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Land Governance in Zambia

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List of Acronyms

CF:	Conservation Farming
CFU:	Conservation Farming Unit
CLGF:	Commonwealth Local Government Forum
FIG:	International Federation of Surveyors
IDP:	Integrated Development Plan
LA	Lands Act
LDRA:	Lands and Deeds Registry Act
MLG:	Medici Land Governance
MLG:	Ministry of Local Government
MOA	Ministry of Agriculture
MLNR:	Ministry of Lands and Natural Resources
MCTA	Ministry of Chiefs and Traditional Affairs
PTT:	Property Transfer Tax
TPIN:	Tax Payer Identification Number
UNZA:	University of Zambia
WARMA:	Water Resources Management Authority
ZEMA:	Zambia Environmental Management Agency
ZILMIS:	Zambia Integrated Land Management Information System
ZRA:	Zambia Revenue Authority

Abstract

Zambia is a landlocked country located in Southern Africa and covers a land area of 752,614 square kilometers of which 11,890 square kilometers is water area. Zambia operates a dual land tenure system being statutory tenure that is based on English Law and customary tenure which is governed under customary law. In terms of classification, 15-20% of the land is held under statutory tenure while 80% is still regulated under customary tenure. Most of the national laws and policies have concentrated on statutory tenure and regulation of customary tenure remains uncodified. The Lands Act simply recognizes customary tenure and supports the conversion of customary tenure to statutory tenure but not vice versa. The management and administration of the two different tenures is supported through different institutional frameworks. For example the current land registration system does not cover customary tenure. As such, there is no comprehensive system of land registration applicable to the two different tenures. In this chapter, the focus is land governance under the two different tenure systems.

The governance of statutory land is situated under the Ministry of Lands and Natural Resources. Other government institutions that play a role in the administration and management of land include Ministry of Local Government, Resettlement department (Office of the Vice President), Land Husbandry Section (Ministry of Agriculture), Government Valuation Department (Ministry of Works and Supply), (Zambia Environmental Management Agency and Water Resources Management Authority (Ministry of Water Development, Sanitation and Environmental Protection) and National Parks and Wildlife Department (Ministry of Tourism and Arts). Customary land on the other hand is governed under the Ministry of Chiefs and Traditional Affairs, administered through traditional leaders.

There are various land governance challenges in Zambia. Some of these include inadequate co-ordination among land management and administration institutions and inefficiencies, traditional leaders' lack of knowledge and skills to govern land, outdated and fragmented land Laws, limited access to formal court systems or alternate means of resolving land disputes.

Key Words: Customary land, statutory tenure, Land governance, Land administration, land management.

1 Background

Zambia is a landlocked country located in Southern Africa and shares boundaries with Tanzania and the Democratic Republic of Congo to the north; Zimbabwe, Botswana and Namibia to the south; Malawi and Mozambique to the east; and Angola to the west. The country covers a land area of 752,614 square kilometres of which 11,890 square kilometres is water area.¹ According to 2010 census of population and housing, the population of Zambia is 13,092,666, out of which 49.3 per cent are male and 50.7 are female.² In terms of land occupation, 60.5 percent (7,925,500) live in rural areas while 39.5 (5,174,500) live in urban areas.³ The average population density would be approximately 17 persons per square kilometer. The country is divided into ten provinces, the most recent inclusion being Muchinga Province.

Figure 1: Map of Zambia showing its provinces and neighbouring countries



Source: <https://zambiareports.com/wp-content/uploads/2015/11/Zambian-Map.jpg>

Zambia has a dual land tenure system namely statutory and customary tenure. The dual land tenure system is a product of the country's history of the colonial settlement on Crown land and the separation of settlements for the indigenous population in native reserves. Statutory tenure

¹ Government of the Republic of Zambia. (2010). 2010 census of population and Housing. Lusaka, *Central Statistics office*, 1.

² Ibid, p7

³ Ibid, p8

is governed by the written laws while customary tenure is regulated by customs. In most urban areas land is held under statutory tenure while in rural areas land is held under customary tenure. The extent of land areas under customary tenure and statutory tenure is subject to debate. The original percentage was 94 per cent for customary land and 6 percent for statutory land which may not be accurate. The current estimates are 15-20% of the land held under statutory tenure while 80% is still under customary tenure due to conversion of customary land to statutory land.⁴ In terms of urban land, most land in urban areas is held informally in unplanned settlements and therefore not surveyed and registered.⁵ The total number of parcels in the country is not known due to the fact the land audit is an ongoing exercise since 2014.⁶

Currently, there is no system of land recording or titling for land held under customary tenure although customary tenure is recognised at law.⁷ The Lands Act provides for the conversion of customary tenure to statutory tenure allowing rural dwellers to obtain certificates of title for their land. However, there is lack of data on the numbers of parcels that have been converted from customary tenure to statutory tenure.

⁴ Chileshe, R. & Shamaoma, H. (2014). Examining the challenges of Cadastral Surveying Practice in Zambia. *South African Journal of Geomatics*, 3(1), 53-63.

⁵ Civic Forum on Housing and Habitat. (2015). Zambia Housing Symposium Report. Lusaka, *Civic Forum on Housing and Habitat*.

⁶ Shlomi, S. (2016). Empowering Land Audit in Zambia through technology. Paper prepared for presentation at the “2016 World Bank Conference on Land and Poverty” *The World Bank - Washington DC*, (unpublished).

⁷ Lands Act, chapter 184 of the Laws of Zambia, s7

2 Institutional Framework on Land Governance in Zambia

The existence of two tenure systems means that the institutional frameworks guiding land governance for statutory land and for customary land are different. The following sections discuss the institutional frameworks for statutory and customary land governance.

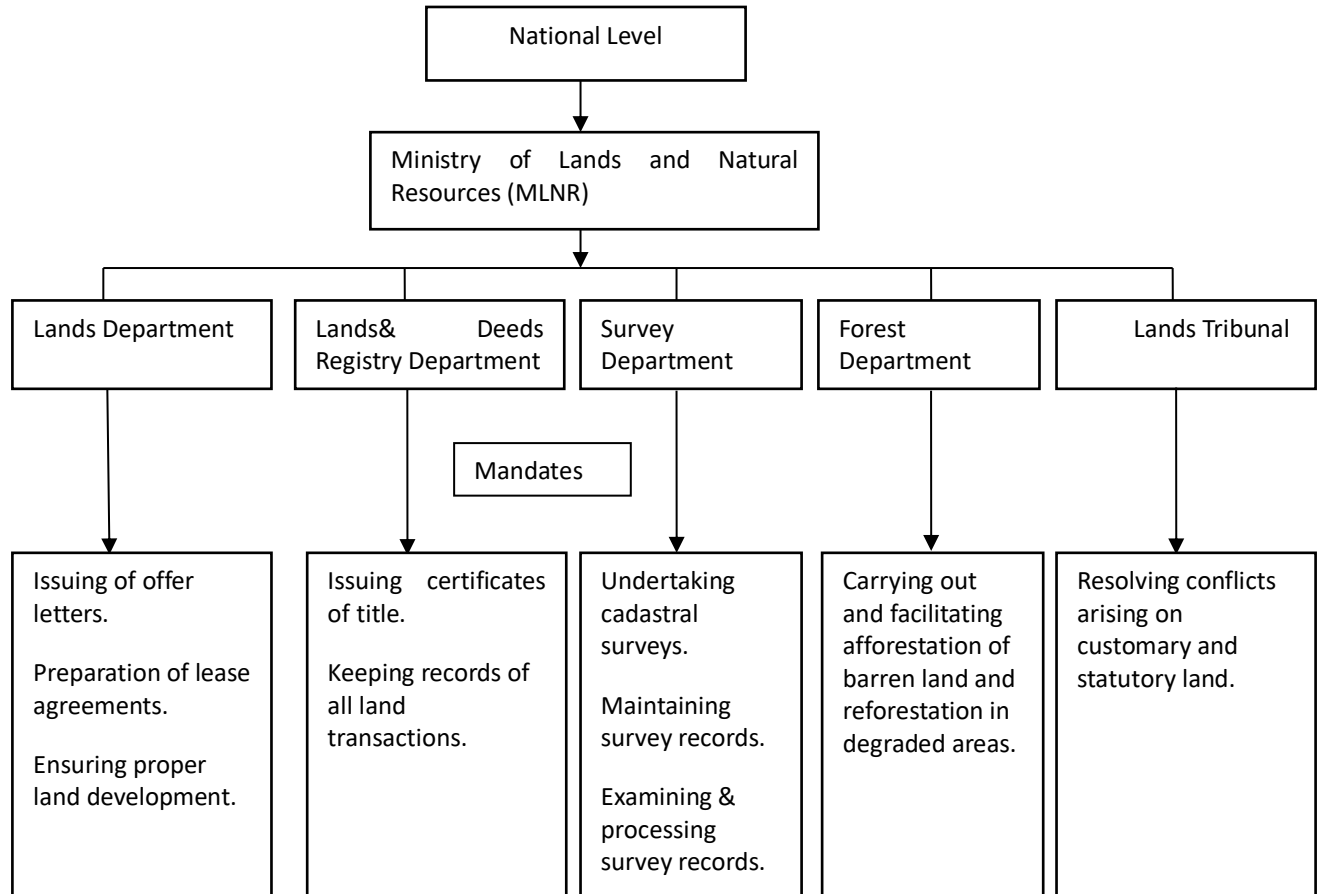
2.1 Institutional Framework on State Land Governance and Administration

Governance of statutory land is conducted through various institutions which include the Ministry of Lands and Natural Resources, Ministry of Local Government, Office of the Vice-President (Department of Resettlement), Ministry of Agriculture (Land Husbandry Section), Ministry of Works and Supply (Government Valuation Department), Ministry of Water Development, Sanitation and Environmental Protection (Zambia Environmental Management Agency and Water Resources Management Authority), and Ministry of Tourism and Arts (National Parks and Wildlife Department). These are explained below.

2.1.1 Ministry of Lands and Natural Resources

The Ministry of Lands and Natural Resources (MLNR) is the principal ministry responsible for state land governance and administration. The MLNR consists of six departments, but only four of them deal directly with matters of land governance and administration. These include departments of Lands, Lands and Deeds, Survey and Forestry. The Lands Department has administrative responsibility for all state land matters such as issuing of offer letters and preparation of lease agreements in the country. They also ensure proper development of areas planned for residential, commercial, industrial, agricultural and other uses by Local Authorities and Department of Physical Planning (Ministry of Local Government), Resettlement Department (Office of the Vice President), and the Land Husbandry Section (Ministry of Agriculture). Land and Deeds Department keeps records of all land transactions and issues certificates of title. Survey department among other functions undertakes cadastral surveys and maintains survey records, compile property index maps, and examine and process survey records. Forest Department carries out and facilitates afforestation of barren land and reforestation in degraded areas, ensures sustainable management and utilisation of forest resources, and identifies areas to be declared protected forest areas to avoid loss of biodiversity and land degradation. The other two departments are the Department of Planning and Information and Department of Human Resources. The MLNR also houses a key statutory body known as the Lands Tribunal whose objective is to resolve conflicts arising on customary and statutory land. The institutional structure and mandates of MLNR are shown in figure 2.

