for agricultural growth and development as intended in the Malabo Declaration should be based on land integration in the sector. Land integration in Agriculture is a major sector to determine increased agricultural investment and create certainty on tenure security for farmland (African Union, 2014). In line with the Ten-Year Implementation Plan for Agenda 2063, the African Land Policy Centre has pursued activities to support efforts to address land governance challenges in order to modernise agriculture for increased productivity and production (AU Goal 5). The ALPC supports efforts of Member States to align the National Agriculture Investment Plans (NAIPs) to reach targets of the 2014 Malabo Declaration on Agricultural. In this regard, the ALPC mobilised funding to pilot a project on mainstreaming land governance in the NAIPs of the Comprehensive African Agriculture Development programme (CAAD/NAIP). The CAADP supported NAIP process and initiative was developed to conduct the project in countries at various stages of CAADP implementation to draw useful lessons and promising practices and develop capacity of Member States. Based on implementation of this programme in selected countries that include Cote d’Ivoire, Democratic Republic of Congo (DRC), Madagascar, Malawi, Rwanda and Tanzania, lesson a have been learnt and prospects for scaling up exist. It has so far generated evidence on the key land governance issues hampering agricultural transformation (ALPC, 2018).

# **Land administration in Zambia - the principle laws**

There are various pieces of legislation in Zambia, which have a direct or indirect bearing on land tenure and land administration in the country. The Constitution of Zambia was enacted in 1991 to repeal the 1973 constitution. Further amendments have been made over time in 1996 and 2016. Part III, article 16 of the Constitution states that no individual can be compulsorily deprived of any property without adequate compensation, unless under an Act of Parliament or in such cases as where the acquisition is for recovery of tax, the land is abandoned, the land is required for exploiting minerals, or for the implementation of a land policy. Part XIII, article 127, allows for continuation of the existence of the Institution of Chief in any area of Zambia in accordance with the culture, and traditions of the peoples concerned. In addition, Article 128 of Part XIII allows the Institution of Chief to operate as a corporation and to hold assets or properties in trust for itself and the peoples concerned. The recognition of the chiefs’ establishments as institutions, that they should continue in existence according to their traditions, and that they can hold property in trust for their people, has significance in relation to how customary land should be administered in Zambia. Chiefs are already custodians of customary land, and if they should continue in existence according to their traditions, it means even administration of land should continue to be based on those same traditions. Since they do already hold land, it can be said that they do constitutionally hold that land in trust for their people.

## **Acts related to land registration, surveying and planning**

Lands Act number 20 of 1995 provides that all land in Zambia is subject to this Act, and that no land can be alienated for a term longer than 99 years. A lease can be renewed for a further term of 99 years, if it is not liable to forfeiture. The Act provides for the continuation of leaseholds and leasehold tenure; for the continued vesting of land in the President and alienation of land by the President; for the statutory recognition and continuation of customary tenure; and for the conversion of customary tenure into leasehold tenure. In addition, the Act provides for the establishment of a Lands Tribunal for dealing with land disputes and a Land Development Fund for opening land for development. The Act describes ‘customary area’ as all land, which until the Act was referred to as Reserves and Trust land. ‘Land’ means any interest in land whether the land is virgin, bare or has improvements, but does not include any mining rights as defined under the Mines and Minerals Act. Though all land in Zambia is vested in the President, the actual alienation is delegated to the Commissioner of Lands. The Act provides for the following regarding land administration:

1. ***Administration of Land***

The President can alienate land to any Zambian or non-Zambian. A non-Zambian can be granted land if the person is a permanent resident, an investor, has prior written Presidential consent, or is a registered company, a charitable organisation, or a registered commercial bank. The President can also grant land if the non-Zambian is inheriting the land, obtaining land under a lease agreement, or if he has been granted a concession or right under the National Parks and Wildlife Act. However, the President cannot alienate any land held under customary tenure without consulting the responsible chief, affected person, or if the applicant has not obtained prior approval of the chief and the local authority. A chief is a recognised institution by the Constitution. The recognition of customary tenure, however, does not bring about the registration of ownership rights. It is just meant for the protection of use and occupancy rights. It is illegal to occupy vacant land, whether state or customary, without lawful authority and any person so occupying is liable to eviction. For customary land, this authority may be a chief’s permission since the chief is a recognised institution by constitution.

