

# Improving Land Tenure Security?

*An Evaluation of the Application of the VGGT Framework  
in Post-Colonial Zambia*

By

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## Declaration

I declare that “Improving Land Tenure Security? An Evaluation of the Application of the VGGT Framework in Post-Colonial Zambia”, is my own, original work, that I am the sole author thereof and that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged by complete references.

Hermine Mwenyi Ilunga

October 2018

Signature

.....

Supervisor: Dr. Vusilizwe Thebe (University of Pretoria, South Africa)

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## **Abstract**

Land is a natural resource which has gained immense attention in recent years. Popularly used for the development of infrastructure, food production, farming, livestock, and other uses, this resource is vital for any country, let alone economy. While some countries boast vast amounts of water banks, others are land-locked, land abundant, and/or less utilised. This underutilisation and abundance has attracted financially capable investors from foreign countries with the hope of successfully purchasing and developing land for various projects. This trend has become common in less developed countries as they tend to have huge tracts of what is being termed available land. As a result, the rush for land has risen steeply due to an increase in land use. Land types differ but in most developing African countries, the most popular types are state and customary land. In some African countries like Zambia, the majority of the population dwells on customary land and depend on it for their livelihood.

Land investments in Africa have sky rocketed over the years and while this may appear economically beneficial for some countries in need of economic growth, it has deceitfully resulted in some unpleasant outcomes, such as land grabs and improper land transactions. As a result, land tenure security has become a hot topic in developing countries due to this increase in improper land transactions taking place across the African continent and beyond and because, as a source of livelihood for rural communities, land is becoming scarce. To address this, a number of international organisations have been at work to assist countries with strategies, policies, or tools to improve their land governance and enhance tenure security. This study focuses on the application of such international standard tools in a local setting, particularly the Voluntary Guidelines on the Governance of Tenure (VGGT).

## **List of Abbreviations**

<b>AU</b>	African Union
<b>BSA Co.</b>	British South African Company
<b>DMMU</b>	Disaster Management Mitigation Unit
<b>EIA</b>	Environmental Impact Analysis
<b>EU</b>	European Union
<b>FAO</b>	Food and Agriculture Organisation and
<b>FDI</b>	Foreign Direct Investment
<b>IAPRI</b>	Indaba Agricultural Policy Research Institute
<b>IFAD</b>	International Fund for Agricultural Development
<b>IFPRI</b>	International Food Policy Research Institute
<b>LOC</b>	Land Ownership Certificates
<b>LPI</b>	Land Policy Initiative
<b>MDG</b>	Millennium Development Goals
<b>MMD</b>	Movement for Multiparty Democracy
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NGO</b>	Non-Governmental Organisation
<b>PRAI</b>	Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods, and Resources
<b>RAI</b>	Responsible Agricultural Investment
<b>RRA</b>	Rapid Rural Appraisal

<b>SADC</b>	South African Development Community
<b>SAP</b>	Structural Adjustment Programmes
<b>SDG</b>	Sustainable Development Goals
<b>UN</b>	United Nations
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNIP</b>	United National Independence Party
<b>USAID</b>	United States Agency for International Development
<b>VGGT</b>	Voluntary Guidelines on the Governance of Tenure
<b>ZDA</b>	Zambia Development Agency
<b>ZEMA</b>	Zambia Environmental Agency
<b>ZLA</b>	Zambia Land Alliance
<b>ZLDC</b>	Zambia Law Development Commission

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# Chapter 1

## Introduction to the Study

### 1.1 Introduction

This dissertation focusses on Zambia's land governance in terms of enhancing tenure security for customary land holders through the application of alternative development tools such as the Voluntary Guidelines on the Governance of Tenure. Broadly construed, the Voluntary Guidelines on the Responsible Governance of Tenure, Land, Fisheries, and Forests in the Context of National Food Security, herein referred to as the VGGT, were designed to assist countries with proper mechanisms and principles of land governance. The study mainly focuses on the application of such international development tools in a developing country like Zambia. Many studies have been conducted on development models and conclusions on the failure of development theories led to a change in strategies towards alternative development models. Alternative development models were paraded, marketed, and handed out to developing countries as solutions to their development challenges by donors and development agencies.

The VGGT is one such model which was prescribed as the best strategy for land governance. Zambia became one of the many countries where the VGGT model was adopted to guide land governance and to protect land rights for the poor. According to Chatelard and Chu (2015), land investments in the form of agricultural development by Chinese investors have been on the rise in Zambia and this has raised concern on whether these land acquisitions are a form of land grabbing. These transactions have affected marginalised groups of people who live in land abundant areas, commonly known as customary land and, in most cases, who do not have rights to land in the form of title deeds or any other form of legal documents (Buthelezi, 2007). Lack of rights to ownership of land is detrimental for these communities considering that access to land has been identified as a prerequisite for successfully alleviating poverty (World Bank, 1998). Buthelezi (2007) adds that the economic opportunities that pertain to urban areas are associated with informal sector activities while economic opportunities are interrelated with formal agricultural activities in the rural sector.

The world has had its share of experiences in developing and implementing alternative development tools and policies towards poverty reduction, increased participation, and community development. One of these tools is the VGGT framework, a framework developed in 2012 to assist countries with proper land governance principles. While most studies on the

VGGT have focused on the potential of the framework and implementation strategies, this study takes a slightly different approach by focusing on the VGGT as a model and whether this international tool is appropriate for an environment like Zambia. It does this by looking at Zambia's specific circumstances and how certain factors very specific to the country may hinder success of such a model. Very little has been written on the VGGT framework's performance in Zambia and therefore this dissertation seeks to fill this gap and provide a country-specific, realistic analysis of the framework.

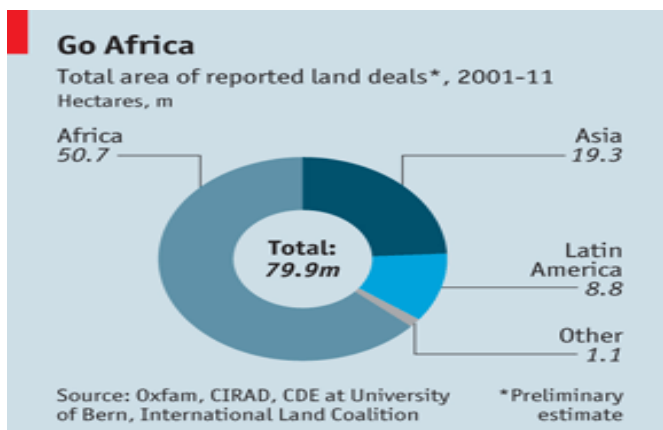
The chapter begins with a background to the study which assists in depicting a picture of the main topic. The chapter highlights the problem statement, purpose and motivation for the study, research questions, and objectives. It also provides a brief thesis delineation, chosen research methods, and ends with a layout of the chapters that form the study.

### **1.1.1 Background to the study**

Land generally has gradually increased in value in many parts of the world. Backed by either land scarcity or its abundance in some cases, its demand has significantly increased, resulting in numerous land transactions or investments across the globe. Land, a natural resource, now appears to be treated as a commodity due to the rampant adoption of neo-liberal techniques to grow economies, which in turn have permitted the opening up of markets and increased land investments. Herre (2013: 4) talks of the financialisation of agribusiness and the food market, arguing that "financial investors are playing a more and more relevant and decisive role in the expansion of agribusiness conglomerates".

Figures published by the International Food Policy Research Institute (IFPRI, 2009) indicated that, since 2000, roughly 15 to 20 million hectares of land across the globe have been acquired or are currently under negotiation due to the foreign direct investment (FDI) surge in land (Von Braun & Meinzen-Dick, 2009) The majority of these land deals have been taking place in Africa as seen in Figure 1 below.

**Figure 1: Global lands deals**



Land investments in some cases have been improper, thus raising concern over emerging land grabs, which are known to have negative effects on local communities in the form of land rights violation, tenure and food insecurity, displacement, and landlessness among other atrocities (Bahati & Homan-Smith, 2014). The potential for displacement, dispossession, and other atrocious effects of improper land transactions has intrigued leading international organisations such as the United Nations (UN), Food and Agricultural Organisation (FAO), and the World Bank to advocate for better land regulation by formulating guidelines and principles which foster good governance norms and whose implementation can allegedly minimise the adverse effects of improper land investments (Hall *et al.*, 2016).

In 2009, at the Thirteenth Ordinary Session in Sirte, Libya, the heads of states and governments of the African Union (AU) in recognition of the centrality of land in sustainable socio-economic growth, development, and the security of the social, economic, and cultural livelihoods of the people, approved the Declaration on Land Issues and Challenges faced in the African Continent (Byamugisha, 2013).

From this declaration, the Framework and Guidelines on Land Policy in Africa (F&G) were established and endorsed by the Joint Conference of Ministers of Agriculture, Land, and Livestock (PLAAS, 2013). The Framework and Guidelines specified how African states should design legal and institutional frameworks to govern land through new or revised national land policies that warrant secure land rights for existing customary owners and for future investors (PLAAS, 2013).

In the same year and within the same context, the Food and Agricultural Organization began a global discussion aimed at developing the Voluntary Guidelines on the Responsible

Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, herein known as the VGGT<sup>1</sup>. The guidelines were globally negotiated and agreed upon and endorsed in the Committee on World Food Security in the year 2012 (Hall *et al.*, 2016).

They can be understood as “internationally accepted standards and practices that serve as a framework which countries can use to develop their own strategies, policies, legislation, and programmes” (Food and Agricultural Organisation, 2012). They do not only aim to eradicate poverty by protecting the rights of disadvantaged communities to land, but also aim to improve the governance of other resources. The guidelines focus on the legal recognition and allocation of tenure rights and duties, transfers, and other changes to tenure rights and duties, administration of tenure, responses to climate change and emergencies, promotion, implementation, and monitoring and evaluation (Gallico & Groppo, 2016; GIZ, 2014). The VGGT emerged from a unification of global initiatives to address land rights, agrarian reform and the right to food (Hall *et al.*, 2016).

The Voluntary Guidelines have been widely accepted globally since 2012 and implementation in a number of countries around the world has been largely driven by the Food and Agricultural Organisation and other civil society organisations (Food and Agricultural Organisation, 2012). Despite the widely noted international recognition and support for the VGGT concept, the model remains a broad global initiative which is highly dependent on the state and supporting civil society activities for its successful implementation (Beckh *et al.*, 2015). Some of the questions raised about the model are of long-term significance and lead to doubts on the effectiveness of the VGGT framework, particularly in the case of some countries like Zambia, where the system of land ownership is highly centralised and property rights are weak (Mukupa, 2011).

### **1.1.2 The Zambian context**

Zambia has lacked a concrete land policy for several years, with the last official land policy being the 1995 Land Act under the Chiluba regime. This change in market reform has been felt country-wide in Zambia. Brown (2005) explains how market-based reforms in Zambia have

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<sup>1</sup>Endorsed by the Committee on World Food Security (CFS) on 11 May, 2012, the VGGT are an unprecedented human rights-based international soft law instrument intended to promote respect for all legitimate tenure rights. Their legitimacy is based on a consultation and negotiation process that involved representatives from governments, the private sector, civil society, academia, and United Nations organisations. All countries have been explicitly encouraged to implement the Guidelines by resolutions of the United Nations General Assembly A/RES/67/228, the G20, the G8, and the RIO+20 Declaration. Thus, the VGGT provide a critically important framework document for future work and activities of the global community in relation to tenure.

been discriminatory, contentious, and confusing. In addition, Mudenda (2006) states that since the passing of the 1995 Land Act, the distribution or allocation of land has been biased towards foreign investors and prosperous well-connected local elites, with a limited number of rural villagers cognisant of the land act or land conversion and its technicalities. To address this, the 1995 Land Act has been undergoing revisions for a number of years (Chu, 2013) with a recently revised draft land policy in 2016 that is yet to be passed.

In the mid-1990s, Zambia was described as a profoundly rural low-income country with an estimated 80% of the rural population surviving through subsistence farming on customary land (Aregheore, 2006). The livelihoods of many, particularly the rural poor, are based on secure and equitable access to land and control over it (Hall *et al.*, 2016). The country has been faced with serious land governance challenges since its adoption of economic liberalisation policies in 1991 (Chu, 2013). This was facilitated through a mid-1990s Land Act that entailed the privatisation of customary land to enhance land investments and improve agricultural productivity (Chileshe, 2005).

After decades of flirtation with neo-liberal open market mechanisms that opened the country to foreign companies and land prospectors in the name of foreign direct investments in the 1990s (Chu, 2013), Zambia, like other countries around the world, endorsed the VGGT model as a tool for land governance. This took place in a context of mounting vulnerability to land dispossession and deprivation for local communities in line, which facilitated foreign direct investment, particularly in land and the agricultural sector (Chileshe, 2005). Foreign direct investment (FDI), which is described as “Investment from one country into another (normally by companies rather than governments)”, involves establishing operations or acquiring tangible assets, including stakes in other businesses (Yelpalaa, 2010).

The study particularly aims to examine the suitability and impact of the VGGT framework in Zambia, if any. The study’s main objective is to analyse the progress made in the implementation of the VGGT framework in Zambia and its effects on land governance, land access, and security of communities on customary land.

### **1.1.3 Problem statement**

Since its unanimous adoption by the Committee on World Food Security (CFS) in 2012, the VGGT model has been endorsed by developing country governments and is currently being implemented as a mechanism to improve land governance, food security, and poverty reduction

in many developing countries. In Zambia, the implementation of the VGGT model is currently underway to improve conditions of land governance after its negative experience with years of flirtation with neo-liberal open market policies (Mbengue & Waltman, 2015).

According to the Food and Agricultural Organisation (2012), responsible governance under the VGGT seeks to “protect people from the arbitrary loss of tenure rights, including through forced evictions. It helps ensure no one is subject to discrimination and leads to more transparent and participatory decision-making. It further helps ensure that disputes are resolved before they degenerate into conflict.” Few have disputed the essentiality of responsible land management to avoid future adversities within the country, in terms of complete exploitation and extraction of resources, control over host governments, displacement, marginalising of communities, and increased challenges in accessing land and securing food (Deininger *et al.*, 2011). The livelihoods and survival implications for local communities can be seen from the various forms of “resistance from below”, mostly by disaffected peasants (Hall *et al.*, 2015).

A substantial amount of scholarship has been devoted to demonstrating the centrality of land management to land policy (Dale & McLaughlin, 1988; Van Der Molen & Jansen, 2010). Perhaps with the exception of Chu *et al.* (2015), writing specifically on Zambia, this scholarship has made a case for the VGGT guidelines and their role in bringing about good land governance practices for national governments, and has been marred by failure to recognise differences among countries and regions, and the difficulty for uniform implementation. Furthermore, the model is still relatively new and the differences between states may challenge implementation in certain countries.

Chu *et al.* (2015) have particularly raised questions on whether the VGGT framework can successfully address and protect local communities in Zambia considering land grabs are facilitated by the Zambian state through the neo-liberal leaning 1995 Land Act in most cases. This is important and may hinder the effectiveness of the VGGT framework in achieving its objectives, given the guidelines neither establish binding applications nor replace existing laws, treaties, or agreements (ANGCOC, 2014). These concerns have not been explored in the specific situation of Zambia, partly because the VGGT concept is relatively new and there are few studies that have been conducted on its progress.

Given that land tenure security is of great significance and a framework like the VGGT can supposedly improve land governance, it is imperative to consider the limitations of the



framework in Zambia and how these limitations can be addressed. The study is important as it has the potential to provide an analysis of the effectiveness or ineffectiveness of the VGGT instrument to a country which land management needs well-structured policies.

## **1.2 Research Questions**

The study is framed into one broad question and four specific questions that focus on specific themes in the Zambian land governance question and the adoption of the VGGT framework.

### **1.2.1 Main research question**

To what extent has the adoption of the VGGT model transformed land governance and improved the land tenure security of communities on customary land in Zambia?

### **1.2.2 Specific questions**

1. What is the context for the adoption of the VGGT framework in Zambia?
2. What are the implications of neo-liberal leaning on Zambia's land system?
3. What country specific challenges may affect the implementation of the VGGT model in Zambia? How might this impede successful implementation?
4. Did the adoption of the VGGT framework improve land access and land tenure security for communities on customary land?

## **1.3 Research Objectives**

### **1.3.1 Main objective**

To analyse the progress made in the implementation of the VGGT framework in Zambia and its effects on land governance, land access, and tenure security for communities on customary land.

### **1.3.2 Specific objectives**

1. To review the Zambian land system and identify local land governance issues.
2. To assess the impact of current neo-liberal development strategies on Zambia's land tenure security.
3. To identify and analyse challenges associated with the implementation of the VGGT model in a country like Zambia.
4. To investigate the changes that have taken place at community level since the introduction of the VGGT framework.

#### **1.4 Significance of the Study**

The outcomes of this study will enable government officials, policy-makers, non-governmental organisations, traditional leaders, as well as ordinary citizens, to structure policy intervention strategies. It may assist in localising and fine-tuning current measures to improve land governance, including the successful implementation of the VGGT framework in Zambia. The study should also influence other researchers, especially in developing countries, to pursue research on the application of international development strategies or tools on various sectors of their economies to enable finding locally fashioned solutions to development problems.

In the absence of information on the VGGT framework's contribution to Zambia's land governance, particularly its progress and impact, this study carries significant lessons for the current Zambian government and other poor countries in Africa that have endorsed and adopted the framework as a panacea to its challenges, given the different context for landholding. This study aims to fill this gap in literature by focusing specifically on the context of land governance in Zambia. More broadly, the study aims to question the adoption of global models like the VGGT and their application in different environments in a 'one-size fits all' kind of approach.

The study may also serve as a valuable resource for policy and legal reform processes in relation to the governance of tenure in Zambia. At the time of fieldwork and writing, the Ministry of Lands and other agencies were in the process of drafting, revising, and exploring new bills aimed at improving the management of land in the country, specifically that of customary tenure. Considering Zambia is yet to pass a new land policy and is currently engaging in further consultations with various stakeholders, the findings and recommendations of this study can serve as inputs to strengthening the tenure-related components of Zambia's upcoming land policy and legal instruments.

The study will tap into Zambia's land governance by evaluating, reviewing, and exploring the land governance systems and tools in place. This will help in our understanding of Zambia's land governance challenges since its signing into the World Bank/International Monetary Fund-initiated Structural Adjustment Programmes and the extent to which the VGGT framework can be a sustainable solution.

## **1.5 Operationalisation of Terms**

### **Land Administration and Governance**

Land is vital and requires land management, which is the proper and sustainable utilization of all aspects of land including the formation of policies. This involves establishing a land administration system, where the functions involved in implementing land management policies are organised (Amanor, 2012). Due to the complexity of land, and the many issues that come with it such as land access, land use, land rights, land ownership and the overall management and administration of it, governance becomes essential.

Governance is understood as a process that affects government and monitoring, through policy, long-term strategy and direction of an organization. According to Amanor (2012), governance generally comprises the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern. In reference to land specifically, land governance is the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled (Palmer *et al.*, 2009). Governance of land is facilitated through the creation and use of land policies, which are tools employed to outline a set of goals and measures for meeting objectives related to land: tenure, use, management, property rights and administration, including administration structures.

### **Foreign Direct Investment, Land Investments and Land Grabs**

A land investment is merely just an investment in land that involves some form of transaction. Foreign direct investment is a concept that gained momentum mostly after the 1980s. It refers to investment from one country into another (normally by companies rather than governments, which involves establishing operations or acquiring tangible assets, including stakes in other businesses. This, concept according to Guo Chatelard (2014) has raised concerns over foreign 'land grabs' and Chinese land deals particularly. This coupled with the lack of systematic, in-depth and empirical research on foreign investments in African agriculture has resulted in a remarkable inconsistency between what is frequently reported and what is in fact going on in Africa. These investments have raised alarms over land rights of indigenous people who live on these targeted pieces of land, leading to displacements and what is commonly being termed land grabs.

The term land grab arises when large-scale land acquisitions take place by private investors and public investors and agribusinesses on a long-term basis to produce agricultural commodities (Chu, 2013). In several cases of land grabbing, one may identify these events as a land reform from above, or an establishment of new colonial relationships imposed by the private sector. Land grabs are known to affect land rights, which are described below.

### **Land Rights**

Land ownership is the exclusive right to use a parcel of land and enjoy the yield from land and improvements. It also includes the right to transfer the parcel to another person. Rights are restricted by state legislation. Cousins (1997) discusses land rights, which are the rights of people to land, either individually or collectively. Under customary tenure, customary land rights apply, which refers to the right to use land and resources by a group such as a family, community or clan. Such rights are often exercised under customary tenure. Land rights under customary tenure in some developing countries are being enhanced through the issuance of Land ownership certificates (Jain *et al.*, 2016).

Under state land, land rights are secure due to title deeds or certificates of title, which are officially issued and signed documents by the Registrar of Lands and Deeds, as prescribed by law, which is proof or evidence of fact that a person has been granted legal rights or title to land by the state in accordance with the lease agreement (Lanjouw & Levy, 2002). In a case where land rights are affected, mostly in terms of displacements under customary tenure, a resettlement policy should apply. Resettlement refers to a situation where the state relocates and settles special groups of persons i.e. under privileged, vulnerable or displacement persons such as retirees and unemployed youth.

### **Land Tenure: Customary and Leasehold**

Bruce (1993) explains land tenure as a mode of holding rights in land; a system of access to and control over land and related resources or the set of relationships among people concerning land or its use. Popularly, there are two main types of tenure forms in developing countries. These are customary and leasehold tenure. Customary tenure refers to land rights that are controlled and allocated according to traditional practices. These rights are not uniform and differ according to prevailing social norms and cultural practices and attitudes to land. They range from individual, family or groups of families, clans and tribal land ownership; where such land is used communally through various tenancy arrangements.

On the other hand, leasehold or free hold tenure refers to a mode of landholding where the landholder holds land in perpetuity - free of any obligations to the state except for the payment of taxes and observation of land use controls imposed in public interest. Leasehold tenure refers to a system where land belonging to one entity (the state) is, by contractual agreement, leased to another entity for a fixed period of time. Some countries have undergone land tenure reform, which, as described by Chinene (1993), is a situation where a change takes place in the terms and conditions of holding land through an established authority. As an example, this includes a conversion from customary tenure to statutory tenure or vice versa.

### **Land Tenure security**

Due to several occurrences such as the establishment of land markets, tenure security has become a hot topic. According to Usamah (2012) tenure security can be understood as the degree of confidence held by people that they will not be arbitrarily deprived of the land rights or of the benefits deriving from their land rights. Under customary tenure, (Bruce *et al.*, 1994) explain that tenure security has been enhanced through the issuance of customary title. The idea behind customary title thus becomes centered on a form of legal ownership of land, either individually or collectively for the occupation and use of land for cultivation, grazing or hunting.

### **1.7 Organisation of the Dissertation**

This is a study of the application and suitability of an international land governance framework on Zambia's land tenure system. Zambia is a country with a dual land system, particularly state and customary land, with the latter constituting majority of the land in the country. The study makes an enquiry into Zambia's land governance systems in an effort to explore the domestic issues that could hinder or enhance the success of the VGGT framework in the developing country. The dissertation is organised into six chapters inclusive of Chapter 1, which forms the introduction.

The introduction presents a background to the study, problem statement, purpose, and motivation for the study as well as key definitions, research objectives, and questions. It also offers a brief introduction on the research methods undertaken.

Chapter 2 forms the literature review which outlines the conceptual and theoretical framework. It begins with a conceptual framework which introduces the key concepts of the study which

include, but are not limited to, land tenure, land grabs, and tenure security. The second part of the literature review briefly reviews development theories and concludes by giving an overview of the alternative development theory and its elements such as community development and participation, which the VGGT guidelines have grasped. Lastly, the chapter engages with the VGGT framework and discusses previous studies on the VGGT.

Chapter 3 of the paper presents the research methodology undertaken for the study. The chapter explains the appropriateness of the approach that was adopted. It outlines the relevance of a qualitative study and why it was chosen over a quantitative study for this research. Chapter 3 also provides information on the research methods used, which include a literature review, key informant interviews, and a case study which comprised a focus group discussion and interviews with locals. Additionally, Chapter 3 highlights the research framework and any field work problems encountered.

Chapter 4 presents data collected from key informant interviews. The chapter provides a history of land tenure in Zambia, followed by the events that shaped it. It provides a Zambian perspective of the major concepts that formed the study. This is explored further in Chapter 5 where data was collected from a different angle, that being the locals in the rural communities that were selected. Chapter 5 aims to identify any progress in land access, ownership, rights and tenure security, and whether the VGGT had any influence on these changes. Thereafter, Chapter 6 presents a summary and discussion of the findings, where conclusions and recommendations are also made.

## Chapter 2

### Literature Review

#### 2.1 Introduction

Globally, there is a mounting rush for land as the demand for land continues to rise. This land rush is supposedly intense in countries in Africa, Latin America, and Asia with reports of 134 million hectares of reported deals in Africa and 29 million hectares cross-checked in Asia (Anseeuw *et al.*, 2012). As a result, land markets in developing countries are booming and have been both beneficial and negative on an individual country level. One major issue concerning land transactions is tenure security for marginalised groups. Land that is targeted is usually irrigable land, thereby prompting land experts to develop mechanisms, policies, or frameworks that can enhance tenure security and protect communities from forced displacements, land grabs, and landlessness (Amanor, 2012). Some of these land governing tools are international and thus applicability and implementation may not produce uniform results in every country.

This study focuses on enhancing tenure security in Zambia with the application of the VGGT framework, a land governing framework that has gained popularity around the world since 2012. A number of studies have focused on development strategies and their potential but their applicability and suitability in a local setting is usually lacking, as is the case with the VGGT framework's performance in some developing countries. A few studies have been conducted on the VGGT implementation experience in other parts of the world, but a clear Zambian standpoint isn't readily available. A local study assists in exploring a domestic environment and, in turn, provides realistic information on issues that can contribute to the success of a development tool.

The chapter begins by exploring the main concepts that concern this study, namely, land tenure, tenure security, land governance, land reform, land markets, and land grabs. Concepts such as land markets gained momentum when development ideology shifted to a neo-liberal way of thinking (Zoomers, 2010). The chapter briefly explores development theories and aligns these ideologies to the above concepts to establish a relationship between the two. These topics are discussed further in Chapter 4 and 5 where the Zambian context and history of events that shaped the country's tenure system are discussed. The theories discussed will attempt to explain how these key land concepts have been influenced by development ideology and, to an

extent, in what way these changes in development strategies have contributed to improving land governance and tenure security in developing countries.

Development literature has portrayed how changes in development thinking have altered over the years and how alternative development strategies which foster community development, human rights, women's rights, and participation are trending currently. This derived from the identification of possibilities and opportunities for addressing the failures of global capitalist development as seen in post-development and post-colonial scholarship by Escobar (1995). Some authors went further and provided meaningful insights into addressing the injustices produced by mainstream development (see Cornwall & Caelho, 2007; Cornwall, 2002).