Figure 2: Institutional Structure and Mandates of MLNR



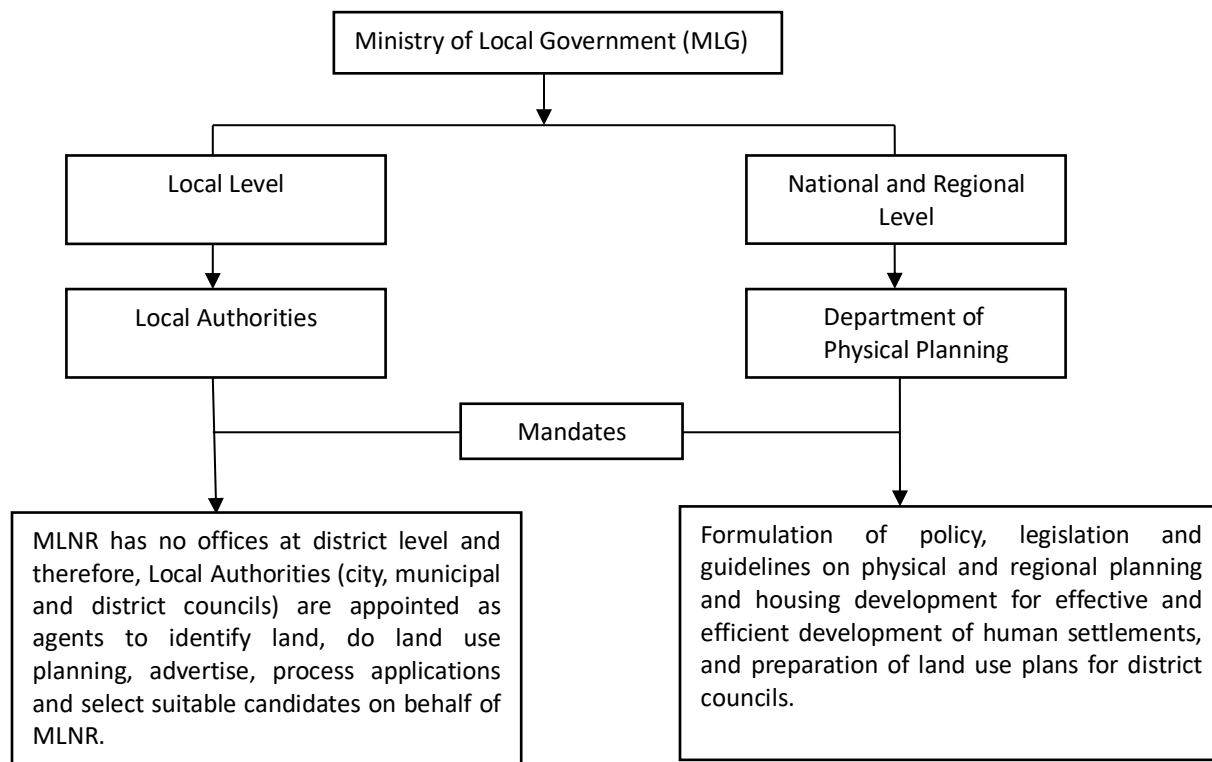
Data Source: www.mlnr.gov.zm/

2.1.2 Ministry of Local Government (MLG)

There are two agencies involved in state land governance and administration under the Ministry of Local Government, namely Local Authorities and Department of Physical Planning. The MLNR is the principle Ministry mandated to carry out the functions of state land governance and administration. However, the MLNR has no offices at district level and therefore Local Authorities are appointed as agents. It should be stated that Local Authorities are called councils and there are 5 city councils, 15 municipal councils and 94 district councils in Zambia. City councils are located in those urban districts which have more population and diversification in economic activities, while the municipal councils cover the suburban regions. District councils are located in those relatively rural districts which have less population and rely heavily on

agriculture.⁸ The functions of the Local Authorities and Department of Physical Planning are indicated in figure 3.

Figure 3: Institutional Structure and Mandates of MLG



Data Source: www.mlgh.gov.zm

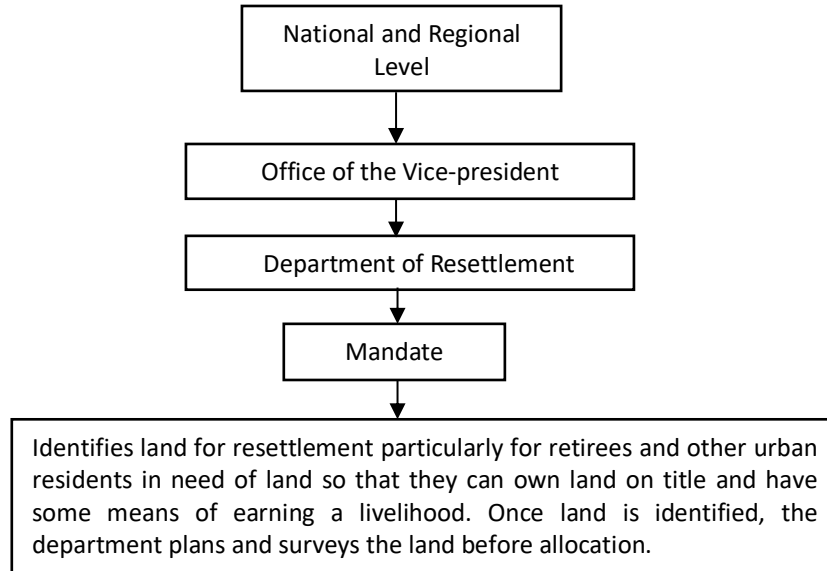
2.1.3 Department of Resettlement

The objective of the Department of Resettlement (under the Vice-President's office) is to identify agricultural land for resettlement for retirees and other urban residents in need of land so that they can own land on title and have some means of earning a living. The creation of resettlement schemes arose from the Government's desire to increase agricultural productivity and reduce poverty⁹. The mandate of the Department of Resettlement is shown in figure 4.

⁸CLGF (2015). The local government system in Zambia. Available online at http://www.clgf.org.uk/default/assets/File/Country_profiles/Zambia.pdf [accessed 20 July 2018].

⁹ Mudenda, F. S. (2007). Land Law in Zambia, Cases and Materials. Lusaka, Unza Press. 69.

Figure 4: Mandate of Resettlement Department

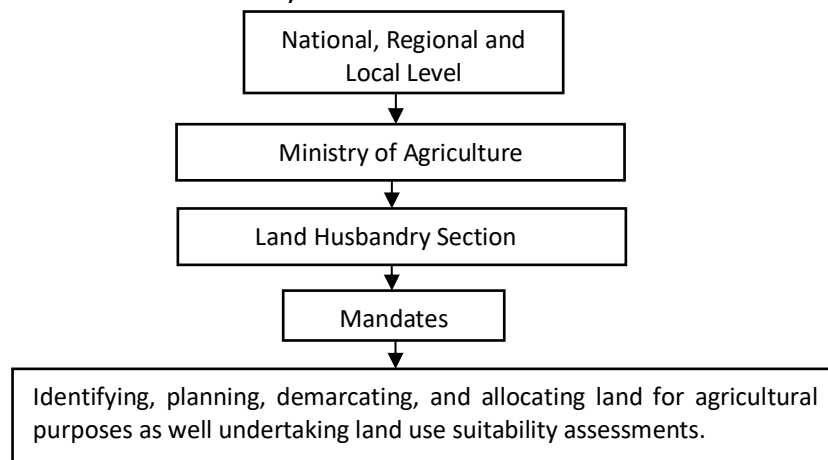


Data Source: www.ovp.gov.zm/?page_id=5229

Land Husbandry Section

Land Husbandry Section in the Ministry of Agriculture through its central, provincial and district offices is involved in the identification of agricultural land, preparation of farm plans and farm layouts, land allocation and demarcations, site preparations, and land use and land suitability assessments. The mandates of the Land Husbandry Section are shown in figure 5.

Figure 5: Mandates of Land Husbandry Section

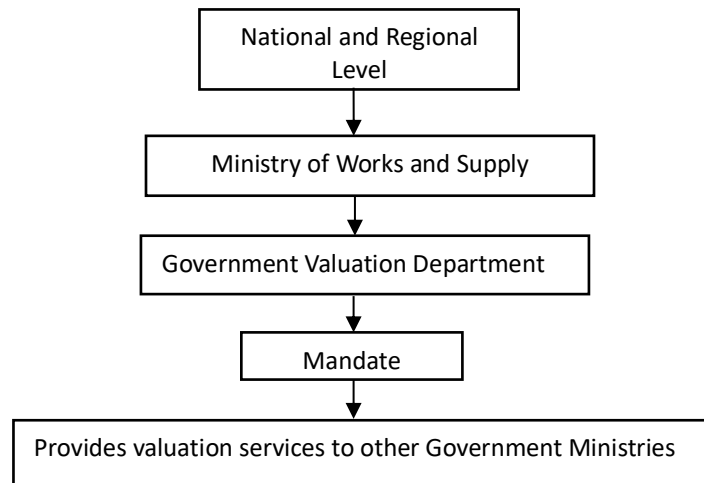


Data Source: www.agriculture.gov.zm/

2.1.4 Government Valuation Department

The Government Valuation Department (under the Ministry of Works and Supply) provides valuation services such as rental valuation, rating and compulsory acquisition (compensation) to other government ministries. Figure 6 shows the mandate of Government Valuation Department.

Figure 6: Mandate of Department of Government Valuation

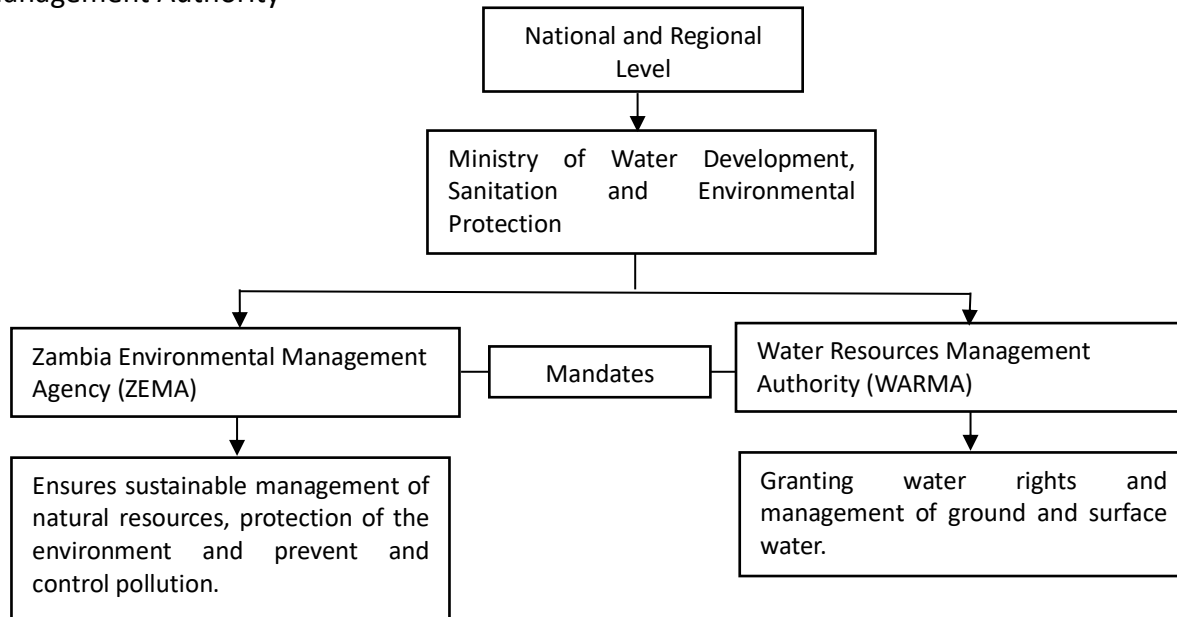


Data Source: www.mws.gov.zm

2.1.5 Zambia Environmental Management Agency and Water Resources Management Authority

Zambia Environmental Management Agency (ZEMA) and Water Resources Management Authority (WARMA) are under the Ministry of Water Development, Sanitation and Environmental Protection. ZEMA is mandated to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment. On the other hand, the mandate of WARMA is to conserve, preserve, and protect ground and surface water as well as regulate its allocation, use, and development. Figure 7 shows the mandates of ZEMA and WARMA.