1. **Land Survey Act (CAP 293, 1960)**

The Act provides for the Surveyor General (SG) to supervise all surveys, to preserve all survey records, and to generally administer the provisions of the Act. The Act also provides for the establishment of the Survey Control Board (SCB), chaired by the SG, to regulate the practice of the survey profession, to conduct examinations and trial surveys for purposes of licensing surveyors, to maintain a register of land surveyors, and to hear complaints against land surveyors. A Government surveyor is allowed to examine survey records lodged for approval with the SG, and may prepare, certify and issue at request copies of approved diagrams filed with the SG. However, he/she is not liable for any defective survey or work done by another land surveyor regardless of whether such survey or work has been approved or registered.

1. **Urban and Regional Planning Act of 2015**

This Act provides process for access land for all development activities. The Act declares all land as plannable land in Zambia. The Act aims to provide for development, planning and administration principles, standards and requirements for urban and regional planning processes and systems; provides for a framework for administering and managing urban and regional planning for the whole country; provides for a planning framework, guidelines, systems and processes for urban and regional planning for Zambia; establish a democratic, accountable, transparent, participatory and inclusive process for urban and regional planning that allows for involvement of communities, private sector, interest groups and other stakeholders in the planning, implementation and operation of human settlement development; ensure functional efficiency and socioeconomic integration by providing for integration of activities, uses and facilities; establish procedures for integrated urban and regional planning in a devolved system of governance so as to ensure multi-sector cooperation, coordination and involvement of different levels of ministries, provincial administration, local authorities, traditional leaders and other stakeholders in urban and regional planning. Further, the Act seeks to ensure sustainable urban and rural development by promoting environmental, social and economic sustainability in development initiatives and controls at all levels of urban and regional planning; ensure uniformity of law and policy with respect to urban and regional planning. The Act repeals the Town and Country Planning Act of 1962, and the Housing (Statutory and Improvement Areas) Act, 1975.

The Urban and Regional Planning (URP) Act provides for establishing planning authorities and supervises and controls land use and the preparation and implementation of land-based development plans. A planning authority is a public body with delegated authority to undertake town and/or regional planning. A district council may be appointed as a planning authority after meeting specific requirements. Under this Act, a land user is required to obtain planning permission before undertaking to develop the land. The URP effectively provides for a local council to act as land administrators using delegated authority from the Ministry responsible for Lands. However, systems and contradictions continue to be under devolved and under developed and this creates significant administrative challenges for both councils and the Ministry responsible for lands.

## **Additional land governance legal legislations**

Various other statutes and institutions exist which control the environment, water abstraction, the use of agricultural land and thus in one way or the other affect land administration in Zambia. These include:

