



A COMPARATIVE STUDY OF WOMEN'S LAND RIGHTS IN ZAMBIA: ACCESS, OWNERSHIP, CONTROL, AND DECISION-MAKING

TENURE AND GLOBAL CLIMATE CHANGE (TGCC) PROGRAM



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Cover Photo: Village land committee members facilitating a customary land certification objections and corrections process in Maguya Chiefdom

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I.0 INTRODUCTION

Customary land documentation in Zambia has remained elusive with a general understanding that whatever is customary is usually not written and remains undocumented. This has led to insecurity of tenure further leading to conflicts and disputes in determining boundaries to the extent of one's land. In order to improve security of tenure, the documentation of customary rights has been promoted in Zambia, and increasingly across a range of countries (Knight, 2010). Prior to the Zambia Lands Act of 1995, Mulimbwa (1993, cited in Mulolwa, 2006) proposed the documentation of customary rights. The documentation of customary rights support are important as an evidence base, not only for individual rights, but also for communal and concurrent rights. Van der Molen et al. (2004, 2005) mention village titles, certificates or rights of occupancy, group ranches, flexible titles, land sharing constructions, customary rights issued by Land Boards, co-ownership, and communal titles as examples of rights recognition tools that can be used. But in Zambia, these models are piloted amidst a gap in legal frameworks to support the documents. Zambia Land Alliance (2013) indicates that documentation of customary land will reduce conflicts and bring meaningful development to land.

Women make up almost 50% of Zambia's approximately 17 million inhabitants according to recent figures from the Central Statistics Office. About 60% of the country's population live in the rural areas. Zambia operates a dual land tenure system, one of customary rights, which is governed by traditional authorities (chief/chieftainess and headmen), and statutory tenure, which is based on Government of Zambia land laws. According to the Food and Agriculture Organization of the United Nations¹ "land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land." Statutory tenure allows for individual ownership rights and other formal land rights transfer and has a documented legislative framework to support this. Customary land tenure is a flexible system that evolves over time based on the traditions and practices of a group of people. Often, customary tenure is undocumented and ownership focus on the community or tribe (van Loenen, 1999); however, in many cases there is movement to document customary practices and for ownership to be recorded at the household level.

Exact figures on the percentage of customary land in Zambia as compared to state land vary with figures ranging from 65% to 95%. These contrasting figures are based on judgements of whether Zambia's protected area network are in customary land or state land, and whether customary land, as established at independence, converts to state land when it is placed under leasehold. Zambia's draft Land Policy stipulates that a minimum of 30% of available land in Zambia should be set aside for women and other disadvantaged groups, however several studies have shown that that efforts to provide equitable access to land and strengthen land tenure for the most marginalized groups, including women are yet to be fully realized.

In Zambia, customary land is land overseen and administered by chiefs. With over 70 tribes and 288 chiefs, this control is mostly based on customs and traditions and is heavily reliant on these central figures. Through their headmen and other traditional structures chiefs allocate land, regulate transfers of land, and control the use of it. Quite strictly, customary tenure is not defined in Zambian laws, though it is recognized and legally protected as a form of landholding. Customary law varies substantially from place to place and a lack of national guidelines on customary land administration means that each

¹ <http://www.fao.org/docrep/005/y4307e/y4307e05.htm>

chiefdom administers customary land according to prevailing traditional norms, customs, and cultural practices.

According to statutory law, women in Zambia can apply for any land in any part of the country, just like their male counterparts. In rural areas, married women usually have access to land for farming through their husbands. In the event of divorce or widowhood, if the husband dies without leaving a will and if he held state land, the Intestate Succession Act regulates that the surviving spouse inherits 20% of the deceased's estates, including land, and together with the children, the house. However, this Act is not applied generally on customary land. If the deceased husband held customary land, the widow may be permitted to continue to use the land. But the widow may also be evicted from the land by the relatives of the deceased.