Figure 7: Mandate of Zambia Environmental Management Agency and Water Resources Management Authority

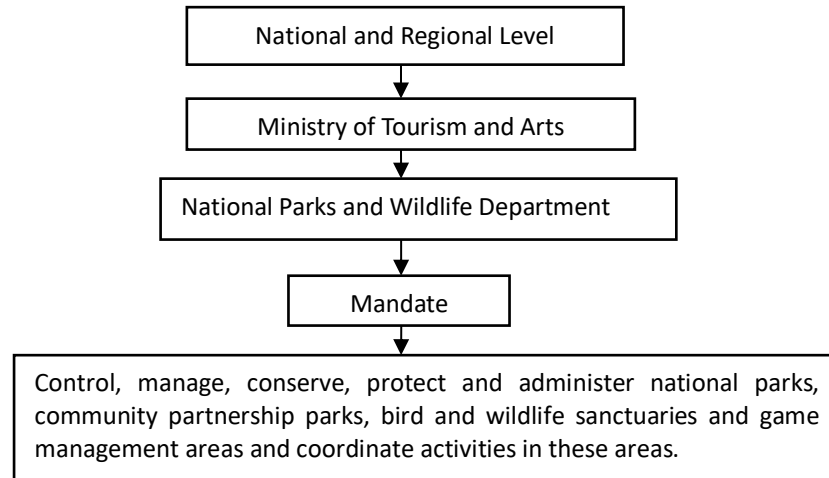


Data Source: www.zema.org.zm/

2.1.6 National Parks and Wildlife Department

The Department of National Parks and Wildlife (under the Ministry of Tourism and Arts) is mandated to manage and conserve land used as among others things parks, and bird and wildlife sanctuaries. Figure 8 shows the mandate of the Department of National Parks and Wildlife.

Figure 8: Mandate of the Department of National Parks and Wildlife



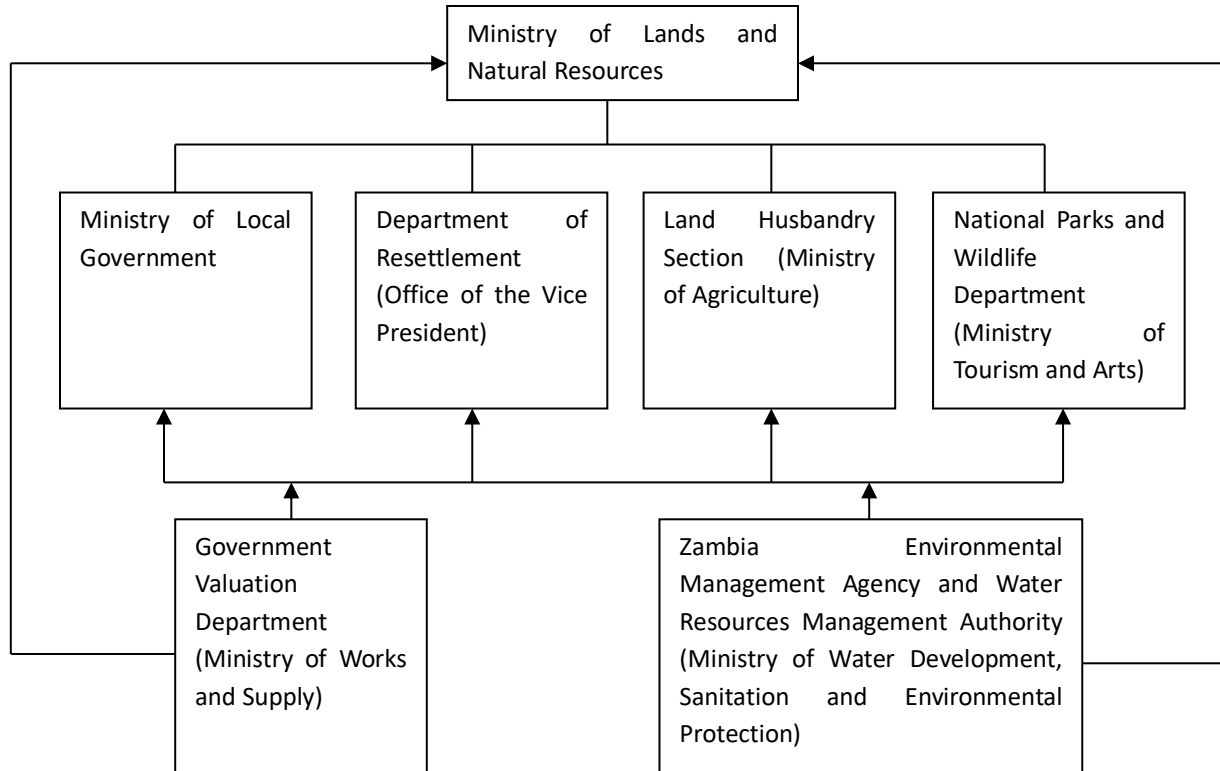
Data Source: www.mota.gov.zm/

2.1.8 Link among Statutory Land Institutions

The main institution involved in statutory land governance is the Ministry of Lands and Natural Resources (MLNR). This implies that the Local Authorities and Department of Physical Planning under the Ministry of Local Government; Department of Resettlement under the Office of the Vice-President; National Parks and Wildlife Department under the Ministry of Tourism and Arts; and Land Husbandry Section under the Ministry of Agriculture are indirectly involved in the governance of statutory land. In this regard, even if Local Authorities may identify, plan and allocate land, plans have to be numbered, cadastral surveys have to be examined, and 99-year certificates of title have to be issued by the Ministry of Lands and Natural Resources. Resettlement Department may plan and allocate land to people for resettlement but cadastral surveys have to be examined and certificates of titles have to be issued by the MLNR. Similarly, Land Husbandry Section may plan and allocate agriculture land to people but cadastral surveys have to be examined and certificates of titles have to be issued by the MLNR. In addition, statutory land under National Parks and Wildlife Department has certificates of title issued by the MLNR.

Government Valuation Department offers valuation services to all the above mentioned land institutions. Zambia Environmental Management Agency provides environment management services while Water Resources Management Agency provides water management services to all the institutions mentioned above. Figure 9 shows the link among statutory land institutions.

Figure 9: Linking Statutory Land Institutions



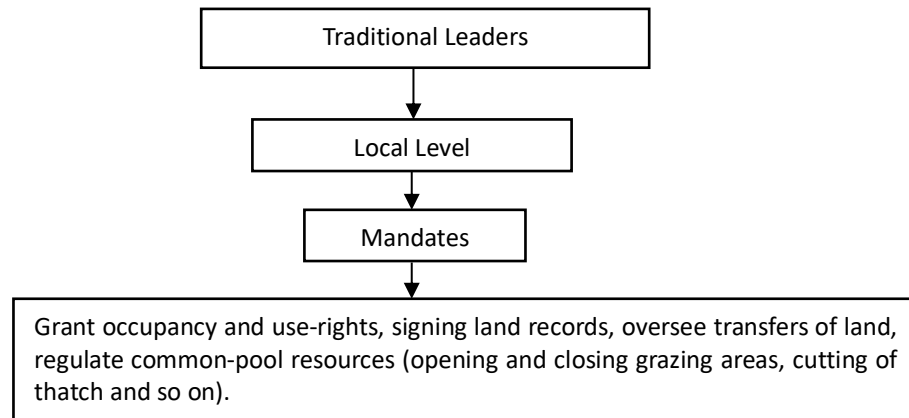
Data Source: www.mlnt.gov.zm/

2.2 Institutional Framework on Customary Land Governance and Administration

Customary land is administered by traditional leaders (chiefs/chieftainesses and headpersons). Chiefs or chieftainesses and headpersons play an important role of ensuring that the land in their localities is administered for the benefit of their subjects.¹⁰ Their mandates are explained in figure 10 below.

¹⁰Sichone, F. (2010). The System of Land Alienation in Zambia: A Critical Analysis of the Legal and Institutional Framework. Master of Law Thesis. *University of Zambia*. Lusaka.

Figure 10: Mandate of Traditional Leaders

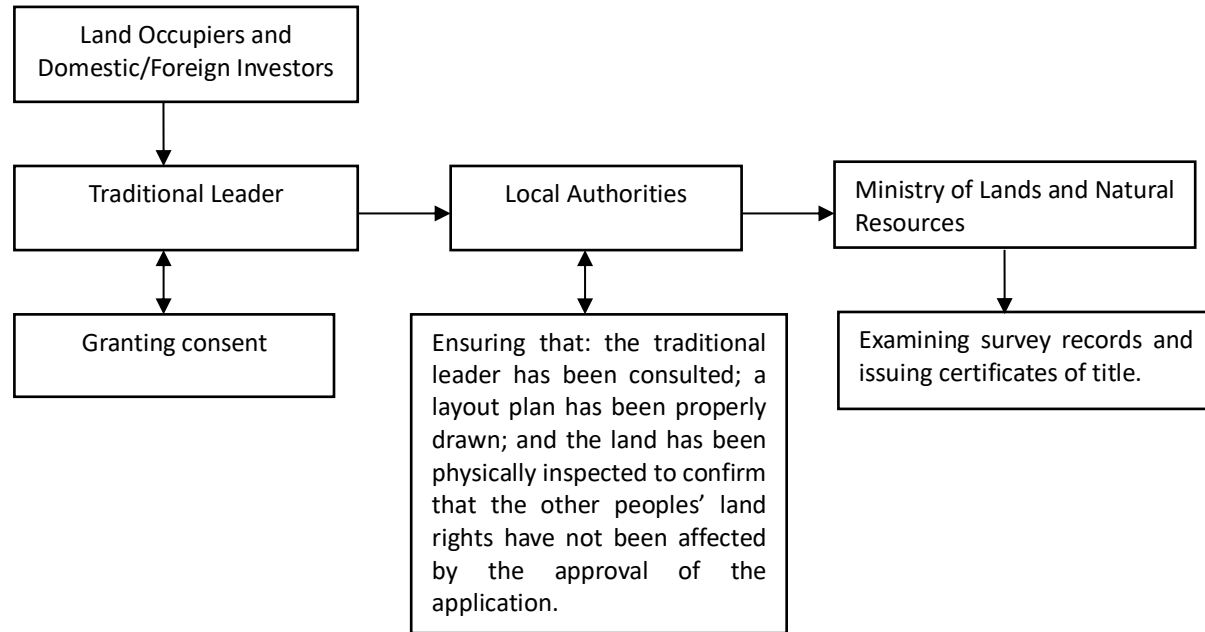


Data Source: www.mocta.gov.zm/index.php/house-of-chiefs

2.3 Institutions and procedures involved in the Conversion of Customary Land to Statutory Land

For land to be converted from customary tenure to statutory tenure the chief or chieftainess of the area where the land is situated grants or refuses to grant consent. If the chief or chieftainess grants consent an application is made to the local authorities who would make a recommendation to the commissioner of lands. In making the recommendation the local authorities will take into account that there is no conflict between the customary law of that area and the Act. The Commissioner of Lands may accept or refuse the recommendation made by the council. If the application is accepted a certificate of title is granted to the landholder. Figure 11 shows the institutions involved in the land conversion process.

Figure 11: Institutions involved in Tenure Conversion¹¹



Data Source: Statutory Instrument No 89 of 1996

Land conversion can be done by customary land occupants as well as local and foreign investors. However, customary land occupants are not well informed about the possibility of the conversion of tenure, and the procedure is bureaucratic, complicated and expensive¹². As a result, many of them (customary land occupants) just sit back and continue occupying customary land without documentation¹³. Local and foreign investors take advantage of the situation by grabbing large tracts of customary land for commercial purposes for undertaking activities such as agriculture, mining, tourism, and manufacturing¹⁴. Consequently, land grabbing leads to displacement of customary land occupants from the land they have occupied for a number of years¹⁵.

¹¹The conversion procedure is stipulated under S.I No 89 of 1996

¹² Van Asperen, P. and Mulolwa, A. (2006-March). Improvement of customary tenure security as pro-poor tool for land development: a Zambia case study. Paper presented at the 5th FIG Regional Conference, Accra, Ghana, 8-11.

¹³ Oakland Institute (2012). Foreign Farmers Undermine Food Security in Zambia. Oakland: *The Oakland Institute*.

¹⁴ Mushinge, A. (2017). Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategy Framework for Preventing Land Conflicts. PhD Thesis. *Technical University of Munich*. Munich, Germany.

¹⁵ Ibid.

3 Legal Framework on Land Tenure in Zambia

Land in Zambia is regulated by several pieces of legislation including the Constitution and each of them provide for different elements of land governance (illustrated in the table below). The legislative framework aims to ensure secured land rights for all.

