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Farmers Under the Current Land Administration System in
Zambia**

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Lauren Honig and Brian P. Mulenga

Working Paper 101

October 2015

Indaba Agricultural Policy Research Institute (IAPRI)

Lusaka, Zambia

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EXECUTIVE SUMMARY

The past decade has ushered in an era of increasingly contentious land politics in Zambia, with investors, the government, and chiefs simultaneously blamed for injustices in land allocation. These conflicts over land have been exacerbated, and at times caused by the lack of transparency and available data on the status of land. While a variety of actors has real grievances with the security and efficiency of the current system of land allocation, smallholder farmers bear the brunt of the risk of continuing the status quo in land policy. As active land markets in customary land encroach on traditional systems of land management, smallholder farmer populations have been pushed off ancestral land. These farmers have limited legal or institutional recourse in the current system due to the lack of recognition of land sales on customary land, due to outdated, non-comprehensive land policies. Thus, the ability of smallholder farmers to access or continue to access arable land is often at the mercy of the decisions of a generally well-meaning but unequipped individual, the traditional chief. These chiefs lack the resources and training to efficiently and objectively allocate land.

Using data from different sources on land and agriculture in Zambia, the current study demonstrates a clear pattern of customary land alienation into state land. At independence, 94% of the land was customary. Here, we argue that the percentage of customary land is now approximately 60% of land. As the percentage of customary land has reduced, the absolute number of small-scale farmers has vastly increased. Eighty-nine percent of Zambia's small-scale farmers derive access to their land through customary property rights, which are allocated by chiefs and their headmen on decreasing zones of customary authority. These farmers are feeling the constraints of land availability; more than half (56%) of smallholder farmers perceive that there is no more land available in their areas. It is this population of smallholder farmers whose livelihoods are most affected by changes to the Zambia land tenure system and, more importantly, to a continuation of the current status quo. As the choice land gets permanently chipped away from customary areas through the process of titling and other conversions to state land, it is important to maintain a focus on the implications of this system for the most numerous and vulnerable population.

Naturally, ensuring access to arable land for smallholder farmers is fundamental to maintaining their livelihoods and food security. However, it is also critical for the development of the Zambian economy to reverse policies that marginalize this population relative to commercial farming, land speculation, and mining.

Against this backdrop, the objectives of this paper are threefold. Firstly, the paper examines land statistics on the status of land in Zambia, and provides an updated set of statistics. This will help ensure that there is more transparent information on the actual status of land in Zambia. Secondly, the paper examines land access for smallholder farmers and the level of marginalization and protection of this customary land in the current system. Thirdly, the paper provides a set of recommendations for land reforms that can help improve smallholder farmers' access to and security of land.

Results from our analysis using data collected from various involved ministries demonstrate that by the most conservative estimate, at least 30% of land in Zambia is state land. However, two major gaps exist in the data that suggest that the amount of state land is likely to be closer to 40%. First is land under mining titles. The mining industry has been a major source of land conversions from customary to state land. This is not included in the statistics on agricultural land titles. The second major gap in the data is the long process of converting land from customary to state such that land which is in advanced stages of the titling process and is no longer under customary control is not yet accounted for in the land title database.

These caveats bring a closer estimate of the status of customary land to 60% of the national territory.

In terms of smallholder farmers' access to land under the current system, our findings indicate that continuation of the status quo system, in which the best land is regularly and opaquely being transferred out of the customary domain without clear engagement of the local communities, has serious long-term implications for Zambia's development. Hence, the smallholder agricultural population must be considered and protected as industrial growth is taking place. This is vital for broad economic growth and the food security of Zambia's most vulnerable population. Therefore, reforms that represent the interests of smallholder farmers are needed, as this population of farmers is the most at risk under the current land tenure regime. We propose the following recommendations for addressing some of issues associated with smallholder farmers' access to land:

1) Recognition of Customary Land Value and Publication of Land Conversions Applications

The inconsistency between the reality of customary land sales and the law of no customary land markets is deeply disempowering to the smallholder farmers living on this land. The theory behind customary land having no value is two-fold: to prevent the land from being commoditized and to allow for an inhabitant with customary rights to convert the land to title without buying it. However, the combined effect of the 1995 Lands Act and the high demand for agricultural land has already served to commoditize customary land. Thus, instead of pushing customary land sales to the black market, this process needs to be controlled, regulated, and made transparent with priority placed on the security of smallholder farmers' access to land. The specific recommendation here is to reform the laws such that for all conversions of customary land the details of the transaction must be made public through media such as posting at council office, major newspaper, and radio.

2) Legalize and Encourage Land Use Documents Alternative to Title

The gap in security of land tenure for smallholder farmers had led to a variety of different types of documents used to indicate ownership or usage rights. These documents are alternatives to land title, which, as previously discussed, are not readily accessible to smallholder farmers. There is a legal basis for these customary titles in the 1995 Lands Act, which allows for titles that confer "a right to the use and occupation of any land under customary tenure claimed by a person." However, there needs to be standard guidelines on how these can be used in order to promote tenure security on customary land.

3) Language of Recommendations and Transparent Information Sharing

The third major recommendation for reforming the current land tenure system is to replace the current system of recommendations and replace them with clear, enforceable laws. The negotiability created by the current patchwork of land conversion documents may be useful for pushing through elite land deals, but it is unfavorable to smallholder farmers who do not have the resources to take advantage of such flexibility. Clear, legally binding land procedures, shared openly with local authorities, are necessary to guide them in land allocation. Chiefs and district councils are the primary institutions that protect the property rights of smallholder farmers. As Zambia's traditional authorities are managing 60% of the country's land and the land rights for the vast majority of smallholder farmers, they need the resources to be able to do so.

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ACRONYMS

BSAC	British South Africa Company
CRB	Community Resource Board
CSO	Central Statistical Office
GMA	Game Management Areas
ha	hectare
IAPRI	Indaba Agricultural Policy Research Institute
MAL	Ministry of Agriculture and Livestock
NER	North-Eastern Rhodesia
NWR	North-Western Rhodesia
OVP	Office of the Vice President
ZAWA	Zambia Wildlife Authority

1. INTRODUCTION

The past decade has ushered in an era of increasingly contentious land politics in Zambia, with investors, the government, and chiefs simultaneously blamed for injustices in land allocation. These conflicts over land have been exacerbated and at times caused by the lack of transparency and available data on the status of the land. While a variety of actors has real grievances with the security and efficiency of the current system of land allocation, smallholder farmers bear the brunt of the risk of continuing the status quo in land policy. As active land markets in customary land encroach on traditional systems of land management, smallholder farmer populations have been pushed off ancestral land.¹ These farmers have limited legal or institutional recourse in the current system due to the lack of recognition of land sales on customary land, resulting from outdated policies. Thus, the ability of smallholder farmers to access or continue to access arable land is often at the mercy of the decisions of a generally well-meaning but unequipped individual, the traditional chief.

Using data from different sources on land and agriculture in Zambia, the current study demonstrates a clear pattern of customary land alienation into state land. At independence, 94% of the land was customary (Adams 2003). Here, we argue that the percentage of customary land is now approximately 60% of land. As the percentage of customary land has reduced, the absolute number of small-scale farmers has vastly increased. The rural population has risen from slightly over 6 million in the year 2000 to about 8 million in the year 2010 (CSO 2012), contributing to increased pressure on the land and competition to access the best land. Eighty-nine percent of Zambia's small-scale farmers derive access to their land through customary property rights, which are allocated by chiefs and their headmen on decreasing zones of customary authority. These farmers are feeling the constraints of land availability; more than half (56%) of smallholder farmers feel that there is no more land available in their areas (IAPRI/CSO/MAL 2012). As one smallholder farmer interviewed indicated, "It is worrying because we are seeing that the land is slowly being occupied and land is becoming scarce. We quarrel over land even within the family." It is this population of smallholder farmers whose livelihoods are most affected by a continuation of the current status quo of the land administration system. As the choice land gets permanently chipped away from customary areas through the process of titling to state land, coupled with rural population growth and as well as rising rural mobility, it is important to maintain a focus on the implications of this system for the most numerous and vulnerable population.