Growing interest to institutionalize women's right to land is born of the recognition of the importance of women's access, control, ownership and decision-making in relation to land in Zambia. Part of this change is articulated in Zambia's 2016 draft Land Policy which aims to "adopt a unified approach to land administration" and recognize "land rights originating from customary tenure as the same as the leasehold land rights." The current version of the draft Land Policy² has a section that covers fair and equitable access and control of land and addresses some of the issues inherent in customary land management. This covers government plans such as recognition of chiefs' ability to issue of customary land certificates.

This represents a major shift in land governance in Zambia as it recognizes that ownership and access to land is linked to ancestry so that land tenure is not just about laws and power dynamic but also culture and norms of the people who have traditionally inhabited that land. The strong social bonds and slowness of more institutionalized thinking to seep into rural areas has allowed cultural practices to dominate in regards to land management. This research explores the gendered dynamics of customary land allocation and management in one of Zambia's 288 chiefdoms, Sandwe Chiefdom of the Nsenga tribe of Petauke District in the Eastern Province. In particular, it examines the land tenure dynamics of individuals in traditional villages under the customary management of the chief, as well as individuals who live in communities within a former refugee resettlement area (Ukwimi), where land has been opened up to and allocated to new settlers.

² October 2015 version

2.0 METHODOLOGY

The approach to conducting this research was grounded in a case study of Sandwe Chiefdom. The research incorporated the use of both primary and secondary data in data collection methods. Primary data was mainly be obtained through field research while secondary data was obtained through desk research and some field observation. This approach took into account the contextual challenges of collecting data in a rural setting where low literacy rates may challenge paper-based survey methods.

The chart below summarizes the types or research, the methods, techniques and mediums used.

Type	Method	Technique	Medium
Desk Research	Analysis of historical records	Review records, content analysis	Written records Audio recordings Video recordings
Field Research	Participatory Rural Appraisal	Semi-structured interviews Focus group discussions Information visualization (mapping)	Written notes Audio recording Photographs Drawings Observation

Primary data was collected mainly through interviews with people living on customary land and state land in Petauke District, with a specific focus on the area of Sandwe Chiefdom and the Ukwimi resettlement area. Both men and women were interviewed. In Mpsasi village three groups were convened: men, women, and a mixed group of men and women.

2.1 PARTICIPATORY RURAL APPRAISAL

Data collection relied on participatory rural appraisal, which offered a means to overcome challenges by involving the rural subject communities and focusing more on shared learning and experiences rather than individual experiences.

Interviews were carried out from 6-8 December 2016. Questions focused on four aspects of women’s land tenure in both the resettlement area and the village: access, control, decision-making, and ownership. It is important to note that for the purposes of this study there is a distinction between homesteads and farming land.



Residents of Mpsasi participating in the focus group discussion
PHOTO: ZAMBIA GOVERNANCE FOUNDATION