Table 1: Legislative Framework

Laws	Purpose
Constitution of Zambia, No. 2 of 2016	Provides for principles of land governance and administration. ¹⁶
Lands Act, Chapter 184 of the Laws of Zambia	Provides for the dual land tenure system, vesting of land in the President and recognition of customary tenure and conversion of customary tenure to statutory tenure. ¹⁷
Land and Deeds Registry Act, Chapter 185 of the Laws of Zambia	Provides for land registration and issuance of the certificate of title. ¹⁸
Land Survey Act, Chapter 188 of the Laws of Zambia	The Act provides for the manner in which land surveys shall be carried out and diagrams and plans Prepared. It provides for the protection of survey beacons and other survey marks. ¹⁹
Lands Acquisition Act, Chapter 189 of the Laws of Zambia	This Act makes provision for the compulsory acquisition of land and other property and compensation. ²⁰
Urban and Regional Planning Act, No. 3 of 2015	Provides for development, planning and administration principles, standards and

¹⁶ The Constitution of Zambia, chapter 1 of the Laws of Zambia (amendment No. 2 of 2016).

¹⁷ Lands Act, chapter 184 of the Laws of Zambia.

¹⁸ Lands and Deeds Registry Act, chapter 185 of the Laws of Zambia.

¹⁹ Land Survey Act, chapter 188 of the Laws of Zambia.

²⁰ Lands Acquisition Act, chapter 189 of the Laws of Zambia.

	requirements for urban and regional planning processes and systems. ²¹
Lands Tribunal Act, No 39 of 2010	Lands Tribunal Act was enacted to expand the jurisdiction of the Tribunal. From 2010, the Tribunal has been handling both state and customary land conflicts. ²²
Forest Act, No. 4 of 2015	An Act to provide for the establishment and declaration of National Forests, Local Forests, joint forest management areas, botanical reserves, private forests and community forests. ²³
Mines and Minerals Development Act, No. 11 of 2015	The Act provides mineral rights and licenses and the establishment of the Mining Appeals Tribunal. ²⁴

Data Source: Zambian Land Laws

3.1 Tenure Regimes

Legal security of tenure with regards to access, ownership or use of land confers security on all individuals holding land against the threat of forced evictions or harassment to enable them enjoy their right to land freely. The obligation to confer legal security on tenure is placed on the government.

The current Lands Act²⁵ vests all Zambian land in the President and recognizes two tenure types being statutory and customary tenure. Customary land is controlled by traditional authorities and is administered according to local customs. Customary land tenure is often confused with communal land ownership, yet this is only one form of use of such land and includes all common resources like forest areas and woodlands, rangelands and wetland areas that cannot logically be owned or used exclusively by an individual or a family.²⁶ Customary land tenure is distinguished from statutory tenure in terms of land ownership typology, the absence of formal

²¹ Urban and Regional Planning Act, No. 3 of 2015.

²² Lands Tribunal Act, No. 39 of 2010

²³ Forest Act, No. 4 of 2015.

²⁴ Mines and Minerals Development Act. No. 11 of 2015.

²⁵ Lands Act, Chapter 184 of the Laws of Zambia.

²⁶ Government of the Republic of Zambia, (2017b), Draft National Land Policy, Lusaka, Ministry of Lands and Natural Resources.

land documentation, land market valuation and formal land use management. Even though customary land tenure is regarded as typically communal and therefore without recognised individual land rights, in practice, customary law actually protects both individual and communal land rights, in perpetuity. It recognises the occupancy rights of residents against interference from anyone else, except protection from eviction by government and now increasingly also by customary authorities themselves.²⁷ A large part of land held under customary tenure is for agricultural production by small scale farmers who eke out a living by utilising the land in a traditional manner and planting subsistence crops.

In terms of statutory tenure the right to land is in the form of a renewable fixed term lease registered at the Lands and Deeds Registry.²⁸ The approximate figure is that there were about 200,000 leaseholds as at 2016.²⁹ With a comprehensive national land titling program which is currently ongoing by Medici Land Governance (MLG)³⁰ on urban land these figures may have increased. The objective of the project is to develop a block chain-based land titling program that includes a mobile platform and capabilities for mobile payments. The platform will accommodate streamlined regulations and data collection to assist future government decisions around city planning and land use. This will allow for a more accurate estimation of what is the extent of land held under statutory tenure.

The statutory tenure system provides security of tenure and permits the holder to pass on the property freely to their designated heirs. The statutory tenure is subject to a registration process and to the issuance of a land title which is conclusive proof of ownership.³¹ Statutory land is subject to payment of taxes and rent as well as regulations such as zoning laws, building laws and environmental protection laws. Under statutory tenure the state issues different types of leases to land holders. These leases are subject to different duration, terms and conditions dependent upon the type of lease or licence being issued.

²⁷ Ibid.

²⁸ The deeds registry is established under the Lands and Deeds Registry Act, chapter 185 of the Laws of Zambia and deals with statutory land and land that is converted from customary to statutory land provided for under s8 of the Act.

²⁹ Government of the Republic of Zambia (2017a), Budget Address by Honourable Felix C. Mutati, MP Minister of Finance Delivered to the National Assembly on Friday, 11th November, 2016. p14.

³⁰ Medici Land Governance (MLG), its block chain subsidiary focused on land administration, has signed a Memorandum of Understanding (MOU) with the Lusaka City Council (LCC) that will lead to the issuance of no fewer than 250,000 certificates of title related to real property under the jurisdiction of LCC in and around the capital city of Zambia.

³¹ Lands and Deeds Registry Act, cap 185, s54.

The following are the different types of leases or licenses issued by the state:

Table 2: Types of Leases and Licenses

Types of Leases/License	Duration	Institution Issuing the lease/License	Specific details
Land Record Card (occupancy licence)	10 years	Local authorities	renewable
Provisional Certificate of Title (interim lease)	14 years	Lands and Deeds Registry	Unsurveyed land identified by a sketch plan.
Land occupancy license	30 years	Local authorities	For municipal areas and settlement schemes
99 or 100 year lease	99 or 100 years	Lands and Deeds Registry	<p>Surveyed land</p> <p>100 years if title was freehold before 1st July 1975 and converted to leasehold.</p> <p>99 years if title is granted after 1st July 1975 by the state</p>

Source: Authors

3.2 Land Registration

Land registration is provided under the Lands and Deeds Registry Act (LDRA).³²The register, as is the case in Zambia records the documents affecting the interests in land; the system is called ‘registration of deeds’ and not ‘registration of title’. Registers are statutorily defined under LDRA as:

- (a) a register of documents relating to land not subject to customary title, other than documents referred to in paragraph (b), called the Lands Register;

³²Lands and Deeds Registry Act, cap 185.

(b) a register of documents relating to common leasehold schemes, called the Common Leaseholds Register;

(c) A register of other documents required or permitted to be registered under this Act, called the Miscellaneous Register.”³³

The objective of the Lands and Deeds Registry is to secure publicity of documents relating to land. The registry is a public registry where searches can be conducted on all the registered land in Zambia upon payment of a fee. The register records transaction relating to statutory land and not customary land.³⁴

The LDRA requires that every document purporting to grant, convey, or transfer land or any interest in land, or to be a lease or an agreement for a lease or permit of occupation for a longer term than one year must be registered.³⁵ Similarly, a document purporting to create any charge upon land, whether by mortgage or otherwise, must be registered. If such documents are not registered within the prescribed time, they become invalid.³⁶

Before registration of deeds can take place, the parties should execute and date the documents. Upon lodgment of these documents at the Lands and Deeds Registry, the date of registration will be endorsed on the deed. In terms of ranking and priority, registered deeds will take priority over unregistered or deeds registered subsequently. The legality or otherwise of a particular deed is not affected in any way, what priority determines is that from the date of registration and not the date of execution of the deed, in the absence of any other competing documents the deed has been registered. Registration has no advantage as far as vesting of the property is concerned.³⁷

3.3 Enforcement of Land Rights

The total number of parcels in urban areas is not known due to the fact that the first land audit at national level is yet to be completed. Ownership of land in Zambia can be vested in a single person or jointly in two or more persons. Persons would include natural legal persons as well as artificial legal entities such as companies as well as cooperatives. The certificate of title will show whether the land is held as joint tenants or tenants in common. Joint tenancy as well as

³³ Lands and Deeds Registry Act, cap 185, s9 (a).

³⁴ Mandhu, F. (2016). Land Titles or Deeds Registration as it relates to the New Model of Land Registration System for Zambia. 45, 57-78.

³⁵ Lands and Deeds Registry Act, cap 185, ss 4 & 5.

³⁶ Lands and Deeds Registry Act, cap 185, s6.

³⁷ Simpson, S.R (1976). land law and Registration. *Cambridge University Press*. Cambridge.

tenancy in common are forms of land ownership especially in cases of husband and wife and other family relationships or business partners.³⁸ In the case of a joint tenancy the tenants have separate rights among themselves but they are considered as a single owner. In a tenancy in common each co-owner has a distinct and quantifiable share in the land. Another form of ownership is commonly held title especially for flats. A common leasehold title is registered in accordance with The Common Leasehold Schemes Act.³⁹ The Act under section 4⁴⁰ outlines the procedure where an individual can apply to the registrar of Lands and Deeds to register a common leasehold scheme in relation to the parcel of land.

In terms of customary tenure which is recognised at law⁴¹ there is lack of data on the number of parcels as well as who owns what and where. The Lands Act provides for the conversion of customary tenure to statutory tenure allowing rural dwellers to obtain certificates of title for their land. There is also lack of data on the number of parcels that have been converted from customary tenure to statutory tenure. Customary land that has been converted to statutory tenure cannot revert back. The legislative framework in Zambia provides for conversion of land from customary tenure to statutory tenure but leaves a gap on whether the rights acquired under customary tenure simply extinguish as soon as the parcel of land is converted or continue to exist. A possible answer though not accurate could be that the rights extinguish since once the parcel of land is converted to leasehold it can never be reconverted to customary tenure. This answer does not address the issue of the existing rights or the competing rights held by a person under customary tenure for land that is subject to conversion.⁴²

Table 3: Enforcement of land rights

Types of tenure	Secured/unsecured	Reasons
99 or 100 years leasehold	Secured	Land is registered and certificate of Title is issued to the owner. However land can be

³⁸Mudenda, F. S. (2007). *Land Law in Zambia, Cases and Materials*, Lusaka, Unza Press. 69.

³⁹The Common Leasehold Schemes Act, Chapter 208, of the laws of Zambia.

⁴⁰Ibid, s 4

⁴¹*Lands Act 1995*. Chapter 184 of the Laws of Zambia, s7.

⁴² Conversion of customary land to statutory land is provided for under Section 8 of the Lands Act, Chapter 184 of the Laws of Zambia. Once converted the land can never revert back to customary tenure. Hansungule argues that the aim of section 8 is that it is a device to “kill” the customary society, in: Hansungule M; (2001). 1995 Land Act: An obstacle or instrument of development? *Zambia Land Alliance*, 31.

		compulsorily acquired or repossessed by the state for breach of the conditions laid in the lease such as non-payment of ground rent or lack of development with 18 months of obtaining a development permit. ⁴³
Co-ownership: Joint tenancy	Secured	Land is registered and Certificate of Title is issued to the owners indicating that land is held as joint tenants. ⁴⁴ Title is secured to the same exceptions stated for 99 or 100 years leasehold.
Co-ownership: Tenants in Common	Secured	Land is registered and Certificate of Title is issued to the owners indicating that land is held as tenants in common. ⁴⁵ Title is secured to the same exceptions stated for 99 or 100 years leasehold.
Customary tenure	Secured/unsecured	Lack of documentation Unsecured where large scale land acquisition takes place for

⁴³ Law Association of Zambia. (2016). National Legal Aid Clinic for Women Report on Zambia's Legal Framework on Land Acquisition and Security of Tenure. *Open Society Initiative for Southern Africa and Law Association of Zambia*, 25-27.

⁴⁴ Mudenda, F. S. (2007). *Land Law in Zambia, Cases and Materials*, Lusaka, Unza Press, 69.