* Land Acquisition Act, CAP, 296, 1970, provides for the compulsory acquisition of land by the President in the public interest. If such land is not developed, no compensation is given.
* Agricultural Lands Act, CAP 292, 1960, is concerned with the establishment of the Agricultural Lands Board. The Board controls dealings in agricultural land and ensures its good management.
* Water Act, CAP 312, 1949, authorises members of the public to abstract certain volumes of water for their purposes for a period under set conditions. It establishes the Water Board for this purpose. This is supported by the Water Resources management Act of 2011.
* Land (Perpetual Succession) Act, CAP 288, 1926, provides for incorporation of trustees of an association to facilitate perpetual succession to land and to incorporate associations that lacked capacity to hold land on title.
* Local Government Act. The Local Government Act empowers local councils to administer land within their districts and have responsibility for land-use planning, in coordination with the Physical Planning Department at Ministry of Local Government. The local councils, as agents for the Ministry of Lands, Natural Resources and Environmental Protection, process applications for leases of state land and evaluate requests for the conversion of customary land to state land.
* Zambia Wildlife Act No. 14 of 2015. The Act provides for the establishment of the Zambia Wild life Department to be responsible for all Game Management Areas and National Parks (including water catchment areas in these parks) covering approximately 33 percent of the total land area of Zambia. The Act controls the allocation of land in national parks for tourism purposes.
* Forests Act Cap 199 of 1973. The Act provides for the conservation and protection of forests and trees.
* Fisheries Act, Cap 200 of 1974. The Act deals with the control and development of fishing.
* Mines and Minerals Development Act No. 7 of 2008. The Act provides for environmental protection during prospecting, mining, decommissioning and abandonment of mines. The Act provides for the administration and management of all land with mineral deposits and guarantees mineral rights. The Ministry of Mines is responsible for all land with mining interests.
* Zambia Development Agency (ZDA) Act No. 11 of 2006. The Act provides for fostering economic growth and development by promoting trade and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy. The Act provides incentives for all sectors including agriculture and energy aimed at attracting investments. The ZDA Act provides for legal protection and facilitates acquisition and disposition of all property rights such as land, buildings and mortgages. Leasehold land, granted under 99-year leases, may revert to government if it is ruled to be undeveloped after a certain amount of time (generally five years).
* Environmental Management Act of 2011. Establishes the Zambia Environmental Management Agency, with broad environmental oversight functions. Subsidiary legislation to this Act is the Environmental Impact Assessment Regulations that guide the execution of the environmental impact assessment studies for projects such as agriculture, aquaculture or irrigation projects that have a likelihood of causing environmental damage.
* National Water Resources Management Act of 2011. The Act promotes participatory management and water resources development in an integrated and sustainable manner. The Act provides for an autonomous regulatory body for the sector – the Water Resources Management Bureau – which is responsible for water allocation and licensing, and for regulation of all waters in Zambia (including international waters and groundwater). Given that many of the agricultural land use or management projects involve the water sector, the legal and institutional framework for water resources management is central to discussions on land management and agricultural production in Zambia.

## **Land Governance in Zambia**

According to Mulolwa (2016), Zambia currently has a rapidly growing population with a total of about 17 million people. The constitution devolves land administrative functions to local governments. Although there are several policies related to land, currently Zambia does not have a specific policy on Land. Zambia depends on the draft lands policy which remains under controversy. This is against backdrop that government has been grappling with drafting the Land Policy for almost three decades now. The vacuum and confusion created by lack of adopted land policy is worsened by existence of several pieces of legislation that affect land, the main one being the Lands Act of 1995. To fill the gaps of the Lands Act, and possibly create clarity and efficiency in administering customary land, a Customary Lands Bill is still being drafted. Chitonge and Mfune (2015) argue that land administration challenges in Zambia are complicated by desperate individuals seeking land for housing development and or commercial activities that include agriculture. Both the poor and well-resourced individuals are eyeing well located and serviced land for their activities.

## **The complexity of land tenure system in Zambia**

 Zambia has a dual tenure system consisting of leasehold (Statutory) and customary tenure. This duality has persisted since the colonial times. The term of leasehold is limited to a maximum of 99 years. Other terms of leases include 14-year leases which are provisional, a 30-year leases for resettlement schemes and a 30-year occupancy licences for housing improvement areas and 10-year land records which are issued by local authorities. These tenure regimes provide land use rights and indicate level of tenure security for the owners. Leasehold provides the widest use rights and highest level of tenure security. An important form of land holding is land that is reserved for public use, such as land for public infrastructure, forests and national parks among others. This category overlaps leaseholds and customary areas (Mulolwa, 2016). In addition to leasehold and customary tenure, there is also the unrecognised/ de-facto tenure which constitutes large portion in and around urban areas e.g. in Lusaka it is estimated that over 60% of holdings are informal. It is estimated that about 90% of the rural population subsist on customary tenure. For agricultural development, leasehold and customary tenure constitute the highest proportion for farm land for both small-holder and commercial farm activities. However, the multiplicity of tenure regimes present major land administration challenges and make it more complex for guaranteeing use and investment rights. This complexity is compounded by lack of clear institutional alignment among various land administrators.