The VGGT framework was derived from such thinking to protect communities and citizens against the injustices caused by the liberalisation of land. While this may be promising, it is essential to engage with these concepts locally, as it enables a more detailed domestic evaluation for the application of the international tool.

## **2.2 Understanding Land Tenure as a Concept**

This section briefly draws on previous studies on land tenure and tenure security while giving an account of the different views expressed by various authors on the topic. Tenure is described as the status of individuals or a community of people in relation to property; it could either be leasehold, freehold, collective, or customary tenure, amongst others (Adams *et al.*, 1999). This paper reflects on tenure of land, which (Bruce, 1993) describes as the terms on which land is held, or simply the rights and obligations of land holders. Pohoryles and Szeskin (1971) explain that several studies have established that land tenure exists in different forms in different countries around the world and that these various forms of land tenure are influenced by several factors ranging from a country's culture to its political system.

Acquaye (1984) portrayed the complexity of land tenure, explaining that land tenure conditions have a tendency of differing from one country to another; he further argued that these differences not only exist on a country level but may be present between different communities in a country. In terms of how land is viewed in a particular setting, Shipton and Goheen (1992) explained that, within most African settings, the perception of land tenure differs, thus affecting the manner in which rural Africans view land. Such a statement implies that land tenure may be affected by various elements and within different settings it could have a different meaning all together.



Bruce (1993) reveals that it is much easier to understand a land tenure system when it is related to the economic, political, and social systems that it is derived from, thus suggesting the significance of understanding a tenure regime itself and its correlation with the political, economic, and social systems on the ground. According to Acquaye (1984), land tenure is structured in the form of customary arrangements and procedures, which govern the rights, responsibilities, and liberty of individuals in the control and use of land resources.

In support of the above statements, Shipton and Goheen (1992) stress the importance of understanding the local meanings of land such as the social affiliations that affect land-use and control as well as sources of power and influence over landholding. Other authors such as West (1982: 4) and Basset (1993) highlight the significance of understanding the social, institutional, administrative, and legal aspects of landholding, arguing that these elements are key determinants of land use and ownership. In Sub-Saharan Africa, debates on land reform and economic development are mainly centered on two major themes, namely, neo-liberal and the evolutionary perspectives.

According to neo-liberal thinking, indigenous customary land tenure is viewed as a hindrance or blockage towards attaining functioning capitalism in the region. Proponents of the neo-liberal ideology argue that customary land tenure should be replaced with individual land titles to enable economic development. The evolutionary position is of a contrary opinion, arguing that customary land tenure in Sub-Saharan Africa is actually dynamic and appears to be gradually moving towards individual ownership (Mudenda, 2006). They further believe that titling programs initiated by the state are in essence worsening the situation and barely making capitalism work (Platteau, 1996).

Given the different contexts for land tenure, it is argued that some forms of land tenure are weaker than others in terms of the laws and regulations that guide them. Customary tenure, for example, is one such type. Customary land tenure, which is also referred to as customary land tenure, is said to be “a form of land tenure where land is held by a group of people through shared rules, and where their land administration systems are informed by and practiced in terms of shared values and customary systems” (Anim & Van Schalkwyk, 1996). Some authors like Mashinini (1983) and Ault and Rutman (1979) find that land tenure systems are dynamic and ever evolving, particularly in Africa. There is a popular consensus that customary land does not provide sufficient security of tenure for local farmers (Mikitimi, 2006).

### 2.2.1 Land tenure reform

Land tenure reform is described as a process in which the terms and conditions of holding land through an established authority are changed (Adams *et al.*, 1999). Over the years, land reform has been majorly influenced by the dichotomy between socialist and liberal market orientations (Cross, 1998). Chileshe (2005) finds that socialists believe the Marxian theory has been used to understand land reform as a class struggle between the proletariat and the capitalist elite, in the same way Whittemore (1981) argues for developing nations of Asia and Latin America where land is concentrated in a few hands.

Chileshe (2005) argues that, in a socialist-oriented government, land reform implies state ownership of all lands, and a programme to collectivise the land tenure system is followed, as was the case in Tanzania, Benin, Ethiopia, and Mozambique (Okoth-Ogendo, 1993). But in the case where land reforms are premised on the individualisation of property rights, the neo-classical property theory applies. The neo-classical property rights paradigm has been a conceptual framework for land tenure studies that are meant to inform land policy in Sub-Saharan African situations. The individualisation of property rights thus becomes attractive for liberal market economies. According to Barrows and Roth (1990), Migot-Adholla *et al.*, (1991), and Place and Hazel (1993), most Sub-Saharan African countries adopted a neo-classical property rights paradigm towards their land reform.

By the 1990s, this neo-classical property rights theory raised concern and was reassessed in relation to tenure reform in Sub-Saharan Africa, leading experts to call for the abandonment of the 'replacement paradigm' which advocates for replacement of indigenous tenure by statutory tenure provided by the state (Chileshe, 2005). A new paradigm according to Toulmin and Quan (2000: 5) emerged, where pluralism and the imperative of African national, regional, and local governments; tribal groups; villages; communities; and civil society organisations began negotiating their own solutions to securing access to land (Toulmin & Quan, 2000: 5). This was known as the 'adaptation paradigm' which, according to Bruce *et al.* (1994), supports gradual changes of indigenous tenure systems. The International Monetary Fund's Structural Adjustment Programmes brought about second-generation land reforms (Isaacs-Martin & Mpofu, 2014), which in turn popularised the concept of land markets that are a hot deal today.

### **2.2.2 Land markets and land grabs**

A land market is established once land is traded as a commodity (Holden *et al.*, 2009). Chimhowu and Woodhouse (2006) argue that land markets in customary settings are poorly understood but are essential to households to access land. Land, as noted by (Nsemiwe, 2006), is generally abundant in supply but land that can be used for cultivation and other income-generating purposes is usually scarce. This is the focus on the current land market discourse around the globe. Demand continues to rise while some developing countries are viewed as land suppliers, and therefore land is heavily sought after and is becoming scarce. The land abundance prevalent in developing countries has led governments to sell off their land to promising investors. These land sales have steeply risen not only in state land but in customary land as well. In some cases, states take over customary land for development purposes, which ushers in the next concept of land grabs.

Land markets have brought about land grabs, where the grabbers have been identified as the global powers (former colonial powers) because they exert their economic influence upon less developed countries (Wittmeyer, 2012). Tortajada (2013) views land grabs as the increasing acquisition of land by new types of investors whose objectives are neither understood nor appreciated. According to Lafrancesca (2013), the “land grabs” debate is centered on whether or not land transactions benefit local economic development or harm the agricultural sustainability of communities. Nonetheless, a multitude of various investors have seen the value of purchasing and leasing land, which has led to the commodification of land. Lafrancesca (2013) highlights that this demand is led by an investor’s desire to invest in agriculture for biofuel or food production for their respective populations. Some view large-scale investments in rural spaces as beneficial, but at the same time risky, hence (Borras & Franco, 2013) argue that the term “land grab” applies in cases where big land deals do not fall under the characteristics of “responsible investment” and “good governance”.

Twomey (2014) explains that literature defines land grabs as possessing a distinctly foreign element: “large-scale, cross-border land deals or transactions that are carried out by transnational corporations or initiated by foreign governments” (Zoomers 2010: 429). Other definitions argue that land grabs have an element of “taking possession of and/or controlling a scale of land for commercial/industrial agricultural production which is disproportionate in size in comparison to the average land holding in the region” (FIAN 2010: 8). Others justify land deals, arguing that they can serve as sites for fuel and food production in the event of future

price spikes (Borras *et al.*, 2011: 209). The debates on land grabbing contrast as some oppose it while others view it as beneficial and worth the cost of potential displacement (Cotula *et al.*, 2009; Hall, 2011; Fairbairn, 2013). The neo-colonial thesis attributes the drivers of land grabbing to the international economy (Borras *et al.*, 2010; Zoomers, 2010; Cotula, 2012), while the utilitarian view perceives land grabbing as potentially legitimate.

### **2.2.3 Land administration and tenure security**

According to Dapaah *et al.* (2001), studies on customary land tenure systems in developing countries found that majority of the rural population is dependent on customary land. It is from such an observation that the concept of land tenure security arose. Land tenure security is said to be associated with the rights of individuals and groups of people in reference to effective protection by their country's government against forced evictions or displacements (Bruce, 1993).

Land administration is a core element for any country's government and is understood as the method through which the rules of land tenure are applied and made operational. It has four functions, namely, land tenure, land value, land use, and management (Enemark *et al.*, 2009). Given the rise in the number of land transactions that have been on going in developing countries and in Zambia specifically, it is imperative that the local communities are protected, and land tenure security is enforced. Both Deininger (2003) and the Food and Agricultural Organisation (2002) agree that land tenure security is a prerequisite for poverty reduction.

Although definable, Simbizi *et al.* (2014) argue that the conceptualisation of land tenure security is abstruse and that there is no agreement on its actual meaning. Nonetheless, land tenure security, according to Mitchell (2011), refers to the rights of individuals and people to effective protection by their governments against forcible evictions. Similarly, Broegaard (2013) views tenure security as the degree of confidence held by people that they will not be arbitrarily deprived of their land rights or of the benefits deriving from their land rights. As mentioned earlier, the VGGT are internationally accepted standards that country governments could use to improve land governance but, despite their wide recognition and support, the model remains a broad global initiative, which is highly dependent on the state and supporting civil society activities for its successful implementation (Beckh *et al.*, 2015).

#### **2.2.4 Land rights**

Western societies place an emphasis on competition and economic growth, ensuring land transactions are secure and efficient. On the contrary, African rural communities place emphasis on the social needs of the community rather than economic growth (Ezigbalike, 1996). Land access and use is considered flexible and negotiable in most African communities and this element is usually embedded in complex social and political affairs (Berry, 1989; Moore & Vaughan, 1994; Cousins, 2000; Lund, 2002).

Land rights are defined as the rights of people to land, either individually or collectively, and are regulated by a formal legal system or through customary law (Alden-Willy, 2011). Many African rural communities enjoy land rights and access to land through intergenerational succession and inheritance (Shipton, 1988; Attwood, 1990). According to Whitehead and Tsikata (2003), land use requests normally arise from social relations, particularly between people, and not out of property relations between people and land.

Inequity issues are present in communities due to social differentiations, ranging from gender, class, political authority, and more, as explained by Peters (2002), who cites Carney (1988) who showcased an important matter in the struggles between men and women concerning authority over fields and crops in a rice project in Gambia. In the example given by Carney (1988), the cultural struggle over definitions remained invisible to project managers and donors, as such expected benefits of a rule change placing women's names as holders of the plots did not occur (Peters 2002: 14). This implies a strong cultural resistance to women's rights to land.

Aside from cultural restrictions and patrilineal settings, Shipton and Goheen (1992) highlighted the importance of "power, wealth, and meaning" in relation to land holding and land use in Africa. This implies the importance of a local understanding of land, rural livelihoods, and access to land, including power relations and influence (Berry, 1993). The authors proposed that an analysis of land holding patterns in rural African settings should answer three basic questions (Shipton & Goheen, 1992: 309-311):

1. What does land mean, and to whom? What kinds of land resources do rural people use?
2. What kinds of social affiliations affect land use and control?
3. Who controls the terminology?

Other authors like Carney and Watts (1990), Berry (1993), and Cousins (1997) have emphasised the impact structures and practices of power and authority have on land rights within African societies. According to them, the “struggle” over meanings or “struggle” influenced by political-economic relations is central in the realisation of land rights. These concerns were not raised in the neo-classical property rights paradigm, thereby waning the model (Barrows & Roth, 1990), as it fails to consider the rural livelihood needs of non-commercial farm households (Shipton & Goheen, 1992; Freudenberger, 1994; Quan, 1998). This is important because land rights beneficiaries in rural Africa are often households that farm or herd as one of their livelihood-generating activities (Cousins, 2000; Shackleton *et al.*, 2000).

### **2.3. Models in Development**

Models in the world of development, such as the VGGT framework, must be understood from a historical context. They emerge and begin to dominate at particular times and places in relation to particular discourses and practices that are embedded in certain historical experiences. In so-called developing nations, particularly in Sub-Saharan Africa, models of development – in land tenure, settlements, and agricultural development – have a long pedigree (see Cheater, 1984 and Wolmer & Scoones, 2000).

From the colonial era to the present, dominant strategies of rural development have been based on models developed and tested elsewhere in the globe which were sometimes imported into these countries and implemented on blind faith. In the 1960s, following fears and predictions of prolonged periods of famine in Asia, a breakthrough in food production in what came to be known as a “Green Revolution” in Asia, saw moves to transfer the model to Africa and other parts of the world (Otsuka & Kalirajan, 2006). One particular model that dominated rural and agricultural development in Africa, particularly settler Africa in the 1940s, was the mixed farming model that was a package dominant in eighteenth and nineteenth century Britain (Wolmer & Scoones, 2000).

#### **2.3.1 Post-World War II development**

The development dogma took on magnitude in the 1950s when United States President Truman undertook an initiative to embark into Third World countries with a purpose to grow them. The underlying assumption in Truman’s speech, and resultant development policies and programmes that followed, was that poor, undeveloped nations of the South should emulate

the industrial growth path of the North. Post-Cold War, two main approaches to development theory contested on supremacy. In this regard, theorists like Rostow designed steps based on the modernisation theory, which developing countries needed to undergo in order to achieve modernity and overall development (Rostow, 1960). The modernisation theory was rooted in capitalism (Matunhu, 2011) and by the 1960s, according to the Rostow model, development had proven to be a great failure since the situations of developing countries were diverse and their circumstances were different from those that went through Rostow's five steps. The development path prescribed by theorists like Rostow was subjected to numerous critiques by theorists from the dependency tradition, who argued that developing countries will not develop under the current exploitative environment. They also prescribed a new model for development – import substitution industrialisation (Bodenheimer, 1971; Dos Santos, 1970; Wallerstein, 1974).

On models, Bernstein (2004: 194) argued:

The potency of 'models' inspired by particular historical experiences consists in how they are generalised and applied, explicitly or implicitly; whether such application facilitates or hinders analysis of the dynamics of other times and places, including what may be 'changing before our very eyes'; and the implications of such analysis for the real worlds of politics.

Indeed, the development discourse was premised on models, and in particular in the developing world, these models were adopted in their quest for development. Development was thought to be unproblematic since the development path – that undertaken by industrialised western nations – was already known (Cornwall & Eade, 2010). Although the dependency model showed some conceptual weaknesses, most African states bought into it and were guided by the dependency ideal after their independence (Arrighi, 2002). By the 1970s, the basic needs model was adopted by many nations as a way to center development on basic requirements such as shelter, sanitation, etc., with a focus on local communities. Galtung (1979) identified basic needs as security, freedom, welfare, and identity. Rist (2002) argued that the basic needs model rested upon a naturalistic conception of the social, and its proponents were of the view that development projects were supposed to be structured in the interest of grassroots.

Years later it was realised that development needed to go beyond local borders as the process of globalisation was underway (Galtung, 1979). International trade was prospering in a world that was evolving with various changes taking place, particularly in the context of globalisation, neo-liberalism, and an imbedded capitalist ideology. The models shifted to the market and the adoption of structural adjustment programs in the 1980s (Gueorguieva, 2000). Robinson, a globalisation theorist, sees globalisation as the spread of capitalism throughout the world (Woods, 1988), and has largely been driven by the interests and needs of the developed world (Grieco & Holmes, 1999).

The structural adjustment programmes required developing countries to undergo economic reforms to improve their economic strength, but, once again, as with the previous models, failure prevailed and, at this stage, development levels worsened the state of poor countries, driving them further into poverty (Cornwall & Eade, 2010). As stated by Yelapaala (2010), foreign direct investment was perceived as a beneficial element for development and, as a result, developing nations became vulnerable to it, thus leading to the adoption of market oriented, neo-liberal policies such as the structural adjustment programmes. This can be linked to the rush for land and the major increase in land investments by foreigners in developing countries as countries began to alter their policies in a manner that would be more welcoming to the foreign investor.

To address these failures, the Millennium Development Goals (MDGs) were introduced in the 1990s in an effort to address the mistakes of the past; this time development was aimed at sustainable growth, with a focus on poverty, education, health, environment, and partnerships (Bello & Suleiman, 2011). The Millennium Development Goals were part of the guiding principles under the alternative development models that were meant to be a solution to decades of development failure strategies (Saith, 2007). The Sustainable Development Goals (SDGs) followed in the early 2000s.

### **2.3.2 A move towards alternative development**

The previous section discussed a shift in development paradigms over a long period of time. This section looks at another paradigm shift, this time in a different ideology – alternative development, a theory which started gaining popularity in the early 2000s in terms of programmes and projects. When all these attempts failed during the first 50 years post-the Truman speech, there was a need to decentralise and enhance community development and to



adopt people-centered development and bottom-up models and policies aimed at improving and protecting local interests (Liedl, 2011). Although promising, alternative development approaches have been criticised as being “more sinister than ‘hard’ development because its friendly exterior is more seductive than ‘hard’ development, but its content much the same” (Latouche, 1993). These models, however, have led to direct development in the developing world and there are no signs that they will stop. While most have been less successful than others, failure always leads to the emergence of even more innovative models.

Alternative development strategies are aligned with community development. Proponents of community development argue that this type of development enables marginalised people to have a voice in the democratic process, arguing that activities under community development have the ability and potential to affect changes that will combat poverty and social exclusion and address power imbalances in policy making. In other words, community development is seen as a powerful force for social and political change (Lee, 2006). This study is associated with community development, more clearly in the rural sense. Arguably, rural development is mirrored with ‘sustainable development’ because these two concepts vaguely outline what they mean. Two definitive definitions are highlighted below:

“Rural Development is a strategy to enable a specific group of people, poor rural women and men, to gain for themselves and their children more of what they want and need” (Chambers, 1983).

“A process leading to sustainable improvement in the quality of life of rural people, especially the poor” (Singh, 1999).

According to Van der Ploeg *et al.* (2012) rural development emerges from a socio-political struggle and debate stand point. The literature on rural development is characterised by a mix of theory and practice: “that is both ideas about how ‘development’ should or might occur, and real world efforts to put various aspects of development into practice” (Potter, 2002: 61).

Alternative approaches in development are bottom-up approaches to development that is mostly carried out by non-governmental organisations and other agencies, including governments. According to Larrison (1999), alternative development consists of current popular concepts such as participation, people-centered or community development, improving local resource management, localising finance access, replicating human development, and increasing communication and interchange.

Following “the rapid and sharp increase in foreign land acquisitions that took off in 2006 (what has come to be known as the global land grab)” (Sassen, 2013) and growing land governance concerns in developing countries, the VGGT has been introduced as yet another model to guide land governance in developing countries. A number of countries in the continent, particularly those that have experienced widespread land acquisitions and fears of social injustice implications of these acquisitions, have bought into and adopted the VGGTs (Hall *et al.*, 2015). The VGGT are considered a fundamental standard which the private sector, financial institutions, and other stakeholders ought to apply to guarantee sustainability and social responsibility of their operations, lending practices and investments in the land sector (Charlotte *et al.*, 2015).

## **2.4 The VGGT as a Development Model**

The VGGT instrument is a soft-law mechanism that was endorsed by the Committee on World Food Security on 11 May, 2012. The guidelines foremost seek to improve poverty eradication, housing security, and sustainable livelihood. Secondly, the guidelines seek to improve governance of tenure for the benefit of all (Wehrmann, 2015). The VGGT principles are a new international instrument that social movements or community-based organisations can use to assert their tenure rights. The VGGT can therefore contribute to the efforts of communities, peoples, and organisations in improving the governance of tenure for natural resources. The VGGT are considered a fundamental standard which the private sector and financial institutions ought to apply to guarantee sustainability and social responsibility of their operations, lending practices and investments in the land sector (Charlotte *et al.*, 2015).

### **2.4.1 Studies on the VGGT and the governance of tenure**

Considering governments play a crucial role in regulating investors and investment, the VGGT stress the state’s role in recognising and protecting tenure rights, food security, human rights, and the environment (Gallico & Groppo, 2016). The authors specified the actions required by a state, stating that before any investment takes place, states should ideally secure all legitimate land and resource rights, particularly for marginalised groups, and they should ensure access to land for these vulnerable groups.

Although there is a provision for a list of principles that states should follow to implement the VGGT, the guidelines were not solely designed for government use; in fact, the primary audience of the guidelines is investors. Investors, civil society, and other stakeholders are

advised to make use of the VGGT when dealing with land issues. It is argued that, while investors may have good intentions when investing in land, they may lack the technical capacity to activate international instruments such as the VGGT (Bledsoe *et al.*, 2015). Other than capacity, another issue (Bledsoe *et al.*, 2015) explained is the lack of an adequate understanding by investors, governments, and other stakeholders on how to implement the VGGT guidelines. Drawing from the Asian experience, The Asian Farmers Association (2015) highlighted the following challenges that hinder VGGT promotion:

1. Low awareness about VGGT among policymakers, natural resource managers, and farmers' groups.
2. Not yet formally launched or supported by governments; hence, VGGT adoption is not prioritised and budgeted.
3. Governments may be reluctant to use the VGGT as an assessment tool due to the potential of revealing information about the real status of land ownership and tenure.
4. Government "turfing" over their respective jurisdictions.
5. Illiteracy and low education of farmers; no translated versions yet of the VGGT.
6. How to bring the VGGT to remote rural areas?

In Africa, countries like Sierra Leone have a clearer experience with VGGT implementation. Hall *et al.* (2016) explain that an analysis of the current status of Sierra Leone's land, fisheries, and forestry governance was conducted and identified gaps and inconsistencies with the VGGT. According to these authors, recommendations were put forward for changes to laws, policies, and institutional arrangements for Sierra Leone. The main gaps noted in Sierra Leone's experience are women's tenure rights, access to justice, and rights to inclusive and consultative participation in decision making.

The VGGT knowingly seek to enhance transparency and accountability in tenure structure and administration. In order for this improvement to take place, (Bledsoe *et al.*, 2015) puts forward a statement, arguing that it would require an intervention in the multifaceted reality of tenure administration and governance systems, which are known to differ across geographies and embedded in their regional socio-political history. These changes can be made possible if actors adopt responsible practices. Being voluntary, the VGGT are not legally binding and do not replace existing national or international laws and commitments (Hall *et al.*, 2016). The principles adopted in the VGGT guidelines provide governments, civil society, the private sector, and citizens with the ability to examine whether their actions and the actions of others

represent acceptable practices from a human rights perspective. Since the introduction of the VGGT, implementation has been on-going in Zambia in the form of awareness raising, capacity development, legal and policy frameworks, and operationalisation (CFS, 2016).

The European Union (EU), along with technical agencies such as the Food and Agriculture Organisation, the New Partnership for Africa's Development (NEPAD), the Land Policy Initiative (LPI), the International Fund for Agricultural Development (IFAD), and others have collaborated to make provision to finance capacity building and to promote policy dialogue concerning the VGGT (Hall *et al.*, 2016). To this effect, these organisations have made commitments towards the VGGT. The United States Agency for International Development (USAID), for example, is in the process of preparing an 'Operational Guidelines for Large Scale Land-Based Investment' which is based on the VGGT and principles of Responsible Agricultural Investment (RAI).

The Food and Agriculture Organisation and United Nations Economic Commission for Africa (UNECA) are working through the Land Policy Initiative and the New Partnership for Africa's Development to support the integration of the VGGT in the national policies of African nations. The VGGT were designed to influence land policies and this has indeed materialised in some countries around the globe as they have revised their land reforms to incorporate elements of the VGGT. Country examples include countries like Brazil, Namibia, Sierra Leone, Guatemala, and the Philippines (Food and Agricultural Organisation, 2015).

## **2.5 Chapter Summary**

Development policies, mechanisms and tools have for several years been influenced by the development ideology present in each period of time. During the 1950s, development tools were based on modernization, by the 1980s with the rise in globalization, development models were based on free market ideology. These influences are still present as countries attempt to correct the mistakes of the past with alternative development strategies. The issue with the failure in development strategies does not seem to be an issue of the models themselves but instead, perhaps the problem lies in the application of models. At the same time, countries differ in many ways, be it politically, economically, culturally or socially. Thus the applicability of models cannot be uniform and that is what some critics of development models base their arguments on.

This chapter introduced and provided literature on the main concepts that form this study, being land tenure, land administration land grabs, land rights, and tenure security and governance. These concepts have been a hot topic since countries opened up their land markets in the wake of globalisation, neo-liberalism, free market ideology, and reforms. These have been influenced by changes in development thinking over the years from modernisation theory to present-day alternative development thinking. Land as seen in this chapter may have different meanings for countries and this alone influences how people treat it, value, protect and manage it. Customary land holding patterns are not necessarily complicated in nature but they differ substantially from statutory land which is arguable more organised, defined, secure and identifiable. Property rights are weak under customary tenure and this has led to many negative events under this form of tenure ranging from boundary disputes, land grabs, displacements, landlessness and food insecurity, conflicts within communities and more.

The VGGT was formulated to correct the wrongs, which marginalised groups have been severely exposed to, as a result of irresponsible land investments and poor governance of land. The VGGT guidelines have brought a breath of fresh air for the rural communities, who are the focus of the framework. The guidelines assist in managing the current challenges in the governance of land in developing countries. While the framework seems promising like most development models, the challenge still dwells on its applicability in a local setting. The next chapter outlines the research methods and processes undertaken to examine Zambia's land governance and tenure security, including the overall experience, performance, and challenges of implementing the international VGGT framework in Zambia's domestic environment.

## Chapter 3

### Research Methodology and Methods

#### 3.1 Introduction

The research methodology was guided by the study's objectives which sought to analyze the progress made in the implementation of the VGGT framework in Zambia and its effects on land governance and land access and security for communities on customary land, if any. The starting point of this analysis was to explore the Zambian land tenure system and the effects neo-liberal development strategies have had on the land system and to what extent the VGGTs can address these issues. This was done by engaging Zambian land experts who are familiar with the land governance issues and a group of local individuals living on customary land where governance challenges are heightened.

The chapter begins by discussing the research design and methodology adopted to collect data and highlights the research instruments used. A qualitative research approach was adopted and is described further in the section that follows. The chapter before this, being the literature review, assisted in framing the debate on the main topics that concern this study. This chapter also includes details on the research paradigm, fieldwork area, and sampling technique. Highlighted in this chapter are the steps that were taken to collect and analyse data, the limitations, as well as delimitations of the chosen research design. Lastly, the ethical considerations that guided the study are also specified.

#### 3.2 Research Design

There are two main types of research designs, namely quantitative and qualitative research designs. De Vos (2002) accounts for the difference between the two, highlighting that while quantitative research includes surveys, statistics, experiments, and content analysis, qualitative research is associated with case studies, biography, ethnography, phenomenology, and grounded theory. This study followed a qualitative research approach, which is concerned with developing explanations of social phenomena, particularly how the social world is experienced, interpreted, and understood (Mason, 1996). According to Monette, *et al.* (2010), qualitative methods are interpretative methods where data may be presented in the form of words, images, descriptions, and narratives as opposed to numbers and counts. In the social sciences domain, this type of research method is common as it intends to access one's personal and subjective experience over certain issues (Fouche, 2005).