Naturally, ensuring access to arable land for smallholder farmers is fundamental to maintaining their livelihoods and food security. However, it is also critical for the development of the Zambian economy to reverse policies that marginalize this population relative to commercial farming, land speculation, and mining. There are competing development models relevant to the Zambian context. The first is broad-based support to small-scale farmers, such that they can drive economic development, as in the case of Asia's Green Revolution (Mellor 2014). Development focused on broad agricultural growth incorporates greater populations and is more effective at reducing poverty (Christiaensen, Demery, and Kuhl 2011). Further, in developing countries, small-scale farming is efficient, adaptable and has a greater output per hectare than large farms (Eastwood, Newell, and Lipton 2010). For this development model, the need to ensure access to land for small-scale farmers is obvious. If this population is marginalized in the land allocation process, they cannot be the engine of Zambia's economic growth.

¹ Our research presents evidence of this encroachment. However, for prominent cases of displacement, see for example, (Phiri, Chu, and Yung 2015).

However, the second model of development, one based on industrialization and commercial farming also demands attention to access to land for small-scale farmers. While this strategy may lead to structural shift and promote economic growth in the long-term, in the short-term rural population growth will still outpace any increases in nonfarm employment (Johnston and Mellor 1961). Further, marginalizing small-scale farmer populations slows the transition to industrialization; farm incomes must increase in order to create requisite demand for goods and services (Losch, Fréguin-Gresh, and White 2012). For both models of economic development, ensuring and improving access to land for small-scale farmers is key.

Against this backdrop, the objectives of this paper are threefold. Firstly, the paper provides an updated set of land statistics on the status of land in Zambia, in order to make available more transparent information on the actual status of land in Zambia. Secondly, the paper examines land access for small-scale farmers and the level of marginalization and protection of this customary land in the current system. Finally, the paper provides a set of recommendations for land reforms that can help improve smallholder farmers' access to and security of land.

1.1. Historical Background to the Current System

The current Zambian land administration is largely unchanged from the system designed over 100 years ago that privileged the political calculations of the colonial administration and the desire to make land accessible to (white) elites. The British South Africa Company (BSAC) and the British Colonial Government endowed Zambia with a set of land divisions and property rights institutions that are the foundation for today's land situation. Policies that encouraged and legitimized European settlement for commercial agriculture and mining have set the current patterns in customary and state land. At the turn of the 19th century, initial European settlement was concentrated in the Tanganyika plateau (later known as Abercorn and now Mbala) and Fort Jameson (now Chipata). However, such settlement in North-Eastern Rhodesia (NER) was soon discouraged in favor of North-Western Rhodesia (NWR) where colonial authorities felt they had a legal basis for alienating land to settlers due to the status of their treaties with chiefs. In the area to the east of the base of the Luangwa River (NER) the BSAC only obtained a series of mining and trading treaties with chiefs. However, in NWR, the more comprehensive and extended negotiations with the Paramount Chief of the Barotse allowed for the right to alienate land within all of the NWR territory, including the modern Southern Province (Lewanika Correspondences 1904, 1906). Concessions with the Paramount Chief Lewanika, were used to justify land grants in all of North-Western Rhodesia except for the Sesheke and the Barotse Valley areas explicitly excluded from the BSAC's rights of alienation by the Lewanika (Fox 1903). The first Permits of Occupation for farmers issued by the British regime directly reference the permission of the Lewanika as legal justification for the BSAC to grant titles on land in North Western Rhodesia (BSAC Administration 1902-1908).

The pattern of European land settlement and the distribution of titled land fundamentally shifted with the preparation for and construction of the railway from Victoria Falls to Kalomo to Broken Hill (Kabwe) to the Northern boundary of the colony. This path, and the expropriation of indigenous land for the railway, was also justified using the October 17 1900 concession between the BSAC and the Lewanika (BSAC Administration 1906). By 1909, the railway reached from Victoria Falls to Katanga after which point the perimeter of the railway became the focal point for the colonial government's encouragement of white settlement (Kay 1967). When the area around the railroad was over-saturated with settler agriculture, the colonial state selected Mkushi as the next location where they would allow and encourage non-indigenous farmers to settle. These two colonial policies are the origin of the current

concentration of commercial farms along the railway in Southern Province and in Mkushi District.

As the administration of land in Zambia shifted from the BSAC to the British Colonial regime to Independent Zambia, the first private titles and concessions converted into crown land and then into the current state land. Thus, this distribution of state land now can be best understood not because of where the most fertile land is located but as a reflection of BSAC policies that largely prioritized infrastructure access over water and soil resources. For example, Mumbwa's Big Concession land, initially alienated for mineral exploration by companies such as the Kafue Exploration Company, is now a major source of state land for agro-investors such as the German Amatheon.

As colonial policies encouraged commercial farming and individual property rights for Europeans, the need to specify and limit indigenous property rights became more pressing. While native reserves existed informally under the BSAC regime in 1907, the British Colonial formally established 39 native reserves across the unified Northern Rhodesia territory through the 1928 and 1929 Orders-in-Council (Eccles 1946). The first native reserves proposed were in modern-day Eastern Province, for the purpose of facilitating concessions and commercial farming by consolidating scattered indigenous villages and providing a pool of agricultural labor. Other native reserves were created to open up township areas or hunting concessions. The native reserves system also facilitated governance through Native Authorities (chiefs) and tax collection for the colonial regime. This system implemented contiguous areas of land earmarked only for communal, untitled usage under the authority of a chief. As such, it is the foundation for the current *customary land* type. It is this 1928 Order in Council that created the initial division of land into separate zones ruled by customary law and statutory land (Mudenda 2007).

In 1947, a similar category of land, *Native Trust Land* was created, which had more liberal allowances for gaining permits of occupation in the area for non-natives, but was still overseen by customary authorities. After removing the word Native, these categories otherwise remained in place until the Lands Act of 1995 merged Reserve and Trust Land to create the Customary Area. Former crown land, and all land under statutory rights, became state land. The categories of Native Trust and Native Reserve Land were created in order to facilitate the governance of the small-scale farming populations on those lands and to limit the domain of these populations, towards the end of opening up land for elites. These categories of land were created by the colonial authorities with the needs of elites, not small-scale farmers in mind. Zambia has largely maintained this status quo, despite an overwhelming recognition by practitioners, legislators, and civil society that the system is outdated and in need of reform in order to incorporate the needs of contemporary small-scale farmers.

2. CUSTOMARY LAND VERSUS STATE LAND

The initial endowments of property rights institutions have determined the current division of land into two basic categories: customary land and state land. While there are a variety of legal differences between these categories of land the three differences with the most important practical implications are related to markets, ownership, and planning authority.