## **Tenure overlaps**

Land tenure and land systems in Zambia overlap with one another. Public land overlaps both state land and customary areas. In addition, the Lands Act allows conversion of customary tenure to leasehold. However, the Lands Act is not explicit on the status of the land under the converted tenure. The Act does not mention of any new inclusions to or exclusions from customary areas as described in its schedules. This confusion form part of the reason that suggest that the figures of about 9 and 91 % for state land and customary areas, respectively, still stand today (Mulolwa, 2016). When public areas are overlaid with the state land and customary areas, the picture changes dramatically, especially for customary areas. These overlays show that there are overlaps in terms of jurisdictions and further implications on reversions. Based on the Integrated Land Use Assessment (ILUA I) data collected from 248 sample plots between 2005 and 2008, the distribution of land ownership amongst various types of owners at the time, shows that the amount of land owned by private individuals across the country is 10.5 % and that by the state is at 19 % (see table 1).

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Source: Land ownership in Zambia, (Mulolwa 2008, compiled from ILUA I data)

## **Overlaps between different levels of government in land administration**

There is a clear division of land-related responsibilities between the different levels of administration and government but there are major overlaps which are experienced. The overlaps involve interference by higher levels of government into the roles of the lower level institutions.

We experience very high levels of political interference from above. We are harassed every day on our decisions. We cannot perform our duties without undue interference from political cadres and it is a very sad situation. Our work environment is not supportive of transparent and inclusive decisions. Land is for all Zambians, but this is very hard to live up to (Personal Interview, Very Seniour Official, Ministry of Lands, Natural Resources and Environmental Protection, February 2019).

The views by the senior official show the intertwined nature of land administration and politics in Zambia. The responsibility is with the local level institutions, but the higher authorities may overrule the decisions of the former. For example, in addition to the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP), other institutions that play a role in the process of land administration are local authorities. These institutions which include District, Municipal and City Councils have been given delegated authority to discharge land administration functions on behalf of the Commissioner of Lands. Local authorities fall under the Ministry of Local Government and not the MLNREP. This therefore makes it difficult for the MLNREP to supervise local authorities. Thus, if local authorities commit a breach, there are no direct sanctions from the MLNREP. The sanctions can only be taken by the Minister for Local Government on behalf of the MLNREP under the circumstances. In practice, the MLNREP has been taking sanctions against local authorities when found at fault by suspending them from administering land or making recommendations to the Commissioner of Lands in their respective localities. This measure by the Minister of the MLNREP is however, not legally provided for under any statute, statutory instrument or regulation (Sichone, 2011; Mwiche, 2013).

## **Ambiguities in the mandates of Public Institutions on land matters**

There are some ambiguities in the institutional mandates of institutions which deal with land-related matters very differently and effective mechanisms for coordination are not in place. The administration of land in National Parks and Game Management Areas is regulated by the Zambia Wildlife Act. However, there is a problem of institutional coordination in the administration of land in Game Management Areas. This is largely caused by the fact that Game Management Areas are situated in customary areas and therefore, conflicts between local people, Chiefs and the Zambia Wildlife Authority often arise. Local authorities also face difficulties during performing land alienation functions in Game Management Areas, because the governing statutes clearly state that the management of Game Management Areas is a preserve of the Zambia Wildlife Authority.

# **The 2017 Daft National Lands Policy**

The Zambian Government currently does not have an adopted national land policy. A national land policy formulation process was initiated in 1993, and a Draft Land Administration and Management Policy were issued by the Ministry of Lands, Natural Resources and Environmental Protection. The same remains in draft form to-date. It is said to be “a working document and not a formal policy document and that it should not be quoted and interpreted as the policy of the Government of Zambia or any other government ministry or department until it has been finally agreed and adopted (GRZ, 2006; 2017). The last and new draft policy was made available in December 2017. Stakeholders have disagreed on how best to conclude the Policy and adopt it for implementation. The 2017 National Draft Land Policy remains incomplete and stakeholders (not official government document) have called for further consultations to conclude the process, adopt it and implement the policy.