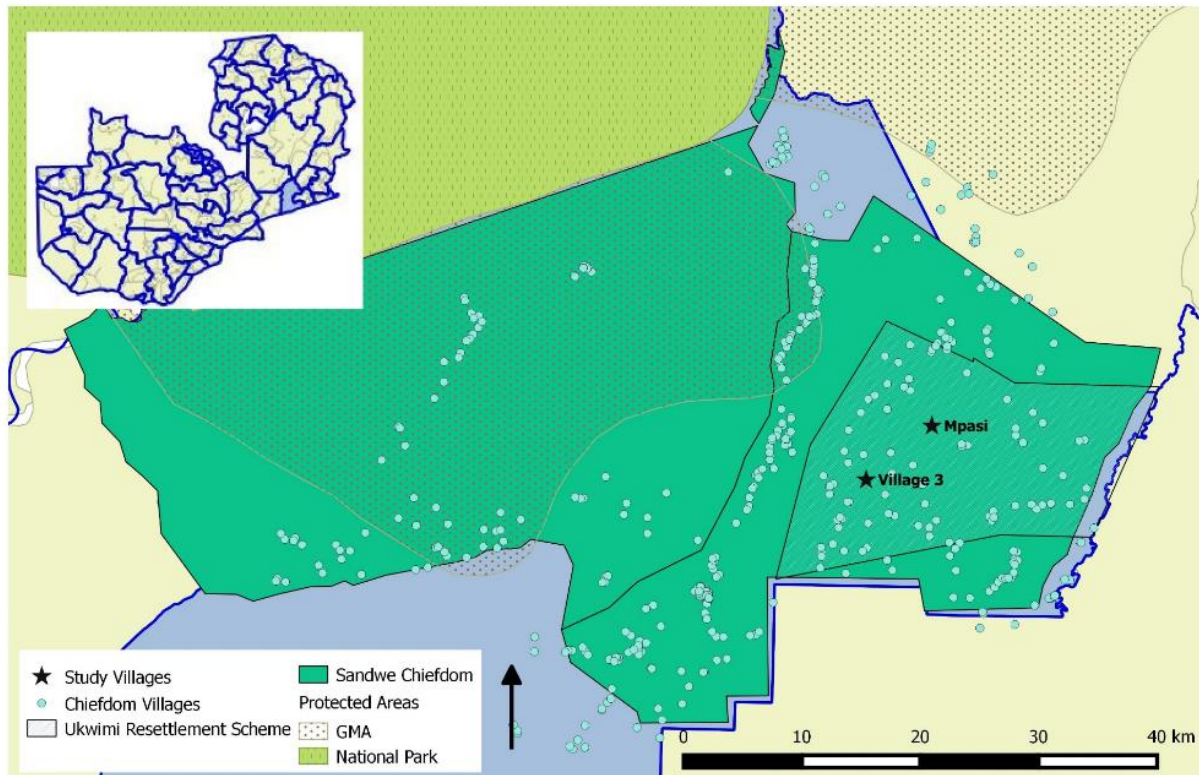
2.2 JUSTIFICATION OF LOCATION OF STUDY

Ukwimi settlement scheme is located in the Eastern Province of Zambia in an area where there are mostly Nsenga people. The area is approximately eighty kilometers from the boma or administrative center of the district and has rich, arable farm land. Ukwimi was established in 1987 to accommodate Mozambican refugees then living along the border in Petauke, Katete, and Chadiza Districts. After the repatriation of refugees in 1994, because its infrastructure was already in place, Ukwimi evolved into a government-run agricultural resettlement scheme until its re-opening as a refugee camp for Angolan refugees in 2001. More recently according to a Report of the Committee on National Security and Foreign Affairs from October 2011, the refugee camp has been handed over to the government to continue to be managed as an agricultural resettlement scheme.

The field work was conducted in two villages: Mipasi village in Sandwe Chiefdom, which is managed through customary practice but sits within the resettlement area, and in Village Three that was established by settlers in the resettlement area (see map). These two locations were selected not only for their tribal composition and the type of land they were located on, but because in each area the key land administration authority (induna or chairman) was tasked with overseeing a wider area. In Mipasi the induna there also oversees the village of Amose, while the Chairman of Village Three is also the satellite chairman overseeing twenty-one villages in the resettlement area.

Questions focused on generating a better understanding of the status of women in this area of overlapping statutory and customary rights and on understanding the ingredients of land administration success, which can be extrapolated to address the challenges of land governance in Zambia.

MAP SHOWING MPASI VILLAGE AND VILLAGE THREE



Sandwe Chiefdom is predominantly inhabited by the Nsenga tribe. They are one of the many tribes Nyanja-speaking tribes of Eastern province, including, the Kunda, Ngoni, and Nsenga (Taylor, 2006). The Nsenga observe matrilineal descent and customs; that is, their system is of kinship of ancestral descent is traced through maternal and not paternal lines. Chiefs are chosen from particular lineages within clans who rule designated lands. This system of descent affects many customs, including inheritance which ultimately affects land rights. In Nsenga custom, when a man and woman marry, the man moves to the woman's village and the woman has more security of tenure by living on the land of her clan (Petauke District Land Alliance, 2012). If the woman dies, the right to the land reverts to the chief or to the traditional leaders for reallocation. The chief has limited discretion to deviate from custom, which require that the land is remains within the clan. In that way a husband is disadvantaged as he does not have inheritance rights to land in the Nsenga custom. The following table details the process to customary land administration in the Nsenga customs.