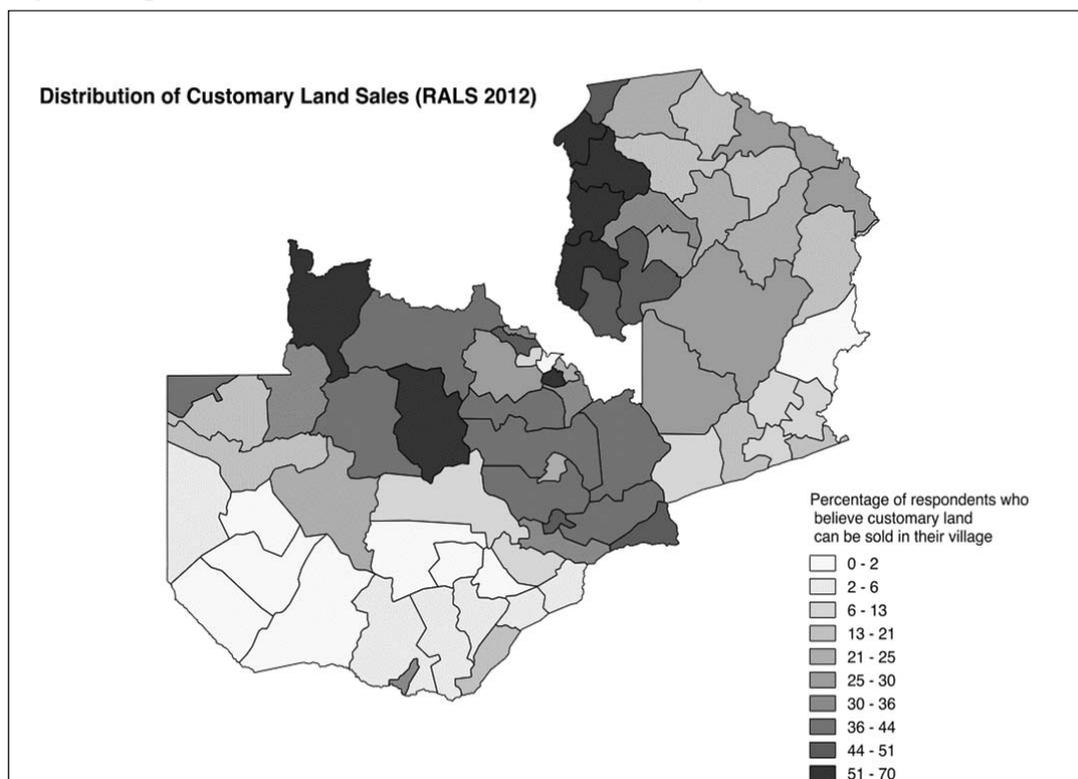
Legally, customary land cannot be sold. It is a community resource with no value. In contrast, state land has value—it is a commodity that can be bought and sold. If you are displaced from titled land, you are compensated for the land and any improvements on the land. If you are displaced from customary land regardless of how long that land has been in your family, it is only the construction or improvement on the land that has any value for compensation. Thus, for two parcels of land in the same location, with the same access to infrastructure, water resources and soil quality, one may be worth nothing and the other millions of Kwacha depending on whether the land is titled or not.

This lack of value for customary land is based on a theoretical system of community ownership and community access to the land resources. Having headmen, headwomen, and chiefs control access to land within a community can be beneficial. In principle, this allows for efficient allocation of land by community members, mixed usage of the land, and communal areas. In Zambia, these communal areas are often for gathering firewood, mushrooms and caterpillars, hunting, and to a lesser degree pasturing cattle. However, while the policy originated when population densities were far lower, this traditional system is no longer independent of land markets in Zambia. In practice, customary land does have value and all stakeholders involved—from smallholder farmers, to chiefs, to investors—are aware of this.

The current high demand for land in Zambia is in fact high demand for customary land. While illegal and clandestine, land markets are active on customary land (Sitko 2010). Land sales in Zambia are now far more common on customary land than on state land. About 24% of smallholder farmers cite that land can be sold in their villages, without first converting it to state land (IAPRI/CSO/MAL 2012). Investors and commercial farmers argue that it is not possible to find as large a parcel as they need on state land, but that it is readily accessible on customary land. Entrepreneurial Zambians seeking land as an investment, retirement activity, or side project prefer customary land for its price. Moreover, since they are able to navigate through the conversion process, they obtain customary land with intentions of titling it in order to increase its value.

The reality of customary land being sold is inconsistent with the policy that customary land has no value. This is problematic because it relegates these land sales into black market transactions. Figure 1 shows the distribution and extent of these land black markets across the country. It is clear from the figure that land black markets exist across the country, with the Western and Southern parts scoring relatively low in terms of percentage of respondents indicating the possibility of selling customary land in their area.

Figure 1. Spatial Distribution and Extent of Customary Land Sales



Source: IAPRI/CSO/MAL 2012.

The chiefs, headmen, and smallholder farmers who receive payment in exchange for customary land can only be considered to be accepting a gift and any transparency is undermined by the illegality of the exchange. Thus, the smallholder farmers not directly involved in the transaction have no real input into the loss of community land or the ability to demand that a portion of the sale be used towards community projects. Further, even when chiefs *are not* receiving the alleged vehicles and envelopes full of cash for alienating land, the lack of transparency in this system leads their subjects to believe that they are selling land, regardless of the reality. Thus, this has the further effect of undermining the legitimacy of customary authority. It is evidently clear that customary land has value, and denying this is disempowering to smallholder farmers in both their compensation and their ability to advocate for appropriate community resource management.

State land and customary land also differ in their ownership. At independence, the President replaced the Crown as the custodian of all Zambian land (GRZ 1964a, art. 5 and 6a; GRZ 1995, art. 2, part 3). At the same time, chiefs are the custodians of customary land, in trust of their subjects, and the state owns state land. Titles are leases with the state and provide a strong sense of ownership to beneficiaries. In contrast, in focus groups and interviews with hundreds of smallholder farmers, headmen, headwomen, traditional counselors, and chiefs in 2013-2014, the vast majority indicated that customary land is owned by the chief. While state land is seen to be owned by individuals or the state, in practice, ownership of customary land is highly centralized through an individual chief. As the legal custodians of customary land, chiefs control allocation and alienation of this land. These alienation decisions have high stakes for the community as once land is converted from customary to state land, it can never revert to its original status because land conversions are a one-way process.

As long as land remains customary, chiefs have sovereign rights to manage the land as they wish. The use of the President's power over land to override chiefs' claims on customary land is extremely rare. Cases of chiefs refusing to give land investments that promise to fill government coffers, especially in the case of mining, are common. Further many government projects, such as the extension of township boundaries, have been blocked by chiefs who refuse to relinquish land from customary to state. The President's legal right and eminent domain have not been invoked in these cases, out of respect for the customary land system and, more strategically, for fear of the political influence of customary authorities.

The third key difference between these two types of land that has far-reaching implications is that per the Town and Country Planning Act of 1962, planning authorities only have jurisdiction on state land, although this is bound to change with new 2015 Act. In practice, this means that it is currently illegal for planning authorities to address sanitation and housing issues on customary land as they do on state land. As chiefs and headmen do not have sufficient resources for such activities, this has led to neglect of planning issues on customary land. District councils often complain about slum-like conditions in settlements that spring up on customary areas on the edges of townships. However, they cannot address planning issues without first converting the land from customary to state land or receiving a specific statutory order from the President (GRZ 1962, sect 3(2)). While legislation has in fact been long pending to address the jurisdiction of planning authorities, under current policy the population who resides in customary land areas is denied access to equal social and environmental planning services as those on state land.

This contributes to a nearly constant back-and-forth between district councils and chiefs over extending township land. District councils across the country are seeking more land from neighboring chiefs and often have trouble acquiring it. In the current system, what motivation do chiefs and headmen/women have for contributing land to townships? The Ministry of Local Government and Housing, district or municipal councils, and the Provincial Planning offices cannot legally buy this land. Thus, much of these exchanges of customary land are based on well-intentioned but unenforced promises of infrastructure projects for the chiefdom. Both traditional authorities and district councils rightly recognize that allocating plots on peri-urban lands are an opportunity to bring in more revenue. This is motivated by the fact that both of these local institutions have more responsibilities in local governance than they have the funds to support. For example, chiefs play a key role in local conflict resolution and policing in rural areas, often holding weekly court sessions where community members bring conflicts.