⁴⁵ Mudenda, F. S. (2007). *Land Law in Zambia, Cases and Materials*, Lusaka, Unza Press, 71.

		developmental projects Individual rights can be enforced in customary areas. ⁴⁶
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Source: Authors

3.4 Equity and Non-discrimination.

The current legal framework does not guarantee equity and non-discrimination with regards to issues relating to land acquisition and decision making processes for statutory land. For instance, the Lands Act 1995 does not adequately provide for procedures for allocation and sale of land. Consequently, certain groups, such as women, persons with disability or the youth may be excluded from participation in the acquisition of land and decision making processes. This is further illustrated in a relatively small number of women that are allocated land under the statutory tenure.⁴⁷

Customary land tenure on the other hand perpetuates gender discrimination especially among women and the youth who are usually excluded from key decisions relating to allocation of land. For instance, women are normally discriminated against in key decisions relating to land allocation.⁴⁸ This is due to various reasons including existence of Constitutional provisions⁴⁹ that permit discrimination of women on grounds of personal law. Under the customary tenure, there is an inclination towards male dominated interests which tend to be biased against women hence weakening the equitable distribution of land.⁵⁰

In addition, under the Act, once a customary land tenure right has been converted to statutory tenure, the change is irreversible, thus extinguishing the customary land rights indefinitely. This is both contrary to the basic principles of equity and non-discrimination, this is detrimental

⁴⁶ Nicholas J. S., Chamberlin J., and Hichaambwa M. (2015, September). The Geography of Customary Land in Zambia: Is Development Strategy Engaging with the Facts? Retrived from <http://www.iapri.org.zm> and <http://www.aec.msu.edu/agecon/fs2/zambia/index.htm>

⁴⁷ Draft National Land Policy (2017).

⁴⁸ Odeny M (2013). Improving Access to Land and strengthening Women's Land rights in Africa: Paper prepared for presentation at the Annual World Bank Conference on Land and Poverty. 8.

⁴⁹ Article 23 (4) of the Constitution of Zambia, chapter 1 of the Laws of Zambia.

⁵⁰ Munalula M.M. (2014). Distributive Justice in Zambia: Lozi Women and Customary Land Rights. *Zanzibar Yearbook of the Law*, Volume 4 at 207.

particularly to individuals that might want to revert to customary tenure.⁵¹ The law assumes that statutory land tenure is more favourable compared to the customary tenure, due to the limitations aligned to rights over customary land.⁵² Consequently, women have limited access to land, as well as ownership.

Zambia's ratification of the 1979 Convention on the Elimination of All Forms of Discrimination against women in 1985, and has subsequently, domesticated it by the adoption of the Gender Equity and Equality Act 2015.⁵³ The legislation is progressive and intended to address the mischief relating to issues of equity and non-discrimination in decisions relating to land. Unfortunately, the Act has not yet been activated into law.

3.5 Land Markets

In Zambia there are two types of markets regarding statutory land: one called the sales market while the other is the rental market. The market for the sale of real properties is not subject to legislative controls. The market forces determine the prices. Rented property is subject to regulations under the Rent Act⁵⁴ which provides for residential proprieties while the Landlord and Tenant (Business Premises) Act⁵⁵ provides for industrial and commercial properties. The purpose of these pieces of legislation is to protect the tenants from excessive rentals and evictions by the landlords. In practice the rentals are determined by the prevailing market forces.

For customary land, there exists an informal market for both sales and lettings. Although sales and lettings do take place, they are rare and limited to areas where there is some sort of economic development.⁵⁶ This is because of subsistence economy coupled with abundance of land in rural areas. Where sales do occur it is usually the sale of improvements on the land and not the land itself. The reason for this is the understanding that land belongs to the respective ethnic groups which prohibits the individual sales of land.⁵⁷

⁵¹Spichiger, R. and Kabala, E. (2018). Gender and Equality and Land Administration: The Case of Zambia. *DIIS Working Paper*, 18.

⁵² Section 8(1) Lands Acts Cap 184.

⁵³ The Gender Equity and Equality Act No. 22 of 2015 has been enacted but has not been brought in to effect due to the entrenched Bill of Rights in the New Constitution.

⁵⁴Rent Act, Chapter 206 of the Laws of Zambia.

⁵⁵ The Landlord and Tenant (Business Premises) Act Chapter 193 of The Laws of Zambia.

⁵⁶ Hansungule, M. (2001). 1995 Lands Act: An obstacle or instrument of development? Lusaka, *Zambia Land Alliance*. 27.

⁵⁷Ibid. 28

3.6 Expropriation

Compulsory acquisition of land in Zambia is regulated under both the Constitution⁵⁸ as well as the Lands Acquisition Act.⁵⁹ Article 16 of Part 111 of the Constitution states:⁶⁰

16. (1) Except as provided in this Article, property of any description shall not be compulsorily taken possession of, and interest in or right over property of any description shall not be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

The current Constitution provides a negative pledge for protection of the right to own property in that if property is compulsorily acquired for public purposes adequate compensation is to be paid as prescribed. Article 16 of the Constitution is a vertical pledge by the state that it will not interfere with the enjoyment by individuals of their property. However, The President may if he is of the opinion that it is desirable or it is in the interest of the public acquire any property of any description from the individual who owns it. Therefore the right to property is not absolutely guaranteed.

The powers of the President to acquire land compulsorily can be challenged on the basis of legality as was decided by the Supreme Court in the case of *Zambia National Holding Limited and Another v The Attorney General*.⁶¹ The facts in this case were that Zambia National Holding Limited brought a petition in the High Court to challenge the decision for the respondent to acquire compulsorily under the Lands Acquisition Act. The President resolved that it was desirable or expedient in the interests of the Republic to acquire this property. The appellants wrote to the respondent suggesting a sum of money to be paid as compensation, however, the question of compensation was postponed until the court had disposed of the challenge to the legality and constitutionality of the compulsory acquisition. The petition was unsuccessful and the appellants appealed. The Supreme Court held that the President's power to acquire land can be questioned in terms of legality.

Compensation where property is compulsorily acquired is paid out by the government in terms of section 10 of the Lands Acquisition Act⁶² which provides that money is paid out from funds

⁵⁸The Constitution of Zambia, Chapter 1 of the Laws of Zambia (Amendment Act No. 2 of 2016).

⁵⁹Lands Acquisition Act, Chapter 189 of the Laws of Zambia.

⁶⁰ The Constitution of Zambia, Chapter 1 of the Laws of Zambia, Article 16(1).

⁶¹*Zambia National Holding Limited and Another v The Attorney General* [1991] SCJ.

⁶²Lands Acquisition Act, Chapter 189 of the Laws of Zambia, s10.

held by Parliament, where compensation in money as may be agreed between the parties. In the alternative it is possible for the government to offer a grant of other land not exceeding in value the value of the land acquired, upon the same terms and conditions. In the case of disagreement the amount is determined by the courts of law.⁶³

⁶³Ibid s11(2)

4 Land Dispute Resolution and Conflict Management

Disputes on state land are mainly resolved through litigation using the formal court structure. These disputes are resolved through the Subordinate Courts which are established under the Subordinate Courts Act⁶⁴, Lands Tribunal established under Lands Tribunal Act⁶⁵, and High Court which is established under the Constitution and the High Court Act.⁶⁶ The Subordinate Court has jurisdiction in terms of land disputes relating to land on title.⁶⁷ The Lands Tribunal was established as a specialised land court in 1996 to resolve land disputes in a timely and cost effective manner. A person who is dissatisfied with the decision of either the Subordinate Court or Lands Tribunal may appeal to the High Court. The High court has original jurisdiction for disputes on state land. This means that cases relating to land disputes can be commenced and decided by the High Court. For land dispute cases a case on the same set of facts cannot be commenced in the Subordinate Court, the Lands Tribunal and the High Court at the same time. This restriction has been placed in the laws to prevent forum shopping. A system exists to appeal rulings on land cases. As explained earlier, if the parties are dissatisfied with the decision of the Subordinate Court or Lands Tribunal, the parties can appeal to the High Court, the Court of Appeal and finally to the Supreme Court of Zambia. The decision of the Supreme Court is final and binding on the parties.

Alternative dispute resolution mechanisms such as arbitration and mediation are also available alongside the formal court system. The aim of the alternative dispute resolution system is to ensure that disputes are resolved in an informal, timely, and cost effective manner.

Disputes on customary land on the other hand are mainly resolved by local courts and traditional courts which are constituted by the traditional leaders. Where parties to the disputes elect not to use the local courts due to court fees and other expenses that may be required, they may use traditional courts as a convenient option. Although, traditional courts are not recognised in the formal courts system, they resolve a significant number of disputes on customary land in an effective and equitable manner.⁶⁸ The methods of dispute resolutions by

⁶⁴Subordinate Courts Act, Chapter 28 of the Laws of Zambia.

⁶⁵Lands Tribunal Act No 39 of 2010.

⁶⁶ The Constitution, Act No. 2 of 2016, Article 133 and High Court, Chapter 27 of the Laws of Zambia.

⁶⁷Subordinate Courts Act, Chapter 28 of the Laws of Zambia s23.

⁶⁸Hall, M., Murombedzi, J., Nkonkomalimba, M., Sambo, P., and Sommerville, M. (2017). Zambia customary land documentation tenure assessment. Lusaka, Zambia: *USAID Tenure and Global Climate Change Program*.

the traditional courts are negotiation, mediation, arbitration, judicial recourse, avoidance, and self-help.

Negotiation is a process of settling disputes between parties and restoring existing relationships by reaching a consensus, while mediation involves an independent third party who steps into the dispute resolution process to act as an intermediary between the disputing parties. In the customary system, the mediator can be a headperson, chief, or village elder.⁶⁹

Traditional courts are governed by a system within a particular chiefdom. A dispute brought before a traditional court requires all parties to be present together with their witnesses at the time of hearing the matter. Where a party is dissatisfied with the decision of the traditional court, the party can apply to rehear the matter in the local court, in which case the matter will then fall within the formal court system and subject to the usual appeal structure.

In addition, civil society organisations such as National Legal Aid Clinic for Women, Zambia Land Alliance, and the Legal Resources Foundation help parties to resolve their land disputes in urban/peri urban and rural areas. In the two Mpongwe⁷⁰ cases which have been decided by the highest court being the Supreme Court whose decisions are binding on the parties. To resolve the dispute from a practical perspective civil societies have facilitated meetings between the commercial farming companies and the community members regarding the issue of displacements. The aim of these meetings is to retrieve the land for the communities or to find alternate land on which the communities can be settled. On the ground the members of these communities have been left without land, their lives have been disrupted leaving men, women and youth as well as children without food, water, shelter and the most important the source of livelihood (land). The members of the communities are labelled as squatters and are being forcefully removed from their land in the name of development and improved status of life promised by the state. The state simply watches and seems disinterested in meeting its basic obligation of protecting its people and denying the community members the right to food a very basic human right.

⁶⁹Hall, M., Murombedzi, J., Nkonkomalimba, M., Sambo, P., and Sommerville, M. (2017). Zambia customary land documentation tenure assessment. Lusaka, Zambia: *USAID Tenure and Global Climate Change Program*. 15

⁷⁰Mpongwe Development Corporation Limited v Francis Kamanda and 51 Others Appeal No.137 of 2007 and Mpongwe Development Company Limited v Francis Kamanda and Others SCZ Judgement No.14 of 2010.

5 Valuation and Taxation

There are two forms of valuation in Zambia, one being statutory while the other being non-statutory. Statutory valuation is done for taxation as well as land acquisition. Non-statutory valuation is for sale and purchase transactions, secured lending, insurance and accounting among others. It is important for the value of the property to be determined for the purposes of paying the different types of taxes relating the real property. The collection of taxes from property owners is one form of raising revenue for the central as well as local government.