TRADITIONAL NORMS OF THE NSENGA TRIBE IN LAND ADMINISTRATION³

<p>WHEN THE HOLDER OF THE RIGHT DIES</p>	<ul style="list-style-type: none"> • The right reverts to the surviving spouse of the second or further marriage, but only if that spouse consents to the allocation of the right, • If there is no surviving spouse or if the spouse refuses the allocation, the child of either the first or a later marriage may be allocated the right. The family must determine which child is entitled to the allocation of the right in line with the customary law
<p>WHEN THE SURVIVING SPOUSE OF A SECOND OR LATER MARRIAGE, TO WHOM CUSTOMARY LAND RIGHT HAS BEEN ALLOCATED DIES</p>	<ul style="list-style-type: none"> • The right reverts back to the Chief or Traditional Leader who determines to whom the right must then be allocated. Members of the family or families concerned must be consulted first. • The following people may be considered: <ul style="list-style-type: none"> • The surviving spouse of the deceased person who was allocated the right on the basis that s/he was married to the original owner of the right; • Any child of any of the marriages; or • Any other person including the adopted child.
<p>WHEN THERE IS NO SURVIVING SPOUSE OR ANY CHILD TO WHOM THE RIGHT CAN BE ALLOCATED OR IF THE SURVIVING SPOUSE AND CHILDREN REFUSE TO ACCEPT THE ALLOCATION OF THE CUSTOMARY LAND RIGHT</p>	<ul style="list-style-type: none"> • Customary land right reverts back to the Chief or Traditional Leader to allocate to any other person

Issues concerning land administration in Mpasi village are overseen by the induna or headman who is a representative of the chief. The induna from Mpasi village, Herbert Mwanza, actually oversees two villages and divides his time between the two. In the resettlement scheme, the scheme manager, who is a civil servant, oversees issues concerning land.

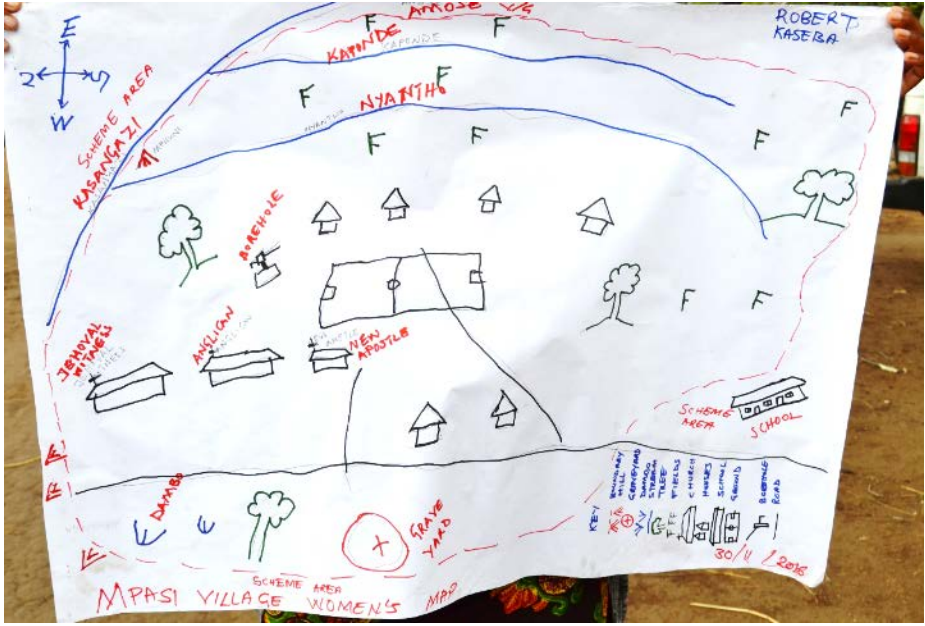
Thus Sandwe chiefdom, with its matrilineal heritage and neighboring Ukwimi resettlement area under the formal state land tenure systems, provides a good environment for testing systems to ascertain whether customary norms versus more formal systems of land administration advantage women more. That is, did formal laws that looked equitably upon women's and men's rights to land provide more security of tenure than customary norms that should favor women? More specifically what, if any, were the different experiences of the women in Mpasi village (customary tenure) and Village Three (statutory

³ Compiled from PDLA's Customary Land Administration Guidelines.

tenure) in regards to access, ownership, decision-making and control of land? The following findings begin to answer these questions.