The 2017 draft policy has the following statement in its opening pages:

This national land policy primarily seeks to promote equitable access to land to all the people of Zambia on state and customary land, for both poor and the wealthy and irrespective of gender. The policy seeks to strengthen land tenure security and enhance sustainable and productive management of land resources by upholding transparent and cost-effective systems of administration (The Ministry of Lands and Natural Resources, 2017).

The current draft policy has recognised the rising interest in Zambia for international investors looking for large amount of land for land-based investments. Since 2007/8 global food crises, Zambia has seen an increase in foreign investments seeking to contract thousands of hectares of land for up to 99 years. The rush for land is for mining and minerals, bio-fuel and food production, forests and water resources, all because of global product shortages and rising commodity prices. This recognition in the draft Policy is further shared by all key informants interviewed about land and agriculture integration in Zambia. Much of the land involved in foreign land investment is customary land. Since, customary land is held in trust by the local traditional authority and that land occupants do not have documented land rights, they are often at risk of loss of livelihoods when their land is transferred to private investors. Given that small holder farmers who usually depend on traditional land produce food for most Zambians, it is essential to note that when local communities lose access to water sources, farm land, and forest products when their land is acquired for private investments, food security for Zambia is threatened (Interview, Executive Director, Zambia Alliance, June 2019). The role of chiefs, and how customary land should be administered remains fiercely contested issue in the 2017 National lands Policy. In the following sections, the report discusses the national agricultural policies and plans. With vast experience on land security for smallholder farmers in Chief Mungule’s area in Central province, the People’s Process on Housing and Poverty in Zambia (PPHPZ) emphasised during personal interview that food security for Zambia is determined by small holder farmers who depend on highly threatened customary land (Personal Interview, Farai Shumba, Programmes Officer, PPHPZ, March 2019).

# **Agricultural Policies in Zambia**

According to the Policy Monitoring and Research Centre (PMRC) (2016), the agriculture sector is one of Zambia most important economic sectors. The sector supports the livelihood of approximately 70% of Zambians and accounts for around 10% of Gross Domestic Product (GDP). Activities in the sector are guided by a sectorial policy, the first being the 2004 – 2015 National Agricultural Policy (NAP).  The First NAP 2004 – 2015 focused on improving production in the Agriculture sector. During the first NAP period, production increased significantly in all the agricultural sub-sectors, however, there was minimal improvement in productivity. The launch of the Second National Agricultural Policy (NAP) 2016 -2020 seeks to address the challenges faced during the implementation of the First NAP.  The Vision of the Second and current National Agricultural Policy is: An efficient, competitive and sustainable agricultural sector, which assures food and nutrition security, increased employment opportunities and incomes. The Second NAP focuses on ten strategic objectives that include objectives promoting productivity, promoting Research and Development (R&D), strengthening training, promoting markets (inputs and outputs), private sector participation, nutrition and food security. The rationale of the second NAP is to promote sustainable agricultural diversification, commercialisation through improved private sector participation and to create an enabling environment that promotes competitiveness, efficiency and food and nutrition security (Ministry of Agriculture and Livestock, 2015). This implies that land access for farming is a major component if achieving the objective is to be realised.

However, land is not included as a strategic element in agricultural investment and development in the current and previous policies. The policy is largely silent on matters of effective land administration to support the realisation of the second NAP goals. Zambia has a total land area of 75 million hectares, of which 58% is classified as having medium to high potential for agriculture production. Suitable production includes crops, fish and livestock. Currently, only 14% of agricultural land is underutilisation, 42% of this land is suitable for livestock production. During a normal rain season, the country is estimated to receive 160 billion cubic meters of rainfall annually, only 60 billion cubic meters is utilised while 100 billion cubic meters is lost (PMRC, 2016). Further it is estimated at only 155, 912 hectares is utilized out of a potential of 2.75 million hectares. Further limitations of the second policy include lack of an integrated approach to agricultural development and investment programmes. This goes against the provisions and strategic approach of the 7th National Development Plan which seeks to take an integrated approach to all development policies, plans and implementation programmes (Ministry of National Development Planning, 2018).