The two main types of taxes are the property transfer tax and the municipal tax. Property transfer tax is payable by the vendor upon sale of the property to the Zambia Revenue Authority. For the purposes of paying the property transfer tax the value of the property is determined by the valuation surveyors in accordance with the Valuation Surveyors Act.⁷¹ The Act requires for a valuation surveyor to be registered by the Valuation Surveyors Registration Board in order to assess the value of a property.⁷² The methods for valuation of the property are not provided under the Act but are based on the general methods to assess the value of the property. The methods are, direct comparison, investment or income, accounts or profits and cost. All these methods are utilized in Zambia.

In Zambia, the law⁷³ on payment of property transfer tax (PTT) states that the tax is payable within 14 days from the date of assessment of the realizable value. The PTT provisional return form is available from the ZRA tax offices or ZRA web portal. The vendor is required to fill in the PTT return and provide additional documents to ZRA. The documents include the Tax Payer Identification Number (TPIN) for the seller, contract of sale, State consent to assign, identity card for both the seller and the buyer, a valuation report for property in cases where property value exceeds ZMW500, 000.00 (US\$41,946.31)⁷⁴. Once the documents are lodged and PTT is paid in full, the ZRA then issues a tax clearance certificate and the tax payment receipt.

In terms of rating valuation this is essential for raising revenue for local authorities. The appointment of the valuation surveyor is subject to the condition that the surveyor should be a registered valuation surveyor working for the government valuation department in accordance with the Rating Act.⁷⁵ The methods and the process of valuation are the same as the ones

⁷¹The Valuation Surveyors Act, Chapter 207 of The Laws of Zambia.

⁷²Ibid, s9

⁷³ The Property Transfer Tax Act Chapter 340 Of The Laws Of Zambia and its amendments.

⁷⁴ US\$1 is equal to ZMW11.92 as at 5th December 2018.

⁷⁵ Rating Act No. 12 of 1997, s (3) (2).

indicated for valuation of property transfer tax. The Act provides for declaration of a rateable area.⁷⁶ For the property to be rateable it should be located within the rateable areas which are described as land held under statutory leasehold or statutory housing area; land whether developed and undeveloped which has been on title for 2 years and has been serviced; and agricultural land not used for agricultural purposes. Non-rateable properties include property in occupation of the President as head of state; property used for any public utility; rateable property that is sold with the benefits of planning permissions, licenses and other consents; and property offered for sale with improvements existing as at the time of valuation.

The respective local authorities are responsible for ensuring that the taxation of these properties is efficiently carried out through the rating valuation process. The process includes several stages which begin with the passing of a resolution by the full council to prepare the valuation roll and appoint a valuation surveyor. The appointment should be approved by the Ministry of Local Government. The Council then notifies the leaseholder through the public media of the intended inspection of all rateable properties within the cities which are residential, commercial and industrial. After which field inspections are carried out the surveyor delivers the valuation roll to the town clerk and both parties sign the declaration. The valuation roll is then published to notify the property owners that they can inspect and lodge any objection to the values indicated in the valuation roll. If there is an objection the Rating Valuation Tribunal will sit to consider the objection.

In terms of transparency, publicity and effectiveness the property transfer tax system has a procedure which is clearly provided by Zambia Revenue Authority but this information is not readily accessible by people wishing to sell or buy property. The process is transparent in terms of allowing the aggrieved party who is dissatisfied with the decision to appeal against the decisions. In cases where the public official at ZRA has acted ultra vires the powers the aggrieved party has the right to appeal to the Tax Appeals Tribunal. The Tax Appeals Tribunal is a specialized court whose jurisdiction stems from an Act of Parliament.⁷⁷ Its mandate is to adjudicate tax disputes that arise between the Taxpayer and the Zambia Revenue Authority.

The transparency, publicity and effectiveness in the rating system is characterised by description of the processes in the legislative framework which are available to the public. Valuation rolls are accessible and widely publicized to the property owners. In terms of effectiveness the laws

⁷⁶ Ibid. s6

⁷⁷ The Revenue Appeals Tribunal Act No. 11 of 1998 which has been repealed by the Tax Appeals Tribunal Act No. 1 of 2015.

are not implemented on the ground due to several constraints that include lack of human and financial resources. For example, the requirement to conduct rating valuation for local authorities every five years in accordance with the Act⁷⁸ has not been possible.

⁷⁸ Rating Act No. 12 of 1997, s (8) (3).

6 Land Use Planning and Control

Land use planning and control are vital elements in any country. This is because of the existence of different communities made up of different individuals having different needs, interests and life styles. The legislative framework for planning and control has been revised recently in Zambia. The Urban and Regional Planning Act⁷⁹ provides for development, planning and administration principles, standards and requirements for urban and regional planning processes and systems. It also provides for a framework for administering and managing urban and regional planning for the country. In addition it also provides for a planning framework, guidelines, systems and processes for urban and regional planning.⁸⁰

Urban and Regional Planning legislative framework provides for procedures for integrated urban and regional planning in a decentralised system of governance to ensure involvement of different stakeholders. The different levels of planning under the Act are a national planning framework, regional development plans and local area plans as shown in table below:

Table 4: Mandate at different levels

Level	Mandate
National Planning Framework	General policy framework for development of land in all provinces. Planning guidelines for regional development plans, integrated development plans, local area plans and sectoral plans.
Regional Development Plan	Provide for use and development of land as a natural resource at a regional (provincial) level.
Local Area Plans	Provide detailed proposal for development of land at district level.

Data Source: Urban and Regional Planning Act No. 3 of 2015

6.1 Land use planning in urban areas

In urban areas, the Urban and Regional Planning Act introduces the concept of comprehensive five (5) year Integrated Development Plans (IDPs) to be prepared for all municipalities which incorporates “informal unplanned areas” as “special treatment areas” for urban regeneration and introduces the concept of “planning agreements” between Chiefs and Local Authorities to ensure effective and coordinated planning of peri-urban areas and all customary land.⁸¹

⁷⁹Urban and Regional Planning Act No. 3 of 2015.

⁸⁰Preamble of Urban and Regional Planning Act No. 3 of 2015 p27.

⁸¹Urban and Regional Planning Act No. 3 of 2015 s16.

Urban land use planning is done by planning authorities who include the city and municipal councils and the department of physical planning. The procedures for both the preparation and implementation of urban land use plans are clear and well documented in planning law.⁸² The following are the steps for land use planning:

Table 5: Land use planning procedure

Step 1: Local Authority (i.e. city, municipal or district council) identifies land for development.

Step 2: Local Authority establishes the suitability of the use of land

Step 3: Planning authorities prepare layout plans and requests Lands Department at the Ministry of Lands and Natural Resources to check for land availability.

Step 4: If land is available, Lands Department requests Survey Department to number the layout plan.

Step 5: When the Lands Department receives numbered plans from Survey Department, they send copies to the planning authorities.

Step 6: Local Authority provides services such as water, roads, electricity and sewerage

Source: Mushinge, 2017

6.2 Land use planning in rural areas

The situation in Zambia regarding land use planning in rural areas is complex due to the difference between customary and state land. The new Act⁸³ creates responsibilities for government to plan on customary land. The responsibilities have not been stipulated under the Act and planning regulations have not yet been enacted to implementation of the Act.

6.3 Delivery of Services

The problem of service delivery is present in both urban and rural areas. In urban areas the local authorities have been slower in coping with the ever increasing population which has consequently led to increased demand for serviced land. This has often resulted in informal

⁸²Ibid ss35 and 36

⁸³Urban and Regional Planning Act No. 3 of 2015, s20 (6).

settlements within the urban areas. The capacity of local planning authorities needs to be strengthened to respond to growing urban development needs. There is need to build human, and technical capacity and mobilize adequate resources for authorities to respond to demands of rapid urbanisation, population growth and rural to urban migration.

6.4 Development Permits

Planning permission has to be obtained before any development on land, change of use of land or subdivision is undertaken by the owner of the land as per the requirements in the Act.⁸⁴ A planning authority has to grant development permit for a major development or change of use within 90 days and for other developments the period is 28 days.⁸⁵

In terms of the procedure the submitted building plans are scrutinized by 3 departments of the Council before recommendations to Plans, Works, Development and Real Estate (PWDRE) Committee for either outright approval, approval with conditions or disapproval. This is followed by Full Council for ratification of grant of the development permit.⁸⁶

The Act provides for public objection and consultation⁸⁷ on planning applications in circumstances where the stakeholders are adversely affected by the granting of the building permit. Once the decision of the planning authority is made an aggrieved party may appeal against the decision to the Planning Appeals Tribunal.⁸⁸ The Planning Appeals Tribunal shall determine disputes and hear matters relating to the decisions of the planning authorities.⁸⁹ Judicial review is available where the decision making process of a public body to which an individual has been subjected and not to the merits of the decision. On appeal the tribunal will consider whether the public body had the power to act in the matter in the manner it did, whether it followed procedure, whether it exceeded its jurisdiction?⁹⁰

6.5 Building Inspection

Any construction being undertaken in the urban area has to be inspected by the Building Inspectors in local authorities. Once the building plans are approved the Building Inspectorate

⁸⁴Urban and Regional Planning Act No. 3 of 2015, s49 (1).

⁸⁵ Ibid s 55

⁸⁶ Ibid s 55

⁸⁷ Ibid s 58

⁸⁸ Ibid s 59

⁸⁹ Ibid s 62

⁹⁰ Anheuser-Busch Inbev, 1st Applicant; Zambia Breweries Plc, 2nd Applicant; National Breweries Plc, 3rd Applicant And The Attorney General, 1st Respondent; The Minister Of Finance And National Planning, 2nd Respondent; The Securities And Exchange Commission, 3rd Respondent, 2017/HP/1243.

will conduct an inspection of development. The construction must be inspected at six (6) different stages and these are:

- Trenches
- Foundations
- Damp and Ant Courses
- Drainage
- Completed up to wall plate level
- Completed and ready for occupation.

A developer who may wish to make alterations to the development, must make an application to the planning authority to vary the terms and conditions of the planning permission.⁹¹ When a building is completed the developer is required to obtain an Occupation Certificate from the Local Authority. An Occupation Certificate is a permit allowing the developer to occupy and use the building.

6.6 Land Use Control

In terms of monitoring and revision of planning provisions the Act stipulates that monitoring is provided for under the integrated development plans.⁹² The content of the integrated development plan should have a planning survey, a development framework and an implementation programme.⁹³ The implementation programme should include a monitoring and review of the integrated development plan using key performance indicators.⁹⁴ A planning authority shall review its integrated development plan every 5 years.⁹⁵

The decision-makers have to release funds, instruct sectoral agencies and facilitate the work of private-sector collaborators. Governments may use incentives such as grants and subsidies and may introduce regulations. Sectoral agencies such as the Forestry, Agriculture and Irrigation Departments may work directly where they have the necessary staff and experience; alternatively, they may work indirectly by training as well as through extension services, field demonstrations and workshops.

⁹¹Urban and Regional Planning Act No. 3 of 2015, s56 (1).

⁹²Ibid s20

⁹³Ibid s20()

⁹⁴Ibid s 20(5)(d)

⁹⁵Ibid s 45(1)

The Conservation Farming Unit (CFU), a civil society organisation that has been spearheading the concept of Conservation Agriculture in Zambia since 1996 but it up scaled its activities in 2006. In Zambia CFU is currently present in 45 districts and the network is spread across 6 regional offices, 100 dedicated Field Staff and a cohort of 2,880 Lead Farmers. CFU mainly concentrates on providing the extension training service spread through the Lead Farmer system. These Lead Farmers (who are well trained by CFU Field Officers) train anyone in their communities who wants to acquire the knowledge on CF. There are no incentives given by CFU but members of the community attend the trainings because they want to learn the technology.⁹⁶

6.7 Climate Change and Environmental Management

The need for mainstreaming climate change and environmental management in land use planning is clear and urgent. Climate change is no longer only an environmental issue but is increasingly recognised as a political economy issue. It is a ‘threat multiplier’, amplifying existing social, political, and natural resource stresses. Climate change is an existential threat, affecting everyone and everything. However it is and will continue to disproportionately affect the poorest and most vulnerable people and places the most, impacting negatively those least responsible for the climate crisis.