3.0 FINDINGS

The case of land in Sandwe is like most customary land in Zambia and other agrarian societies. That is that an individual's right to land, specifically right to cultivate, is an inseparable and inalienable element of



Community map of Mipasi village
PHOTO: ZAMBIA GOVERNANCE FOUNDATION

tribal membership (Klaus & Feder, 1998). Thus the comparison did not assume that there were similarities in the status of women in the two areas but rather that land was a central issue in their lives. The focus group discussions were broadly arranged to ascertain how women got access to land, whether they had control of the land if they had access to it, and even if they did not have ownership or access, whether they were involved in the decision-making

processes surrounding land in their area. The comparison was related to land they used for farming *Ma minda* and not residential or homestead land. The focus then was how land related to their livelihoods.

3.1 ACCESS

Access in this case relates to how women get access to land to farm. Access, in the scope of this study, did not necessarily imply inheritance and had more to do with the ability to use the land. The key here was whether a woman could access land in her own right and not as the beneficiary of her father, husband, or uncle.

The focus group discussion with a mixed group of men and women of Mipasi village, who were predominantly Nsenga, identified three ways in which a person could obtain access to land. These were through birth (*babadwila*), marriage (*bakwatilila*), and borrowing the land (*bapempa*). The group indicated that most of the farming land in their area was *malo ya makolo* – inherited land.

When the mixed group were asked which of these types of ways of accessing land was “better” than the others, the group agreed that either inheriting or marrying into the land was more secure as borrowing land depended on the person you were borrowing from.

The segmented group interviews revealed that most women questioned, whether Nsenga (indigenous to the area) or those who had moved to the area, had a sense that land was shared with their husbands. The women were asked specific question in relation to their farming land as to how they obtained that

land. They said that they obtained access to the land through their birthright but men had power or *mpavu* over the land. One woman elaborated that “(the land) is for those born here...those women born here ‘own it’ with their husbands.” While this may seem to differ from Nsenga custom in that that land should move through inheritance through the woman, the practice seems to have come about because of another Nsenga custom in that the man is the head of the household and custodian of family assets including land. In fact this belief in a husbands’ overall right to supply access to land affected the women’s recommendations on how land in the scheme should be managed. When it was suggested that women on customary land may want to have the same formal access to land that women in the scheme have:

Interviewer: Do (you) know that women in the scheme can own land on their own without their husbands? Is that something you would like for yourselves?

Woman: If they (women) do not have a husband then that is fine, but if she had a husband it should be in his name.

It did not appear that the matrilineal system of inheritance put the women at a particular advantage in terms of access to land in their own right except that it kept land within the clan and “ownership” of the farming land would not be transferred to outsiders.

Conversely the women in the resettlement scheme had access to land in their own right to land and went through the same process as the men to get land as governed by statutory law. They pay ZMW300 (~\$30) for an application and present it to the scheme manager. The individuals are then supposed to receive offer letters for their farms from the scheme manager but the focus group discussions revealed that out of the eight households represented, only two had offer letters. The satellite manager, an elected representative of residents of the scheme, outlined the process of receiving an offer letter for their farm land:

One can have a letter that says I stay here – a letter of occupancy, but to get title deeds, for that one needs an offer letter. So now here we have residential and farm plots and we are being told to pay ZMW300 and when you pay it is like an application letter. From there it goes to Chipata (the provincial capital) and from there surveyors are supposed to come to survey the land. Once you have the drawing you can get title deeds.... There are different rules between farms and residential. For example, we are told we cannot keep animals on the farm. However if someone has a residential and farm plot the must have ‘papers’ for both.