Data collection in qualitative research normally involves a process of direct interaction with individuals, either in a group or on a one-to-one basis between participant and researcher. According to Auerbach and Silverstein (2003), this type of research involves analysing and interpreting interviews and literature to identify meaningful patterns. Due to its nature, this type of research method is deemed time consuming. Therefore, unlike quantitative methods, the sample used to collect data is usually small in nature. Information acquired from qualitative research is said to be beneficial because it is profound and provides a deeper understanding of the subject matter.

Associated with qualitative research or interpretive research are research techniques such as field research or participant observation, which assist in understanding the appearance of social phenomena (Mason, 1996). For land tenure studies, many social anthropologists have opted to use interpretive methods of research. Take, for example, Wilson's study on the land rights of Nyakyusa dwellers in Tanzania between 1934 and 1938. Wilson firstly looked at the Nyakyusa's perception of land. He then examined the land rights of Nyakyusa people within their settlements and, in comparison, to other chiefdoms. One may also see the social interpretive approach in a couple of land tenure studies such as those by Allan (1945), Watson (1958), Colson (1960), Scudder (1962), Gluckman (1975), Berry (1988), and Shipton and Goheen (1992).

Qualitative research aims to explore a phenomenon (McLaughlin, 2007) and this exploratory-descriptive research design assists in gaining insight into an unexplored situation, individual, or phenomenon to develop a hypothesis or formulate a problem (Legard, *et al.*, 2003). In doing so, such an exploratory study assists in satisfying a researcher's desire for a better understanding of a phenomenon, in developing methods to be employed in subsequent studies, in determining priorities for future research, to develop a new hypothesis about an existing phenomenon, and to test the feasibility of exploring the study further (Babbie & Mouton, 2001).

To explore the question set above and the underlying principles of the VGGT framework and its suitability to Zambia's land environment, the chosen research design used a combination of both primary and secondary research methods. These methods included a literature review, key informant interviews, and a case study. According to Babbie and Mouton (2001), qualitative research seeks to answer a question, collect evidence, and produce findings that are applicable beyond the boundaries of a study. Additionally, it seeks to understand a given research problem or topic from the perspectives of the local population it involves. A case study, according to

Yin (2009), permits the researcher to retain the holistic and meaningful aspects of reality. For the case study undertaken, the researcher chose to use two sub methods for data collection, namely a focus group discussion and interviews with community members which included community leaders such as the chief advisor, community dwellers, and headmen.

Adopting a qualitative design for this research allowed for the examination and interpretation of observations and thus assisted in discovering the underlying meanings and patterns of relationships between the key concepts of this study. This type of research design is investigative and suitable for this study as it enables the analysis and examination of the VGGT framework, its applicability, impact, and suitability. An analysis of this sort is more appropriate for this study in comparison to a quantitative design as it provides a more naturalistic, ethnographic, participant observer type of result.

### **3.3 Sampling**

Strydom and Delport (2005) describe sampling as taking any portion of a population or universe as representatives of that population, of which the universe refers to all potential subjects who possess the attributes in which a researcher is interested in. For this study, a non-probability sampling method, also known as purposive sampling, was employed. This is described by Strydom and Delport (2005) as “a purposeful, systematic method by which a controlled list of specified populations within a geographical district are developed and detailed plans are designed to recruit adequate numbers of cases within each target”.

According to Rithchie and Lewis (2003), qualitative research makes use of non-probability samples for selecting the population for the study, in which case selection is purposefully done. Using a purposive sampling procedure, the researcher was able to identify key units of analysis which were deemed relevant samples for the study. This includes communities on customary land and for whom the VGGT guidelines were designed to benefit, as they make direct reference to the research questions (Bryman, 2008). Marshall (1996) strongly believes this form of sampling is the most suitable platform for understanding social phenomena as it draws perspectives from units which possess features related to the study.

The focus group discussion and interviews conducted with the community members focused on issues of land: access; investments; ownership; and rights, including those for women, land and food security, and the overall management of land. More broadly, the main aim of the case study was to examine the progress made in local communities in relation to the VGGT goals



and to assess whether there are any current factors that could hinder the successful implementation of the VGGT framework. Initially, the researcher had planned to have a sample consisting of 12 key informants and a range of 30 to 40 local participants for the case study. The researcher chose these sample sizes as they would be enough to cover the topics that were being explored. However, fewer participants were available for the case study, mainly due to the spread of villages which made it difficult to bring many people together at once. Additionally, the case study took place on a weekend where certain members could not make themselves available. As such, the sample included 12 key informants and 15 individuals representing households for the case study. The final case study sample size did not compromise the research results as the information received was from community representatives.

### **3.4 Research Instruments**

To obtain detailed information from the above sample and other platforms, the following research instruments were adopted.

#### **3.4.1 Literature review**

Chapter 2 forms the literature review which covers secondary data that was drawn selectively from academic literature such as books; journal articles; abstracts and other published material, including official reports, media material, and opinion blogs. The literature review extends to Chapter 4 where a Zambian perspective is provided. In Chapter 4, the literature varies according to the periods under review, from post-colonial Zambia, Zambia after independence, and the present. The subject is broad and covers areas where government documents and reports, commissioned reports, organisational material, conference and workshop proceedings, and statutes are readily available. The review of literature covers various subjects including: land tenure security and landholding patterns, the historical context of land policy in Zambia, neo-liberal development strategies, the 1995 Zambia Land Act, land grabs and foreign direct investment, land administration, the VGGT model, and more. The literature review provides suitable sources of data that would help answer the research questions of the study.

#### **3.4.2 Key informant interviews**

Key informants formed the primary research of this study. The examination of the VGGT implementation, applicability, and suitability as a land governance instrument in Zambia is rather broad. It spans different periods in postcolonial Zambia, focusing on policy, the social

sphere, and the international environment. Different individuals with knowledge, expertise, and involvement in these issues were a valuable source of information. For the primary research, targeted interviews were conducted with 12 key informants from the Ministry of Lands, Zambia Land Alliance, Zambia Environmental Management Agency, Agricultural Consultative Forum, Zambia Development Agency, Zambia Law Development Commission, Indaba Agricultural Policy and Research Institute, Caritas Zambia, and Zambia Institute of Environmental Management.

These informants ranged from implementing organisations and organisations dealing with land governance and management in the country, to organisations interested in the adoption and implementation of the VGGT in Zambia. The above-listed informants comprised of government officials, research institutes, development organisations, and non-governmental organisations (NGOs) in Zambia. A purposive sampling model was used to identify key informants; this facilitated the grouping of individuals according to the criteria relevant to the specific research questions.

An interview guide was employed; however, the interviews were semi-structured and designed to source information specifically from a particular informant and their experience. According to Ritchie and Lewis (2003), semi-structured interviews combine structure with flexibility, allowing a researcher to cover specific issues or topics. According to them, an unstructured interview eases the ability to adapt an interview schedule to an interviewee's knowledge and experiences of the central themes or concepts that form a study. On their own, formal, structured interviews tend to be inflexible due to their restrictive nature and as such do not allow interviewees to freely express their answers when responding to a question (Kvale, 1996). They can also degenerate into an interrogation process. Unstructured interviews, controlled through an interview guide, have the advantage of allowing respondents to engage with issues in great depth, and these types of interviews produce useful data outside the set questions (Kvale, 1996).

Once samples were identified, the researcher contacted, consulted, and requested meetings with informants to enable the two parties to agree on suitable times for the interview. Prior to conducting interviews, the researcher in most cases shared the interview guide with the interviewees and, on the day, the researcher would go through the information sheets to inform them about the relevance and purpose of the study. The researcher ensured the participants fully understood the purpose of the study and informed them that their participation was

voluntary, would be audio recorded, and if they wished to remain confidential, their wish would be respected. All interviews were audio recorded and lasted for 45 minutes on average. Thereafter, all interviews were transcribed for further analysis.

The researcher also requested documents and records pertaining to the study, which were provided by the Zambia Environmental Management Agency. This form of information collecting can be in the form of letters, regulations and guidelines, policy statements, and so on (Gillham, 2000). While conducting and recording the interviews, notes were taken of any information or thoughts that triggered further ideas that were significant to the rest of the study.

### **3.4.3 Case study**

A case study is a source of comparative information and is of secondary importance to the literature review and key informant data. The case study was conducted in Mumbwa, a town located in Zambia, as seen in the figure below. Mumbwa is home to a population of 225 659 people (City Population, 2017). The case study focus area was Moono constituency, particularly within local rural communities from the villages of Zulwe, Lundumuna, and Kwempa. These community members mostly spoke the Ila language, while a few were fluent in English. The chief advisor that took part in the focus group discussion interpreted questions and answers throughout the whole process.

Land in this region is mostly customary and is a major source of livelihood and survival for the majority of the households dwelling in these communities. A range of techniques was used to collect data, namely a focus group discussion with different communities and unstructured interviews with farmland owners, the headman of the Zulwe village and chief advisor, and the headman of the Moono Chiefdom. The focus group discussion involved community members from the all villages listed above and lasted for an hour. These groups were chosen due to their nature, being, rural customary land dwellers and farmers whose land access, rights and ownership is key to their survival.

All participants were informed of the area where the discussion would take place. The discussion took place in Zulwe village as it was a central meeting point for all. A guide was used during the whole process but was unstructured and allowed participants to speak freely on any issue they wanted to raise. The focal point of the discussion was centred on the experience of these community members in terms of land investments, land rights, and governance. The discussion aimed to analyse the status quo in terms of the main concepts of

this study and to examine what impact the introduction of the VGGTs and similar alternative development strategies have had in terms of improved tenure security, land access, land rights, and land ownership for customary land holders.

Additionally, a community tour and an observation of the area took place to gain a better understanding of the community. Individual interviews took place with the chief advisor and headman from Zulwe village. Similarly, like those of the key informants, the interviews were unstructured but controlled through an interview guide, which allows a researcher to gain information on a wide range of issues. These individual interviews lasted for 40 minutes on average per interview. The focus on the relationships between local farmers or land owners, investors, traditional authorities, and the state required an understanding of the nature of the leadership on either side of the alliance. Participants were made aware of the purpose of the study and informed that their participation was voluntary, and would be audio recorded. They were given the option of remaining anonymous if they wished. All interviews and the focus group discussion were audio recorded and later transcribed for further analysis.

**Figure 2: Map of Mumbwa**



**Source: Weather forecast.com**

While the case study gives an account of the land situation in Mumbwa's Moono constituency, it is in no way a general reflection of the national situation, considering cultural practices and beliefs and other factors differ in different parts of Zambia. Touching on issues of land access, use and ownership, employment patterns, living standards, and tenure security for the participating communities and how these have changed in recent years, the case study simply

provides an illustration of land governance and management, tools and mechanisms in place for the study area, and attempts to identify the impact of the VGGT, if any, for this particular area.

Part of the fieldwork, particularly for the case study, involved administering a short and structured focus group discussion with the use of a questionnaire or guide with a number of villagers in Lundumuna and Zulwe village.

### **3.5 Data Analysis**

Data analysis in qualitative research is described as a process of bringing structure, order, and meaning to the data a researcher collects in the field (Schwandt, 2001). To analyse the data collected, a thematic analysis was selected, which, described by Braun and Clarke (2006), is a qualitative analytical method for identifying, analysing, and reporting patterns or themes within data. Themes are vital as they capture important aspects of the data collected in relation to the research questions; they also represent some level of patterned response or meaning within the data set. Hence, the researcher chose this form of data analysis as it creates links between the research questions and the data (Braun & Clark, 2006).

Braun and Clark (2006) outline a six-step process of data analysis, which respectively includes familiarising yourself with data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing a report. These six steps are explained in detail below:

*Familiarising Yourself with Data* – The researcher transcribed all recorded interviews and read through each of the transcripts carefully to gain a better understanding of the data collected.

*Generating Initial Codes* – While other authors like Tesch (1990) make use of abbreviated codes to identify topics, the researcher chose to color highlight the text to identify key themes and topics.

*Searching for Themes* – The researcher made notes of key themes that emerged from the study which were related to the study's objectives.

*Reviewing Themes* – The researcher identified the final themes and related subthemes that emerged by reading through thoroughly and checking mistakes. Comparison was made between the data retrieved from the participant's responses and the data within the literature

from Chapter 2, a process of double checking participants' responses and the data which assists in gaining a better understanding (Elo & Kyngas, 2008).

*Defining and naming themes* – The researcher finalised the themes and categories that emerged from the study and placed them in a table.

*Producing a report* – Once themes were identified, labelled, and categorised, the data was interpreted and presented according to each theme.

### **3.5.1 Data verification**

According to Kvale (1996), data verification is the process of checking, confirming, and being certain of the trustworthiness of the research process. For qualitative research, Lincoln and Guba (1986) argue that the criteria for good qualitative research is bound to the concept of trustworthiness, which they believe, are centered on four concepts, namely: credibility, transferability, dependability, and confirmability.

#### **3.5.1.1 Credibility**

Lincoln and Guba (2000) argue that credibility makes a researcher question whether the findings seem authentic and whether there is compatibility between the realities that exist in the minds of the informants and the realities attributed to them. Accuracy of the information thus becomes essential and therefore the researcher made use of a digital recorder during all interviews to ensure that the findings would be consistent with what was reported by informants. Credibility was further supported by an in-depth review of literature by the researcher.

#### **3.5.1.2 Transferability**

Babbie and Mouton (2001) also discuss transferability, which refers to the degree that the findings from a study can be used with other participants or in other settings. This study did not intend to generalise the findings but sought the knowledge and opinions of the informants.

#### **3.5.1.3 Dependability**

This is described as a situation in which a researcher is capable of providing an audience with evidence that would be similar even if it were to be repeated with the same or similar respondents (Babbie & Mouton, 2001). Bryman (2012) adds that when dealing with the issue of dependability, all processes encountered when conducting a study should be reported in

detail, as this would allow for future work to be conducted by the researcher. To this effect, this paper has outlined the methodology in detail, thereby highlighting how data was analysed. The researcher thus believes replication with similar results should be possible.

#### **3.5.1.4 Confirmability**

Babbie and Mouton (2001) say confirmability is the extent to which a study's findings are not biased or a product of a researcher's opinions but are a product of the enquiry. To address this, the researcher linked the data collected to literature in order to ensure objectivity.

### **3.6 Ethical Considerations**

There are many ethical issues to consider when conducting a research project; the identified ethical issues applicable to this study are highlighted in this section. According to Steffen (2016) obtaining consent from participants is not only important; participants should be legally and psychologically capable to give consent. Furthermore, it is a must that respondents are fully aware that they are free to withdraw from interview processes at any time. The study was guided by fundamental ethical considerations that relate to responsible research in the human sciences. Other than answering questions through key informant interviews, a case study was used to evaluate the progress made with the implementation of the VGGT. This element of the study was crucial as it would highlight whether the framework has made a positive impact for those who it was designed for – the locals. The researcher assumed full responsibility for the integrity of the research process and the dignity and wellbeing of the research subjects. The researcher particularly paid attention to the following:

- *Permission to conduct the study:* Before commencing the study, permission to conduct the study was requested from all the organisations enlisted in the sample table in section 3.5 of this chapter. The researcher also requested permission from the chief of Moono constituency where research was conducted at the local level. At the individual level, requests for participation were sought after from targeted key informants. A letter of introduction from the university was presented to the targeted participants along with the ethical clearance letter from the university.
- *Informed Consent:* Participants were informed of the purpose of the study and informed consent was received before undertaking any research. Participants were made aware that they are taking part in the study voluntarily so that they could decide whether it

would be in their interest to proceed (Du Plooy-Cilliers *et al.*, 2014). Consent was requested from all participants, supported by a consent form which was developed for participants to sign, although subjects that did not want to append their signature were not coerced into signing.

- *Harm to Participants*: Assurance was given to all participants that involvement in this research would not directly or indirectly produce any physical, psychological, or general work-related harm to them.
- *Confidentiality and Anonymity*: The respondents were informed that their responses would be treated with the strictest confidentiality and anonymity if they wished to remain anonymous. Participants were assured that all data collected from the fieldwork would be stored securely and reported findings would not allow the ready identification of the respondent if they were not willing to be identified. To protect the identification of participants, pseudo names have been used. A confidentiality agreement was signed between the researcher and all participants that formed part of key informants.

### **3.7 Research Framework and Fieldwork Problems**

To address the research questions, a literature review acted as a secondary research method, while key informant interviews and a case study survey of the selected area were the primary research methods. The key informant interviews were a rational starting point for research of this scope and nature, considering a number of experts in land issues were available for information sourcing. Given the context of the topic, the case study in the Mumbwa district was essential as it reflects land issues under customary land tenure and assists in linking or supporting the information presented by literature and key informants against the definable area. The fieldwork was conducted over a few weeks between May and June, 2017 in two towns in Zambia, particularly Lusaka and Mumbwa.

Field work in Lusaka consisted of key informant interviews, while fieldwork in Mumbwa took place in Moono constituency and involved a focus group discussion and unstructured interviews with headmen and some community members. No field work problems were encountered while conducting key informant interviews, although in one or two cases interviews had to be rescheduled. Assessing community members in the rural settings was not necessarily difficult but, on the day, the number of participants turned out less than anticipated because community members were either at an unreachable distance and/or in religious or other



cultivating activities. This reduced the sample size but did not affect the quality of information received. Most participants for the case study did not speak English but this was resolved through interpretation by a headman who translated from the widely spoken Ila language to English and vice versa. One other challenge encountered during this study related to the limited amount of accessible literature on the VGGT implementation and performance in the country.

### **3.8 Chapter Summary**

This chapter has shown the research approach adopted for the study. It has highlighted elements of interpretative social science to constitute a methodology of qualitative research. The combination of participatory methods such as the focus group discussion is intended to assist different but complementary purposes. To this end, the discussion has attempted to emphasise the complementary role of research methods. In the next chapter, data analysis is presented, with a focus on answering the first three questions of the study.

## Chapter 4

### VGGT in Zambia: Implementation, Governance and Challenges

#### 4.1 Introduction

Zambia possesses a dual land tenure system and has maintained this type of system for several years. Prior to independence, British colonisers created reserves aimed at secluding white settlers and African natives but, since independence, Zambians have had no major challenges accessing land, explained most key informants and participants during field work. Although land is deemed easily accessible to Zambian citizens, land laws and policies have facilitated land acquisitions in the country by local elites and outsiders and, in some cases, these acquisitions have led to land grabs, landlessness, displacement, and more. This chapter provides a local synthesis of land governance in Zambia and how development strategies over the years have affected land policy and management in the country. It seeks to examine the implementation and suitability of the VGGT framework in Zambia's environment and assists in identifying key challenges in the Zambian land system that pose a hindrance for the successful implementation of the VGGT.

The chapter begins by describing the type of land tenure system in Zambia, followed by the history and events that shaped it. The section after that focusses on the impact neo-liberal development strategies have had on Zambia's land system. This, along with a history of land tenure; governance; and the introduction and enforcement of land market reforms, aids in highlighting the domestic land governance challenges Zambia faces, as well as the factors that could hamper effective implementation of the VGGT framework.

This chapter seeks to address the first three research questions of the study and thus presents a combination of findings from the semi-structured interviews undertaken and the data obtained from literature on Zambia's land governance experience, from land alienation, development strategies, land markets, and the VGGT. As a reminder, the research questions that the chapter is addressing are listed as follows:

1. What is the context for the adoption of the VGGT framework in Zambia?
2. What are the implications of neo-liberal leaning on Zambia's land system?
3. What country specific challenges may affect the implementation of the VGGT model in Zambia? How might this impede successful implementation?

The chapter that follows provides a community perspective on the above and seeks to examine whether the VGGT guidelines have had any impact on local Zambians in terms of land rights, land access, land ownership, and tenure security.

#### **4.2 Zambia Land Tenure Administration, Dualism, and Policy**

Zambia is landlocked and known to possess a vast amount of land. Land tenure has for many years followed a dual land holding pattern, particularly state land and customary land, with the latter being the most abundant (Sichone, 2008). The land law of Zambia officially categorises all land as either “State Land” or “Customary Land” respectively (Government of the Republic of Zambia, 1995). Customary land tenure is in clear majority in Zambia, in comparison to state land as seen in the figure below. Although Zambia has been considered a settler state, it never experienced large settler populations. Unlike Namibia, South Africa, and Zimbabwe, where settlers expropriated large amounts of land for settler capitalism which generated a land question that has remained unsolved up to the present, commercial settler agriculture did not develop massive land interest in the country and the post-colonial state did not interfere with the land occupied by the settler population.

As a result, Zambia is a different settler state where customary land forms a large segment of the land in the country, although there are also similarities with other settler states in the region in that customary land is occupied by most of the population, which is mainly peasantry. Unlike other settler states in the region, Zambia’s land administration is not complicated, as an official from the Ministry of Lands Chief Registrar Officer reported:

*The land administration system in Zambia can be described in two-fold, we have the lease hold tenure in which the land is vested in the Head of State, the other part being in the traditional rulers. State land only accounts for about 6% whereas 94% is vested in the traditional leaders or is under customary law which is controlled by the various traditional rulers.<sup>2</sup>*

These statistics are not a reflection of current percentages as they have not been updated in decades, affirmed the Ministry of Lands, Deputy Surveyor General.<sup>3</sup> The quantifications of these percentages were established as early as 1975 and, since then, Zambia has not established a system that can correctly establish the percentages because conversion of customary land to

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<sup>2</sup> Interview, Lusaka, June 2017

<sup>3</sup> Interview, Lusaka, June 2017

leasehold tenure has been ongoing. In Zambia, many land transactions have taken place since the 1995 Land Act was introduced (Hansungule, 2001). A digital system to quantify these numbers was developed in 2015; however, conversions that took place before 2015 have not been added to this digital information system, thus making it difficult to provide actual statistics. Nonetheless, what emerges from the discussion is that customary tenure still dominates land holding patterns in the country where the state has retained some control over land despite its adoption of neo-liberalism in the 1990s.

#### **4.2.1 Land administration and institutional framework**

Despite influence from the west in terms of adopting structural adjustment programmes, facades of neo-liberalism, and the enforcement of capitalist-oriented approaches, Zambia has its own issues and systems at home. These are notable in its institutional framework and capacity, traditional or cultural practices, corruption, and a lagging land policy amongst others.

A lagging land policy has meant reliance on a Land Act that was passed over 20 years ago. According to the Zambian government, the new national land policy will ideally lead to equitable access to land and associated resources for women and all the people of Zambia, poor and rich, under the Ministry of Lands. The new policy will allegedly strengthen land tenure security, particularly among the rural and urban poor, in order to enhance sustainable and productive management of land resources in a more transparent and cost-effective manner and at the same time provide for a better framework for conservation and protection of ecologically sensitive areas and a cost-effective and efficient settlement of land disputes (Ministry of Lands, Government of Zambia, 2015).

In terms of administration and rules governing the dual land system, the Zambian president holds land in perpetuity on behalf of the people, as confirmed by a Zambia Land Alliance (ZLA) representative who also acknowledged traditional leaders as custodians of customary land. The study found that people in Zambia can acquire land easily as the law does not disadvantage or discriminate anyone from acquiring land. However, it is not unheard of that certain groups and people are disadvantaged. People dwelling on or owning customary land in rural areas have been disadvantaged in the past as expressed by (Mudenda, 2006) and without a concrete land law guarding customary land, they remain at risk.

Apart from a non-existent customary land bill that could protect customary land holders, this group of individuals face risks merely because they do not have documented rights to their

land, thus putting their faith on traditional leaders who have authority over that type of land. The issue of traditional leaders having authority over land has raised concerns by land governing agents and locals because some traditional leaders have abused their power and sold off land without the consent of the people. Caritas Zambia director sympathises with these concerns and believes the chiefs need to be regulated in terms of how they sign off land or authorise title deeds. He stated:

*Currently it is just by evolution, if the chief decides, he writes a letter and it goes to the council and the full council meeting sits and that is it, land is changed. So, we need to have some kind of guidelines that will be guiding each and every traditional leader for that particular process. We are not sure whether they sell land because it is not receipted, but since it is not receipted we cannot say they sold off the land. We cannot match a foreign investors financial muscle; imagine a foreign investor gives a tractor as homage or he comes with a bag of money, it is a given that he will be given land. We need to have an equal footing; both local and international people so we are hoping that these things being put in place will bring about a lot of sanity.<sup>4</sup>*

Land administration in a dual land system can be cumbersome since the laws that govern state land do not necessarily apply to customary land. Administration of land by chiefs under customary tenure has brought about anxiety because it is believed there has been some carelessness in the way land has been governed by traditional leaders stated some respondents. As such, talks of decentralisation have emerged. Other challenges under customary land felt directly by locals are discussed in the sections that follow.

It would appear Zambia has gone for years without a land audit to confirm the amount of customary land that has been converted, as was the case in the early 2000s (Muchima, 2006). This confirms a concern raised about customary land being significantly less than anticipated, and that private land may be greater than officially recognised. This was addressed by a representative from the Zambia Land Alliance, an organisation dealing with land rights and other land issues, who expressed great doubts over the size of customary land, stating:

*According to reports, customary land could be about 50 or 60% of the total land mass as huge chunks of land have been allocated for investment purposes.<sup>5</sup>*

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<sup>4</sup> Interview, Lusaka, June 2017

<sup>5</sup> Interview, Lusaka, June 2017

Land conversion in the country peaked in the late 1990s following the enactment of the 1995 Land Act by the Movement for Multiparty Democracy (MMD) government. The Act introduced privatisation of land with the aim of encouraging investments in land (Spichiger & Kabala, 2014). In Zambia, however, land conversions have a long pedigree. Conversion of land started in the 1970s with the 1975 Conversion of Titles Act. At this stage, freehold tenure was done away with by the Kaunda regime, thereby bringing about the two types of land holding patterns that are present in Zambia today. At the time the value of land was relatively low, and its demand was low in the peri-urban and urban areas but since the introduction of the Act in 1995, title conversions have mainly taken place in peri-urban areas or in commercial rural areas, and titles have mainly been acquired by foreigners and nationals (Brown, 2005: 100). A representative from the Zambia Law Development Commission shared his view on the 1995 Land Act:

*If you were to look at the genesis of the 1995 land administration, Zambia had just come from a one-party state and it was getting into a multi-party state and, if you remember during the one-party state there was very little foreign direct investment. The multi-party state brought about liberalisation under the Chiluba administration and the liberation was looking at how best we can integrate with the international community, so the Land Act then was very useful and very cardinal, but it needed to be updated as it went along the way.<sup>6</sup>*

Fast forward to the 1990s after the 1995 land reforms, several pockets of land were opened up for development and alienation of customary land was taking place for various investors like non-Zambian commercial farmers, tourism operators, and mines (Metcalf, 2006: 54). This came as a benefit to some people whereas others felt displaced or left out (Ngombe *et al.*, 2014). Apart from displacements in rural settings, cases have been reported of land which was previously allocated to investors but remained undeveloped and was later repossessed by the state but was not returned to customary land (Mudenda, 2006). Such cases have led land management experts to conclude that there is a lack of transparency surrounding land transactions.