The narrative of land abundance, and the land policy inertia it engenders serves important political and economic purposes. On the one hand, it is often mobilized in development strategy documents and policies, particularly those aimed at attracting foreign investment to Zambia’s agricultural and mining sectors. On the other hand, recent evidence shows that local elites are increasingly utilizing Zambia’s opaque land administration system to alienate large tracts of customary land for speculative purposes (Sitko and Jayne 2014; Jayne et al. 2014). Yet household survey data from rural Zambia increasingly contradicts the dominant narrative that Zambia has an abundance of freely utilizable arable land in customary areas. According to nationally representative household survey data for 2012, 54% of smallholders in Zambia indicated that traditional authorities, the administrators of Zambia’s customary land, no longer have abundant land available to allocate to local households. Some of this may have to do with the high levels of spatial clustering in rural population distributions. Jayne et al (2014) report that just under half of Zambia’s rural population resides and farm in just 20% of the rural land area, and nearly a third of the rural population are concentrated in just 10% of the land (Sitko et al, 2015).

Recent analyses suggest that many of these urban wage earners are investing in the acquisition of land in customary areas and are converting it to titles as prescribed by the 1995 Land Act (Chitonge et al, 2018; Sitko and Jayne 2014). Zambia is also in the midst of a population boom driven by population growth rates of nearly 3%, and rapid urban expansion, with urbanization rates of 4.15% (Central Statistical Office, 2010). To accommodate this rapidly growing urban population, the central and local governments have acquired significant tracks of customary land and converted it into leaseholds for urban residents. The central government has also utilized the 1995 Land Act to alienate land for commercial farming blocks and agricultural settlement areas (Chenoweth, Knowles, and Ngenda 1995; Sitko, Chamberlin, and Hichaambwa, 2014; Hichaambwa, eta al, 2014). The combination of permissive land policies, demographic changes, and rising urban incomes are likely altering the conditions for customary land access in important ways. Other land administrative designations, such as National Parks and Game Management Areas create a paradoxical landscape of land constraints for the rural poor amidst a seeming abundance of land (Chitonge et al, 2018).

## **Agricultural development and land administration in Zambia- achieving the nexus**

The daft National lands Policy recognises the multiplicity of actors and responsibilities in land administration. Zambia’s population grows fast, presenting a rising demand on land for various activities including agriculture. Agricultural food production must increase by two and half times by 2030 just to maintain the current rate of consumption. Therefore, the declining smallholder access to land to achieve the required minimum food security targets presents a major challenge for Zambia. The Policy outlines that the overall population density is low at 14 persons per km2, while the national average farm size is 4 ha and that of smallholders is 1.8 ha and declining as shown by shortening of fallow cycles and rotations, which imply declining soil quality and fertility and potentially land productivity. There is need to resolve the apparent paradox of inadequate access to land for many rural households despite low population density and ample land by improving access to basic services, water, road infrastructure and markets viable agricultural investments and agricultural development. Thus, the link between land and agricultural investment and development is apparent and this has been recognised in the draft policy. However, the mode of achieving an integrated institutional arrangement to operationalise the policy intentions on land-agricultural investment and food security nexus remains unclear. This is particularly important given that nearly 40 per cent of the country is under one form of conservation management, such as forest, national park or game management areas under the management of the Ministry of Tourism and Arts. The Policy maintains that there are synergies between different land uses and that achieving these synergies requires stakeholder coordination and spatial planning at a landscape or regional scale. Meeting the increased demand for agricultural products requires an ecologically sensitive approach which should be well planned and coordinated.