In accordance with the planning laws issues of environmental management should be part of the integrated development plan.⁹⁷ In terms of content there should be a baseline environment assessment of the areas to be covered by the plan.⁹⁸

Without addressing climate change comprehensively, goals on eradicating poverty will be ineffective and fail to ensure sustainable development. One of the recognised shortcomings of the MDGs was the failure to properly integrate social, economic and environmental aspects of development.⁹⁹

⁹⁶ Conservation Farming Unit. (2019). Retrieved from: <https://conservationagriculture.org/>

⁹⁷ Ibid s 19(4)(e)(v)

⁹⁸ Urban and Regional Planning Act No. 3 of 2015, s20 (3) (e).

⁹⁹ The Millennium Development Goals Report, 2015 UN, New York.

7 Management of Public Land

Under the Lands Act all land in Zambia is vested in the President¹⁰⁰ who hold it on behalf of the people of Zambia. The classification of land includes statutory land and customary land, however public land is part of statutory land. Public land has not been defined under the Lands Act¹⁰¹ but can be referred to any land that is held in trust and meant for Government use. This land is used as national parks, forest reserves, conservation areas, recreation areas and historic and cultural sites or any land set aside for public use.¹⁰² Public use also includes land set aside for the establishment of public educational, health service and other public institutions. What is defined in the Act is ‘public purpose and not public land’¹⁰³ as follows:

Table 6: Definition of public land use

- Land for exclusive use by the Government;
- Land used for sanitary improvements;
- Land used for laying out of townships;
- Land used for aviation;
- Land used for the construction of railway, road, hydro-electric and other public works; and
- Land used in connection with the preservation, conservation, development or control of forest produce, fauna, flora, soil, water and other natural resources.

Data Source: Lands Act, chapter 184 of the Laws of Zambia

It therefore follows that a company or individual cannot not own public land and the government decides the purpose for which public land can be used. In terms of public land some of the information is or may be available to the public, however accessibility is limited.

7.1 Public Land Inventory

Land inventory is a system that serves to answer land data queries of how much, how many and where, with an emphasis on reports which derive primary data. The objective of a land inventory is data collection, input, and editing to ensure accurate and high integrity base of land data. In terms of the land inventory the available data in Zambia is a simple estimation based on

¹⁰⁰ Lands Act, chapter 184 of the Laws of Zambia, s3

¹⁰¹ Lands Act, chapter 184 of the Laws of Zambia.

¹⁰² Ibid s 4(2)

¹⁰³ Ibid

research carried out for a report on the implementation of the land governance assessment framework.¹⁰⁴ This data may not be accurate but requires verification through primary research.

Table 7: Estimated categorisation of land area

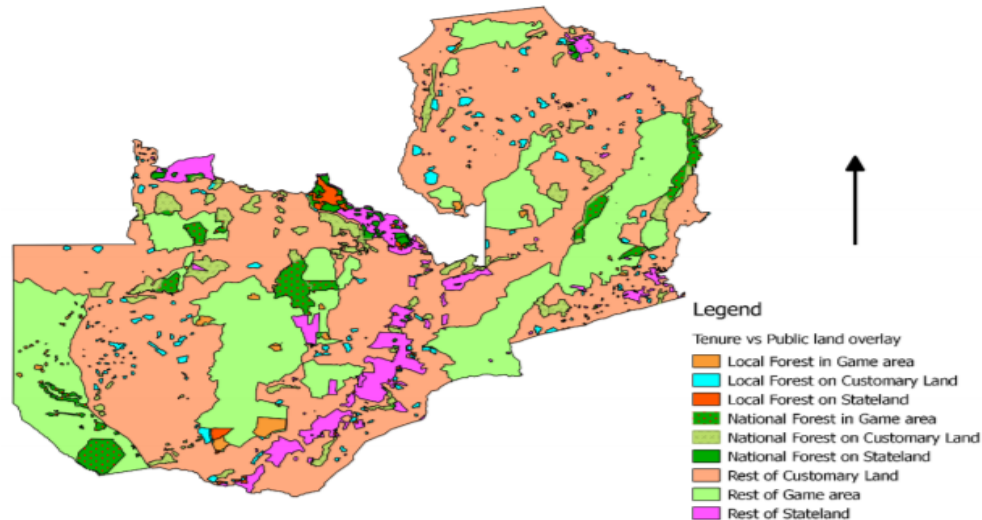
Category	No.	Area (Ha)	Percentage (%)
Local forest in game area	52	505,476	0.7
Local forest on customary land	278	1,363,403	1.8
Local forest on state land	50	359,218	0.5
National forest in game area	42	2,087,524	2.8
National forest on customary land	119	3,161,303	4.2
National forest on state land	86	517,777	0.7
Rest of customary land	4	43,867,518	58.3
Rest of game area	12	19,790,380	26.3
Rest of state land	104	3,647,748	4.8
Total		75,300,348	100

Source: Mulolwa, 2016

¹⁰⁴ Mulolwa, A. (2016). Improving Land Governance in Zambia: Implementation of the Land Governance Assessment Framework, *World Bank*.



Figure 12: Estimated categorisation of land area



Source: Mulolwa, 2016

7.2 Allocation of Public Land

The government through the Ministry of Lands and Natural Resources is tasked to administer land in the country by coordinating the various governmental functions that relate to the administration and management of land. The overall objective of the ministry is as follows:

...to formulate policies and provide guidelines for all, coordinate and monitor allocation of land to the people in the most equitable and efficient manner; to effectively collect revenue on land in order to contribute to government revenue; to provide an accurate, national base and specialised mapping services; to ensure the provision of effective and efficient cadastral services; to provide up-to-date and timely information in order to facilitate expeditious land transactions and enhance public awareness of their rights regarding land; to maintain an efficient and effective administrative support service and continuously develop human resource so that the Ministry provides its services effectively and efficiently.¹⁰⁵

The allocation process for public land is not clearly defined in the legislative framework. The Lands Act¹⁰⁶ does permit the President to alienate public land in the interest of the public. The

¹⁰⁵ Government of the Republic of Zambia. (2002). Objectives, Ministry of Lands Annual Report, Ministry of Lands.

¹⁰⁶ Lands Act, Chapter 184 of the Laws of Zambia, s3 (6).

nature of public land requires the application of the doctrine of ‘public trust’ and the concept of fiduciary duty.¹⁰⁷ These have been introduced through the vestment clause. The Lands Act¹⁰⁸ vests all the land in Zambia in the President creating a trust relationship between the office of the President and the people of Zambia. This places a duty on the President to protect the rights of the Zambians to their land. The trust duty is the foundation of the vestment clause. The President should act in good faith and in the best interest of the people when allocating land.¹⁰⁹ It can be argued that the degree of transparency, competitiveness and auditing of public land is lacking since the process of allocation of land is vested in the President.¹¹⁰

¹⁰⁷ Quirke D. (February 2016). The Public Trust Doctrine: A Primer. *University of Oregon School of Law Environmental and Natural Resources Law Center*.

¹⁰⁸ Ibid s3(1)

¹⁰⁹ Hansungule, M. (2001). 1995 Lands Act: An obstacle or instrument of development? Lusaka, *Zambia Land Alliance*.

¹¹⁰ Ibid

8 Land Information

The International Federation of Surveyors (FIG) defines Land Information Systems (LIS) as a tool for legal, administrative and economic decision-making and an aid for planning and development.¹¹¹ A land information system consists, on the one hand, of a database containing spatially referenced land-related data for a defined area and, on the other, of procedures and techniques for the systematic collection, updating, processing and distribution of the data. The base of a land information system is a uniform spatial referencing system, which also simplifies the linking of data within the system with other land-related data.¹¹²

Land information has two main components: a textual description of each property; and a graphic representation or map often containing dimensional information. Reliable, up to date and accessible land information is vital to among other things to plan, and develop the land. Therefore, the overall objective of the legal or fiscal component of any land information system is to achieve the following:

Table 8: Functions of the land information system

- Store and maintain a digital form of the land registers and other land records
- Facilitate transactions by providing on-line access and maintenance
- Provide administrative and statistical support to users
- Provide a document tracking system and
- Support computer aided property valuations and transactions.¹¹³

8.1 Public Provision of Land Information

Recognizing the need for a modern and publicly accessible information on land administration and management, Zambia embarked on the creation of a repository for land data through Zambia Integrated Land Management Information System (ZILMIS). The main features of this system are as follows:

¹¹¹Foster, R. W. (2001) International Federation of Surveyors (FIG) Surveying Education Database and Academic Membership. Paper presented at the XVIII Surveying and Mapping Educators Conference.

¹¹²Economic Commission for Europe (1996), land administration guidelines, UN ECE, Committee on Human Settlements, Geneva.

¹¹³ Williamson, I. P. (2000). Best Practices For Land Administration Systems in Developing Countries. *International Conference on Land Policy Reform*, 1-32.

Table 9: Features of ZILMIS

A GIS (Geographic Information System) integrated module which enables linkage between the Geographical (Cadastral) land boundaries and its ownership information

Supports the processing and issuance of new leases and title deeds including subsequent transactions such as assignments and mortgages

Enables easy storage and retrieval of land ownership data in a secure manner

Through the Electronic Document Management (EDM) component can to store the archived physical documents.⁸⁶

Source: Economic Commission for Europe, 1996

There are several technical challenges regarding the ZILMIS such as lack of trained human resource to implement the system effectively. Public access to land records is available in Lusaka and Ndola where the lands and deeds registries are situated. However the records are not usually updated. The additional problem is that some of the hard copies have not been scanned and uploaded in the system.

8.2 Land Administration Services

Land administration refers to the processes of recording and disseminating information about the ownership, value and use of land and its associated resources.¹¹⁴ Benefits of land administration among others include asset management; conveyancing; credit security; demographic analysis; development control; emergency planning and management; environmental impact assessment; housing transaction and land market analysis; land and property ownership; land and property taxation; land reform.¹¹⁵ The functions of the MLNR are centralised and therefore accessibility to land administration services is limited. The conclusion is that the land administration services are not cost effective in terms of accessibility and availability of information coupled with the centralisation of the ZILMIS.

¹¹⁴Economic Commission for Europe (1996), land administration guidelines, UN ECE, Committee on Human Settlements, Geneva.

¹¹⁵Ibid

9 LAND GOVERNANCE: KEY CHALLENGES IN ZAMBIA

9.1 Challenges in Institutional Framework

9.1.1 *Inadequate co-ordination among land administration institutions and inefficiencies*

Currently there are many institutions dealing in state land administration such as the Ministry of Lands and Natural Resources, the Ministry of Local Government, the Ministry of Agriculture, the Office of the Vice President, and the Ministry of Tourism and Arts. Although the mandates of these institutions are defined, there is inadequate co-ordination among them.¹¹⁶ Thus, the institutions often operate with overlapping powers, functions, and jurisdictions.¹¹⁷ For example, the function of land use planning is carried out by the Department of Physical Planning and Local Authorities in the Ministry of Local Government, Land Husbandry Section in the Ministry of Agriculture and the Planning Section in the Department of Resettlement in the Office of the Vice-President. This multiplicity of institutions involved in land use planning leads to overlaps and duplication of efforts.¹¹⁸ Another example is state land allocation, where the Department of Land Resettlement, Land Husbandry Section, and Municipalities are involved in the allocation process. However, inadequate coordination among these land institutions sometimes lead to the same parcel of land being offered to different people by different land institutions thereby causing land disputes.¹¹⁹

In addition, there is lack of knowledge on the land alienation and registration processes because land institutions do not disseminate the information to the public.

9.1.2 *Corruption*

There is corruption in land institutions responsible for allocation of land.¹²⁰ The consequence of corruption is that it is very difficult for the great majority of the people, especially the poor to acquire or secure state land on an equitable basis.¹²¹ Access to land becomes difficult for those

¹¹⁶Ministry of Land, Natural Resources and Environmental Protection. (2014). Strategic Plan 2014-2016, Lusaka.

¹¹⁷Government of the Republic of Zambia (2017). Draft National Land Policy. Lusaka. *Ministry of Lands and Natural Resources*.

¹¹⁸ Ibid

¹¹⁹Mushinge, A. (2017). Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategy Framework for Preventing Land Conflicts. PhD Thesis. *Technical University of Munich*. Munich, Germany.