The majority of Zambians rely on land for their livelihood, whether for farming purposes, personal cultivation, or other socio-economic needs such as housing. The rural population

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<sup>6</sup> Interview, Lusaka, June 2017

makes up a large amount of the Zambian population and may be at risk of plunging into further poverty as they reside on land that is either sought after, unrecorded, or faces multiple governance challenges. This indicates why this group of individuals who are faced with tenure insecurity are the reason behind the thinking and the implementation of the VGGTs, which seek to enhance tenure security for marginalised communities. The following subsections look at the history and policies that have affected land governance in the country. These historical factors and effects have prompted land governance agencies to develop guidelines like the VGGT that can assist with improving land governance.

#### **4.2.2 Historical overview**

Like most developing nations, Zambia has experienced land management challenges given the country has had no luck in escaping development failures over the years. Literature associates this with factors that influenced land governance and overall management of land in the country. From modernisation attempts to market reforms and other models of development, the country has found itself submerged in failed policies. A history of these events assists in identifying the context for the adoption of the VGGT framework in Zambia, its relevance, and its potential. Across the globe and in Zambia particularly, these land governance challenges and experiences eventually led to the application of alternative development strategies in land management with the introduction of the VGGT guidelines in many countries like Sierra Leone, Tanzania, Brazil, and other countries in South America and South East Asia (Hall *et al.*, 2016).

Chileshe (2005) gives an account of the origins of Zambia's dual land system. He explains that the land system was influenced by the policies and practices instilled by British colonial administrators in the early 1900s. Historically, the influx of European settlers in Zambia (formerly known as Northern Rhodesia) provided for an official policy that set aside large tracts of land solely for Europeans, argues Palmer (1973), who also points out that, at the time, the African population density was low and land for European settlers was alienated along the line of the rail from Livingstone Town to the Copperbelt province, in the Northern Province around Mbala, and in Eastern Province's Chipata Town.

According to Amankwa and Mvunga (1982), the categorising of land by British authorities at the time provided for a distinction between land for indigenous Africans and that of European settlers. It was established that Crown Land would be allocated for European settlement and economic development and that Reserves and Trust Land would be allocated for indigenous

African interests (Roth & Smith, 1995). This was similar to the principle applied by the British settler administration in neighbouring Southern Rhodesia (Zimbabwe), where land was separated into white land and native reserves, although in Zambia the proportion of white settlers was relatively smaller.

It is important to understand the British influence on Zambia's land tenure system. According to Adams (2003), in pre-colonial times, the people of Zambia were linked to land through ethnic groupings to enjoy land rights, which stood for basic use of land. Through this, village membership was vital. The coming of western colonialism and capitalist-oriented thinking brought about a change in this trend and thus the notion of the control over land started to emerge (Adams, 2003). White settlers arrived in Zambia in 1890 and introduced British law and by 1924 the British South African Company (BSA Co.) divested control over Northern Rhodesia and the British Colonial land was apportioned into three categories, mainly crown land, native reserve, and trust land, with crown land having the highest value (Van Loenen, 1999). Native reserves were of a lower value and were to be used by Africans (Mvunga, 1980). These injustices in land administration and distribution led to the fight for Zambia's political independence which was gained in 1964.

Mvunga (1980) gives an account of the laws passed by the British King/Queen through the Privy Council for British colonies, laws that were known as Orders-in-Council and which are believed to have lacked a local legislature. The British South African Company was the administering authority and a belief that European settlers would vastly migrate to Zambia led to the creation of what was to be known as native reserves in the concession area. Roth and Smith (1995) described this reserve policy as one of racial separation in farming areas.

To this effect, by 1913, 19 provisional reserves had been defined for the occupation of Africans in the Eastern Province. This classification of land did not merely separate two race classes; the land that was reserved for the Africans was strategically different from that set aside for Europeans (Roth & Smith, 1995). The authors also outlined how land occupied by European settlers was more fertile with the best water supplies in comparison to the native reserves allocated for Africans.

According to Palmer (1973), after being granted land and rights to minerals in 1923, a year later in 1924, the British South African Company handed over Zambia, then known as Northern Rhodesia, to the British Government who, in turn, granted it the status of a Protectorate under



the direct administration of the colonial office. Later that year, the British South African Company was stripped of its administration of Northern Rhodesia and administration was taken over by the Colonial Office along with the appointment of its first Governor, Sir Herbert Stanley. The concept of reserves introduced by the British South African Company was supported by the new government and on 10th October, 1924 the appointment of a Native Reserves Commission took place (Chileshe, 2005).

With the commission's advice, three large reserves were created for the Ngoni, Chewa, and Nsenga tribes in the Eastern province. However, the moving of Africans into these reserves was to take place without compensation (Palmer, 1973). Employed Africans were required to live outside the reserves to ensure labour was available for potential mining and agricultural activities. Regardless of the small number of European settlers, the company's requests were accepted by the government which led to the appointment of a Commission in 1927 to investigate the matter (Palmer, 1973).

When it came to the demarcation of reserves for the African population that accounted for 106,513 people at the time, 13 reserves with a total area of approximately 7,968,570 acres were recommended, while 5,030,340 acres were secluded as Crown Land for future European settlement. Prior to these demarcations, about 109,548 acres of Crown Land had been allocated to European settlers (Palmer, 1973). Through the passage of the Northern Rhodesia Crown Lands and Native Reserves the reserve scheme was implemented in 1929. Reserves were also created and demarcated along the railway line mainly for European mineral exploitation as all mineral-rich mining areas were to have no occupation by Africans (Mvunga, 1980).

Just like any policy would have an impact, so did the reserve policy on the Africans. However, its adequacy was questioned and became a concern. According to Bruce and Dorner (1982), by 1919 the number of European settler farms was 250 and this figure was maintained for a further 20 years. Judging from this it can be seen that the anticipated influx of European settlers was miscalculated. Due to lack of demand for the land, the demarcated Crown Lands were unjustifiable and deemed unnecessary which led to an influx of dispossessed Africans, thereby overpopulating and causing distress among the African populations (Siddle, 1971).

These details surrounding demarcations and reserves policy were confirmed by Caritas Zambia director:

*When the colonialists came into Zambia, they acquired land from the chiefs and they acquired the best land and the people who were living along the best land were moved to other areas which were reserved for them, native reserves as they called them. My relatives were part of the huge groups that were displaced.*<sup>7</sup>

The studies Palmer (1973) and Kaunda (1993) undertook analysed historical factors that led the restructuring of Zambia's land tenure system, including the examination of proprietary and institutional structures.

#### **4.2.3 Policy development**

Palmer (1973) gives an account of the origins and thinking behind the creation of the reserves, from the arrival of white settler-farmers. Mvunga (1980) went further to provide a legal analysis of historical factors that shaped Zambia's land tenure system during the colonial period (1924 to 1964) by examining legal interests in the designated lands, namely: Crown Land, Native Reserves, and Native Trust lands. The demarcations were influenced by economic interests. In his 1982 study, Mvunga examined customary law interests in land and the state of the law after Zambia's independence, where he concluded by recommending the granting of uniform interests, consolidating and rationalising the land law, and simplifying the machinery for regulating and assuring a land holder's interests (Mvunga, 1982: 97).

From a socio-economic, political, and environmental perspective, Kaunda (1993) examined proprietary and institutional structures in respect of land tenure in Zambia. Kaunda's view on land policy stood on the grounds of providing a framework for acquisition, use, and transfer of land. In relation to customary tenure, Kaunda's study affirms that land-use under customary tenure is individual and with the emergence of private property in land, there is a continuous use of land for commercial purposes. Kaunda favoured leasehold tenure and urged the state to facilitate for easier conversion to statutory tenure.

After independence in 1964, efforts to address and correct the injustices in land distribution became the ruling political party, the United National Independence Party (UNIP)'s, goal. Under the presidency of Zambia's first president and founding father, Kenneth Kaunda, the United National Independence Party enforced a socialist-themed land policy based on principles of Humanism that supported public ownership of the means of production.

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<sup>7</sup> Interview, Lusaka, June 2017

President Kaunda passed laws aimed at nationalising land owned by absentee landlords and by 1970 a Land Acquisition Act followed (Government of the Republic of Zambia, 2006, 2005). In 1973, Zambia became a one-party state and introduced the first ever land policy reforms (Roth & Smith, 1995), thus establishing the Land (Conversion of Titles) Act in 1975, which stated that:

*Every piece or parcel of land which immediately before the commencement of this Act was vested in or held by any person – (a) absolutely, or as a freehold or in fee simple or in any other manner implying absolute rights in perpetuity; or (b) as a leasehold extending beyond the expiration of 100 years from the commencement of this Act; is hereby converted to statutory leasehold and shall be deemed to have been so converted with effect from the first day of July, 1975 (cited in Kajoba, 1998: 303).*

For a country that previously experienced inequality in land distribution, this Land Act and its stricter conditions was of great significance as it would assist in controlling ownership of land by foreigners. The Act, however, received several criticisms pointing to its weaknesses such as the restriction on the operation of the market, driving high property values, and the hindrance of property investment (Mutale, 2004).

In 1991, Zambia changed from a one party to a multiparty state, known as the Movement for Multiparty Democracy. The Movement for Multiparty Democracy drove a different agenda for land policy. To this extent, the weaknesses in the 1975 Land (Conversion of Titles) Act prompted the Movement for Multiparty Democracy to repeal the Act (Zambia Land Alliance, 2008). The Movement for Multiparty Democracy advocated for a move from state control of land to individual ownership. This also implied an efficient and just system of land conversion, from customary land to state land. For economic purposes, the Movement for Multiparty Democracy government attached an economic value to land and fostered the issuing of title deeds to land owners (Roth & Smith, 1995). Regionally, governments began to adopt such land policies which facilitated privatisation of customary land rights with the goal of improving economic growth and poverty alleviation.

#### **4.2.3.1 Adjusting to development models**

To get a better understanding of the different dynamics that were at play in Zambia's land governance, it would help to relate the land laws and policies to the development phases that were taking place globally. The emblematic start of the ideology of development was provided

by the speech of the United States president, Harry Truman (known as the Speech of Four Points) on 20 January, 1949, in which he stated:

*Fourth, we must embark on a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas.*<sup>8</sup>

It all began with the modernisation theory of the 1950s when traditional states were blamed for retarding development because of their nature. The dependency theory replaced the modernisation theory and was followed by the basic needs approach. By the 1980's market liberalisation and the need for reforms was taking momentum and the Structural Adjustment Programmes (SAPs) of the International Monetary Fund (IMF) were introduced (Sulaiman, 2014). The idea behind these reforms was to assist developing nations in achieving economic growth. The Structural Adjustment Programmes are a set of free market economic policy reforms that are imposed on developing countries by the International Monetary Fund and World Bank. In order to obtain a loan, these conditions were to be respected (Oberdabernig, 2010). The Structural Adjustment Programmes were aimed at improving a country's foreign investment climate by eliminating trade and investment regulations, thus boosting net exports and reducing government's deficits.

Saad-Filho and Johnston (2005) argue that we live in the age of neoliberalism, a modified or revived form of traditional liberalism, with a focus on free market capitalism and the rights of the individual. The authors are of the view that power and wealth are highly concentrated within transnational corporations and elite groups. They further argue that it is made possible as a result of the practical implementation of an economic and political ideology. (Dean, 2008) supports this statement by stating "a great reversal has taken place, where neo-liberalism has replaced the economic theories of John Maynard Keynes and his followers." These mainstream development policy adoptions are evident in Zambia and have influenced policy making over the years, particularly in relation to land policy.

Before the concepts of neo-liberalism, capitalism, or the free market came into existence, pre-colonial communities in Zambia considered land to be a free commodity (Hansungule *et al.*, 1998). However, when these concepts grew in momentum and country governments began to

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<sup>8</sup> Harry S. Truman: "Inaugural Address.," January 20, 1949. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. <http://www.presidency.ucsb.edu/ws/?pid=13282>.

design their policies accordingly, Zambia was no exception. In 1995 The Movement for Multiparty Democracy government ratified a pro-investments Land Act aimed at attracting foreign investment (Adams, 2003). The 1995 Land Act made it easier for investors to obtain leasehold titles to customary land according to (Brown, 2005). As a result, foreign investors began to flock to the country as large chunks of customary land were being converted to private tenure.

#### **4.2.3.2 Paving the way for land markets**

In line with liberal policies, the Movement for Multiparty Democracy government in Zambia developed and enacted the 1995 Land Act. According to the Land Act, all land would be vested in the President on behalf of the people. Regardless of having authority over the land, in order to alienate land the President was still mandated to undertake consultations with customary land authorities or the local council (GRZ, 1995).

Since the 1995 Land Act was passed with the intention of increasing the level of investments in Zambia, there have been several land investments that have taken place. Land investments are viewed as a necessary step towards economic growth by many experts, such as a Zambia Development Agency (ZDA) representative, who said:

*My view and the view of the Zambia Development Agency of course is that every investment, whatever the nature, requires land to begin with, even before we dissect the sectors. Therefore, you cannot promote investment in the absence of land availability. So, my view is that you cannot separate investment from land. The question then is how you manage land to the extent that you do not carelessly dish it out or how do you manage land to avoid speculative people coming to get that land for wrong reasons?<sup>9</sup>*

The idea behind the conversion of customary land or acquisitions was that without a chief's approval, customary land could not be converted to state land. It would appear this was a long shot as cases of abuse of office by the president began to erupt and it was discovered that land was being allocated to high profile investors without necessary consultations with the chiefs (Brown, 2005).

This can be seen from the statement below made by Chief Ngabwe to a journalist in 2018.

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<sup>9</sup> Interview, Lusaka, June 2017

*There are a lot of titles that have been given from Lusaka on a piece of land on some Chiefs' area where the Chief doesn't even know. They don't even know who is occupying that piece of land, where title has been issued in Lusaka. In my chiefdom, for instance, the whole of Gambwe Chiefdom, the Ministry of Mines has given title for the whole chiefdom! They have given mining licences; they've never even been there! (The Zambian Observer, 2018).*

In the previous Zambian constitution, before 2015, allowed the president to take or acquire land from its owner or occupier for the purposes identified as national benefits such as agricultural development or improvement (Malambo, 2014). Critics argued for amendments that would see an improvement in equitable access to land, water, and the sustainable management of land and resources (Oakland Institute, 2011). One critical element about the Lands Act is that it outdoes customary law in the case of a conflict (Oakland Institute, 2011). If a local user holds land under customary law, an investor's land rights will prevail that of the customary holder as the investor's rights are explicitly provided for by law under the Lands Act.

It is safe to say Zambia has lacked a concrete land policy for several years. Since the Land Act was implemented in 1995, a new land policy has not been passed. Nonetheless, the Ministry of Lands drafted and revised a "Land Policy" in 2000 (Oakland Institute, 2011). The country has been formulating a national land policy to address issues of land management. The most recently revised draft land policy was released in 2015 and is yet to be endorsed as customary issues have supposedly delayed it. The 1995 Land Act provided for the conversion of customary tenure to statutory tenure in the form of a 99 year leasehold. Although criticised for being inequitable and favouring the elite and foreign investors while having detrimental effects on the locals (Hansungule, 2001; Zambia Land Alliance, 2002), it appears the urgency to pass a new land policy has been lacking.

This delay in land policy was a shared disappointment for some key informants that took part in this study as confirmed by a Zambia Law Development Commission representative who said:

*...what I would say is we have lagged a little bit because law is a living document and we needed to have been updating it each and every step of the way.<sup>10</sup>*

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<sup>10</sup> Interview, Lusaka, June 2017

The Act made a provision to convert customary land to state land. According to Smith (2004), this change in traditional tenure was aimed at incentivising land owners to improve, promote access to credit, and stimulate efficient markets. The 1995 Land Act did result in an influx of foreign investment in Zambia, as hoped. Foreign direct investment is reported to have increased from US\$ 72m in 1995 to US\$ 350m in 2006, considering it had previously plunged from US\$ 200m in 1990 to under US\$ 50m in 1994 (United Nations, 2001).

Land investments have been on the rise in Zambia, led by both domestic and foreign investors (Ogunbumni, 2014). This was confirmed during interviews as interviewees acknowledged an increase in land investments by foreign and local investors from 1995 to date. This came as a concern to most participants while some viewed land investments as a necessary step towards improving living standards. The Ministry of Lands chief registrar explained the benefits that have resulted from land investments in the country:

*After the 1995 land reforms, several pockets of land were opened up for development. There are certain investors who have opened up mining investments and they have also invested in schools as a way of giving back to the community whatever they are getting back from the community. They have opened up schools [and] clinics so indirectly the population has also equally benefitted but also there could be others who have felt they have not benefitted from such kinds of arrangements. Not everyone can be said to be happy from such a situation but others have definitely benefited and obviously the records are there for justification.<sup>11</sup>*

A Zambia Institute of Environmental Management representative, like others, was concerned about how responsible these investments that have been mounting in the country are, commenting:

*Zambia was rated number seven in terms of attracting investment in Africa, meaning that we are attracting quite huge volumes of foreign direct investment and each investment that we are attracting as a country is not located in the vacuum, it goes on the land. So again, other procedures are still followed which include the state taking responsibility; they want to create an environment for the investment to take off so they should also take*

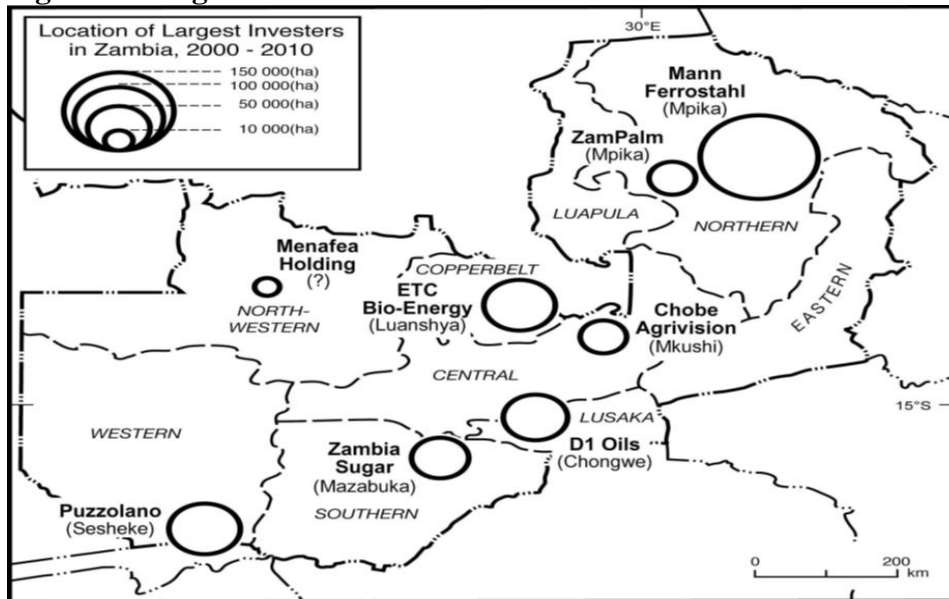
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<sup>11</sup> Interview, Lusaka, June 2017

responsibility to ensure the particular piece of land that is going to be zoned and allocated to any investor.<sup>12</sup>

The country's economy significantly relies on land use and natural resource capital (Rasmussen, 2013). For this reason, the government of Zambia has acknowledged land-use investments as essential to the development of key economic sectors such as energy, forestry, mining, and agriculture.

**Figure 3: Large scale land investments in Zambia**



Source: Wytse van der Werf, 2012

### 4.3 Foreign Direct Investment, Land Markets, and Land Grabs

Government policy has been sympathetic to donor thinking considering the country has profoundly relied on foreign assistance for many years (Lofchie, 1986). This helps in understanding the thinking behind the drafting of Zambia's land policy in the 1990s which is said to have been crafted in a manner that made the investment environment foreigner-friendly (Toulmin & Quan, 2000; Brown, 2005). This led to a move from the humanistic ideology in support of public ownership of the means of production to a market economy and individual private ownership (Chinene, 1993).

Sambo *et al.* (2015) argue that the potential of land investment lies in its ability to activate development, boosting the economy and creating direct benefits such as local employment and

<sup>12</sup> Interview, Lusaka, June 2017



infrastructure. Although positive in its nature, these land investments may bring about their own atrocities, particularly in the context of economic, social, and environmental inequities. This relates to findings from the field where some argued that land investments have brought about negative results for customary land owners, mainly due to weak regulations under this type of tenure. The impact of land use investments in Zambia has indeed led to an increase in land investments but this increase, when quantified, does not correspond to reduced poverty levels, considering approximately 60% of the population lives below the poverty line (Rasmussen, 2013).

To get more detail on the effect that land market liberalisation has had in Zambia, the researcher made inquiry into the impact this has had on local Zambians. The study found that market liberalisation was appreciated but concern was raised on the need for proper land regulation. A Zambia Land Alliance representative reported:

*I'm coming from a non-governmental organisation dealing in land advocacy so maybe my biases will be more on the impact on land rights but if I can talk a little on employment, we do interact with other civil society organisations working on that. You will find that although investors claim that they will offer a lot of jobs for the host community or the local community, it is evident enough that the local community gets the least jobs, say in terms of casual jobs, whereby for a month you get a job and then you are put off.<sup>13</sup>*

The study found that there is a negative side to the employment of local people in rural communities as they are hired for the least jobs due to their low education levels, while people from other districts are brought in to do the main jobs. The form of employment also requires community members to side-line their cultivation as it requires them to be present from morning to the afternoon. This questions whether investment in local communities makes an actual socio-economic impact for the host communities. This negative impact can be seen through the breach of property rights, unsustainable land use, environmental degradation, and labour rights abuses.

According to the Zambia Development Agency, mining activities continue to lead in terms of foreign direct investment (ZDA, 2013). Examples of foreign direct investments in land can be seen by the acquisition of 30,000ha, of land by Amatheon, a European company, under a

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<sup>13</sup> Interview, Lusaka, June 2017

willing-buyer, willing-seller agreement. The foreign company aspires to contribute to Zambia's agricultural development and increasing demand for food (Amatheon, 2012).

Although foreign land investments appear beneficial to Zambia's economic growth, in some cases these investments also create adverse situations in the land system and beyond. The increase in land investments in Zambia has resulted in unfair and unjust forced displacements (PLAAS, 2013). Large scale land acquisitions have recently been linked to a concept known as land grabbing which Zambian communities have had no luck escaping (Chu, 2013). Brown (2005) highlights that reports of eviction threats, elite capture, exclusion, displacement, and enclosure of the commons became widespread in Zambia.

Land grabbing can be understood as land acquisitions by transnational corporations, business enterprises, private investors, and foreign governments through a sale or lease which is highly detrimental to the interests of local communities considering the process usually involves the privatisation and commercialisation of commonly used land and resources based on customary law.

According to a UN Special Rapporteur, peasant farmers living in customary land areas have little legal protection from evictions and are usually left with no option but to work in poor conditions on large industrial farms. The Rapporteur also reported that due to the intensive commercial farming going on in these customary areas, there has been an increase in the use of agro chemicals. This has harmed children's health and boosted rates of deforestation and environmental damage (Reuters, 2017).

From a political economist view it entails "capturing power to control land and other associated resources like water, minerals, and forests" (Merlet & Jamart, 2009). Friis and Reenberg (2010) identify the main drivers of land grabs as changing demographic conditions such as an increase population numbers; global economic conditions; the desire for new markets for investors; and for food stocks for some investors given the risk of their own land becoming inadequate due to climactic and/or demographic changes, among other factors.

Some participants argued that the land acquisitions in Zambia should not be called land grabs because some of these land deals are legal and serve economic purposes that contribute to the well-being of others. This was opposed by others who argued that land grabs take various forms. For example, a Caritas Zambia representative reported:

*Just to maybe emphasise one point, people think that land grabbing has something to do with someone acquiring land illegally; it is both someone who can grab land illegally or legally, as long as a person acquires land that is too large compared to the local tenure system that is available. Like in the villages it is very strange for someone to own 22,000 hectares. They have a specific size that they are given, the rest does not belong to them individually; it belongs to the entire community.<sup>14</sup>*

As stated above, Zambia adopted neo-liberal market reforms and the negative effects of these neo-liberal structural policies have been felt in the country. According to Brown (2005), the disadvantages of this law can be seen in the form of land disputes between villagers; traditional authorities; and their subjects, including tension between locals and outsiders. Through discussions in the field, respondents stated that land grabs are indeed present in Zambia. Some key statements made by the land experts interviewed were as follows:

*Generally, land investments have been the pinnacle of foreign direct investment to the effect that most of the industries are now land-based and land has been one of the most topical issues, for foreign direct investment as well local investors and the local business community. So economically, yes, it has had a very great impact.<sup>15</sup>*

*There could be instances where there is a negative impact, for instance for social amenities like livelihoods of people. You find, for example, if a mine is being enacted and within that sphere of the mine there is a fishing space where people over the years have been participating in fishing, now they are moved from there to be taken into agriculture. Now you have a situation where someone has never done agriculture, so they have a new trend for livelihood.<sup>16</sup>*

*Of course, land grabs are persisting, yes, and sometimes they are taking different avenues. You think it is not land grabs but if you investigate and just understand the way the land was accessed you will realise that it is actually land grabs. We can't say we don't appreciate investment, we do need it, but I think there is a need to harmonise investment and how that will benefit community members. According to the VGGT guidelines, an investment should not leave the host community at its worst, it should improve their*

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<sup>14</sup> Interview, Lusaka, June 2017.

<sup>15</sup> Interview, Lusaka, June 2017

<sup>16</sup> Interview, Lusaka, June 2017

*livelihoods but in most of the cases we have encountered as an organisation what we are seeing is far less than expected of investors.*<sup>17</sup>

In essence, the conversion of customary land tenure in Brown's view has resulted in confusion and insecurity about the future of the customary land holders in Zambia (Brown, 2005). Hudson (1996) and Munshifwa (2003) discuss alternative approaches in regard to Zambia's customary land, namely, (i) the retention of customary land tenure system in its present form, (ii) the reform of customary tenure by adapting it to the current social economic environment, and (iii) individualisation of tenure. For a country with a vast amount of land on customary tenure, which accounts for a larger number of the population, it is imperative that these populations are land secure, given it is a source of their livelihood. Without secure access to land and its natural resources, Toulmin and Quan (2000) argue that if tenure insecurity of this nature is to continue, rural people in Africa have little hope of evading poverty.