## **Private investment strategy in Agriculture - incorporating the land aspect**

There is no policy in place to identify and assess land to be made available to investors in agriculture. Instead, land offers and transfers for agricultural development are based on ad-hoc investor demands. For instance, the Zambia Development Agency (ZDA) acquires land on behalf of prospective investors or allocates them from its land bank but there is no a priori assessment of the land potential for different uses. Additionally, not all investors access land from the ZDA’s land bank. Some directly approach traditional leaders and commence agricultural developments without any detailed suitability assessments for either crop or livestock farming. Some of the land parcels in the ZDA Bank are transformed from customary to state land by the Ministry of Agriculture and or Livestock. This involves a close collaboration with local authorities and the ministries responsible for Lands and Energy (Keene et al, 2015) without thorough community consultations.

Overall, the Ministry responsible for lands has limited human capacity to perform all its land administrative and land management functions such as surveying in a timely manner. The Ministry of Agriculture and Livestock, responsible for conducting suitability assessments for agriculture does not routinely perform this function. As part of their investment plans, investors are mandated to describe the employment opportunities to be created by their investments in the locality. Focus is on developments that benefit the wider economy and local benefits are marginalized. Although Environment Impact Assessments (EIAs) are compulsory, they are sometimes overlooked as the minister responsible for the environment has discretionary powers to overturn recommendations from the environmental regulatory agency as happened in the cases of the Lusaka Multi Facility Zone, Kafue Steel, Kalumbila Dam, Kangaluwi Copper Project based in Lower Zambezi National Park, among others (Chileshe & Shamaoma, 2014). Thus, land identification and suitability assessment for agricultural investments in Zambia is limited by institutions lacking either capacity or incentives or professional independence in ensuring socially beneficial outcomes agricultural investments. Most public institutions involved in land administration and agricultural investment promotions do not have adequate resources to carry out their mandates and plan in time for land to attract agricultural investments and development. For instance, by 2013, the Survey Department only had 29 licensed private land surveyors and 7 licensed surveyors working under the Surveyor General’s Office (Chileshe & Shamaoma, 2014). Inadequate capacity also hinders monitoring of compliance.

No robust policy for a coordinated land administration system for agricultural development is in place and decisions on land use and land rights are not coordinated across sectors. Depending on the nature of the proposed agricultural development, inter-ministerial committees are set up encompassing the relevant ministries and agencies on an ad-hoc basis albeit very rarely (Chileshe & Shamaoma, 2014). At district level, inter-departmental committees draw membership from the district offices of the ministries represented locally but they are poorly coordinated, and each department follows its own land use plans and in-house policies. There seems to be a distinct lack of appreciation of the diversity of land, and the need for inter-sectoral and inter-disciplinary management.The Zambia Development Agency is mandated to aid investors in setting up their investments, including the acquisition of land for agriculture. It follows clear and uniform processes for the various services it provides to investors. The time taken from receipt to processing of duly completed application forms for investment licences and permits is two weeks. Those holding rights to customary land with potential for investment have incentives to properly negotiate but their rights are unclear or opportunities to obtain relevant information or assistance do not exist. There is an information asymmetry between rights holders and investors as investors have access to relevant and updated information, while local communities do not. Investors can utilize their financial resources and social capital to obtain information, while right holders, such as rural residents do not have such an opportunity. Rights to land are not always clearly defined for land held under customary tenure, as the rights are multiple and may even be conflicting.Investors can acquire land directly from the state, for instance via the Zambia Development Agency or negotiate with local chiefs for customary land, which is converted to leasehold before a lease can be obtained (Lands Act, 1995). Ideally, local communities who are the rights holders of customary land are supposed to be represented or consulted but increasing reports give evidence of chiefs not consulting their communities (Davis, 2014).