These three key practical differences between customary and state land have clear implications for smallholder farmers. First is that there is a market for state land and a black market for customary land. This market in customary land is largely inaccessible to the inhabitants of that land but makes land accessible to outsiders in that community. Second is that under the current structure of the customary system chiefs legally own the land used by thousands of smallholder farmers. This can be a very effective and secure form of ownership if the chief happens to manage the land well; conversely, it can be very insecure if the individual chief does not manage the land well in the interests of the community. Finally, the implication of this distinction between planning services on State and Customary land is that residents of customary land do not have access to the same service and infrastructure as residents of State land.

3. CURRENT LAND DIVISIONS

Central to alleviating conflicts over land in Zambia is clearer information on the availability and status of land. Nearly all experts and practitioners in the domains of land management, mapping, agriculture and law in Zambia have abandoned the myth of 94% customary land/6% state land (e.g., Machina 2002; Brown 2005), but new statistics are not yet available from the government. Logistical, financial and political concerns have long-delayed a comprehensive land audit or updated chiefdom boundaries. In the meantime, it is possible to estimate the current status of land in Zambia by examining available land data. The following section compiles data on the different sets of property rights and management of land within the categories of State and Customary land towards the end of approximating the status of the dual land tenure system. Within State land, the major divisions are: Forest Reserves, National Parks and Wildlife Sanctuaries, Resettlement Schemes and Settlement Schemes, Townships, and Private leases, including new and old farm blocks.

3.1. Forest Reserves

Forest reserves are included in the state land category with the caveat that some are legally on customary land. However, for the duration of the time that a forest is gazetted (officially designated) as such, it is managed by the state administration for the purposes of conservation and timber and citizens living in such forest are “squatters” (GRZ 1999). This notion is reinforced by the draft constitution’s definition of state land as “through which, any natural resource passes including gazetted or declared national forests” (GRZ 2014, art. 353). While Local Forests have some resource sharing through a Forest Management Committee that features a representative of the chief, ownership of all trees and forest produce on any land in the country is vested in the President. This Forest policy is a continuation of colonial categories of Forest Reserve and Protected Forest land, which also allowed for Reserve (now National) and Protected (now Local) Forests to be gazetted on crown or native land. As timber was an economic priority, the colonial period was marked by yearly increases in this category of reserved land.

As long as the forest is gazetted as National or Local Forest, it is part of the realm of state control, not customary control. However, unlike other categories of state land, forest reserves can revert to their initial land tenure type. There are a variety of current cases of both chiefs and state authorities (particularly for townships) making requests to have forestland de-gazetted so that it can return to their control. As of 2013, there were 517 Forest Reserves in Zambia on 8,076,829 hectares (ha) of land. Of the territory under Forestry Department control, 5,815,510 ha are National Forest and 2,244,038 ha are Local Forest. Northwestern Province has the most gazetted forestland, with over 2.5 million ha of forest. This is followed by Western Province, which has over a million hectares of land under the jurisdiction of the Forestry Department. Predictably, Lusaka Province has the least forestry land.

3.2. National Parks and Wildlife Sanctuaries

Zambia’s 20 National Parks, two wildlife sanctuaries, and one bird sanctuary contribute 6,367,200 ha to the country’s stocks of state land. These are under the jurisdiction of the Ministry of Tourism and Arts for conservation and tourism purposes. Human settlers in this area are considered illegal squatters, although Zambia Wildlife Authority (ZAWA) has the rights to allocate small titles for tourism within this jurisdiction. The largest park is Kafue National Park with nearly 2 million hectares of land. Primarily located in Central Province, this makes Central the province with the greatest amount of National Park land, followed by

Western Province. This category of land in Zambia has been relatively stable; in 1986, there were about 6 million ha categorized as National Park land.

3.3. Settlements and Resettlement Schemes

Settlement and Resettlement schemes are government projects for small to medium-scale agriculture on state land. Settlement schemes are a project of the Ministry of Agriculture, intended to open new areas for agricultural development with investment in roads and infrastructure. The development of settlement schemes has been put on hold as resources shifted to the farm blocks model, which has the same purpose but for large-scale farming instead of small-scale farming. The existing area of settlement schemes is 300,000 ha. All are state land.

Resettlement schemes have a long history in Zambia as a program to help former soldiers, youths, and retired civil servants to access land. The current schemes have been consolidated under the Office of the Vice President (OVP) and are not limited to any specific demographic. These resettlement areas convert customary land areas to state land and create infrastructure for small-scale farming communities. They then open up applications for parcels that are allocated by OVP administrators. While residents may choose to maintain good relations with local customary authorities, chiefs have no jurisdiction on the land once it has been converted to a resettlement scheme. This is a major and continuing program under the Office of Vice President. Especially where new provinces and districts have been created, the OVP is creating more resettlement schemes. By 2012, there were 86 completed resettlement schemes with 38,174 farms on 621,970 ha of land. Since then multiple other resettlement projects have been initiated and a few completed, including over 100,000 ha of land in Muchinga Province alone. This brings a conservative estimate of land under resettlement schemes to 750,000 ha.

All of the land where the resettlement schemes are located is state land and all recent resettlement schemes are on former customary land. Individual farmers who get plots in the resettlement are responsible for obtaining their own individual titles, which most cannot afford. Thus, the land is state land but the vast majority is not under individual title.

3.4. Townships

A significant portion of land in Zambia is devoted to townships. As towns grow or new areas are classified as district capitals, district authorities seek to acquire surrounding customary land to convert to state land in order for the district authority to have jurisdiction in that area. As mentioned previously, social, environmental, and residential planning can only occur on state land, not customary land. Thus the Town and Country Planning Act of 1962 necessitates that any time a new district is created, land must be converted from customary to state land. Many existing townships are also in ongoing negotiations with chiefs to extend their boundaries on to customary land. For example, only 10,788 ha in size, the capital of Northern Province, Kasama, has the least township land of any of its district township neighbors. Thus, the Kasama municipal council has been requesting land from neighboring chiefs for much of the past decade.

In 1986, there were nearly 1 million ha of township land in Zambia (GRZ 1986). Since then, nearly 40 new districts have been completed, each creating a new township area. Nearly all townships are above 10,000 ha in size. Take, for example, the two new townships in the Lusaka Province. For the Shibuyunji District, 23,000 ha has been converted from customary

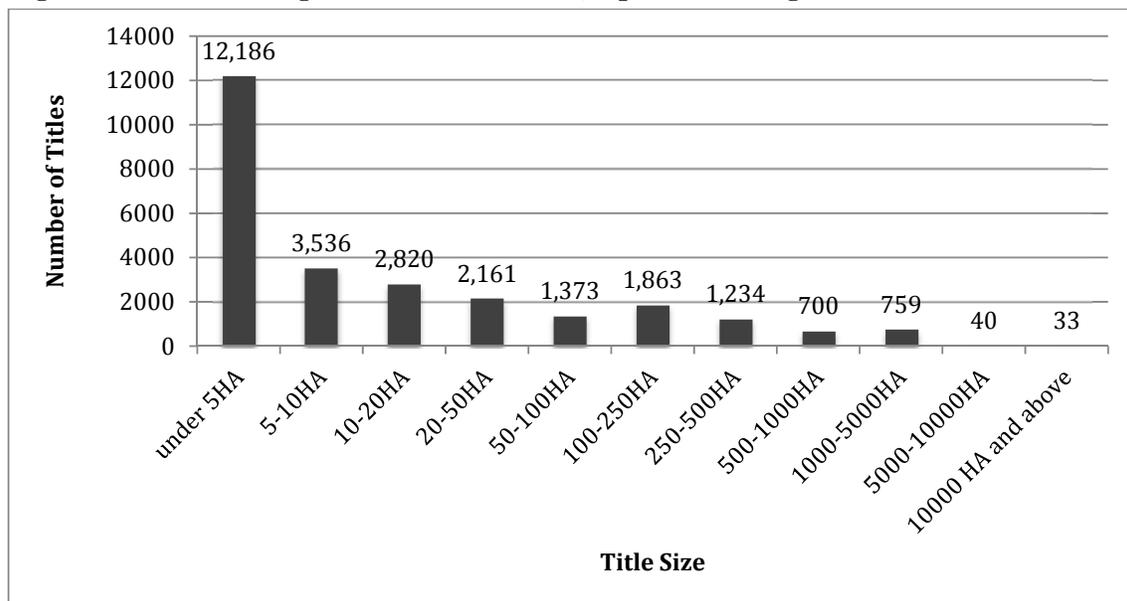
land to state land. For Rufunsa District, 9,524 ha have been converted in the last year. Thus, a very conservative estimate of 10,000 ha per new district would bring the amount of township land to 1.4 million hectares.