#### **4.4 Customary Land and Governance Challenges**

As indicated above, customary land is in abundance in Zambia, supposedly covering 94% of the land mass and accounting for a great amount of the population's residential area. One must contemplate this high percentage of customary land, considering this is land that is not recorded or documented but, despite this, land transactions have been taking place. Knowingly, undocumented land is insecure land because proof of ownership is unavailable. There is a common view that land governance challenges are heightened under customary tenure and that the land system needs to improve in this regard because the issue of insecurity is growing alarmingly. This was expressed by a Zambia Land Alliance representative, who gave an account of the challenge faced by customary land holders, namely the issue of no security of tenure due to a lack of title deeds. According to the informant:

*Customary tenure has proved to be second class to state land because under state land one is given title deeds, which is an assurance of security.*<sup>18</sup>

These findings suggest a dire need to enhance tenure security for customary land holders. There is currently a system of village registers which are kept by the headmen, who know who lives in the villages and who owns which piece of land at the chiefdom level. To this effect, the chiefdoms also give land ownership certificates which are not legal title deeds. The quality of

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<sup>17</sup> Interview, Lusaka, June 2017

<sup>18</sup> Interview, Lusaka, June, 2017

these documents is questionable because they are not legal documents and they do not carry the weight of a title deed, thus making it risky for one to be displaced from their land.

#### **4.4.1 Displacement**

Security of tenure has been identified as an issue for customary land holders. With the rise in investments, individuals dwelling on this type of land are at risk of losing their land. An official from the Ministry of Lands Chief Registrar office said:

*...it is not unheard of to hear of certain people being displaced because certain traditional rulers maybe have given out huge tracts of land without the consent of their subjects to the extent that they end up being displaced.<sup>19</sup>*

For these marginalised rural settlers who do not possess any title deeds and who make up a very large number of the population, displacement seems to be one of the trials they are most likely to face. According to some participants, displacements do indeed take place and mostly affects people living on customary land. This however was not brought about by respondents during the case study. Zambia has done a lot of work in terms of attracting investment into the country; government officers and the president have been seen going out of the country to invite land investors. There was a general consensus from discussions that although land investments are needed for development purposes and other benefits, some investments have left a lot of people displaced. As a result, a lot of people have lost their livelihood which has increased poverty levels in most Zambian communities. According to Van Asperen and Mulolwa (2008), evidence of evictions and displacements within customary land areas exist. One such example is the the Mpongwe (Copperbelt Province) scenario where farmers were evicted from 46, 876 hectares of customary land by a South African-based agribusiness (Mulenga, 2014).

An Indaba Agricultural Policy Research Institute (IAPRI) representative confirmed displacement is one of the major challenges linked to customary land:

*The challenge is, in some cases there have been land displacements where land is taken away from people without their consent or people are coerced to sell their land and they*

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<sup>19</sup> Interview, Lusaka, June 2017

*end up being landless themselves or they reduce the amount of land they had then they are affected negatively.*<sup>20</sup>

Due to improper land governance and a disregard for people's rights to land by traditional leaders, some individuals in rural communities have found themselves displaced. Displacements, however, have not always taken place due to decisions made by traditional leaders. Another point emphasised in discussions was that if the state found it fit to use a particular parcel of land for an investment, the people dwelling on that land would be displaced and allocated another piece of land.

#### **4.4.2 Access to finance**

Another issue that arose which customary land owners or dwellers are facing is the challenge in access to finance. The researcher was informed that peasant farmers feel left out don't feel fully recognised because their land is not documented. This affects their ability to acquire loan facilities from the bank. Because they have no documentation in the form of a title deed, customary land owners are unable to provide collateral, making it nearly impossible for them to be granted loans by financial institutions.

#### **4.4.3 Customs and rights to land**

Land rights are the rights of people to land, either individually or collectively. They are important for various reasons, including self-determination, economic factors, identity, shelter, and religious significance amongst other factors (Anseeuw *et al.*, 2012). In Zambia, one will find that land rights of rural settlers are respected in a certain region while land rights are lacking or violated in other regions. Women's rights to land continue to be a hot topic, not only in Zambia but in other developing countries. The study established that land rights are still weak or lacking in some customary land areas in Zambia, but progress has been made in most parts of the country. Land management experts acknowledged that land rights are still a matter of concern as local masses do not have rights to land by virtue of occupying customary land.

Another issue that was raised was that of boundary conflicts to which villagers themselves are no exception. In some villages there is resistance to community participation in land decision making by some village settlers, as well as resistance from certain traditional leaders who may feel that giving too many land rights to their subjects may take away their right to ownership

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<sup>20</sup> Interview, Lusaka, June 2017

of this type of land system. Additionally, land rights are not prioritised due to the authority and power aspect as the chiefdoms want to exert their authority over these common customary lands.

A Zambia Law Development Commission (ZLDC) representative added:

*There is still a male hegemony in terms of customary practices. Land is never given to a woman, but it is given to a man as the head of the household. In most instances according to Zambian customs, when a woman gets married and her husband passes away she has to go back to her relatives. The woman does not remain in the house she shared with her husband because that is not considered her land, it is considered her husband's land.<sup>21</sup>*

Land rights are not only a problem for women as this marginalised group extends to children and disabled people. It was established that in some cultural practices or groupings, disabled people will not be considered for land rights because of their inability to plough, so instead they are considered as dependents. Another problem raised during the study was the issue of gender in Zambia's land management, placing emphasis on the country's need to promote gender equality to enhance the protection of disadvantaged groups such as women. Going further in depth, the Zambia Law Development Commission representative added:

*We need to carry out continuous research in the area of land rights so that we see what is happening and then we can monitor and be able to advise government on what is going on. We need this discourse to continue. Even though we say there are improvements in terms of discussions in land it is still not enough. Most of these discussions are happening among the elite. We need to promote titling whenever it is important or other means of documentation such as the traditional land certificate so that people are secure on their land.<sup>22</sup>*

Women's rights to land under customary tenure continue to be an issue in some parts of Zambia although sensitisation has been going on in rural areas. Strong customs and cultural norms present in some traditions continue to affect women's chances at owning land and improving their living standards. A disregard for women's rights to land makes it difficult to implement any framework that fosters women's land ownership, access, rights, and utilisation.

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<sup>21</sup> Interview, Lusaka, June 2017

<sup>22</sup> Interview, Lusaka, June 2017

#### 4.4.4 Governance by traditional leaders

As mentioned earlier, Zambia has a dual land system where statutory land is administered by the state and traditional or customary land by traditional authorities, known as chiefs. Traditional land as indicated above is abundant and there are many chiefs in the country administering land. The study found that lags in policy implementation, land grabs, displacements, and other land issues are a result of poor administration by local authorities or their headmen. There also seems to be some resistance by the local authorities to implement participatory processes as power relations are at play. One of the key things pointed out was an unwillingness by local authorities to allow outside parties to implement governance instruments which lessens the leadership of traditional leaders, as they fear losing authority over land. An IAPRI representative shared in these views, stating:

*We have under traditional or customary land traditional leaders who are using their own customs and traditions to administer land. It is easier for people to access land through that process but with the coming in of large-scale investors and the urban elite there is a lot of pressure on them and some are forced to be corrupt. They end up receiving bribes or they end up charging money for people who are coming from town to acquire land and this is creating tension between traditional leaders and their own people and also displacements which we talked about earlier.<sup>23</sup>*

Consultations are said to be on-going for the new land policy bill that is currently being developed because there is still a need to engage and sensitise traditional leaders. Fear of losing authority over land has left some traditional leaders hesitant to support the upcoming bill, while others are reluctant due to a lack of information. The proposed customary land bill and new land policy seek to ensure that they take cognisance of certain aspects and interests of various interest groups such as traditional leaders, their subjects, and all those who need to invest, as well as perhaps giving rights to those who do not have titles but own customary land.

The chiefs are key stakeholders and are yet to comment on and approve the bill and as such the policy is delayed. Once consultations are concluded, it is expected that a second draft will be prepared and presented before cabinet. There is uncertainty on who should be issuing land ownership documents under customary tenure considering the dual land system and its administrative agents. Chiefs are advocating being in charge or having authority over issuing

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<sup>23</sup> Interview, Lusaka, June 2017



land documents in their rural settings. An example of this is Chief Mulukwa in the Eastern Province who collaborated with the United States Agency for International Development Chipata District to issue out some types of land certificates. Another example is in Zambia's central province where an organisation called MEDEEM is giving out what are being called parcel certificates. These parcel certificates are signed off by the chief.

The Ministry of Lands has analysed these documents and has found them to be workable. The challenge perhaps comes in when considering the number of chiefs in Zambia. The legal implication of the chiefs giving out these certificates is a matter of concern and raises questions on whether they will be authentic. Other questions arising from this development are: which institution should give out the certificate of ownership, will it be the government or the chiefs, and do the chiefs have the technical capacity to produce these certificates?

A Ministry of Land official said:

*MEDEEM currently has the resources and they work with the local people and traditional leaders in Chief Chamuka's village to collect information and do the mapping of an area. Additionally, they produce a drawing which shows the boundaries of a property and then they put ownership details and produce a certificate on which the chief signs. In a nutshell, that is how the issue of land ownership is being addressed for customary dwellers. It is a great initiative, but how sustainable is the project? Who will apply the project in the future? Once a customary land holder has a piece of land and the certificates of ownership from MEDEEM, they will face challenges the moment they want to subdivide that land. Who then helps these individuals to conduct these further transactions because the originators of the program have since left?<sup>24</sup>*

Another area of concern is in Chief Munuku's area in the Eastern Province around the issue of transacting with a newly obtained land certificate. A parcel of land is a piece of property that one can transfer by either giving it as a gift, by selling it, by consolidating, or subdividing it. With all these options available for future transactions, the future of this project that the United States Agency for International Development has created is questionable. Although the project seems workable, concern has been raised as to who will maintain the digital database and where

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<sup>24</sup> Interview, Lusaka, June 2017

funds to maintain that database will be derived from. The Ministry of Lands Deputy Surveyor General added:

*We have brought the chiefs on board and we want to discuss with them in an honest way to find a lasting solution. We need to record the rights in customary tenure, it is not necessarily that we want to convert that land into leasehold, the mode of holding can remain but we need to record the interests of each and every person on that piece of land and once we record the boundaries and also the ownership then we link that to the main land information system because we need to take into account all the land that is available in Zambia.<sup>25</sup>*

Another concerning matter raised was the fact that the majority of the land is under the chief who can easily chase someone from a piece of land. Although an individual may have rights to a piece of land, the chief remains the overseer of that land and may allow a certain development to take place in that area. There was a common view that the chiefs need to be regulated in terms of how they sign off on land or assign title deeds. As it is, if a chief decides to allocate land to a particular person, he simply writes a letter, the matter goes to the council, the full council meeting sits in on the matter and the land ownership is changed. Confirmation that land has been given away carelessly was given by some individuals, including the Zambia Institute of Environmental Management director, who said:

*We are not sure whether they sell land because it is not receipted, but since it is not receipted we cannot say they sold off the land. We cannot match a foreign investor's financial muscle – imagine a foreign investor gives a tractor as homage or he comes with a bag of money, it is a given that he will be given land. We need to have an equal footing; both local and international people. We are hoping that with these things being put in place there will be a lot of sanity.<sup>26</sup>*

Previously land was only administered at the Ministry of Lands but there is a new statutory arrangement that has given power to the local municipalities and the councils to administer land on behalf of the Ministry.

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<sup>25</sup> Interview, Lusaka, June 2017

<sup>26</sup> Interview, Lusaka, June 2017

#### **4.4.5 Tenure insecurity under customary land**

Tenure security is the degree of confidence held by people that they will not be arbitrarily deprived of their land rights or of the benefits deriving from their land rights. To address these issues prevalent in customary land tenure, a decentralisation policy has been introduced in the upcoming land policy which seeks to decentralise the administration of land. The study found that tenure security in Zambia is an issue of concern, particularly under customary land tenure. Land tenure security is weak or lacking in some customary settings as revealed in the following excerpts:

*The interests under customary tenure are not registered; people buying land from traditional leaders or people in customary areas are not protected because there are no title deeds. The situation now is if one wants security of tenure they have to convert from customary to state land because under state land there is security of tenure but under customary there is no security of tenure because there are no titles.<sup>27</sup>*

*We need to improve our laws to promote tenure security. We need to learn from countries like Tanzania [and] Mozambique so that we strengthen our laws and ensure that we protect people on customary land.<sup>28</sup>*

*They have no security per se, it really depends. They are displaced like I gave examples when dealing with large investments. Because they have no kind of document to show, in terms of resettlement and compensation, that affects them.<sup>29</sup>*

#### **4.6 Draft Land Policy and Customary Land Bill**

Zambia has not passed a land policy since 1995 and that has brought about motives to pass a new land policy. This motive has been aggravated by the increase in land investments and transactions on customary land. As noted by a Ministry of Lands official:

*The national draft land policy has been in draft for more than 10 years. I think it was started in 2002 and then the draft that was revised in 2015 was a 2007 copy so it has been sleeping for so many years but luckily about two years ago the government decided that we needed to adopt this policy. Yes, it is still in draft up to today and according to the road*

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<sup>27</sup> Interview, Lusaka, June 2017

<sup>28</sup> Interview, Lusaka, June 2017

<sup>29</sup> Interview, Lusaka, June 2017

*map this should have been finalised by last year but this is 2017 and a lot of things have come up.*<sup>30</sup>

In terms of the progress made in the upcoming new land policy, according to the Ministry of Lands representative, the Ministry of Lands has engaged a consultant to collaborate on the development of the policy. A draft National Land Policy, referred to as the Zero Draft, was released in 2006. Thereafter, the Zero Draft was worked on and the Ministry came up with what they called the First Draft in 2016. It is still a working document and is currently being revised but once complete he says it will be the second draft which will be passed on to cabinet. The lag in finalising the policy lies in the challenges being faced with the governance of customary land and the engagement of the chiefs. Consultations with traditional leaders are thus ongoing and once the consultations are done, it is expected that the land policy will be finalised and enacted.

Although the issue of enacting a new land policy has been lagging for a while, to date Zambia has not endorsed one. The country still relies on the 1995 Land Act to govern its land. As seen in the previous section, the 1995 Land Act and its liberal characteristics brought about inequities in land ownership, access and land rights, inconsistencies in the governance of land, and led to land grabs and forced displacements, along with enhanced tenure insecurity. A ministry of lands official said customary land tenure is the mode of holding land for over 60% of the land mass in the country but people's rights to land are not recorded per se. The government, along with other land governing agencies, has attempted to put other measures, tools, and frameworks in place, which have contributed towards land governance in recent years. These include sensitization programs, advocacy and the introduction of a reserve policy where 30% of land distributed is reserved for women.

Literature and data collected indicates a vital need for an improvement in the administration of customary tenure. One of the measures highlighted by respondents was the development of a Customary Land Bill. The bill is said to be in the stages of crafting and thus has not yet been put before parliament. Once this is done, it is believed issues of customary land tenure will be linked into the main land information. Currently, the land information system Zambia maintains focuses on leasehold tenure (state land), as acknowledged by the Deputy Surveyor

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<sup>30</sup> Interview, Lusaka, June 2017

General at the Ministry of Lands.<sup>31</sup> The bill, however, is still in progress and has not yet been passed before parliament.

The Customary Land Bill seeks to ensure the issuance of title deeds to foster security of tenure in customary tenure. A respondent explained that the issue has lagged behind due to the mistrust between the governments and the chiefs. A problem of mistrust between the government and the chiefs appears to be the reason why the bill has moved at a slow pace. The main concern is the issue of roles, that is, the role of the chiefs and the role of the state in the Customary Land Bill as confirmed by a Ministry of Lands official who stated:

*Five years ago, the government did consultations on the Customary Land Bill that is a sleeping document. It is also a secret document, but a lot of people submitted that they needed this document. Because I was part of these engagements, they also said there is a need to reduce on leasehold tenure; we should not give out our land at 99 years at the same time for a local person and a foreigner. Even if it is investment, maybe the maximum time they submitted was about 50 years. Another submission was that there is need for reconversion of land because once land is put in state land, it remains on state land from customary, but we are saying there is need that this land reverts to customary if it was customary land.<sup>32</sup>*

The study confirmed that the last Land Act that was passed in Zambia was the 1995 Land Act, which fostered a spirit of investment and opened the land market for foreign investments in land. This is the Act that has been associated with spate of land transactions in the country. A representative from the Zambia Law Development Commission government official explained the situation:

*I would say we have lagged a little bit because law is a living document and we needed to update it each and every step of the way. If you were to look at the genesis of the 1995 land administration, Zambia had just come from a one-party state and it was getting into a multi-party democracy, and if you remember during the one-party state there was very little foreign direct investment. Multi-party democracy brought about liberalisation under the Chiluba administration and this was a way to try and integrate with the international community, so the Land Act then was very useful and very cardinal, but it needed to be*

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<sup>31</sup> Interview, Lusaka, June 2017

<sup>32</sup> Interview, Lusaka, June 2017

*updated as it went along the way. From 1995, we are talking about 22 years ago, the vision could not be the same as now, we have had four government changes, we needed to be updating but as a nation we did not do a great job in terms of updating the Land Act until now.*<sup>33</sup>

The role of the state and the chiefs in the customary land bill is still unclear. In terms of land policy or policies guiding types of land such as the proposed Customary Land Bill, it is evident that consultations and discussions between the ruling government and traditional leaders have slowed down the pace in enforcing policy.

#### **4.7 Localising the VGGT**

The VGGT is an international land governing tool designed to improve land governance in countries. It is guided by principles that states should apply to their land policy to ensure issues of land tenure security, displacements, irresponsible land investments, and land rights violations are resolved. Their overall aim is to address poverty and contribute towards good land governance (Hall *et al.*, 2016). The VGGT guidelines have been widely accepted and implementation is underway in many developing countries but their voluntary nature leaves freedom to states to incorporate them at their own will, if desired.

The study aimed to evaluate the application, suitability, and implementation of the VGGT guidelines on Zambia's land governance, with a particular interest in assessing the impact the VGGT guidelines have had on tenure security. In doing so, the researcher was interested in identifying any domestic issues that would hinder or affect the successful implementation of the guidelines in addressing land tenure security in the country. Considering the guidelines are international and cannot realistically be implemented in a uniform manner, the researcher engaged with the key informants, who were experts in land issues, policy, and development. This enabled the researcher to get an insight into the domestic aspects of Zambia's land system that could either facilitate or hinder the application of the VGGT guidelines.

##### **4.7.1 Integrating the VGGT in land policy**

With the land policy still undergoing revisions, the study made enquiry into whether components of the VGGT were taken into consideration when drafting the new land policy. The study found that the national land policy has been in draft form for more than 10 years,

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<sup>33</sup> Interview, Lusaka, June 2017

with the last draft in 2016. The study found that very few participants were familiar with or involved in the implementation of the VGGT framework. It is not clear whether the VGGT guidelines were mirrored into the most recent government draft land policy as key informants were uncertain.

Having reviewed the Draft National Land Policy, the researcher believes significant effort has been made towards improving land governance in line with the VGGT principles. Some of which as highlighted in the Draft include:

Accountability: To ensure accountability, transparency, monitoring and compliance to lease conditions to protect land rights and safeguard against environmental damage.

Participation: Promote involvement of community institutions at village and Chiefdom levels in order to strengthen decentralized governance of natural resources.

A Ministry of Lands representative stated:

*I don't think the VGGT guidelines were incorporated but I welcome the idea. However, most research regarding land governance across the globe is quite generic and most studies that have been conducted do not seem to be linked to local culture. It appears there is a distinct disconnection between what researchers are studying and the local culture.<sup>34</sup>*

Efforts to advocate and popularise the VGGT have been carried out by other land governing agencies such as non-governmental organisations and research institutes. Take for example, Zambia Land Alliance, a non-governmental organisation that initiated and conducted its own consultations in the country. The organisation went to 20 districts in the country and conducted two consultations in each province. They also incorporated the VGGTs and other provisions which resulted in a shadow policy that is believed will tackle most of the things seen on the ground.

The Zambia Land Alliance is using the VGGT guidelines because they encounter a lot of cases where foreign investors have affected the rights of people and as such the organisation is trying to sensitise people, the general public, civil society organisations, as well as affected people on the VGGTs so that they can find an entry point as an organisation for advocacy but also to the

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<sup>34</sup> Interview, Lusaka, June 2017

community members because the organisation's strength comes from the affected people who need to push for, demand, and protect their rights.

Data indicates that not many efforts have been made by the Zambian government to prioritise VGGT implementation. This could be due to difficulties in establishing a final land policy and other administrative issues. While the VGGT guidelines have intrigued land experts, discussions show a concern in the efforts being made to localise them and whether or not they are suitable. Other land management experts think the VGGT guidelines may have been included since the new draft Land Policy has accounted for the securement of tenure in both customary and state land. An Indaba Agricultural Policy Research Institute representative reported:

*There is a consensus for the chiefs to agree on the securing of tenure under customary land and preference to gender is being prioritised. 30% of land allocations have been reserved for women but of course there is a pending thing that we need to increase the percentage but at least the 30% was initially agreed.<sup>35</sup>*

The study also found that Zambia, like other developing nations, has ratified many treaties on different platforms but the country faces challenges in terms of localising. This was raised by participants who expressed the importance of the VGGTs as an important tool because they provide principles that are quite important for the country. Examples highlighted were, principles such as those formulating policies which consider the interests of the poor and marginalised people [and] the promotion of gender equality in land governance.

Indaba Agricultural Policy Research Institute representative added:

*There are a number of good principles that Zambia can learn from and some of those principles have found themselves in Zambia's new revised constitution. For example, the issues of gender equality and promoting common resources such as river frontages, all these have been included in Zambia's constitution, so there are some areas where Zambia is able to learn from and include aspects of the VGGT in the national document.<sup>36</sup>*

The VGGT framework is viewed as a great initiative for Zambia by the land experts that formed this study, but they also believe that there may be issues for women in customary land, given

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<sup>35</sup> Interview, Lusaka, June 2017

<sup>36</sup> Interview, Lusaka June 2017



the cultural problem of women not owning land despite the changing traditional perception in Zambia. It was concluded that cultural issues can be a hindrance, unless cultural misconceptions are done away with.

#### **4.7.1.1 VGGT weakness**

Although praised for having the potential to resolve Zambian land issues, people are of the view that the VGGT framework's weakness lies in its voluntary nature. A Zambia Land Alliance participant believes the strength of the VGGT implementation lies in the government, stating:

*Why sign for something that you know will not work for you at the local level? Is it that we are just trying to put a face that we agree to this, because we need to adhere to what we have signed for?<sup>37</sup>*

The government's poor dedication to the VGGT implementation process is seen as a disadvantage to organisations that are taking the VGGT implementation seriously. Investors are looking for weak systems so this laissez faire attitude towards the VGGT implementation process is also being viewed as a drawback for communities because if an investor is approached and presented with all these facts pertaining to the VGGT but they haven't seen a system of enforcement in place, they also enforce an unwilling attitude.

#### **4.7.1.2 VGGT applicability and suitability for Zambia**

Participants appreciated the VGGT concept but when asked whether these international guidelines are applicable to Zambia's domestic environment, they thought certain impediments or conflicts would emerge between boundary disputes, certain chiefdoms, the villagers themselves, certain resistance to community participation by some village settlers themselves, as well as resistance from certain traditional leaders who may feel that giving too much land rights to their subjects may take away their right to ownership of this type of land system as well as authority as the chiefdoms would want to exert their authority over these common customary lands.

People view international agreements, guidelines, statutes, or agreements as persuasive. While countries rush to adopt them, there is a need to domesticate them. In order for that to happen,

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<sup>37</sup> Interview, Lusaka, June 2017

it is believed that consultations with key stakeholders should take place thoroughly to ensure that the tool is acceptable and it blends in with the domestic tailored law.

A Zambia Law Development Commission representative said, as an organisation, it is their mandate to review, revise, and reform the laws to meet the changing needs of society.

A Ministry of Lands representative added:

*...I see the learned only handling matters of land and that is where everything collapses. The major users of land, some of them are not very educated but have got rights to the land. At what point would the VGGT framework involve the actual representatives, the people using the land? How will this framework help the users of the land understand this framework, what are the mechanisms for participation so that they understand this framework they are part of it and then it is driven forward so that you can record success?*<sup>38</sup>

Participants further expressed that the country is struggling with local policies such as the land policy because the actual users of the land haven't been consulted for a long time in an honest manner. They argued that this project is waning because a top-down approach is being utilized in the development of the policy. This debate stems from the fact that some experts have previously formulated policies or projects, without proper involvement and participation by the beneficiaries and hence when the policy is implemented or applied, it doesn't work because the beneficiaries were sidelined from the development of the policy or project.

Others highlighted that domestically, the issue of power relations could hamper effective implementation of the VGGT. As seen in the excerpt below:

*The more land you have the more power you have. You cannot be called a chief if you do not have land; this is also where there is a problem. Chiefs have known the value of land and they would want to sell even without the subjects benefitting, [that's the] the selfishness of our traditional leaders. I think you have seen just last week when the President was opening the house of the chiefs he was saying that some of the chiefs are selling huge tracts of land.*

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<sup>38</sup> Interview, Lusaka, June 2017

*The chiefs know if the government comes in to regulate the way they allocate land then they will have no bread and butter.*<sup>39</sup>

In reference to applying the VGGT to Zambia's land governance, participants found that localising international tools is always a challenge for Zambia. Particularly with regards to the VGGT, localising becomes challenging given their voluntary nature. The VGGT guidelines are meant to help host communities but their non-binding nature leaves people like investors or land governing institutions with the option to apply or neglect them.

#### **4.7.2 Culture and International development tools**

Applying development strategies in different countries tends to produce different outcomes for a number of reasons, one of them being the cultural diversity present in different nations. Culture is said to affect policies and strategies in different ways. Focusing on localising the VGGT, most respondents felt that culture could impede the successful implementation or application of the VGGT framework in Zambia. One participant said:

*The framework can be great for Zambia but maybe the issue is of women and customary and cultural issues to do with women not owning land, although that perception is changing in Zambia. Cultural issues can be a hindrance, unless we do away with cultural misconceptions to do with land where certain people can own land and others can't.*<sup>40</sup>

People explained that there are challenges with gender issues because of Zambia's structural arrangement where most of these institutions are dominated by males who don't appreciate gender equality. Traditional leaders are mostly male and quite a lot of them do not believe they should promote gender equality and access to land but they seem to be changing for the better. A ministry of lands official, like majority of the participants, believes culture can be an issue when it comes to VGGT implementation, saying:

*Zambia is different, the tribal aspects we have patriarchal and matrilineal. When coming up with a law, you are supposed to take into consideration the customary issues of those local people because if you don't take into consideration the customary issues then that law won't be successful. To create uniformity, even when we talk about the land bill, these are the issues why we cannot come up with a customary land bill where all the views will*

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<sup>39</sup> Interview, Lusaka, June 2017

<sup>40</sup> Interview, Lusaka, June 2017

*be taken care of because we have different customary settings. Because where I come from, the Tongas are matrilineal. These are the issues which have made it difficult for the government to come up with one bill because if they don't take into consideration these issues then it would be a flop.*<sup>41</sup>

A Ministry of Lands principal legal officer also views culture as a possible hindrance in the implementation of the VGGT. He said:

*When we are dealing with customary land per se, we are dealing with different cultures. We have diverse cultures in this country and land in those customary areas are administered to a specific culture available in that specific location and we are talking about over 72 tribes in this country. It is difficult when you have to recognise each and every culture but what came out when there was an initial investigation looking at what people really do in these areas, [is that] there are certain things that are common which can be used as a common basis for developing the law that is available for each and every culture in the country.*<sup>42</sup>

Culture differs in most countries, but when it comes to land and the governance of land it proves to be a serious factor in terms of the success of a policy. International development strategies, such as the VGGT may face difficulties primarily due to the cultural norms and standards in some communities. This may be evident when it comes to women's land rights and participation, as some communities culturally disregard women's rights to land.