The Environmental Management Act provides for public review of EIA documents, and for collection of public comments and concerns relating to the environment. Project developers are also obliged to seek the views of those to be affected by the project and describe the socio-economic impacts such as resettlements when preparing an EIA. Reports however suggest that despite this legislative and institutional framework, the system on the ground is quite different and marked by a lack of meaningful consultation, no transparency around EIA processes, and little in the way of protection for small-scale farmers and traditional land users (Timbo, 2015). There is no provision for post project implementation involvement of private parties, including the affected communities. Results of environmental audits are only provided to ZEMA and not to the public or local communities. Consultations with affected communities are provided for under the EIA regulations and happens prior to implementation of proposed projects. There are no mechanisms for affected communities for formally accessing projects after project implementation. Interviews with the Executive Director of Zambia Land Alliance reveals that a few nongovernment organizations such as The Zambia Land Alliance (ZLA) are consistent in lobbying for dissemination of information on all land matters in Zambia. ZAL are unequivocal about the need to prioritise the rights of farmers who sit on customarily land tenure.

# **Conclusions and recommendations**

This report has presented information on land administration-agricultural investments nexus. The report argues that land administration and agricultural development are closely interlinked. The report draws on both the Maputo and Malabo Declarations on agriculture on one hand, and UA Declaration on Land on another hand. The report articulates that in the first CAADP NAIP process for Zambia, land was not an integral part of the NAIP and that lack of effective coordination among relevant institutions resulted in challenges during implementation of NAIP for Zambia from 2013 to 2018. The report has established that Zambia has multiple land administration agencies that are poorly coordinated, and that the Ministry of Agriculture has minimal role on administering land for farming activities. Further, the report has established that the various institutions involved in land administration and agricultural development are uncoordinated and conflicted in many ways. The first and second National Agricultural Policies (NAPs) do not factor this complexity and conflicted institutional arrangement involved in land agricultural development. The report further argues that achieving the Malabo Declaration via the second generation CAADP NAIP process will require significant rethink from the first NAIP design and process for Zambia. For achieving the objectives in the Malabo Declaration, the report makes the following recommendations:

1. *Introduce farmland access as core aspect in the second NAIP for Zambia:* The link between effective land administration and increased potential for agricultural investment is clear and strong. Thus, the need for land to be placed at the core of NAIP programmes is a required condition for success of the Malabo Declaration. Aspects of land surveying, farm suitability analysis and farmland infrastructure development should be done in time and such land should be marketed and investors supported with appropriate investment incentives. This could involve establishment of farming blocks across the country to attract agricultural investments for both smallholder and commercial investments. This could be done by strengthening the role of the Land Development Fund.
2. *Establish a high-level coordination Unit on land administration and agricultural investment:* The most striking challenge that adversely impacted the implementation of the first NAIP for Zambia is lack of a coordinating Unit to ensure an orderly and complementary NAIP formulation and implementation process. A coordinating Unit to involve Ministries responsible for Lands, Agriculture, Cooperatives, Local Government and other relevant government agencies need to be established with a high level of political freedom to make transparent recommendations. The Unit should involve private sector institutes and civil society organisations to allow multiple views from multiple stakeholders to be considered and acted upon. The Unit should have mandates to make recommendations for implementation to ensure land administration and agricultural investment are well integrated.
3. *Improve land tenure security for customary land farmland*: Given a rise in commercial interest in customary land by both smallholder and commercial agricultural investments, the need to improve tenure security for customary farmland is urgent. The initial effort could involve issuance of tenure rights documentation for people on peri-urban land in areas around big cities. Such land may include but not limited to all farmland in Lusaka Province, land around big cities and mining towns. This would require strategies that involve strengthening the role of chiefs and ensure effective and transparent coordination involving ministries of agriculture, lands, local government and local councils.
4. *Improve land information system:* It is a fact that accessing information on land remains a major challenge for most agricultural investors in Zambia. The challenge is bigger for smaller holder farmers depending on customary land. Thus, to promote a transparent and inclusive land administration system, information on land must be available to all. This should involve automation of land information system, land use suitability for various use categories and land ownership profiles. This includes land information being translated in seven key local languages. To achieve this, investments must be made in ambitious land auditing and suitability for farm use analysis.

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