3.5. Private Leases and Farm Blocks

Private leases are a central source of state land in Zambia and of the reduction in customary land. Since the colonial era, lands with private property rights have been categorized as crown or state lands. In 1935, there were 3.5 million ha of Zambia’s 75 million ha of land under private title, lease, and concession agreements outside of townships. By 1950, this number had reduced to around 2 million hectares of alienated crown land, where it stayed steady through the end of the 1970s (Northern Rhodesia and GRZ 1935-1986). In 1982, the Land Use Planning Bureau of the Ministry of Agriculture reported 2,041,274 ha of land under leasehold and an average of 737 ha per private leasehold (Bruce and Dörner 1982). This amount of land under leasehold has steadily increased with the implementation of the 1995 Lands Act and an increasing appreciation of the value of land (customary or otherwise). The 1995 Lands Act standardized the practice of converting land from customary to state land in order to gain private property rights. While land can convert from customary to state land, once converted it can never return to customary land, even if the individual lease is cancelled. Thus, the 1995 Land Act allows for the slow and permanent shift from customary to state control of land in Zambia.

In 2013, there were 4,016,233 ha of land under 26,705 agricultural titles. This statistic is an under-estimate of total land under leasehold as it excludes other forms of private titles, such as titles for mining. Of the existing agriculture titles, 78% of these titles are under 50 ha and 90% below 250 ha. While small holdings (under 20 ha) are the most frequent size of an agricultural title, by 2013 the average size of farm titles is over twice that reported in 1982, at 145 ha. The distribution of titled land holdings is as depicted in Figure 2.

Figure 2. Land-Holding Sizes on Titled Land, Updated through 2013

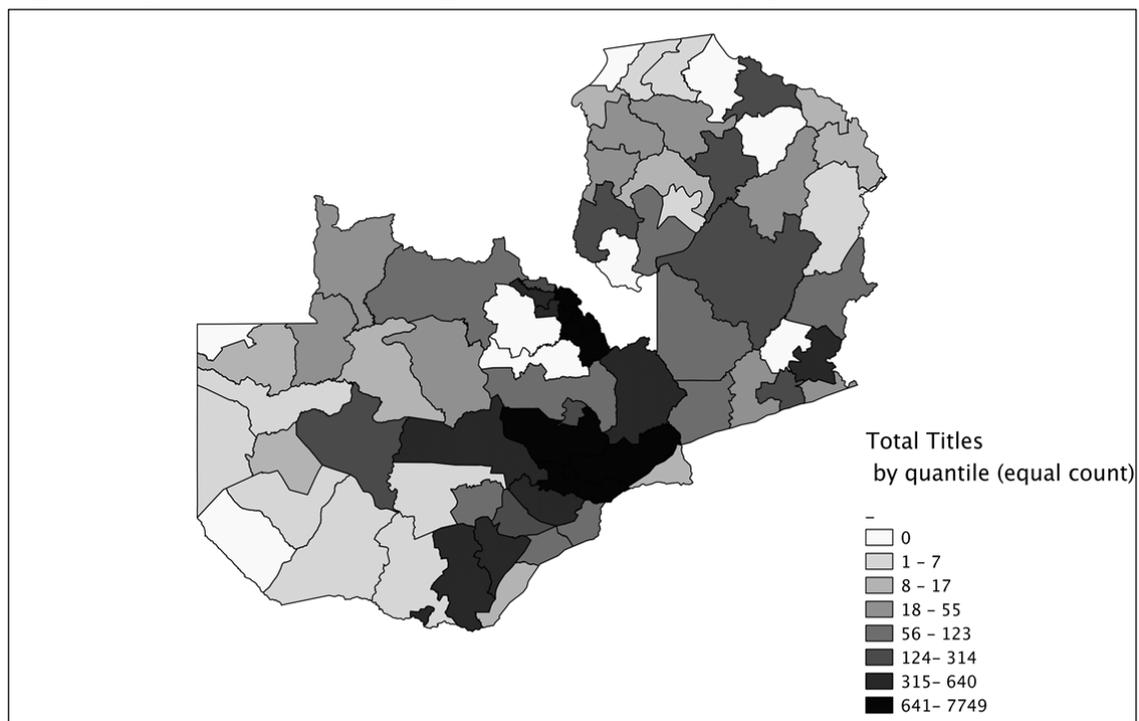


Source: Ministry of Lands Information System (LIMS) Database 2013.

The spatial distribution of this category of state land within different parts of the country follows a few general patterns. First is that urban and peri-urban areas, those areas closer to Lusaka, have more titled land. Second is the concentration of agricultural titles in areas where colonial policies encouraged commercial and settler agriculture. This includes Mumbwa District, (site of the Big Concession), Mkushi District, and the area surrounding the first rail line. A final spatial pattern to note is the way that customary authority structures affect this map. Western Province, where the Barotse kingdom has maintained strength and independence from the Zambian government, features very little titled land. In contrast, in the seven (7) districts in the Copperbelt with no gazetted chiefs, an artifact of the colonial authority's desire to directly control that zone for mining, there is a very high concentration of agricultural titles. While on customary land, a chief must consent before a citizen can access an agricultural title, in these districts without any gazetted chiefs, citizens access titles by applying directly to the state administration.

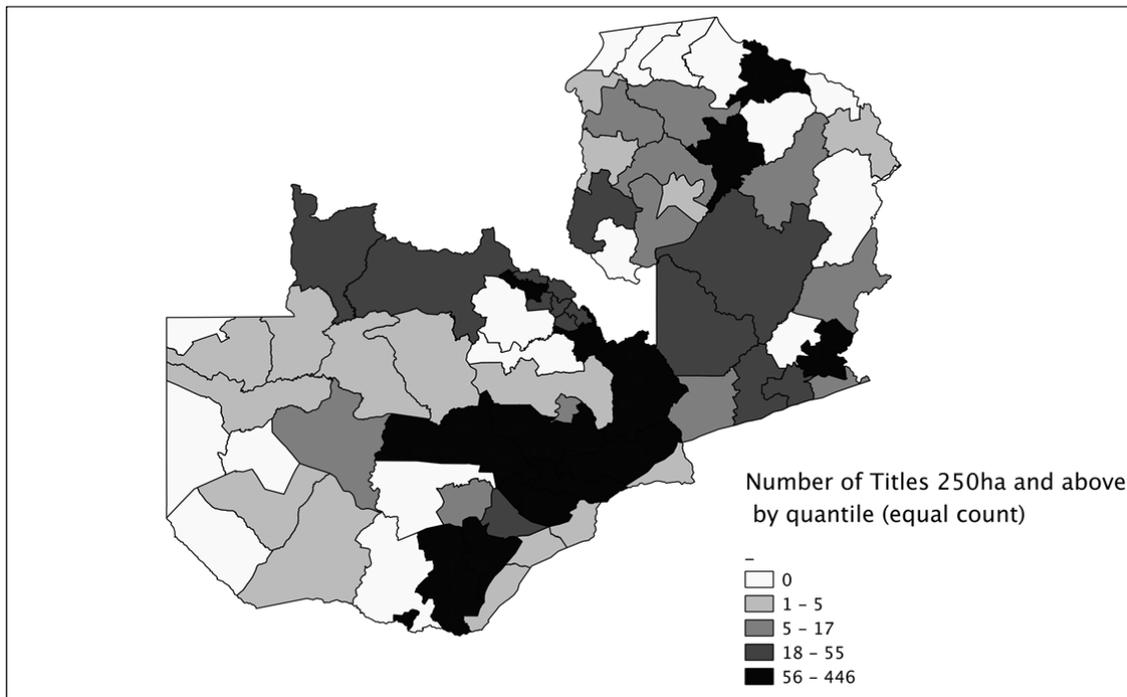
The disaggregation of small (under 250 ha) and large (250 ha and more) titles by district provides more evidence for the path-dependent nature of Zambia's colonial land policies on the status of land today (Figures 3, 4, and 5). Large Titles are more common in the initial areas of crown land and settler agriculture. In addition to the areas surrounding the colonial rail line, Mbala (the former Abercorn) in Northern Province, Chipata (the former Fort Jameson) are notable examples of this pattern.