¹²⁰Government of the Republic of Zambia (2012). Report of the Committee on Lands, Environment and Tourism for the Second Session of the Eleventh National Assembly, Lusaka: National Assembly of Zambia and Ministry of Land, Natural Resources and Environmental Protection, (2014); Strategic Plan 2014-2016, Lusaka.

¹²¹Mushinge. A. (2017). Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategy Framework for Preventing Land Conflicts. PhD Thesis. *Technical University of Munich*. Munich, Germany.

who do not have financial resources to compete with people who are able and willing to pay bribes. It should be pointed out that there has been loss of public confidence in the manner land is allocated in the country due to reported cases of corruption.¹²² Further corruption is also prevalent in land registration.

There is corruption in large –scale customary land acquisition.¹²³ In particular, bribes (in form of cash, vehicles, houses in the capital city and various other forms of incentives) are given to traditional leaders for them to authorize the investors (both foreign and local) to acquire large tracts of customary land.¹²⁴ This in turn leads to eviction and resettlement of customary land occupiers who have lived on the land for many years.¹²⁵ Even at a smaller scale corruption is present when individuals are granted land by the traditional authorities in circumstances where they are not entitled to the land parcels.

9.1.3 Tradition leaders lack of knowledge and unwillingness to convert customary land

Traditional leaders are ill-equipped to manage customary land.¹²⁶ For example, they lack knowledge and skills to ascertain the exact extent of their land.¹²⁷ Investors acquire more land than what is demarcated to them by traditional leaders.¹²⁸ Another issue that is prominent under customary tenure is the lack of willingness by some chiefs or chieftainesses to consent to conversion of customary tenure to statutory tenure. On a practical level there are several procedural difficulties associated in the conversion of customary land to statutory land.

¹²²Ministry of Land, Natural Resources and Environmental Protection, (2014); Strategic Plan 2014-2016, Lusaka.

¹²³Mwando. S. (2016). Evaluation of pro-market land policies on customary land users: A case of large-scale land investments in Kaindu village, Mumbwa District, Zambia, Master's Thesis. *Technical University of Munich*. Germany.

¹²⁴ Mushingi. A, and Mwando. S. (2016). Implications of pro-market land policies on customary land users: A case of large-scale land investments in Kaindu village, Mumbwa District, Zambia; *International Journal of Social Science Studies*, 4(8) 9-18.

¹²⁵Ibid

¹²⁶ Ibid

¹²⁷ Mwando. S. (2016); Evaluation of pro-market land policies on customary land users: A case of large-scale land investments in Kaindu village, Mumbwa District, Zambia, Master's Thesis, *Technical University of Munich*, Germany.

¹²⁸ Mushingi. A. and Mwando. S. (2016). Implications of pro-market land policies on customary land users: A case of large-scale land investments in Kaindu village, Mumbwa District, Zambia. *International Journal of Social Science Studies*. 4(8) 9-18.

9.2 Challenges in Legal Framework

9.2.1 *Outdated law land*

Land laws in Zambia have been enacted at the beginning of the post-colonial era and are outdated in terms of governance of land. Amongst the new legislation the Planning law¹²⁹ has been updated but the other pieces of legislation have not yet been amended¹³⁰

9.2.2 *Fragmented laws regulating land*

Land administration and governance are provided in several pieces of laws which require consolidation and codification.

9.2.3 *Challenges relating to tenure rights under statutory land*

Tenure rights under statutory leasehold land are secured under the legislative framework except where land is compulsorily acquired by the government. The challenge is that the law does not provide for what amounts to public interest in the case of expropriation of land. The land laws are gender neutral and should promote holding of land by women so that gender equity and equality can be encouraged since fewer women than men hold land in their own right whether in rural or urban Zambia.

9.2.4 *Challenges relating to tenure rights under customary land*

Customary tenure in Zambia is considered to be insecure due to the fact that each chiefdom has its only customs applicable to the administration and governance of land.¹³¹ Customary tenure security is dependent on the membership of that particular chiefdom. Gender disparity under customary areas is due to traditional and cultural structures, patriarchal attitudes, women's submissive attitudes to male domination, lack of knowledge on land rights and economic constraints.

9.2.5 *Challenges in Land Registration*

Deeds registration system when compared with titles registration does not prove title, what it shows is a record of an isolated transaction only. The obvious disadvantage of deeds registration which is used in Zambia is that no inquiry can be made as to the authenticity of the deed regarding its form or its content. This disadvantage has been statutorily accepted and is provided for under LDRA; that registration of a deed will not cure any defect within the

¹²⁹Urban and Regional Planning Act No. 3 of 2015,

¹³⁰ Acts such as the Land Survey Act, 1960, Land Acquisition Act, 1970 and The Rent Act, 1972, Landlord & Tenant (Business Premises) Act, 1972

¹³¹Hall, M., Murombedzi, J., Nkonkomalimba, M., Sambo, P., and Sommerville, M. (2017). Zambia customary land documentation tenure assessment. Lusaka, Zambia: *USAID Tenure and Global Climate Change Program*. 10.

instrument or affects its validity in any way. This shows that a deed will remain valid or will be considered invalid as a document on its own and registration plays no part on its effect.¹³² It will not even prove that the parties to the transaction are legally entitled to carry out the transaction. Theoretically speaking no document should be registered unless it is valid under the ordinary law but in practice many invalidating defects such as forged document, a document executed by a person lacking legal capacity can pass undetected at the deeds registry.¹³³

9.3 Challenges in Land Dispute Resolution

9.3.1 Challenges in the formal court system

Access to the formal court system by most litigants in land matters is a challenge because of high legal fees payable to the Advocates who present and defend these cases and the courts fees. The High and Subordinate Courts incur unreasonable delays in deciding cases due to among other factors procedural delays in commencement and completion of the matter, shortage of well-trained staff and shortage of courtrooms. Most cases remain unresolved, for several months or even years. Although The Subordinate Court has jurisdiction to hear disputes on state land, it is subject to certain limitations.¹³⁴ Disputes on state land can only be resolved in the Subordinate Court if litigants agree to resolve such disputes through the court of law. Where the parties do not agree, the presiding magistrate transfers the case(s) to the High Court. Therefore justice delayed is justice denied to the public.

9.3.2 Challenges of Lands Tribunal

Lands Tribunal is not easily accessible because of the highly centralised lodging system for land cases. Therefore all land cases throughout the country have to be filed through the Lusaka office. The outcome is that many people outside Lusaka City are denied the opportunity of having their disputes resolved by the Tribunal. In terms of capacity the tribunal cannot cope with the number of cases lodged as well as the complexity of the nature of the disputes brought before it.

Moreover, disputes on customary land are rarely resolved by the Lands Tribunal. Access to the Tribunal by most customary land occupiers remains limited because they live in rural areas which are far from Lusaka City where the tribunal is located. Challenges facing customary land occupiers in accessing the Tribunal hinge on transportation to and from Lusaka City and legal fees payable.

¹³²Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia. s21

¹³³Ibid

¹³⁴Subordinate Courts (Amendment) Act 25 of 1998. s23

9.3.3 *Challenges of Alternate Dispute Resolution and the role played by CSO and NGO*

The use of arbitration and mediation in resolving land disputes is limited because of lack of information.¹³⁵ There is no publicity on how to access mediation and arbitration and the advantages they offer in resolving land matters.¹³⁶ Where Civil society organisations and non-governmental organisations such as National Legal Aid Clinic for Women, Zambia Land Alliance, and the Legal Resources Foundation assist parties to resolve land disputes in urban or peri urban and rural areas they usually utilize the process of arbitration and mediation. The organisations provide legal and paralegal services to all the communities at different levels in Zambia who are not able to access these services. The organisation are not able to provide legal services to resolve land disputes due to barriers such as human resource, expertise and financial support.

9.4 Challenges in Valuation and Taxation

9.4.1 *Challenges in the valuation process*

There are various challenges in the valuation process for tax purposes. The factors include information, valuation surveyor's challenges, market and general economic issues and legal issues. The table below is illustrative.

Table 10: Challenges in the valuation process

Factors	Specific Explanation
Information factors	<p>Lack (insufficient) of comparable information /data</p> <p>Different dataset available to valuation surveyors</p> <p>Lack (absence) of centralised information source</p> <p>Lack of market transparency</p> <p>Lack of reliable data source</p> <p>Unreliable market data</p> <p>Subjectivity of the valuation process</p>

¹³⁵ Mushinge. A. (2017). Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategy Framework for Preventing Land Conflicts. PhD Thesis. *Technical University of Munich, Munich*. Germany.

¹³⁶ Ibid

Valuation challenges	surveyor's	<p>Negligence</p> <p>Too many assumptions</p> <p>Incompetent assistants</p> <p>Adoption of different methods</p> <p>Different valuation surveyors with different viewpoints</p> <p>Misapplication of the provisions of the law</p> <p>Compromised/corrupted valuation surveyors</p> <p>Lack of/Inadequate market research</p> <p>Third party interest</p> <p>Lack of consultation amongst valuation surveyors</p> <p>Calculation/measurement errors</p>
Market and economic issues	general	<p>Informality within the property market</p> <p>Economic instability</p> <p>Unstable exchange rate regime</p> <p>Dynamism of the market to which some valuation surveyors fail to adapt</p> <p>Volatility of market values from town to town</p>
Legal issues		Lapse of time between appointment of valuation surveyor and Valuations

Source: Munshifwa et al. 2016¹³⁷

¹³⁷Munshifwa, E.K., Jain, N., Kaunda, B., Masiba, L., Lungu, J., Chunda-Mwango, Mushinge, A and Ngoma, W. (2016). Variances in Rateable Values in Rating Practice in Zambia: the Role of Mental Models in Value Assessment. *Pacific Rim Property Research Journal*. 1-18.

9.4.2 Challenges in the taxation process

Sensitization of the existence of the Tax Appeals Tribunal is still one of the major challenges that the Tribunal is facing. Apart from various articles and announcement in the national press, a Facebook page, the Tribunal has, in the last 9 years used various modes of public relations such as television, exhibitions, conferences roadshows and radio interviews to improve the awareness. However international standards require that the Tribunal informs users about the following:

- the range of issues that can be referred to the Tribunal;
- how to contact the Tribunal;
- what information the Tribunal will require;
- where to get help and advice; and
- where previous decisions of the Tribunal are recorded.

The tribunal has tried to incorporate the international standards into their awareness programmes.

9.4.3 Challenges in the payment of tax

The payment of Property Transfer by the vendor in the sale of land has been subject to several changes in terms of the amount payable which has been changing from 5 to 10 per cent and this creates uncertainty to the tax payers. Online payment systems introduced for property transfer tax have also posed problems due to technical difficulties

Payment of property rates to respective local authorities is faced with problems of non-payment as well as late payments by property owners due to non-service delivery by the local authorities.

9.5 Challenges in Land Use Planning and Control

Some developers put up structures without obtaining development permits and others are granted planning permits retrospectively. This promotes disorderly and illegal development since planning regulations and standards are often overlooked. Developers who contravene this requirement are supposed to be fined instead the planning authorities sometimes opt to demolish their structures without compensation. This situation is worsened by the planning authorities' lack of capacity to carry out inspections on a regular basis. The other hurdle faced by developers is the length of time it takes to obtain a building permit for construction which has often exceeded the maximum permissible by law.

9.6 Challenges in Public Land Management

The allocation process for public land is not clearly defined in the law however the President can alienate public land in the interest of the public. What is not clear is what amount to public interest. There is lack of transparency in the process of allocation of public land. Due to lack of data on the actual extent of public land area administration and management of this category of land is adversely affected.

9.7 Challenges in Land Information

There is a problem of accessibility to the centralized institutional systems of land administration. Inaccurate and incomplete data regarding land ownership and scarcity of information on land availability creates challenges in land administration and governance.

9.8 Synthesis of Land Governance Challenges

Land governance in Zambia is characterised by weaknesses in: institutional and legal frameworks, land dispute resolution, valuation and taxation, land use planning and control, public land management, and land information.

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