3.2 OWNERSHIP

Ownership was not limited to possession of state-recognized documents certifying ownership but rather that the community recognized an individual’s right to land which was assured by norms and practices. In this way a comparison could be made between women living on customary land and women living on state land.

Invariably the women of Mpasi village possessed a dimension of ownership that was not only linked to their clan but linked to their family. Thus, the matrilineal system played an important role in terms of inheritance and not necessarily securing individual tenure. Furthermore, the reason to transfer through the women was to ensure that the land remained within the clan and not necessarily to provide security of tenure to the women.

The recognition of a woman’s right to “own” land in her own right was *not* held by the villagers – men and women alike. Land (farming land) was seen as belonging to a household and as local custom dictated that men were the head of the household then men, it followed, owned the land. Some exceptions were

made for female-led households, but these cases were mostly for widows or for some whose marriages had ended for various reasons.

The following conversation demonstrates the prevailing view that women should not own their own land.

Interviewer⁴: Is it ok for a woman to cultivate her own land here in the village?

Man 1: It can be the same (family) field and you give the woman can be given a piece to do her own thing

(Some disagree verbally with this with this including induna).

Interviewer: Why does the induna disagree?

Man 2: Let us just base it on freedom...you can give freedom that she can be given a piece of land to farm

Induna: This freedom if you give it, it can go bad.

Man 3: Ok let us talk about how we grew up here...these things are not good that each one (in a household) has their own place to farm. These are the things that bring confusion in the future.

Man 2: When we farm, we agree but this way (with a woman having her own piece of land separate from her husband) they will be not be working together in a household (*kugwilizana*).

The above discussion also demonstrates the complexities of traditional customs and practices that previous research have found in Eastern Province. According to a research carried out by the Zambia Land Alliance in 2008, Eastern

Province differed from other selected chiefdoms in Southern, Luapula, and Western provinces in the sense that women only had “user rights” through male relatives and did not own land outright. For married women this was through their husbands and for single women this was through their

fathers, brothers, uncles, or cousins (Zambia Land Alliance, 2008). Focus group discussion with the women of Mipasi village revealed the women themselves still see as the men’s purview to “give” women freedom to cultivate land or make decisions on land. While most men held this view, not all the men

Case Study: Fabian Mumbia

“I would like to talk about this topic of ‘gender.’ We have no knowledge about this topic and we are willing to learn, but the women who should be talking about this are quiet. (And) even this discussion you have brought here for us is good for them but they are still quiet. I don’t know why they won’t say anything.” This was an impassioned outburst from a young man, Fabian Mumbia, in response to a question on whether widows’ rights to land were upheld in the village. Fabian stood out in the group of men for his quick responses and ability to articulate the nuances of land administration in the community. After the focus group discussion, a one-on-one discussion gave context to his words. Fabian tended the family land with his mother. He had moved away from the village to Mbala for work and had a good job in “town” but returned to help his mother tend their family land when she was widowed to ensure that he could help her secure the land that belonged to them.



⁴ Seven minutes into tape

who took part in the segmented focus group discussion in Mpasi village thought the same way as the case study highlights in the case of Fabian Mumbia.

The situation was less nuanced on state land. It was acknowledge that women could own land, which stemmed from the administrative processes to access land that were not gender discriminatory. This was strengthened by norms and practices, for example when women in the scheme were prodded as to whether they experienced discriminatory practices when they applied for land such as questions of “where is your husband” all women responded that they did not experience this.

That is not to say that ownership of land in the scheme was certain. In fact a troubling case was found in which all the individuals interviewed from Village Three did not have title for their farm land and only had letter of offers or receipts from their applications:

Male participant: Let me talk about my situation, I have a letter of occupancy and the former Scheme Manager and when I went to the current scheme manager to try to get title deeds I was told that I needed an offer letter. He promised that he would give me an offer letter and I am still waiting. That’s why I say an offer letter is something else which I haven’t seen.