Figure 3. Spatial Distribution of Agricultural Land Titles, by District



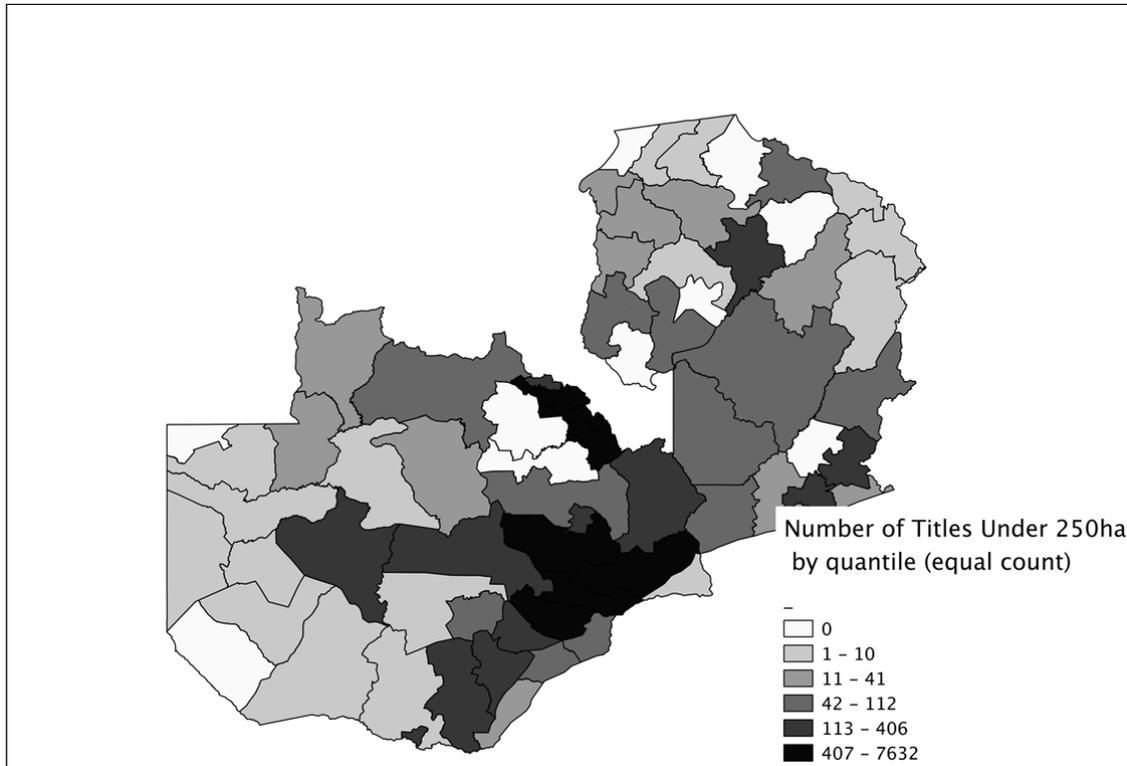
Source: Ministry of Lands Information System (LIMS) Database 2013.

Figure 4. Spatial Distribution of Large Agricultural Land Titles, by District



Source: Ministry of Lands Information System (LIMS) Database 2013.

Figure 5. Spatial Distribution of Small Agricultural Land Titles, by District



Source: Ministry of Lands Information System (LIMS) Database 2013.

These maps of currently titled land also reflect the locations of old farm blocks, including those developed in the 1970s, such as the farm blocks along the Tazara rail line in Mpika. However, there are also 10 additional new farm blocks being developed by the Ministry of Agriculture following a plan developed under the Mwanawasa administration. These 10 farm blocks, one in each province, are in varying stages of development. This farm blocks program should convert about 100,000 ha of customary land to state land in each province. The Luena farm block in Luapula Province and Nasanga farm block in Serenje District of Central Province are the most advanced of these farm blocks, such that the 255,000 ha of land in the two farm blocks has been fully surveyed and are starting to be allocated.

These farm blocks remain an active project by the Ministry of Agriculture and the Patriotic Front administration. In his September 2013 opening speech to Parliament, the then President of Zambia, Mr. Michael Sata made a public statement on the continuing work done on this project, stating that: “land has been identified for farm block development in Northwestern, Copperbelt, Western, Eastern, Muchinga and Northern Provinces. Consultations to identify land for developing farm blocks with our traditional leaders in Lusaka and Southern Provinces are still underway.” The most recent reports by the Ministry of Agriculture indicate that 531,500 ha of land have already been released by customary authorities for conversion into state land for this farm blocks project.

Table 1 presents statistics collected from relevant ministries on the amount of land under state control. This indicates that by the most conservative estimate, at least 30% of land in Zambia is state land. However, there are two major gaps in the data presented here that suggest that the amount of state land is likely to be closer to 40%. First is land under mining titles. The mining industry has been a major source of land conversions from customary to state land. This is not included in the statistics on agricultural land titles. Many of these mines are in the land initially partitioned as crown land by the colonial state in the Copperbelt region. However, for the mines located elsewhere in customary areas such as those in Northwestern Province, administrators have to negotiate with chiefs to convert land to have the surface rights needed for mineral extraction to begin.

The second major gap in the presented data is the long process of converting land from customary to state such that land which is in advanced stages of the titling process and is no longer under customary control is not yet accounted for in the land title database. These caveats bring a closer estimate of the status of customary land to between 60% and 65% of the national territory. This figure is consistent with other estimates of available customary land measured in Sitko, Chamberlin, and Hichaambwa (2015) using available GIS data. Excluding forest reserves, Sitko, Chamberlin, and Hichaambwa (2015) found that roughly 63.8% of Zambia landmass likely remains under customary control.

Table 1. Zambia's Total Land by Ownership Type

Land use/type	Area in HA
Total Land Mass	75,261,400
Forest Reserves	8,076,829
National Parks	6,367,200
Private Leases	4,016,233
New Farm Blocks	531,500
Townships	1,400,000
Settlement Schemes (MAL)	300,000
Resettlement Schemes (OVP)	750,000
State Land Total	21,441,762
Customary Land Total	53,719,638
Percentage Customary Land	71%
Excluding Forest Reserves²	
State Land Total	12,364,933
Customary Land Total	62,796,467
Percentage Customary	83%

Source: Authors.

² While Forest Reserves function as state land in that they are under the state's direct jurisdiction and not eligible for customary land uses, they are a unique category as they can revert to customary land if the state chooses to de-gazette them. Thus we also present the data with the Forest Reserves excluded from state land category.