#### **4.7.3 Alternatives to the VGGT in regulating land investments**

Land investments have been on the rise in Zambia and with a sleeping land policy, the country has been faced with land governance challenges. Although the VGGTs aren't popularly known or being entirely applied in Zambia's land governance, other measures are being practiced in the country and are likely paving the way for full VGGT implementation. In the absence of a land policy, the study found that various strategies, processes, and rules are being put in place which foster equality, women's rights to land, and participation. It also found that security of tenure is being sought after for customary land holders. Some of the measures discussed were an environmental impact assessment for investors, land reservations for women, sensitisation,

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<sup>41</sup> Interview, Lusaka, June 2017

<sup>42</sup> Interview, Lusaka, June 2017

and consultations with traditional authorities and community members. Zambia Development Agency representative further explained these processes, stating:

*We must understand the processes for the two individuals, a local Zambian and non-Zambian or, an entity incorporated by a Zambian and that incorporated by a foreigner would have access to this land, what are the processes? Most of the land on statutory tenure is private land; this is land on title deeds. It either belongs to individuals, government, or the private sector. Whatever the case, statutory land is on title deeds and access to it would be through some negotiation process with the owners of that land. Then we have what we call customary land tenure which is administered by our traditional leaders and, even then, we must understand that there is a limit because a traditional leader by law is only allowed to give 250 hectares. Even when he is giving 250 hectares it does not mean that title deeds will be given automatically, it is subjected to the local authorities.<sup>43</sup>*

A neatly organised regulation process was described by some respondents during interviews, explaining that the Ministry of Lands has established land agents in district councils that administer land on behalf of the Ministry. Within the district councils there are a plans and works committee and a full council committee who are technocrats at the district level. The processes are tight in that if a chief was to give out 250 hectares of land, the land recipient will have to lay out a plan of that particular piece of land, which will then have to be subjected to the Plans and Works Committee of the council. Thereafter, an inspection would be carried out to see if the land is indeed free or if there are inhabitants on the land.

To do the vetting process, the council comprises part of the technocrats and the political elements who are the councilors. Once they are comfortable with that process, they do the minutes and they stamp the lay out plan, the letter from the chief, and the minutes from the council and these are sent to the Ministry of Lands for offer and numbering. When doing the offering and numbering at the Ministry of Lands, there is a scrutiny process which outlines that before government gives a title they must be sure that no one is being displaced and, if anybody is being displaced, those people must be compensated in line with the dictates of the United Nations. There are some guidelines issued by a global body on how to handle displaced persons which Zambia has adopted. Zambia's compensation strategy is reported to be in line with the

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<sup>43</sup> Interview, Lusaka, June 2017

above so that even a single tree that has been planted should be accounted for in the compensation plan.

The Zambia Development Agency argues that chiefs who give land on an area which is inhabited should take responsibility to provide alternative land for the people that are going to be displaced and the compensation should be of such a nature that it leaves these people in a better condition than they were. One of the strategies being used to avoid forced displacement in customary land is government's demand for a remote sensing picture through the government's remote sensing centre. The Zambia Development Agency informant said investors normally want large parcels of land but the law doesn't allow the chief to give out such large pieces of land. Therefore, the chief would indicate the amount of land available for investment and then the respective council in that particular area takes up the responsibility of surveying the area with the involvement of the plans and works committee at the cost of the investor. They also do a social sampling to sample what the area is and then an environmental impact assessment takes place.

Furthermore, even if land is approved by Ministry of Lands and title deeds are given, an investor cannot begin to develop 50 hectares without an environmental impact assessment. The Zambia Environmental Management Agency holds meetings at the targeted land area with the community members on the ground. The community must then give consent and they must decide how their community is going to be looked after and what impact the project might create in their area.

It is not unheard of that chiefs have connived with investors and this has led Zambia's government to develop strategies that could resolve the challenges faced with land investments. One of the strategies highlighted during discussions is the establishment of farm blocks. A representative from the Zambia Development Agency gave further insight into this strategy:

*We have 10 provinces as a country and in each province government has set aside a minimum of 100, 000 hectares of land specifically for local and foreign direct investments, especially those coming into the agricultural sector. What has happened is that government has already undertaken the process to get land back from the chiefs, so chiefs are not involved whatsoever in the process of allocating land in these designated farm*

*blocks. The government has instead established technical committees that look at applications for people coming to invest in these farm blocks.*<sup>44</sup>

The technical committee on farm blocks is said to be comprised of different technocrats from government ministries and departments. The process described includes the completion of a vetting process by the technical committee followed by a review from the steering committee which comprises of permanent secretaries from different government ministries and departments. This team scrutinises and examines the recommendations of the technical committee and if they discover that there is something lacking, they may send an investor's application back or reject it. If everything is in accordance with the guidelines, the application is then approved and, once approved, the application goes to the Committee of the Council of Ministers. The council of ministers will then have to ratify the decision of the committee of government secretaries.

After this process has been completed, the Ministry of Agriculture, which manages all farm blocks, writes to the Ministry of Lands to permit them to commence the process of issuing title deeds on those parcels of land. The concept of farm blocks is being viewed as a way to avoid the displacement of locals because the idea behind them is for locals to be part of the process through the establishment of out-grower schemes, which give locals an opportunity to be involved in large scale land investments. This is a well-structured program and the areas for the core ventures are sometimes 10, 000 hectares, while commercial farms start from 1,000 to about 5,000 hectares. Emerging farmers will start from about 50 to 500 hectares.

This facilitates the empowerment of small scale farmers by taking them to well-planned plots. It is hoped that eventually these big players will be linked to the small players, thereby providing the sought-after value chains or linkages. Foreign investors going into farm blocks are being encouraged to take a few Zambians on board through an out grower scheme arrangement by providing them with technical expertise, input material, and a take-off agreement to provide a market for the locals. It is believed that these farm blocks will minimise the discriminate issue of land in the country. This has brought about some confidence that there will be a reduction in land losses and displacements with the idea of land banks such as farm blocks. The promotion of farm blocks and multi-facility economic zones and industrial parks in all the districts is underway. These are primarily for investors who want to go into

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<sup>44</sup> Interview, Lusaka, June 2017

manufacturing. The strength of this initiative lies in its ability to drive investors into well-designated areas that have been evaluated and cleared of inhabitants. A Zambia Development Agency representative commented on the same, saying:

*We want to take them to designated zones where they can put up such ventures. But for investors who are coming to put up hotels, offices, and whatever, they would like to be in cities and in cities land is already on title deeds and getting that land would mean them just going to have some commercial discussions with the owners of the land and then buying it off and putting up such investments.*<sup>45</sup>

Another measure that has been enforced to improve land management is that of the Zambia Environmental Agency (ZEMA). The Zambia Environmental Agency has come up with the Environmental Impact Analysis (EIA), a tool which is believed will improve land governance in Zambia and will address and reduce issues of land grabs and forced displacements. Despite not having an updated land policy or customary land bill, people are confident that atrocities from improper land transactions will be reduced due to the Zambia Environmental Agency's environmental impact analysis as seen in the following statements:

*It is a requirement that if a person is going to set up a project or an investment in an area that is occupied by the local people, the investor or the developer is supposed to facilitate for a resettlement action plan which must be approved the Zambia Environmental Agency and other stakeholders such as the Disaster Management Mitigation Unit (DMMU) and the government evaluation department. So when a person has identified a piece of land and an inspection conducted reveals that the piece of land is occupied by people whether it is for housing infrastructure, grazing land, or farming land, the developer is required to undertake a resettlement action plan to resettle those people or find a way for compensating for the loss of their properties, whether fields, houses, or a source of livelihood.*<sup>46</sup>

The Environmental Impact Analysis is said to be an assessment that is undertaken to determine if a project is likely to have an adverse impact on the environment. The process involves an investor coming to the Zambia Environmental Agency for screening purposes where it will be determined whether they have to provide an environmental project brief or an environmental

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<sup>45</sup> Interview, Lusaka, June 2017

<sup>46</sup> Interview, Lusaka, June 2017



impact statement. The environmental project brief is for projects which are determined to have less adverse impacts on the environment while the environmental impact statement is for projects likely to have an adverse impact.

Before a report is produced and reviewed by the Zambia Environmental Agency, investors are required to go into the field and collect data in order to provide all the information related to the project, which should include an area description, any settlements, the project plan, the project processes and possible impacts, mitigation, and commissioning plans at the end of the project. Thereafter, the Zambia Environmental Agency reviews the project, gives comments and, if unsatisfied, an investor is informed and required to submit another report until the Zambia Environmental Agency is satisfied.

As is the case with many tools, loopholes and challenges are encountered. The Environmental Impact Analysis has a lot of potential but has its own challenges. It was reported that the Environmental Impact Analysis is not mandatory and while it seems to be an effective tool that can assist with reducing the number of land grabs, displacements, and landless cases, it isn't being received equally by all, especially by some investors whose main aim is to maximise profits. The Environmental Impact Analysis, however, also comes as a benefit to investors as reported by a Zambia Environmental Agency representative:

*What I can say is there is still a lot that needs to be done in terms of sensitisation on the importance of carrying out an Environmental Impact Analysis because that is a planning too; it helps to plan for the future or even to just have that relationship in a community. For example, if you want to set up a project somewhere, you have to go back to the people in that area and connect with them and that can be facilitated through the Environmental Impact Analysis process. But if one sets up a project without the process of the Environmental Impact Analysis, somehow it can be difficult for the people to relate with that project and it can end up with the people rejecting that project in the vicinity because they were not consulted. But the Environmental Impact Analysis takes this into consideration and the people are consulted on the projects that come in their area.<sup>47</sup>*

Speaking on the issue of regulating land investments, the Ministry of Lands Surveyor General said:

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<sup>47</sup> Interview, Lusaka, June 2017

*You need to understand one thing, when an investor, either local or foreign, comes to apply for say a thousand hectares and there are people on land, people would need to be compensated. What law will be used to value that land in order to tie that land to the compensation criteria? If the investor wants to resettle people on that land, an investor should come up with a resettlement action plan and define how the people who will be affected will be resettled. If it is in a particular chiefdom, the chief will strive to find alternative land but where [do] they go, how [do] they continue with their livelihood? Are they going to continue doing agriculture if they were participating in that? If it was capture fisheries, will they continue fish farming? How are they going to be compensated?*<sup>48</sup>

Compensation is a hot topic with land investments but since customary land is not recorded, compensation becomes difficult considering there is no law that helps to determine the valuation of a piece of land. If, however, land rights were recorded, it would assist with valuation.

#### **4.8 Chapter Summary**

Zambia's land tenure system as seen above has been influenced by different development periods and is currently still influenced by the free market ideology which gained momentum in the 1990s with the introduction of structural reforms and land reforms. The 1990s brought about a new wave of investments in land. Numerous land transactions have taken place since then by both local and foreign investors. Positively, many lives have been impacted, such as those of rural community members in mining areas who have gained from the introduction of hospitals, schools and more. Negatively, due to poor administration and ineffective land management, among other things, some rural populations have been affected by land grabs, displacements, forced evictions and further poverty due to landlessness. This has brought about a lot of conversations centered upon improving the management of land in Zambia.

The 1995 Land Act was the last land policy that was enacted in Zambia and although many other tools and mechanisms have been put in place, it is the policy that still stands. Zambia does not currently have a customary land bill to guide the governance of customary land. This lack of concrete land policies for several years sets the context in which the VGGT could assist land governance in the country. The data shows that figures for customary land are not

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<sup>48</sup> Interview, Lusaka, June 2017

available, but conversions have been ongoing, while sells have also taken place in these settings. Poor administration by traditional leaders is a common view that emerged from respondents, thus indicating a need for intervention. Information on the performance of the VGGT is barely present and perhaps this could be due to its infamous nature in the country. The study found that most participants were completely unaware of the framework but all agreed that its voluntary non-binding nature makes the tool somewhat not a priority.

In terms of suitability and applicability of the VGGT framework, local issues such as poor administration by traditional authorities, cultural practices and norms, resource and technical capacity, along with the VGGTs non-binding nature may pose a challenge to successfully implementing the framework, making it unpopular. While not much can be said about the progress that has been made in the implementation and use of the VGGT in Zambia, the country has put in place many other measures to assist with land governance and the enhancement of tenure security. The following chapter continues to provide presentation of findings but from the community perspective.

## Chapter 5

### Tenure Security within a Customary Land Tenure System

#### 5.1 Introduction

Zambia's largest population resides on customary land, and includes peasantry or small-scale farmers, villagers, rural community members, and others. As highlighted in previous chapters, these marginalised groups have in the past dealt with forced displacements, land grabs, and gender inequalities amongst other issues. The situation of these rural communities is captured by an excerpt from a Human Rights Watch report on the Serenje district:

*Rural residents in [the] Serenje district have faced severe suffering over the past few years due to commercial farming. Some commercial farmers have burned or bulldozed homes, uprooted trees, and evicted residents with no compensation and no meaningful opportunity to contest their removal. Dozens of residents evicted by one commercial farmer in 2013 have spent the past four years in tents or shoddy housing in a forest area where they have little access to water and were not given permission by local authorities to cultivate crops (Human Rights Watch, 2017).<sup>49</sup>*

Tenure security under customary tenure is deemed weak in comparison to statutory tenure, which, as indicated by literature, raises little concerns, considering it grants de jure security of tenure. The argument lies in the fact that customary land rights are not recognised and protected by law (Mudenda, 2006). It is such arguments that led to the implementation of the 1995 Land Act in Zambia, an Act that has been opposed by the chiefs and the local people because they believe customary resources play a vital social role and allow people to have equal access to the resources that nature has provided (Chinene *et al.*, 1998). This is mainly because, unlike statutory tenure, customary land rights are grounded in local customs and not formal or state title deeds (Van Asperen & Mulolwa, 2008).

This has led the international community to advocate for a reform to convert customary land to statutory tenure (Lamba, 2005). Some view these reforms as the actual instigators of tenure insecurity on customary land, with a fear that their customary land will be seized by governments and allocated to private investors at any time (Chileshe, 2005). From this

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<sup>49</sup> Human Rights Watch, 2017, <https://www.hrw.org/report/2017/10/25/forced-leave/commercial-farming-and-displacement-zambia>

observation, one can say tenure security plays out differently depending on the type of land tenure a community holds. International organisations and donors working on land issues around the globe began promoting a need to shift to pro-poor land policies and tools to enhance tenure security in Sub-Saharan Africa, as seen in with Rwanda's land tenure regulation, Mozambique's land tenure service project, Ethiopia's rural land certification, South Africa's land reform, and land administration reform in Ghana (Simbizi, 2014).

Zambia has made efforts towards improving land governance and tenure security through the introduction of frameworks, tools, and policies such as the Environmental Impact Assessment described in the previous chapter. The country has also carried out sensitisation programmes to educate their citizens and traditional leaders on land issues. The study found that VGGT advocacy and implementation has been carried out by a few organisations such as the Zambia Land Alliance but has not been given much attention by other institutions.

This chapter seeks to examine the progress in the implementation of the VGGT guidelines in Zambia. It also seeks to address whether there have been any improvements in land access, land rights, and tenure security for communities under customary land since the introduction of the VGGTs. The households selected to partake in this case study were locals from the Mumbwa district in the Moono constituency, particularly from Lundumuna Village, Zulwe Village, and Kwempa village. They are communities whom the VGGT aims to protect, and they are also individuals dwelling on customary land, hence their feedback gives a more realistic picture of the situation on the ground.

Section 2 of this chapter provides a brief history of the Mumbwa district, its occupants, and land holding patterns. The section additionally explores the land rights, ownership, and access of the communities under observation. This links to section 3 which focuses on the impact land investments has had in the region in terms of land grabs, land rights violations, tenure security etc. The section after that is concerned with the status quo post-VGGT introduction as well as other measures enforced by Zambian institutions and non-governmental organisations. The chapter will be concluded with a chapter summary. The findings in this chapter were derived from a focus group discussion, an observation, and interviews that formed the case study. Additionally, literature was used to complement the findings. Chapter 4 focused on the context for the adoption of the VGGT framework in Zambia, the implications of neo-liberal leaning, and a review of land governance in the domestic environment. Data presented in

Chapter 4 was collected from key informants, while this chapter is a continuation of data analysis and presentation of findings that focus on the experience of the locals.

## 5.2 Area profile

Mumbwa town is mostly rural and is located three hours and 162 km away from Lusaka, the capital city of Zambia. The Mumbwa district was chosen as a case study for this research. The district has been described by Mumbuna and Machina (2015) as the breadbasket of the central province, where mining, tourism and agriculture are the three main economic activities (Joala *et al.*, 2016). The town is mostly rural, with 2010 statistics indicating a rural population of 151,230 people, with only 22,081 in Mumbwa's urban area<sup>50</sup>. The land holding pattern for most communities is customary tenure. Like most rural areas, land in this region is considered available or unused hence investments in the Mumbwa district's land have been on-going for a number of years.

A total of 12 households formed part of this study, comprised of representatives from Lundumuna, Zulwe, and Kwempa villages. All located in the Moono constituency in Mumbwa district, these villages are in semi-close proximity from each other. These households include individuals who took part in the focus group discussion, community leaders, and other community members. This sample included three headmen, one being an advisor to the chief in the chosen area, and community members from Lundumuna Village and Zulwe Village.

These villages and their community members are all located in Mumbwa, in the Central Province of Zambia, particularly in the Moono constituency. Pseudo names have been used for the anonymity of participants. Mumbwa town is mostly rural and is located three hours away from Lusaka, the capital city of Zambia. Most participants were not able to communicate in English, hence translation and interpretation was resorted to during the process as the researcher did not speak or understand their language of communication except for the Nyanja language which was partially used by some participants in some instances. They mostly spoke the Ila language. All participants had access to land and mostly engaged in farming activities for their livelihood

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<sup>50</sup> City Population, <https://www.citypopulation.de/php/zambia-admin.php/adm2id=0105>

### **5.2.1 Land Rights, Access and Ownership in Customary settings**

According to Wadie and Appah (1981) a land tenure system involves a bundle of rights which cover both the obligations and entitlements of the holder. This implies that although one may have tenure or rights to land, they may not necessarily have possession of it (Bruce, 1981). In support of this statement, De Villiers (1996) describes land tenure as the form of access, use, or occupation arrangement that one has on land, along with the conditions attached to it. Others believe land tenure is accompanied by a set of value systems attached to culture which affect the way land is used. This yields a logical assumption that land tenure is a context-bound issue and is accompanied by a set of values that are likely culture-bound (Jain *et al.*, 2016).

Traditional land or customary land is the land tenure type that this study focuses on. A customary land holding pattern is associated with this type of land tenure, where people are temporary custodians of their land as explained by Van den Brink (1994: 44). Customary land tenure as described earlier is a form of land tenure where land is held by a group of individuals through shared rules, and where their land administration systems are informed by and practiced in terms of shared values and customary systems (Anim & Van Sckalkwyk, 1996). As a result, some authors like Migot-Adholla, *et al.* (1991) and Bruce (1981) find that customary tenure processes distort market forces and weaken full integration of rural economies into national and international markets. Their other point of argument is that customary land settings permit paternalistic inheritance; hence, this form of tenure system contributes to land fragmentation, thereby encouraging uneconomical and wasteful litigation.

Many authors have linked tenure insecurity to customary land holding patterns. They oppose this indigenous tenure system, arguing that it is not only static and hinders agricultural development but that the traditional land holding system fails to provide security of tenure (Dorner, 1972; Harrison, 1987).

### **5.2.2 Land governance efforts in Mumbwa**

In customary areas, land is administered and governed by traditional authorities and land allocation is carried out by headmen. This is the case in the Moono constituency but while community leaders make attempts to sensitise people not to sell off their land carelessly, careless land sells continue to take place in customary areas by the people entrusted to care for the land as confirmed by a headman:

*...some headmen have violated people's rights to land and have sold parcels of land without the knowledge of the chief.<sup>51</sup>*

Customary land is treated differently in comparison to state land, which is legally documented. Lack of documentation under customary tenure makes it complicated to administer land in a fair and just manner because customary land is now hot land that is being sought after by elites and investors. Without a legal document binding someone to a particular piece of land or land area, it becomes chaotic when land transactions take place, especially without the consent of the community members. This issue has been raised by several African governments and international donors who attribute rural poverty, poor agricultural output, and low levels of economic development to customary tenure (Quan, 1998). Without knowledge of land rights, responsible land investments, and proper land governance structures, customary land challenges remain heightened. In most developing African countries, the problems associated with land administration are under their tenure systems, which, according to Kambenja (1997), include environmental degradation, landlessness, squatting, inadequate public revenue, and rural poverty.

Through conversations and observation of community members during fieldwork, they acknowledged that they were fully aware of their land rights. They also affirmed that land investments haven't had severe adverse outcomes in their communities in terms of displacement and landlessness. Most participants stated that they are consulted before an investment takes place while a few gave examples of scenarios where consultations lacked. Participants said there have been improvements in the manner in which land is governed in their community. They gave an example of how they were consulted for a project which entailed building a substation in their community. They strongly believe they have rights and access to land and will not allow anyone to come grab land in their communities.

In line with these improvements in land governance in the Mumbwa region, the chief advisor of Moono constituency confirmed that due to the respect for policies and rules by community members and headmen, there has been a significant reduction in the number of careless land sales in the region. Additionally, no forced evictions were reported in their communities; however, just like other customary areas in Zambia, some challenges are present. Culturally, people explained that there are situations where men find themselves more superior than

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<sup>51</sup> Interview, Mumbwa, June 2017



women, limiting women from doing anything on land. Cultural beliefs continue to sideline women in terms of access to land despite several attempts to sensitise communities on the importance of women's land ownership (Mudenda, 2006). These gender issues were asserted by one of the female participants, Mutinta, who said:

*In fact, last week we had a meeting. We went around to sensitise the women on how they can care for land and we encouraged them to have title deeds.*<sup>52</sup>

Women's land rights under customary tenure have proved to be a challenge in Zambia and many parts of Africa. Kariuki (2006) affirms this, arguing that women's land problems range from tenure disputes, unsuitable land legislation, land administration, land grabbing, and invasions. Nsemiwe (2006) adds that customary practices such as inheritance systems contribute to the inequality of land distribution in Zambia. The study found that land access and allocation under customary land did not seem to be a challenge in communities as respondents acknowledged that land was easily accessible. Respondents also affirmed that there are no criteria to be allocated land in their area and therefore anyone qualifies for land allocation. Wiza shared in this view, saying:

*It is very simple to access land. They do not separate people, we have various tribes and it is easy to get allocated land. Unless perhaps one has a bad character.*<sup>53</sup>

While most participants said that land is easily accessible, others like Mutinta and Musa from Kwempa village had a different opinion on land access and ownership for women. While they admitted that land is easily accessible for men, they said women have difficulties in accessing land:

*Us women, we don't have anything whereas if you want to get a title, there are those charges. The headman and the chief will want something, the council, the ministry of land, and all those agents, so as women it is quite difficult.*<sup>54</sup>

This experience is different for men who have access to finance as land owners. Some argued that women in the Chief Moono constituency do not own land. This may go in line with the findings of Kariuki (2006) and Nsemiwe (2006) on women's land rights in Zambia. Both

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<sup>52</sup> Interview, Mumbwa, June 2017.

<sup>53</sup> Focus Group Discussion, Mumbwa, June 2017.

<sup>54</sup> Interview, Mumbwa, June 2017

authors argued that women's rights to land are sidelined due to various factors such as customary practices, land administration, and unfitting land regulation. All these factors have affected land access and ownership for women in different parts of Zambia and notably still affect women in these communities under review.

Having access to land isn't the highest attainment these individuals are seeking but that land needs to be held in a different form. Respondents expressed interest in converting land from customary to state land. They aspire to have title deeds, which they believe is a more secure way of owning land. Lack of de jure security under customary land holding patterns leads to lack of protection of land rights by the state. This means that when other people make claims on land which belongs to customary communities, their land rights will be expropriated (Lamba, 2005). There is a strong consensus that Africa can only develop if the traditional tenure is integrated into the leasehold tenure system based on principles of individualisation (Kambenja, 1997).

As seen in Chapter 4, land conversion has a long history in Zambia. Prompted by lack of finance, rural communities have grasped on to the spirit of land conversion. Finance has affected community members in many ways but also in terms of acquiring title deeds, as explained by Ken and others who said:

*Because of poverty we cannot manage to have titles.... It is too difficult because maybe if we take that land and put it on title deeds, it is only valid for five years and it will need to be renewed but we won't manage to renew because of the poverty.<sup>55</sup>*

While participants expressed a sense of urgency towards converting their land and acquiring title deeds, critics have failed to find empirical evidence that links title deeds to easily accessible credit at a lower cost (Brasselle *et al.*, 2002), considering there are several other requirements as a prerequisite to credit worthiness (Hollingsworth, 2014). According to Anseeuw *et al.* (2012), tenure security appears to be heading towards a direction in which it is solely characterised by documented land rights and less by observable and unobservable characteristics of the landholders. As a result, credit institutions may feel confident that documented land rights may be used as collateral for credit allocation. At the same time, the

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<sup>55</sup> Focus Group Discussion, Mumbwa, June 2017

formalisation of land rights in rural areas has raised concerns about the land tenure security of the least powerful and least informed.

Most, if not all members of this case study, affirmed knowledge of their land rights and explained how their land rights are protected by the traditional authorities who are the caretakers of the land.

Literature has indicated that some traditional authorities have acted irresponsibly when it comes to land transactions by not having the interest of the community in mind. Take Akrofi and Whittal (2011) who found that chiefs tend to abuse their positions for wealth accumulation by depriving their subjects of their land rights and extracting monetary benefits from outsiders without the community member's consent. Most members of this study felt differently, stating that they trust that traditional leaders have their best interest at heart and protect their land rights. According to them, there is transparency and consultations take place whenever land transactions occur in their community. For example, one of the headmen said:

*Yes, in fact that is what we want because previously the headmen were just doing things anyhow but this time we have improved now. They are supposed to inform the chief; the chief must be aware that this land is sold, or people want to do something with this land.<sup>56</sup>*

Initiatives are carried out in communities to educate villagers about their land rights and how they can protect them. These land rights awareness initiatives are continuous because not all community members are aware of their land rights. Those who are, are mostly educated.