3.3 DECISION-MAKING

Land administration in customary land is primarily the purview of the chief who is supported by headmen or induna (an advisor who oversees multiple villages). Customary land is mostly administered using unwritten but commonly known and understood rules and procedures (Zambia Land Alliance, 2008). Best practice suggests that decision making in customary land administration should take a decentralized form in support the work of chief and induna in the form of committees or *bungwes* to help in land allocation and dispute resolution. The powers of a chief or traditional leaders in relation to land extend to reviewing application for land, resolution of conflicts involving land through hearings, and overseeing headmen who act on his behalf. Ideally a chief should convene a land allocation board to assist the chief and induna in hearing applications and resolving disputes.

**Functions of a land allocation board
(adapted from Petauke District Land Alliance guidelines on land administration)**

Formation of a land allocation board	
The chief is responsible for establishment of one or more land allocation boards in the chiefdom; the number of boards depends on the geographical area of the chiefdom.	
FUNCTIONS	<ul style="list-style-type: none"> ▪ Advise Chiefs in all matters of land administration. ▪ Establish Land Fund. ▪ Control the allocation and cancellation of customary land rights by Chiefs or Traditional Leader. ▪ Decide on application for rights of leasehold. ▪ Create and maintain registers for land allocation, transfer and cancellation of customary land rights and leasehold. ▪ Perform any other duties which the Chief may assign them.
COMPOSITION	<ul style="list-style-type: none"> • One representative from the Traditional Authority. • One representative from NGOs. • One representative from each line ministry in the area. • Three women representatives in the area. • One representative from organized farming group.
TERM OF OFFICE	<ul style="list-style-type: none"> • Serve for three years. May be reappointed for two consecutive terms of three years.

The focus group discussions on the decision-making aspect of land tenure at a household level revolved around who made decisions regarding the use of the land. Specifically how were decisions made on what to plant and what to do with the harvest. For the members of Mpasi village, when separated by gender, both the male and the female focus groups said that the men held the final decision in deciding what to plant, but on the proceeds from the harvest they seemed to be some leeway.

On a higher level even men were at a disadvantage because of the centralized authority of the induna over land. This came out in discussion about conflict resolution where it was found that there was “a lot of conflict in regards to land” and both men and women felt the induna, as representative of the chief,



Herbert Mwanza, the induna of Mpasi village
PHOTO: ZAMBIA GOVERNANCE FOUNDATION

needed help in resolving land disputes. Community land boards or *bungwes* were seen as necessary by both men and women in Mpasi, who agreed that the induna needed help in resolving disputes as he could not be everywhere.

However both men and women when interviewed separately thought that women’s representation in such a committee should be limited. When asked about the gender composition of a hypothetical committee of seven people, invariably they gave the lesser representation to women. One male participant even amended his answer from four men and three women to only two women and five men, noting that, “women can

bring confusion.” Another point that both men and women agreed on is that they type of woman to be included in such committees once formed were either widows or married women, with men showing more preference for widows. When pressed further on what type of person was best for such committees, whether men or women, with the suggestion of young people one man retorted, “This is will be committee where wisdom is needed, there is no place for toddlers!”

Women living on customary land were disadvantaged in the decision-making process on several levels, at household, in the community and even among women preference was given to those whose “value” inherent in their relationship to men, i.e. they were married or had been married to a man. Thus a woman who was young or single effectively had no voice in land matters.

In the scheme, women were afforded the right to participate in the decision-making processes. Women, in practice, could be elected to land administration committees or even become satellite chairpersons. The participants of the focus group discussion actually highlighted cases of women being chairpersons of their villages. The discussion below demonstrates the paths available for women to participate in decision making;

Interviewer: How do you pick a chairman?

Woman 1: There are elections. The terms are for two to three years. When they reach two years we look at their performance and decide whether they should continue.

Man 1: For satellite chairman they also do elections and call all the villages to vote.

Interviewer: Can anyone vote? Women? Men?

Woman 2: Yes women can vote, in some villages women are also chairmen...like village seven and thirteen.