4. CUSTOMARY LAND

The active legal definition of customary land derives from the 1995 Lands Act, which then refers to the Orders-in-Council that defined National Reserve and Trust Land from 1928 to 1964. This category is not found in the existing Constitution of Zambia (1996) but recent drafts of a new constitution have defined this principal category of land as “land delineated as such under an Act of Parliament, held by traditional communities identified on the basis of tribe and allocated by a chief” (GRZ 2014, art. 297). While these definitions use the status of land at the end of the colonial period, in which 94% of land was Native Reserve or Trust, as a baseline for delineating land, a variety of legal instruments have converted portions of this customary land to state land. The 1995 Land Act is the most significant legislation in this arena; in general, the practice of land being permanently converted from customary to state when put under title is also consistent with the law. While Zambia’s customary authorities did not initially understand the implications of the Land Act, now, 20 years later, even chiefs with lower levels of education and connectivity to Lusaka appreciate the permanency of titling customary land.

Conservative estimates of the amount of state land indicate that at most, 71% of Zambian land is customary land. This land is under the custody of the country’s 288 gazetted chiefs, leading to an average of 186,500 ha of land per chief.³ However, the amount of land per chief ranges from less than 3,000 ha of land up to over 2 million ha. Of these gazetted chiefs, the Lozi chiefs in Western Province have the largest territories.

4.1. Game Management Areas

Located within Zambia’s customary land are 36 Game Management Areas (GMA) on 17,270,400 hectares of land. This represents a third of existing customary land in the country. This category of land is relatively stable, with most having been created in the 1970s. This land is overseen by the Zambia Wildlife Authority (ZAWA),⁴ “for the sustainable utilization of wildlife” (GRZ 1998). Unlike National Parks and Forest Reserves, GMAs are semi-protected areas where human settlement and small-scale agriculture can continue. Within these GMAs, community resource boards (CRB) assist in managing the wildlife and negotiating any economic activities related to the wildlife, particularly hunting contracts. The Chief, as patron of the Community Resource Board, receives 5% of these contracts while ZAWA earns 50% and the remaining 45% is used for community activities by the CRB.

Legally, no land in a GMA can be converted to a title without the permission of ZAWA. However, this provision has largely been ignored. For example, one of the more contentious customary land management regimes, that of Chieftainess Chiawa in Chongwe and Kafue Districts, has at least four private titles of over 1,000 ha in addition to the many small leasehold titles for tourism along the Zambezi River. In GMAs, it is common for land to pass through the conversion process from customary to state land without any consultation from ZAWA. Thus, GMA land is spotted with individual titles in the same way that non-GMA customary land (known as open areas) is.

³ Under a more realistic estimate of 60% customary land, this reduces to 157,000 ha.

⁴ In November 2014, ZAWA was abolished as a statutory body or independent entity. In 2015 it was restructured as a department in the Ministry of Tourism and Arts. It still retains the responsibility for the administration of this land.

4.2. The Slippery Slope of the Status Quo

The rapid conversion of land from Customary to State, without a commensurate increase in employment opportunities for small-scale farmers has led to widespread insecurity of land access and lack of faith in the customary land allocation system. The current era of high demand for agricultural land internationally, combined with the highly negotiable cost of customary land and rumors that “land is running out,” has led to a conversion fever in Zambia. As Adams (2003) observes, “applications for leasehold rights continue to accumulate, presumably because the customary system is less secure and predictable than it used to be.” Urban Zambians, civil servants, and wealthy farmers argue that now is the time to stake out a piece of customary land because it is gaining value and becoming rarer every day. This speculation creates a self-fulfilling prophecy. Some district councils process hundreds of conversion requests per year, varying from small parcels to tens of thousands of hectares. Chibombo District alone receives over a thousand conversion requests a year, with consent letters from the chiefs.⁵

Another telling sign that the current customary system is no longer effective and is only becoming more insecure is the frequency of chiefs converting customary land to personal titles for themselves and for their family members. As one Southern Province chief said in reference to chiefs seeking personal titles for land:

“Now I’m just doing things for my grandchildren. I don’t want to leave nothing for them... But I’m doing it in other chiefdoms, with my friends. They also appreciate what I’m doing; they give me land there. Because this is what we have said, among ourselves as chiefs. Let us help each other, our family members. My children can go to another chiefdom to get a piece of land. Because when I leave and he has got a piece of land in the same area, they may say, ‘No’, the one who comes to the throne—this land belongs to the royal establishment. So we have to protect our family members.”⁶

If the custodians of the customary systems themselves do not feel secure in their access to land in the future, then most likely the level of insecurity among smallholder farmers is even higher.

The difference between those driving the conversion rush by seeking parcels of customary land and the smallholder farmers who live on customary land is that for smallholder farmers, title is often not an option. There are three main reasons that titles are currently inaccessible to Zambia’s smallholder farmers. First is the cost. As one smallholder farmer in Northern Province articulated: “We in villages, how can we raise the money they are asking over land where your ancestors have lived all their lives? It is hard for us. If you have no papers, you can’t say anything. We are not safe. It is frightening.”⁷ The second reason that these are unavailable to smallholder farmers is related with access to information and the prohibitive long procedure. Lack of knowledge of the process, linguistic difficulties working with written English documents, and discomfort with bureaucracy are all real barriers for smallholder farmers to accessing title. Finally, the chief’s own perspective on whether smallholder farmers should or should not have titles in the chiefdom has created a large variation in where smallholder farmers have accessed land titles. Some chiefs interviewed allow any subject to access title to his or her land and cite access to credit as a key reason behind this. Others attempt to preserve the uniformity of the customary area and allow only usage rights to their subjects.

⁵ Interview, Chibombo District Council, 2014.

⁶ Interview, Southern Province, 2013.

⁷ Smallholder Farmer Focus group, Northern Province, 2014.

Thus, the current land policies have facilitated access to customary land for investors, bureaucrats, and urban elites without protecting the rights of smallholder farmers. Naturally, those purchasing customary land are interested in land with the best access to roads, markets, water, and other infrastructure. When villagers are displaced by land conversions, the principal question is whether there is land where they can be resettled, not whether this is desirable land that will sustain or improve that farmer's livelihood. Thus the status quo is slowly pushing Zambia's smallholder farmers to marginal lands. Smallholder farmers interviewed in 2013-2014 frequently referenced this phenomenon. One stated, "Another thing for us poor subjects in villages, they will get somebody with money from town and give him a piece of land where you stay. And where your ancestors lived. A land you have inherited. Where shall we go?" In another chiefdom: "Sometimes, you can be seated comfortably on that land, then later the same land will be given out to somebody else and they displace you." A second farmer in that chiefdom added: "In other cases, many of you can be displaced and squeezed on a smaller land."⁸ It is important to note that smallholder farmers are also often complicit in the phenomenon of land transfers to investors, urban elites, and bureaucrats. While the traditional authorities must agree to all conversions, they often do so at the behest of smallholders seeking to sell their land.

This insecurity is not limited to certain regions or agricultural zones. Even smallholder farmers in the chiefdom of one Lusaka-area chief known for refusing conversions shared they were "all in fear," it felt "like being seated on the edge," and "at any time it could be taken." Part of the reason for this insecurity is the lack of institutional recourse for smallholder farmers to advocate for their land rights. While the Lands Tribunal⁹ would be an excellent resource for smallholder farmers seeking recourse for land injustices, it is not currently accessible to this population. The Lands Tribunal does have legal jurisdiction on customary land but even mobile tribunals have not sufficiently permeated rural areas. When smallholder farmers were asked what they can do if they are upset about land allocation, they reiterated that "Even if we say something, nothing can be done" or "There is nothing we can do, so we just observe as slaves" because the conflict resolution institution most accessible to a resident of customary land is the traditional court system. The traditional court system is under the jurisdiction of the traditional authority, making it futile for smallholders to pursue land allocation complaints against their chiefs. Without any accessible forms of recourse, in the words of two smallholder farmers: "We should be protected only by the headman and the chief in the area we live. Otherwise we don't have that protection," followed by, "If they say you are moving, you just move and go."¹⁰

⁸ Smallholder Farmer Focus Groups, Southern, Central and Northern Province, 2014.