### **5.3 Land Investments and Land Grabs in Mumbwa's villages**

Land investments in customary areas have yielded different reactions. At the grassroots level, land investments have generated diverse reactions "from below" (Polack *et al.*, 2013). These reactions stem from social differentiation based on gender, generation, status, wealth, income, and livelihood strategies. They range from demands for inclusion in agribusiness ventures as farm workers or out grower schemes, to efforts to obtain better terms for consultation or compensation, through to resistance strategies aimed at terminating the deals and pursuing alternative development pathways (Borras & Franco, 2013).

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<sup>56</sup> Interview, Mumbwa, June 2017

On the other hand, governments in southern Africa are reformulating land policies to facilitate privatisation of customary land rights. This can stimulate land markets, foreign direct investment, access to formal credit, and enhance security of tenure through the issuance of title deeds, thereby contributing to economic growth and poverty alleviation (Hall *et al.*, 2015). Zambia's reputation as an investment hub has grown over the years and, backed by its agricultural successes, it has attracted a number of investors in the country. One notable investor is Clayton Africa, an investment fund that pledged a multi-million-dollar investment into the country. Some view land investments as prerequisites for development in rural areas. This is the case in Zambia as the government views land as a tool for development. In their view, an effective and efficient land administration system can produce meaningful development. The government of Zambia has accordingly placed great importance on land in order to enhance national development.

Cotula (2012) finds that as the rush for land and natural resources continues, disadvantaged groups are at risk of losing out, particularly where their tenure and land rights are concerned. These marginalised groups have challenges asserting their rights and are in jeopardy due to major power imbalances which shape relations with governments and investors and elites. Land rights violations, land grabs, and displacements tend to occur in rural communities as indicated in the literature provided in Chapter 2 and data presented in the previous chapter. The communities in this case study said their land rights have not been violated. While this may be true in this region, it does not reflect the experience of other communities living on other customary land areas in the country.

However, in Mumbwa particularly, there have been issues with land investments where cases have surfaced of disputes between villagers and some investors. An example is a case in which villagers from Milulu village distracted the works of Zambia's electricity company, Zesco. These disruptions took place in the Moono constituency, the same region in which fieldwork for this study was done. The dispute derived from the villagers demanding compensation for their crops which were destroyed by the company while they were working on a construction project. For months, the villagers had been awaiting compensation, but the delay forced them to disrupt the works of Zesco. A headman from Milulu village explained that they feared the

company would disappear upon completion of their works, considering they had been waiting for compensation for several months.<sup>57</sup>

Participants from Lundumuna and Zulwe villages all confirmed that consultations take place whenever a land transaction or investment is taking place in their community. While community members interviewed in the two villages said their land rights were respected and they are always consulted when land transactions take place, Kwemba community members had a different opinion:

*There is this project, this Zesco one. We were not consulted, we just saw people surveying, doing this and that. The next thing we saw is power lines in my field, so we were not consulted.*<sup>58</sup>

*...if the instruction to utilise a particular piece of land comes from the government, it comes as a sort of dictation to say this is going to happen without even consulting the community, you just see people being displaced. Now if that comes from the top, we are voiceless.*<sup>59</sup>

Kwemba village participants maintain that people from other villages and rural settings are not aware of their land rights or are ignorant thereof, hence they cannot tell when their land rights are being violated. In this study, participants did not assert that land grabs have taken place in their communities, but some acknowledged that land grabs, careless land sales, and land rights violations by headmen or community leaders have taken place in other regions. One key issue pointing to land grabs and careless land sales is a lack of finance which has prompted some headmen, households, and chiefs to sell off land to investors. These groups of people are vulnerable and are seeking a way out of poverty. Most of them complained that regardless of having access to land, they have no finances to develop that land for themselves. They face challenges in purchasing materials needed for farming and livestock purposes, making it difficult to optimally utilise the land they have access to.

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<sup>57</sup> Lusaka Times, 2015, <https://www.lusakatimes.com/2015/08/02/villagers-disrupt-zesco-works-in-mumbwa-demand-compensation-for-their-crops/>

<sup>58</sup> Interview, Mumbwa, June 2017.

<sup>59</sup> Interview, Mumbwa, June 2017

This has led the rural communities to seek a different form of tenure and opt to convert their land from customary to statutory tenure as this will allow them to have title deeds which they can use to acquire finance from financial institutions.

The participants were warm to the idea of land investments in their community with a strong belief that land investments will reduce poverty levels. They all acknowledged that they would like to see a lot more investments happening on their land. In support of these sentiments, the community leader explained the process of an investment taking place on their land, explaining that when approached by investors, the headmen are informed of the exact area that an investor seeks to put up an investment. Thereafter, local people who live on that land are engaged and discussions pursue. After discussions, when an agreement has been established, investors can proceed with their projects. The community leader said in a case where members of the community do not agree to the investment proposal, they are not forced into making an agreement because they have the right to decline.

The potential for an increase in socio-economic benefits has intrigued the community members to advocate for land investments. Participants said land investments can contribute to poverty reduction especially when land is used for cultivation. They believe farming is ideal because it yields profits. This can be seen from the following excerpts:

*If investors come, if we give them land, maybe it can reduce poverty. If they give us something that we want, then maybe it can finish poverty, we could even find employment from the investors.<sup>60</sup>*

*By having investors present in the community, a clinic and school can be built, which will really come as a benefit considering it is the most important problem the communities in Zulwe and Lundumuna village are facing. We travel almost four kilometers to go to a clinic or the school.<sup>61</sup>*

The participants from Lundumuna and Zulwe villages advocated for further investment and did not identify any negative issues with past land transactions. This might imply investments are carried out in a proper, lawful manner, thereby respecting the land rights of these communities. However, a couple of hundreds of meters away in Kwempa village, other

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<sup>60</sup> Focus group discussion, Mumbwa, June 2017

<sup>61</sup> Focus group discussion, Mumbwa, June 2017

participants said their community is not benefitting from large scale investments. According to the Kwemba village residents, when investments are brought into their community, jobs are allocated to outsiders, mainly people coming from town to do the work as opposed to the locals carrying out the work, so that they don't gain from it.

From this observation, it appears land investments in these communities have had no major benefits for community members as they have not created much income for them or reduced their poverty status. It also indicates a stagnation of living standards as the villagers continue to seek significant needs such as health centers, schools, and employment. In terms of land grabs, forced displacements and landlessness, none of the participants said these atrocities are taking place in their region. So yet again, it appears land investments in these regions are being carried out in line with the principles of the VGGT as land access, ownership, and rights have not been affected negatively according to the community members.

#### **5.4 Status Quo**

The chapter questioned whether the VGGT guidelines have improved or impacted land rights, land grabs, tenure security, and access and ownership. Since the VGGT guidelines were introduced in developing countries, other states like Sierra Leone have passionately spearheaded them in their land policy and land management. Other countries like Zambia which lack a land policy to begin with have had a weaker experience in implementing and advocating the VGGT guidelines. Zambia has made other efforts in improving land governance as seen with the implementation of the Environmental Impact Assessment by the Zambia Environmental Management Agency. This tool has benefitted communities in the sense that it significantly minimises the potential of displacements and land grabs, given aerial examinations are done to establish whether parcels of land are inhabited or not. The Zambia Environmental Agency tool has addressed issues of land rights violations, consultations, and land grabs. While displacements may occur, compensation requirements are enforced.

Land grabs have been facilitated by careless land sales by traditional authorities but government and non-governmental organisations have enforced and driven an agenda for sensitisation programs to educate the rural people on the effects of selling off their land. As a result, a decentralisation policy is being put in place which will minimise the power that traditional leaders have in governing and selling of land. According to an article by Zambia Daily Mail, the country has opted for a decentralisation by devolution as Zambia's main

approach to development. This in effect will lead to a decentralised system of governance within a unitary state of Zambia (Zambia Daily Mail, 2016).

The issue of tenure security is still a concern in most parts of rural Zambia, thus initiatives like MEDEEM, in which forms of ownership documents are issued out as a substitute to statutory title deeds make a difference. These ownership documents under customary tenure will address a number of issues such as ownership and land rights, credit financing, and reducing land grabs. The introduction of other governing measures or tools is likewise contributing to the security of tenure for customary land holders. A customary land bill is one such measure although it is yet to be drafted and enacted. It has potential to address a number of customary land challenges.

Most of these measures and improvements in customary land governance have been spearheaded by government but there is no confirmation as to what impact the VGGT have had on this. This is mainly because the study failed to establish whether the VGGT guidelines have been incorporated in land management in the country. A few experts confirmed knowledge and utilisation of the VGGT guidelines in their work but most people, including the locals and the Ministry of Lands officials, were not aware of the guidelines.

VGGT guidelines in these particular communities have not been spearheaded although some non-governmental organisations have carried out sensitisation programs in other parts of the country. None of the participants were aware of the VGGT guidelines. Likewise, the study could not establish what government efforts have been carried out to foster VGGT implementation. Other measures are being carried out by government to enhance tenure security, land access and ownership, and to protect women's land rights. These attempts have brought about some changes over the years and have thus improved the status of tenure security, people's land rights, and their access and ownership of land. These measures range from the Zambia Environmental Agency Environmental Impact Assessment, the South African Development Community (SADC) protocol, sensitisation programs, reservation of land for women, and land ownership certificates (LOCs) under customary tenure.

In this case the VGGT are not the reason behind the improvement in land issues but its components are being applied in the governance of land in Zambia. These VGGT elements are evident in the revision of land policies, enhanced participation by communities, and evidence of women in decision making.



Data presented in Chapter 4 indicates a slow implementation of the VGGT in Zambia. While some of the organisations and institutions dealing with land governance mentioned involvement in the implementation of the VGGT, others simply were unaware of the framework itself while others were uncertain. Nonetheless, some efforts have been made towards VGGT awareness and its principles and guidelines seem to match some measures that are currently being put in place in the country. Clear and accurate information on how much progress has been made and how it has directly benefitted communities could not be obtained during the interviews or through other means such as literature. Nonetheless, discussions over the VGGT have been felt widely across continents and its elements have been incorporated into other policies and Acts that Zambia follows such as the South African Development Community protocol, which addresses issues of gender and equality in land, land rights, and participation.

Efforts to enhance tenure security are underway in Zambia and some progress has been seen through the issuance of ownership certificates on customary land, sensitisation and the decentralisation of land administration. The government and other organisations such as the Zambia Land Alliance are carrying out consultations with traditional leaders who have issues of power relations and land rights violations in some regions. These efforts indicate an attempt to improve land access, ownership, rights, and tenure security for customary land holders.

#### Women involvement in decision making

The VGGT guidelines advocate for community participation, women's rights, land ownership by women, and women's involvement in land decisions. According to the participants in Zulwe and Lundumuna villages, women's rights are respected, they partake in decision making, and are also leaders. The chief advisor in the Moono constituency reported that there are 95 headmen in the constituency, of who 15 are women.

To the contrary, in Kwempa village, the participants affirmed that women are not involved in decision making when it comes to land transactions. Judging from these different statements, one may conclude that some believe women's rights are respected while others don't. These differing views may be due to a lack of understanding of the concept of women's rights, education levels, and experiences.

Irresponsible land administration or governance by traditional authorities came up during this study as the community leader revealed that land sells have been taking place in their chiefdom.

It was reported that three quarters of the 95 headmen have been selling land and these sales supposedly have been taking place without the knowledge of the chief.

Another issue that arose is the difficulty women face in owning land. Land access should not be an issue for most regardless of gender but when it comes to land ownership, an inequity arises. Mutinta stated:

*Right now, we have a project running that is funded by the European Union, where we are advocating for women to own land and even sensitising the community that women also must own land. The project is a new one but since it started the response has been good, the response has been overwhelming from the chief, headpersons, even women [and their] husbands.<sup>62</sup>*

Community members pointed out that poverty is a hindrance to women owning land. Others expressed that married women are facing a problem with their husbands, in that men think if the woman owns land, he will not be able to do his role and lose power accordingly. This is due to power relations between the two genders and cultural norms. In her own experience, Mutinta reported:

*What is happening is, since I am married to him, he has all the control over land, even over the products from the field. Even the chickens, I am saying they are my chickens but to get one I have to go through him as the head of the family.<sup>63</sup>*

Rachel, Matende, and others believe the solution lies in lobbying government and traditional leaders to advocate for women owning land. The participants elucidated that since farming has been ongoing, women have been used as laborers by their husbands. According to Mutinta, one may find that a woman is working the field with children and the husband has gone out drinking, yet he will be the one at the front. Mutinta also argued:

*The men make all the decisions, and this is the trend in 90 % of homes.<sup>64</sup>*

Although women's rights are known, they are not necessarily enforced. Sensitisation could bring about an improvement for women because it appears people are ignorant or unaware of

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<sup>62</sup> Interview, Mumbwa, June 2017

<sup>63</sup> Interview, Mumbwa, June 2017

<sup>64</sup> Interview, Mumbwa, June 2017

their rights. Most women did not go to school, so they do not know their rights but through sensitisation, this element could change.

## **5.5 Chapter Summary**

The data shows differing views by community members as some agree that land rights violations and poor land governance is prevalent in the communities, while others see no such outcomes. It is clear, however, that most participants felt investments are beneficial to their communities and would like to see more taking place. The participants also indicated their desire to convert land as they believe their type of land holding pattern is insecure and limits them from having access to finance. The participants were not familiar with the VGGT, including the community leaders, thereby making it difficult to confirm whether the VGGT framework has had any real impact in these particular communities or region at large.

Although the impact and progress of implementation of the VGGT is not clearly identifiable, its components seem to have been applied locally. This can be seen through a respect for land rights, participation, and land ownership and access enhancement in communities. A clear picture cannot be painted about whether the VGGT guidelines have led to improvements in land tenure security, ownership, and access as a result of the VGGT, but data indicates some level of improvement, considering land rights and participation awareness have already been incorporated in communities. The VGGT guidelines have got elements that when applied locally may hinder successful implementation and these issues along with the findings from the entire study are summarised and discussed in the chapter that follows.

## **Chapter 6**

### **Discussion and Conclusions**

#### **6.1 Introduction**

This dissertation explored the application and suitability of the international VGGT development tool to Zambia's land governance. The research produced key insights on the main factors affecting the proper governance of land in Zambia's customary land areas. In the wake of increasing land investments, these issues are affecting tenure security under customary tenure. The data chapters were effective in outlining the challenges and weaknesses of the current land tenure system. Chapter 4 provided a local synthesis of land governance in Zambia since the arrival of European settlers to present, detailing the factors that have long affected land ownership for locals, land access, land rights, and tenure security. This includes, but is not limited to, governance instruments, cultural hindrances, poor administration by traditional authorities, and lack of a concrete land policy, improper land transactions, and weak property rights. Chapter 5 assisted in highlighting the experience of the locals and the progress made in the governance of land in the region under review.

This dissertation sought to identify the key challenges in implementing the international VGGT framework. This conclusion aims to pull these themes together to discuss the implications of adopting international development tools and challenges and localising them in developing countries like Zambia. The conclusion also aims to discuss some broader policy questions and briefly comments on the limitations of this research and potential areas for further study. A qualitative study which encompassed a literature review, key informant interviews, and a case study assisted in examining to what extent the adoption of the VGGT model transformed land governance and improved the land tenure security of communities on customary land in Zambia. This examination is important, as it provides an analysis of the effectiveness or ineffectiveness of the VGGT instrument in Zambia.

The findings may be useful to government officials, policy-makers, non-governmental organisations, traditional leaders, as well as ordinary citizens. It relates to the rationale of the study which dwells on localising and fine-tuning current measures to improve land governance and tenure security in the country, including the successful implementation of the VGGT framework. The study could influence other researchers to pursue research on the application of international development strategies or tools on various sectors of their economy to assist in

identifying locally designed solutions to development problems. This may also serve as an input to strengthening the tenure-related components of Zambia's upcoming land policy and legal instruments, thus providing a valuable resource for policy and legal reform processes in relation to the governance of tenure in Zambia.

These findings portray areas in Zambia's land system which need attention. They also portray the impact and effect neo-liberal leaning has had on land and policy development in the country. This is vital considering the country has a large amount of customary land which majority of its population inhabits and relies on for livelihood purposes. The findings assist in establishing which domestic factors pose a challenge in successfully implementing the VGGT guidelines so as to find a more adequate way to localise the framework and improve land tenure security in the country.

## **6.2 Discussion**

This study sought out to analyse what impact the VGGT have had in addressing land issues and tenure security for rural communities who live, cultivate, and utilise land for their livelihood in customary land in Zambia. The main focus was on the status of land rights, land access, ownership, and tenure security under customary land holding communities, given land transactions have been on the rise in the country. The research further established that the VGGT guidelines have been faintly implemented in the country but that other mechanisms are currently being applied to the management and governance of land in the country. However, some non-governmental organisations like Zambia Land Alliance and Caritas were very familiar with the VGGT guidelines and have used the framework as a point of reference in some advocacy projects.

Zambia's status as a dual land tenure country, with a high percentage of customary land, made it a suitable country to evaluate the application of the VGGT framework. The VGGT were crafted with a focus on indigenous groups because these are the people most affected by land transactions and poor land governance. The land debate in Zambia and most developing countries is centered on how best to utilise land for agricultural development, economic growth, and livelihood for rural communities. Having effective land governing mechanisms becomes essential in this day and age, where land investments continue to rise in a globalised liberal world. Economic liberalisation in the 1990s led to the creation of land markets in the country. Several land transactions have been reported in the country over the past two decades. This has

taken place in conjunction with land conversions, where customary land has been converted to state land for development purposes. The quantifications of these events are unavailable as confirmed by Ministry of Land, given there isn't a system in place that quantifies these events. The 94% customary land and 6% state land statistic does not realistically reflect current percentages but the percentage of customary land available in the country is still rated larger.

Many scholars have written on land abuse and community vulnerability as a result of free market liberalisation policy in Zambia. This is evident in present day as seen in many rural communities where poverty challenges, land rights abuses, and lack of finance are hot topics. These findings suggest that these issues, along with other land governance mishaps, are due to but not limited to outdated policy, poor administration, limited resources, political will, and institutional capacity.

In the midst of all these issues that have been strongly influenced by neo-liberal ideology, Zambia is making attempts to fix the errors of the past, as is most developing countries that have suffered from implementing market-driven models to their local policies. Alternative development strategies such as participation, inclusion, and community/ rural development are the trending models in present-day development talks. While alternative development strategies are promising, they have been criticised by many for being either inapplicable or unattainable in present day due to the heavy reliance on liberal or market mechanisms by governments in Africa and beyond. It is argued that priority is given to economic development rather than social development by most governments. This means that whether or not social development projects are present in a country, preference or priority will normally be given towards economic development, including the implementation of tools that concern the two.

### **6.2.1 Aligning the VGGT locally**

Zambia has for several years lacked a land policy but has a draft National Land Policy in place, which has been circulating and undergoing revisions. Since 1995, no new land policy has been passed. This means there has been one outdated land policy guiding land governance in the country since 1995. Existing in a globalised world, the country has adopted international development frameworks such as the International Monetary Fund's structural adjustment programmes, the Millennium Development Goals, the Sustainable Development Goals, and various other international policies. However, with the failure of past attempts to grow the economy, the attention in most developing countries has shifted to community development

and empowering the marginalised. In this regard, many countries, including Zambia, have signed into various alternative development models to correct the wrongs of the past. This study questions the application of these alternative models, not only because most models are international, but also because they are generalised. The VGGT framework was globally introduced in 2012 and many countries have adopted them or applied them in one way or the other. VGGT implementation in Zambia as seen in this research has been relatively low and thus has not had a definite impact on the country's governance of land. Nonetheless, the study found that other measures have been put in place by Zambia's government, non-governmental organisations, and land governing institutions. The study began by reviewing Zambia's history from the creation of land reserves, as well as a review of the country's dual land system administration, in order to discover the domestic challenges engraved in the governance of its land.

From these observations, it is evident that, like most developing countries, challenges exist in different forms when it comes to applying development models or tools in local settings. For this particular study, when analysing the implementation of the international VGGT guidelines, the results found that customary land practices and cultural norms, amongst other domestic issues, pose a challenge in successfully applying the international VGGT framework work in Zambia.

In terms of gender issues, the study found that land ownership, access, and women's rights are respected in some areas while cultural norms still pose a challenge for women in owning land and having tenure security. Aside from cultural hindrances, the VGGTs are not widely known or actively being used by investors or land administrators in Zambia. The study failed to establish whether the VGGT guidelines were incorporated in the most recently revised 2015 draft Zambian National Land Policy. The VGGTs have not been prioritised and, as seen through discussions during the course of the interviews, the international land governing guidelines are perceived to be a weak framework due to their voluntary and non-binding nature.

The findings suggest that one of the major problems that could be faced in localising an international development framework such as the VGGT in Zambia depends on the capacity of traditional leaders in administering land under customary tenure. In Zambia's dual land system, land administration has produced different results given the laws guiding state land are different to those guiding customary land. This point was magnified when analysing the status

of tenure security in Zambia, where it was established that tenure security is weak for customary land holders.

Since the mid-1990s Zambia has been leaning towards neo-liberal development strategies, which in present day clash with efforts to reduce land grabs in the country. This drives investors into land-abundant regions seeking land for projects. Although a small sample was used for the case study, the study found that the views and experiences of community members relating to land governance and management differed between neighboring communities in the Moono constituency, thus questioning whether land administration is carried out uniformly within a region. As the Moono constituency has a total of 95 headmen, one would then question what kind of systems are in place to administer land, given the contrast. Where one community acknowledged land rights violations and lack of consultations, other communities in the same region would argue differently.

The VGGT framework was endorsed globally in 2012, giving its existence a 6-year mark. The study, however, found that most of the individuals in the organisations dealing with land were not familiar with the guidelines nor utilised them in their work. This indicates the unpopularity of the framework and the level of implementation and awareness of experts dealing with land and policy in the country. The VGGT guidelines have a lot of potential to improve land conditions but considering they were introduced over 5 years ago and they are not popular in Zambia, perhaps their voluntary nature has led the country to sideline the guidelines. There is barely any official information on the implementation progress of the guidelines, nor on their performance in the country.

VGGT implementation has been on-going in other countries like Sierra Leone, where its performance has been documented and appreciated. Sierra Leone began its implementation process by firstly establishing a Multi-stakeholder Platform for improved dialogue on tenure governance. According to reports, the country's multi-stakeholder platform comprises more than 100 stakeholders, including traditional leaders, representatives from national and local government, civil society, the private sector, academia, and international development partners. It convenes annually to present recommendations related to tenure governance priorities for the land, fisheries, and other sectors.

This is one way that has proved to successfully and effectively implement an international tool as it involves various stakeholders and assists in identifying issues that are hindering the



performance of the VGGT. Additionally, Sierra Leone created an institutional framework to oversee the implementation of the framework, which includes a steering committee, an inter-ministerial taskforce, a technical working group, a VGGT secretariat, and a multi-stakeholder platform. All these groups comprise the Ministry of Lands, the private sector, civil society organisations, non-governmental organisations, traditional leaders, and tenure right holders.<sup>65</sup>

Zambia could learn from this and consider prioritising the implementation of the VGGT framework. International development tools tend to face applicability and suitability challenges when developing countries attempt to implement them. While the Sierra Leone example is a country specific success story, it indicates structural efforts that can assist in implementing the VGGT framework in a more social inclusive manner.

One cannot review development projects in developing countries and not come across reports of failed development strategies. Alternative development theorists like Escobar criticise development strategies for having a one size fits all style. A number of consultations were done before the drafting took place but challenges in implementation are still prevalent and its popularity is weak in some countries. In Zambia, particularly, not much activity has taken place in terms of implementing or popularising the VGGT.

Hall *et al.* (2016) make suggestions toward future implementations, some of which include:

1. The promotion and careful use of technologies for recording land rights, through participatory processes and the involvement of ethnographic research expertise.
2. Building further on the synergies between regional and global frameworks to benchmark countries' progress towards realising the VGGT principles, using the Sustainable Development Goal land indicators and the legal assessment tools that have been created.
3. Capacity building also requires institutionalising land governance in universities and other institutions of higher learning, in research as well as in academic and professional training.

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<sup>65</sup> See Food and Agricultural Organisation, 2016, <http://www.fao.org/3/a-i6270e.pdf>

From the above, recording of land rights in Zambia as seen in this research is underway but very limited in regions like the Western Province. Countrywide, these processes are not even part of a long-term plan. A conversation with a Ministry of Land official showed how this project may not be sustainable. MEDEEM is one of the organisations in the country issuing land certificates and this has helped enhance land rights for community members, including women in certain areas. The MEDEEM project and other similar projects by the United States Agency for International Development are said to be pilot projects but are not country wide. There is also talk of traditional leaders giving out these certificates under customary land tenure but the major questions surrounding this is authenticity of documents, corruption, sustainability, and capacity of the traditional land administrators to carry out a countrywide project of this caliber.

### **6.2.2 Domestic challenges: culture, gender disparities, and institutional capacity**

Many studies have found that culture plays a huge role in affecting the impact of international development strategies, projects, and policies when applied in different countries. The VGGT framework, although designed for developing nations, advocates for a number of principles which governments, investors, and the wider community should incorporate in their land management practices. For example:

*Gender equality: ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary (Food and Agricultural Organisation, 2012).*

*Consultation and participation: engage with and seek the support of those who could be affected by decisions, prior to decisions being taken, and respond to their contributions; take into consideration existing power imbalances between different parties and ensure active, free, effective, meaningful, and informed participation of individuals and groups in associated decision-making processes (Food and Agricultural Organisation, 2012).*

Gender equality and participation are topics that are common. They continue to be an issue in some countries and regions, primarily due to rich cultural doctrines or traditional norms bound to their societies. Culture differs from country to country, and can be seen when gender issues are concerned. While certain parts of Zambia have seen an improvement in women's rights to land and participation, as stipulated by the VGGT guidelines, some regions still face difficulty

with this gender issue. Some participants acknowledged that cultural norms continue to affect women's ownership and rights to land. Patrilineal systems etched in most rural communities pose a challenge in implementing the VGGT in rural communities considering the mindsets of those dwelling in patrilineal settings continue to undermine ownership of land and participation for women in decision making, leaving those women in such settings open to further poverty, landlessness, and exclusion.

Although sensitisation programmes for women's rights have been on-going for years and other mechanisms have been put in place to reduce poverty and empower women, women's rights to land are still a work in progress. Gender equity still haunts the Zambian land system in certain rural settings. In urban areas women easily access and own land but the study found that in rural areas some women still face challenges when it comes to owning land.