⁹ The Lands Tribunal was established under the Lands Act of 1995, with the main objective of providing the public with a fast-track method of resolving land disputes in a manner that is efficient and cost effective than the established judicial or court system. The tribunal is a circuit court and can sit at any place in Zambia where there is a dispute. However, these intended goals have not yet been realized. As Brown (2005) found, it continues to be inaccessible and affordable to rural populations.

¹⁰ Smallholder Farmer Focus Groups, Southern, Central and Northern Province, 2014.

5. CONCLUSION AND POLICY RECOMMENDATIONS

This study examined the status of land in Zambia and origins of the dual land tenure system using data from various sources including different ministries and organizations involved in land governance and agriculture. This paper has presented the data on the current land system, its historical origins, and how this has led to a precarious situation for Zambia's smallholder farmers. Statistics collected from various involved ministries demonstrate that by the most conservative estimate, at least 30% of land in Zambia is state land and the remaining 70% is customary. However, after accounting for mining and land that is in the process of being titled, results suggest that the amount of state land is likely to be closer to 40% and 60% customary. An examination of the current land administration system and its distributional effects indicates that continuation of the status quo system, in which the best land is increasingly and opaquely being transferred out of the customary domain without clear engagement of the local communities, has serious long-term implications for Zambia's development. It is clear that the current system does not protect smallholder farmers' interests in terms of land access and security. The smallholder agricultural population must be considered and protected as industry grows. This is vital for broad economic growth and the food security of Zambia's most vulnerable population.

In light of these findings, the paper proposes some feasible changes to the current land tenure system that can improve land access and tenure security for smallholder farmers while maintaining the beneficial characteristics of a dual land tenure system. Reforms that represent the interests of smallholder farmers are needed to help mitigate some of the land access and tenure security risks smallholder farmers are exposed to under the current land tenure regime. We propose the following recommendations for addressing some of these issues.

5.1. Recognition of Customary Land Value and Publication of Land Conversions Applications

The inconsistency between the reality of customary land sales and the law of no customary land markets is deeply disempowering to the smallholder farmers living on this land. The theory behind customary land having no value is two-fold: to prevent the land from being commoditized and to allow for an inhabitant with customary rights to convert the land to title without buying it (GRZ 1995, sect. 4). However, the combined effect of the 1995 Lands Act and the high demand for agricultural land has already served to commoditize customary land. Thus, instead of pushing customary land sales to the black market, this process needs to be controlled, regulated, and made transparent with priority placed on the security of smallholder farmers' access to land.

The specific recommendation here is to reform the laws such that for all conversions of customary land the details of the transaction must be made public at least 15 days before the district council can forward an application for conversion to the Ministry of Land for the conversion to be valid.¹¹ In order to share this information with the broadest population, publication should include posting at the council office, in a major newspaper, and radio announcements. In the current system, there are major commercial land deals that skip the process of district council recommendation and go directly to the Ministry of Lands because they already have support from Lusaka. The local government is then *informed* that the conversion is taking place. This practice needs to be revised such that all conversions pass through a transparent and public debate at the local level.

¹¹ This protocol has been piloted elsewhere and is a long-standing part of the land conversion regulations in Senegal, among other cases.

5.2. Legalize and Encourage Land Use Documents Alternative to Title

The gap in security of land tenure for smallholder farmers had led to a variety of different types of documents used to indicate ownership or usage rights. These documents are alternatives to land title, which, as previously discussed, are not readily accessible to smallholder farmers. Such land documents have developed spontaneously in different communities in response to the need for alternative ways to secure land tenure. As a result, they take many different forms. Some traditional authorities allow their subjects to bring a survey map of their land that is then stamped by the Chief. Others will write official letters on chieftom letterhead or have standard certificates of customary land usage. These are sometimes referred to as chiefs title. In other chiefdoms, headmen or village land committees create these documents, with and without the consent of the chief. There is a legal basis for these customary titles in the 1995 Lands Act (GRZ 1995) that allows for titles that confer “a right to the use and occupation of any land under customary tenure claimed by a person.”¹² However, there needs to be standard guidelines on how these can be used in order to promote tenure security on customary land. Currently there are no regulations regarding who has the right to give out customary papers, what rights they can promise, how much they should cost to smallholder farmers, and, most importantly, who must honor them.

5.3. Language of Recommendations and Transparent Information Sharing

The third major recommendation for reforming the current land tenure system is to replace the current system of recommendations and replace them with clear, enforceable laws. The negotiability created by the current patchwork of land conversion documents may be useful for pushing through elite land deals, but it is dangerous for smallholder farmers who do not have the resources to take advantage of such flexibility. The most problematic is the Administrative Circular No 1 of 1985 that lays out general policy guidelines for the size of land. These are the recommendations that indicate that the district council, acting on behalf of the Commissioner of Land, has the authority to alienate only land under 250 ha. This provides no guidance to these bodies on how to handle the many requests they get for land over 250 ha. One effect of this *recommendation* is that some chiefs have interpreted it to mean that it is illegal for chiefs to consent to giving more than 250 ha for conversion, which creates more incentive for them to be non-transparent about the alienation of land. Agents in district councils and Plans and Works Departments have also expressed confusion on how to handle applications for large parcels.¹³ Further, this document has not held up in court to limit land allocations (Sichone 2010). Another key document in this patchwork is the Statutory Instrument 89 of 2006, which states that conversions above 1,000 ha must be approved by the President. However, in addition to which level of hierarchy must approve a land conversion, the rules for when one can or cannot convert land of certain sizes must be clarified. This is closely linked to the need for transparent transactions in customary land with enforceable conditions.

Clear, legally binding land procedures, shared openly with local authorities, are necessary to guide them in land allocation. Chiefs and district councils are the primary institutions that protect the property rights of smallholder farmers. Both need assistance on how to make these decisions that are vital to the livelihood of such a large population. For example, district councils need to be trained in applying explicit and well-articulated laws on compensation

¹² GRZ 1995; Lands Act “(3) Except for a right which may arise under any other law in Zambia, no title, other than a right to the use and occupation of any land under customary tenure claimed by a person, shall be valid unless it has been confirmed by the chief, and a lease granted by, the President.”

¹³ District council interviews, 2013-2014.

and community engagement in the decision to recommend a land conversion or not. These councils, composed of bureaucrats and elected representatives, are the first line of defense against unjust land allocation. However, they have limited incentives to check the recommendations of chiefs. District council agents generally understand their role as confirming that all of the required documents are submitted for a land conversion, the chief's consent letter being paramount. While some councils send agents to visit every site of land conversions to check for community approval, others consider the chief's consent as community consent. However, there is wide variation in each chief's consultation process before signing conversion letters.

On the chiefdom level, the lack of clear laws and transparent information to guide chiefs is even more profound. For example, the majority of the 18 chiefs interviewed in 2013/14 could not approximate how much land was in their jurisdiction. For many, quantifying units of land was a difficult concept. How can a traditional leader make an informed decision when approached by an investor asking for 20,000 ha of land without information on how much land is within the chiefdom? These authorities want to foster the prosperity of their chiefdom and their subjects, so they often agree to cede large pieces of land for promises of development and employment for local people. The role of chiefs has changed in this era of high land transactions, without a commensurate change in support for and constraints on them. Despite their good intentions, chiefs are currently not equipped to be the primary decision-maker on whether a 200 ha parcel of land should be permanently removed from the customary (community) domain.

Chiefs or literate advisors of their choice need training in land-related issues by provincial or district level planning offices before taking office. Both government and traditional authorities need regularly updated maps of chiefdoms and accurate population data. They need training on the land conversion process and how to decide whether to convert land or not. As Zambia's traditional authorities are managing 60% of the country's land and the land rights for the vast majority of small-scale farmers, they need the resources to be able to do so.

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