Spichiger and Kabala (2014) wrote on gender equality and land administration in Zambia, saying numerous donors include gender concerns in their activities related to land indirectly by contributing towards agricultural programmes or by supporting the justice sector. According to these authors, there have not been any direct government donor-supported programmes on women and land. This study found that some programmes are currently being implemented in Mumbwa with the help of the United States Agency for International Development, where advocacy for women's rights is heightened.

To address gender disparities in land, in support of the South African Development Community protocol, the country has put some measures in place such as sensitisation, issuing of land certificates to women, and land reservation for women. Such moves are associated with changes in laws and policies which could be aimed at the decentralisation of power in the governance and administration of land. Armstrong (1995) finds that laws and policies alone are inadequate to address women's rights to land, more especially when their application is mediated by customary law. The country finds challenges in land administration and land management primarily due to unreliable land information management systems and the absence of decentralisation and collaboration among various stakeholders (GRZ 2011: 7). Some respondents argued that capacity may be an issue as resources are not easily available to implement the VGGT, thus the attention for the same is not being prioritised. Mkandawire (2001: 8) identifies three major issues that challenge African governments when it comes to development efforts, namely:

1. Lack of developmental policy that facilitates and promotes economic growth and structural transformation.
2. Lack of development programmes that are democratic in a manner that makes it derive legitimacy through popular participation and electoral processes.
3. The absence of social inclusiveness that ensures equitable entitlements to citizens leading to the exclusion of critical capacities and constituencies of the African population.

Apart from cultural hindrances and issues of capacity, some respondents pointed to political interests and the role of traditional leaders. Onuoha and Qobo (2012) argue that one of the major weaknesses of African countries is their weak institutional mechanisms that have to manage implementation of programmes. Traditional leaders are perceived to have a strong will to have control over land, thus not fully allowing participation to take place in their communities. These domestic issues may hinder successful VGGT implementation but, considering efforts are being made towards sensitisation and other measures are in place to improve tenure security, it paints a promising picture.

As seen through literature and in interviews, there is much concern around Zambia's lagging land policy that has taken over 20 years to be revised and enacted. Development programmes do not lack in Zambia; various non-governmental organisations and international organisations are present in the country and carry out and implement development programs. The VGGT are one such example, non-binding but present regardless of its weak performance in terms of implementation. Others believe this is also because Zambia does not have the capacity to implement this international tool, especially since it is voluntary, its priority is perhaps of low concern to the government. Mkandawire's last point concerning social inclusiveness might be relevant in analysing the applicability of the VGGT in Zambia. Is the spirit of social inclusiveness really present and sound in Zambia, one would ask.

### **6.2.3 Traditional leaders and power relations**

Traditional leaders are responsible for administering land under customary settings and are known as the custodians of land in customary areas. Chiefs are the overseers of land and are assisted by headmen who we could say are the general managers of land: they allocate, they discuss with prospective investors, and they generally govern land in all aspects. This has been the system in Zambia's customary areas for a number of years and has not brought about major

concerns, more especially in terms of governance. However, due to the rise in the demand for land since the opening up of markets, their capacity is being questioned. Issues such as displacements, land grabs, and land rights violations are said to be on the rise due to careless land management and sales by traditional authorities, more especially headmen. These rural settlers are influenced by various factors, including hefty amounts of money from investors which have resulted in the land rights of community members being violated.

Power relations are said to have an effect on land transaction outcomes in the country. Others argue that the introduction of tenure security measures and land rights protection processes have resulted in traditional leaders believing that their authority is being undermined. There is also a general belief that if a traditional leader's control over land is affected, that leader may be faced with loss of land which would undermine their authority in their community. This poses a challenge and reluctance on the side of traditional authorities to foster land rights and tenure security.

Moncrieffe (2004) explains that power relations affect socio-economic development outcomes and argues that the poor are likely to suffer from multiple interlinked causes of poverty, including various forms of economic, political, and social marginalisation. Harris-White (2002) confirms that power relations may lead to the most intense forms of poverty. In her view, groups that exclude and violate the human rights of others do so for selfish reasons, thereby accumulating resources for themselves. There is a strong consensus that traditional leaders or headmen are sabotaging their own subjects by selling off land without their consent. In short, careless land transactions by some traditional leaders have contributed to land grabs and tenure insecurity in some parts of Zambia. Traditional leaders and their fear of losing power over land likely affects effective implementation of the VGGT given their reluctance goes against some of the VGGT principles, especially in the cases where traditional leaders have a patrilineal mindset and allocation or involvement of women in land related matters is nonexistent or limited.

#### **6.2.4 Enhancing tenure security through land certificates**

The findings indicate that as land investments continue to rise, affecting tenure security for customary land owners, conversion of land is sought by rural communities who dwell on customary land. In this regard, measures to achieve tenure security are being carried out through the issuance of land certificates in some areas. Land certificates are not title deeds such

as those issued by law under state land; they act as certificates of ownership, to allow for the identification of a land owner to their piece of land. No confirmation was made on whether land certificates have broken the hurdle of accessing finance in the country. The issuance of land certificates has supposedly brought about a positive change for customary land holders in other parts of Zambia, but concern has been raised around the sustainability of these land ownership certificate issuance projects.

The land certificate project has not reached the rural Mumbwan communities as of yet. Perhaps this explains the urge people in Lundumuna and Zulwe villages have in desperately seeking the conversion of their land from customary to statutory land. Two notable tenure rights granted in a dual land system like Zambia's are *de jure* rights and *de facto* security of tenure. Lanjouw and Levy (2002) find that the highest form of tenure security is believed to arise from *de jure* rights which are granted by the State. However, authors like Usamah *et al.* (2012) and Payne (2001) do not quickly give praise to *de jure* rights which they believe lack social legitimacy. They contend that while *de jure* security is legally legitimate, *de facto* security of tenure is socially legitimate because in the absence of the legal recognition of land, their strength derives from a mutual understanding between landholders and the community and/ or social relations.

According to Jain *et al.* (2016), scholars argue that simple recognition by the community and social relations confer more security to landholders in comparison to recognition by statutory bodies. These perceptions may be changing as customary land holders have taken an interest in converting the land from customary land to state land to acquire title deeds. This issue came up during the focus group discussion in which members of Zulwe, Lundumuna, and Kwempa village from the Moono constituency in Mumbwa said they would like to convert land for security reasons. They believe conversion will provide title deeds, thus making their tenure secure. Tenure insecurity is associated with the lack of legal title deeds according to Deininger (2003).

Land conversion in Zambia began years back but with the increase in land investments and the rise in land grabs and displacements, individuals on customary land feel threatened considering they have no form of documentation to prove that they own that land. A study conducted by Jain *et al.* (2016) on the perceptions of customary land tenure security found that customary land dwellers have a strong perception that land ownership certificates provide security of tenure. Land certificates under customary land are a long term project and it is unclear which governing authority will take up this role. Therefore, consultations and discussions are still

ongoing between the state and traditional authorities. In the meantime, land conversion from traditional land to state land is being sought after by customary land holders. One of the officials in the Ministry of Lands said a system of documentation for customary land owners has begun in some regions and is a long-term project which the government is looking into.

Security of tenure is believed to provide social stability and lower transaction costs (Hollingsworth, 2014). Deininger's 2003 study found that traditional titles of ownership will likely provide a security of tenure considering a title deed is perceived by many as the definite proof of ownership. The social stability aspect kicks in due to reduced conflicts and disputes over land (Deininger *et al.*, 2006). Feder (1987) and other authors like Adams (2004) believe security of tenure contributes to higher levels of agricultural productivity. This can be understood from the confidence one will have when they have full rights to a piece of land, which consequently leads to more activity on that land.

Land ownership certificates are issued as a proof of customary land ownership according to Roth and Smith (1995). Many countries in Sub-Sahara Africa have followed suit with this trend, with countries like Tanzania, Botswana, and Uganda issuing customary title deeds to land holders (Sundet, 2005 & Kalabamu, 2000).

Botswana established a Tribal Lands Act, which enabled the establishment of land boards which possess all land-related powers that once belonged to the chiefs (Bornegrim & Collin, 2010). The Act outlines procedures that are to be adhered to when granting certificates of customary land (Republic of Botswana, 2010). White (2009: 1) states that the Tribal Lands Act vests, "all the rights and title to land in each tribal area ... in the land board ... in trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting the economic and social development of all the peoples of Botswana."

According to Kalabamu (2000), this move has brought about improvements in the land administration system in Botswana as it hinders chiefs from abusing their authority by allocating big portions of land to themselves or selling land off without their subject's concern. This seems like a potential solution for the Zambian land administration system, which, as seen by data and literature provided, has made a case for irresponsible land transactions by some traditional leaders.

A study conducted by Jain *et al.* (2016) in Zambia's Mongu town found that 66.7% of customary landholders with land ownership certificates felt secure while very few without land

ownership certificates held a similar perception (only 33.3%). According to the study, when customary landholders without land ownership certificates were asked to give reasons why they felt insecure they explained that local authorities in the area easily change their decisions. They stated that:

*Indunas might allocate a parcel of land to an individual but later on give it to another. It is thus important to have a document that can prove landownership (Jain et al., 2016).*

Jain *et al.* (2016) conducted a survey which revealed that previously allocated plots are in some cases at risk of being sub-divided for onward allocation to other people, thus giving a further understanding as to why customary landholders without land ownership certificates feel insecure.

Such confidence in land ownership certificates has influenced the demand for land certificates under customary tenure. Participants in the Ministry of Lands indicated that efforts are being made in this regard. Land certification under customary tenure in Zambia is still a long-term project, however, some areas have been advantaged in this regard. The literature and data presented earlier mentioned that land certificates have been issued in some provinces like the Western Province and that an organisation called MEDEEM.

MEDEEM is running a pilot project which is currently issuing land ownership certificates for customary land holders. While these land documents are being issued and have been accepted as adequate, sustainability of these documents is being questioned. Furthermore, traditional leaders have indicated their pursuit to be issuers of land certificates under customary land but the state is still concerned with the capacity of traditional leaders to issue out land ownership certificates.

### **6.2.5 Neoliberal development vs alternative development**

Neo-liberal ideology came in the 1980s with the promise of economic growth and poverty eradication. The idea behind neo-liberal development strategies such as the structural adjustment programmes was that the liberation of markets would lead to an increase in economic growth. This ideology quickly spread decades ago, influencing countries like Zambia to structure their policies in a manner that resembled neo-liberal values. Today Zambia still relies on its 1995 Land Act which fostered foreign investment in land. Land investments in the



country have been on the rise as data has shown. However, at the same time, the country has adopted alternative development strategies such as participation in its development efforts.

This has caused a clash because the country continues to seek investors in its land but not enough mechanisms are in place to protect locals from the adverse effects of land acquisitions. Capacity, political willingness, and other domestic issues are affecting implementation of the VGGT in Zambia. The presence of these two ideologies accompanied by lack of land policy has resulted in inconsistencies in proper land management in the country, which when scrutinised, showcases a country that on one side fights land grabs and on the other side fosters them. On the one hand Zambia is making progress towards empowering, protecting, and alleviating poverty in communities. On the other hand, the heavy reliance on neo-liberal development strategies is resulting in a disconnection between the two, considering priority is given to economic development.

### **6.3 Conclusion**

While international development tools are well-thought out instruments that have assisted developing countries in many ways, in terms of improving human rights, infrastructure development, health policies, etc, they at times do not realistically match the local environment in which they are being implemented. This is especially the case when it comes to community or rural development where cultural practices, power relations, and gender issues are prevalent. As highlighted in Chapter 2, land tenure types differ and it is essential to understand that land has a different meaning to different people in different cultures and countries but sometimes its meaning also differs within regions in a country. Land is heavily sought after and this has led rural customary land holders to seek security by either converting their land to state land or seeking customary land ownership documents. Acquiring ownership certificates is not enough as other issues are dominant in this type of land holding system. Some of these issues include but are not limited to women's rights to land, participation, and inclusion.

The surge in land investments has brought about several debates regarding the way forward with land management and governance of tenure. This intrigued leading organisations like the Food and Agriculture Organisation to formulate guidelines that could assist countries with good land governing mechanisms. The argument then becomes an issue of successfully implementing and requires an examination of applicability, suitability, and performance evaluation. Others have argued that development projects will always fail because they fail to

incorporate domestic issues. This was seen through the scholarship of Arturo Escobar and others, who believe the cultural diversity of developing countries makes it difficult to adopt and successfully implement international development tools.

This dissertation followed in this thinking and reviewed the Zambian land system in order to examine the application of the VGGT and to what extent it has brought about progressive changes in the land system. Evidently, cultural beliefs have a hindering element in some parts of Zambia when it comes to implementing certain VGGT principles, especially when it comes to women's rights to land. Strong engraved patrilineal systems are present in certain communities as highlighted by some participants in Chapter 4. This is ongoing despite current sensitisation programs that advocate for the recognition and respect of women's rights to land. Political will and institutional capacity have proved to be a limiting factor in the implementation of the VGGT in Zambia. This arguably could also be due to the voluntary and non-binding nature of the framework.

The status quo on land rights, ownership, and access and tenure security has improved for many rural communities in Zambia, including for those dwelling in this study's ethnographic area. This is mainly due to several ongoing mechanisms that are aimed at improving the governance of land in the country. One major mechanism is the Zambia Environmental Management Agency's (ZEMA) Environmental Impact Assessment which has made it difficult for people to be displaced. The VGGT framework is relevant for Zambia but needs to be aligned with current domestic measures.

#### **6.4 Policy Implications and Suggestions**

Zambia's national land policy, also referred to by others as a sleeping document, has undergone revision for several years. At the same time, land investments have risen steeply and continue to take place in the country at an alarming rate. This, along with tenure insecurity for customary land holders has increased but the country has been placing priority on economic development ventures and the communities have felt this adversely. This research was able to reveal that land tenure security has improved in connection with land rights, ownership, and access for most communities in certain parts of Zambia but it was also able to reveal that women still face difficulties in this domain. Specific policy lessons emerged within the research and this concluding section discusses these below.

### *Integrating the VGGT into local land governing tools*

The VGGT framework carries a lot of potential in terms of addressing most of Zambia's land governance issues but the tool has proved difficult in standing independently. Countries like Sierra Leone have applied the principles in line with their land governance measures and this is something that could boost the current *Zambian* measures. While the national land policy has not been enacted, it could assist to align the principles of the VGGT to the national land policy, as well as other local instruments so as to ensure tenure security and the protection of indigenous groups who have been severely affected by land investments in the country. The VGGT stress the importance of participation and this is something locals are mostly stripped of when land decisions are taking place. Although it has been stated through this research that consultations have been on-going, there seems to be opposing views in this regard. Therefore it would be a key element that locals are fully educated on the land rights and are actively included and participating in the governance of land in their communities.

### *Sustainable customary land ownership certificates*

Many customary land holders believe land conversion will bring an end to their poverty and livelihood challenges because their land is sought after and they do not have any form of documentation to claim their land rights. A few regions have begun issuing land ownership certificates but this project is viewed unsustainable by some, mainly because they are pilot projects by non-governmental organisations. These land ownership certificates need to extend to other communities but need to be prioritised and taken over by government so as to ensure continuity and sustainability. This also requires educational awareness on the value of customary land ownership certificates in order to intrigue rural communities to maintain their land holding type.

### *Improved administration with regards to traditional leaders*

Some traditional leaders are overpowered by greed, power relations, and patrilineal thinking and hence have jeopardised their own people with their capacity as custodians of land. A decentralisation policy is currently being debated in the country to address this but it would also be key to fully involve and educate traditional leaders on proper governance structures. The laws that guide statutory land do not guide customary land but with talks of a customary land bill, it would be essential that the bill incorporates principles that traditional leaders will

need to abide to by law. The VGGT principle would act as a valuable resource for the customary land bill considering they are focussed on community development.

#### *Women's empowerment and land rights awareness projects*

The issue of women's land rights needs to be revisited because sensitisation programs and various community projects have not resolved the challenges being faced by women. These projects could take a focus on educating men in women's land rights, starting from the traditional male authorities who could be a leading example in rural settings for the acknowledgment, recognition, and advocacy for women's rights to land. Projects and policies should involve men in the process so as to break the cultural barriers that cause women's land rights to be side-lined by their male counterparts.

### **6.5 Areas for further research**

The subject of tenure security is ever evolving. Customary land has proved to be the type of land system where land challenges are heightened. This study has aligned the application of the VGGT to the Zambian land system and has found that domestic hindrances may exist in the form of institutional capacity, strong cultural beliefs and patrilineal system bound in customary land tenure, amongst other things. Rural development and/or community development will require a shift from top-down approaches to bottom-up approaches. As seen in this study, customary land holders have turned to seeking conversion of their customary land to state land in an effort to break away from socio-economic problems and tenure insecurity. There has been a lack of integration of rural needs in past policy frameworks and thus a need to focus on rural land administration has emerged.

Based on the findings, the following have been recommended for further research:

The creation and issuance of land ownership certificates is a topic that should be thoroughly studied and probably carried out by government to ensure continuity and to enhance tenure security for customary land holders.

Research should be done to explore various ways of breaking cultural hindrances that limit the participation and ownership of land for women, which includes sensitization programs that are male focussed.

ZEMA's Environmental Impact Assessment should target all types of investments to ensure they undergo an examination mandatorily.

The quantification of percentages defining state land and statutory land should be taken with priority as this will enable identification of land availability and how it can be allocated adequately.

Thorough consultations on land governance and land rights awareness should be carried out in all communities, this should include capacity training for traditional leaders, and this may assist with a reduction in the number of careless land sales taking place in rural communities.

Support programs to empower small scale farmers should be carried out to encourage locals to invest in land.

The draft land policy should be aligned to the VGGT guidelines and other local mechanisms to ensure effectiveness. This should include a change from heavy reliant free market ideology to community focussed development.

The VGGT guidelines could undergo a localisation study specific to the Zambian environment in order to attain successful implementation.

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## Appendices

### Appendix 1: Key informant interview schedule

#### A. Theme: Land Investments in Zambia

##### Questionnaire

1. What is your view on land investments in Zambia and could you share an insight on Zambia's agricultural sector?
2. To what extent are local people, mostly rural, involved in the agricultural sector?
3. Can you describe what impact land investments have had on the country and its people over the years?
4. Would you say land grabs are persisting in Zambia? Do you link them to Zambia's current reliance on neo-liberal techniques?
5. From your experience, how beneficial are international models of development to developing African countries like Zambia?
6. Generally, what would you say are the main drivers of food insecurity in Zambian communities?
7. Do you know of any measures in place aimed at protecting locals from forced displacement, food insecurity, and land losses resulting from improper land transactions?
8. Are you familiar with the Voluntary Guidelines on the Governance of Tenure? If so, are you involved in the works of the VGGT implementation in any way? What could you say about this land governance tool?

#### B. Theme: Land Governance

##### Questionnaire

1. Could you describe the land administration system in Zambia? What aspects of the system do you think need improvement?

2. Would you say the 1995 Land Act, which fostered a spirit of investments in land, plunged Zambia into a long-term poverty trap and what would you recommend would be the way forward for the country in terms of land policy?
3. A draft national land policy for Zambia was released in the year 2015. Were components of the VGGT framework taken into account when creating the land policy?
4. Majority of Zambians rely on customary tenure for livelihood, shelter, and survival. With the increase in land transactions over the years, this group of people has been significantly affected. Has the Ministry made any commitments towards improving these outcomes? Could you tell us about the draft Customary Land Bill – has it been officially enacted?
5. According to the VGGT guidelines, states should develop relevant policies, laws, and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. In this regard, have any efforts been made towards breaking cultural barriers in Zambian communities? Could you describe these efforts?

#### C. Theme: Implementation and Progress of the VGGT

##### Questionnaire

1. Is the Ministry involved in the implementation of the VGGT and what is the Ministry's role?
2. How could cultural settings in rural Zambia affect the success of the VGGT, particularly in terms of land rights for women?
3. In your view, what does a framework like the VGGT signify for the agricultural sector?
4. Could you identify key domestic issues that may hinder the progress of the VGGT framework in Zambia?
5. Since the introduction of the VGGT, what notable positive changes for local farmers can be identified since 2012, such as land security, food security, land access, and rights?

6. The Voluntary Guidelines for the Responsible Governance of Tenure have been widely accepted since 2012. They are an international framework that is designed to protect local communities by advocating for good land governance, the protection of communities, and their rights to land. What is your view on the VGGT as a land governance tool for Zambia and other developing countries?
7. Do you have any information on the performance of the VGGT in other countries? What lessons could be taken for Zambia?
8. How have local people been involved in the process?

## Appendix 2: Focus Group Discussion Guide

1. What do you think about the topic that of Land Governance has brought us here today?
2. What is your view on investing in land to address poverty?
  - According to you, have land investments benefited your community? What kind of changes have you seen?
  - What type of land investments do you think would contribute to the fight against poverty in this community?
  - Do any of you make use of land to make a living? If so, what exactly do you do?
  - Are any of you farmers? If so what kind of farming are you into? Additionally, do you farm to feed your family or to trade?
3. Majority of Zambians live and survive through customary land. What does having access or ownership of land mean for your families?
  - How long have you lived on the land that you live on?
  - How is land administered in your community? Who decides how land is allocated?
  - How many women here have access to land? Are you part of decision making when it comes to land use and management?
4. Are you aware of and do you understand your land rights?
  - What efforts are made to ensure all members of the community are aware of their land rights?
  - Do any of you feel as though land rights are being violated in your community? If so, in what way?
  - Are women's rights to land prioritised in this community?
  - Are members of this community consulted when land transactions take place?
5. Efforts have been made towards the securing land rights for customary tenure, allocation, and access to land for rural communities.
  - Would you say you have seen these changes taking place? What sort of improvements have you noticed?

- Have there been any forced evictions and landlessness recently in this region? If not, in your understanding, what has contributed to these changes?
- What issues do you think need attention in order to improve the management of land within your community?



### **Appendix 3: Interview schedule for community members**

#### Theme: Land Ownership, Access, and Use

1. Could you describe your experience with accessing land in your community? Gave you seen any recent changes in the manner in which land is distributed?
2. What does owning or having access to land mean for you? Do you actively make use of the land you dwell on? Are you perhaps involved in any form of farming?
3. As a woman (question specific to women), what challenges have you experienced gaining access to land?
4. How do families go about making decisions over the use of land? Are the women involved?

#### Theme: Land Investments

1. Have you recently been affected by any land transactions in your community? If so, in what way can you describe the effect these transactions have had on you, your family, and the community at large?
2. Were you or do you know if any members of the communities were consulted before any land transactions took place, if any?
3. Would you say members of this community, including yourself, have changed their attitudes in recent years towards investing in land? Could you describe the type of investments on the rise in your area?
4. What is your view on external large scale investments on land in your community? In what ways have these investments affected your community?

#### Theme: Land Rights and Food Security

1. Are you familiar with the concept of land rights? Would you say you are aware of your rights?
2. Have your land rights in any way been violated?
3. One of the major arguments for improving tenure security is to address the issue of food insecurity. Would you say people's rights to land have been respected and what positive changes can you identify?
4. Are you actively involved in contributing to food security efforts in your community? What kind of support do you receive for this?

## **Appendix 4: Interview schedule for community leader**

Theme: Land Governance

1. As a community leader, how involved are you in efforts towards improving land governance in your local community?
2. How is land allocated to members of this community? Does any member qualify to be allocated land or is there a criteria that applies?
3. Would you say you have seen some positive changes recently in the way in which land is managed, used, and allocated in your community? Are you able to describe these changes?
4. Are women actively involved in decision making when it comes to land issues? How does the community deal with gender issues when they arise?
5. How are land-related conflicts resolved in your community? Are there some guidelines in place to resolve these conflicts?
6. Considering majority of Zambians depend and live on customary land, what does the draft customary land bill mean for your community? Are you aware of the draft customary land bill and to what extent was this or surrounding communities included in the development of the bill.

Theme: Land Investments and Land Rights

1. Are you familiar with the concept of land grabs? Would you say this is taking place in your community?
2. What is your view on land investments? Can you list the type of investments in land that are taking place in your community?
3. To what extent is the community consulted when it comes to land transactions? Would you say the level of consultation has improved in recent years?
4. Land is a key asset for the rural poor and secure access rights to land are vital for sustainable livelihoods, poverty reduction, and local governance. How are the land rights of community members protected? What efforts are being made to ensure their rights are protected?
5. Would you say the concerns of the community on land governance are well represented by local government and other representatives?
6. As community leader, what role do you play in land transactions that take place in this community?

## Appendix 5: Consent Form

Name of Researcher: Hermine Mwenyi Ilunga
Institution: University of Pretoria
Title of study:  Improving Land Tenure Security? An Evaluation of the Application of the VGGT Framework in Post-Colonial Zambia

You are being invited to take part in this research because your experience and/or expertise on the subject can contribute to attaining more knowledge and an understanding of land governance in Zambia. This will assist in collecting information on the implementation progress and effect of the VGGT in Zambia and overall governance of land in the country.

### Description of the research and your participation

The purpose of this research is to tap into Zambia's land governance by evaluating, reviewing, and exploring the land governance systems and tools in place. The study particularly seeks to examine the impact of the Voluntary Guidelines on the responsible governance of Tenure (VGGT) in Zambia. The main objective of the study is to analyse the progress made in the implementation of the VGGT framework in Zambia and its effects on land governance and land access and security of communities on customary land.

### Voluntary participation

Your participation in this research study is voluntary. You may choose not to participate and you may withdraw your consent to participate at any time. You will not be penalised in any way should you decide not to participate or to withdraw from this study.

Please read and complete this form carefully. If you are willing to participate in this study, circle the appropriate responses and sign and date the declaration at the end. If you do not understand anything and would like more information, please ask.

- I have had the research satisfactorily explained to me in verbal and / or written form by the researcher. YES / NO
  
- I understand that my participation will involve a 45 minute interview session. An interview guide will be utilised and an audiotape may be used for the purpose of voice recording. YES / NO
  
- I understand that I may withdraw from this study at any time without having to give an explanation. This will not affect my future care or treatment. YES / NO
  
- I understand that all information about me will be treated in strict confidence and that I will not be named in any written work arising from this study, unless willingly. YES / NO
  
- I understand that any audiotape material of me will be used solely for research purposes and will be destroyed on completion of your research. YES / NO
  
- I understand that you will be discussing the progress of your research with others at the University of Pretoria. YES / NO

If you have any questions, you can ask them now or later. If you wish to ask questions later, you may contact Dr Vusilizwe Thebe, University of Pretoria, Phone + 27 12 4204661 or email [v.thebe@up.ac.za](mailto:v.thebe@up.ac.za).

This proposal has been reviewed and approved by the ethics committee at the University of Pretoria, which is a committee whose task it is to make sure that research participants are protected from harm. If you wish to find about more about the ethics committee, please contact + 27 12 4204661.

The participant gives consent to participate in this research study and has been given a copy of this form for their own information.

<b>Participant Signature</b>	<b>Researcher Signature</b>
.....	.....