3.4 CONTROL

Control in this case extended beyond decision-making into the actual implementation of activities revolving around land use. This included the control of the proceeds from land. This tends to be the harvest in the traditional sense, as this is where men can take advantage over women even in the matrilineal system. This is because traditionally men are viewed as head of the household.

In Mpasi both men and women had control when it came to actually working on the land with women being more likely to go into the field at planting time. Though, when asked who decides what to do with the harvest, both men and women agreed that the women played a more important role in this aspect. This seemed to extend from the customs and cultural practice of women “taking care of the household.” Women then would be responsible for keeping part of the harvest for the household to eat, taking maize for example to the *chigayo* for grinding. Men also acknowledged that they could even divide monetary earnings from selling other crops with the women, but it was up to the women to ensure that all household items were purchased with that money.

Control also related to transferring control for a temporary period and who decided upon that process. Most villagers were aware of the “3-3” rule. This rule governed the number of years one could be away from their land before it is reassigned and the depth that their land rights terminate three meters, below the surface of the ground. This knowledge in particular was of interest as not one participant from the focus group could state where the rule came from but they were all aware of it.

Control in the case of the state seemed to be concentrated on the scheme manager. The participants of the focus group discussion narrated how the current manager took up his role in an acting capacity after the person appointed to the position refused to move to the resettlement area from Chipata. The manager dissolved the community structures, namely the committee of village chairpersons tasked with resolving land disputes, and instead instructed the community to approach him to resolve land conflict. This left the chairpersons with limited power or platforms to resolve disputes related to land. Furthermore, there seemed to be no common understanding from the focus group discussion participants what the role of the scheme manager was in relation to land tenure.

Interviewer: Does everyone here know the role of the scheme manager?

Woman 1: He is the one to teach us what we are supposed to do (in regards to land).

Man 1: Well I can say we only know “half-half” at times someone can hide.

3.5 THE PERCEPTION OF CUSTOMARY LAND CERTIFICATES AS A LAND GOVERNANCE INTERVENTION

One of the mechanisms used to strengthen security of tenure for women is the introduction customary land certificates. Petauke District is one of the districts where the process to implement customary land certificates with support from civil society organizations, namely Petauke District Land Alliance (PDLA), has begun. The discussion of access, control, decision-making, and ownership would not be complete

without discussing activities to enhance tenure that were already taking place within the study area. Thus a discussion on the activities to introduce customary land certificates is pertinent as it provides a backdrop to the discussions held with each community.

Theoretically, the concept of customary land certificates only seemed applicable to customary land where both men and women did not have strong tenure and could be displaced more easily. Initially the research was focused on gauging how open the rural communities on customary land were to the customary land certificates process. It was already known that some background work had been done by PDLA in raising awareness on certification and land tenure and that this would affect communities' perceptions.

The villagers in Mipasi village seemed particularly positive about the process they had engaged in with PDLA. When asked for their community maps that they had created (one by men and one by women) they were able to easily locate them and explain them fully. The maps were important to tools to assert the communal ownership on the land even if they had no legal backing – everyone agreed with what was on the map and that in itself was a deterrent to land related conflict.

Deeper discussion around the maps and customary land certificates process revealed an interesting aspect – the villagers were not as open to a land tenure system that was in conflict with their norms, in particular the patriarchal ones. Despite the Nsenga being a matrilineal tribe these inheritance customs often favored the men related to the women and not the women themselves.



An example of a customary land certificate
PHOTO: ZAMBIA GOVERNANCE FOUNDATION

4.0 RECOMMENDATIONS

The provision of recommendations in this report does not assume that the existing systems of land tenure are inherently flawed and need to change but rather builds on the communities' own identified areas of concern. It is important to note that there was much that was commendable in these communities and much must be done to maintain the practices that provide social cohesion and order. Recommendations can be made across three broad areas: information sharing, devolution of authority, and consideration of cultural norms.

4.1 INFORMATION SHARING

No single area completely lacked knowledge and this could be because of the engagement of both state and non-state actors in the dissemination of information about land governance. Many people had no firsthand knowledge of the documents that governed their right to land but could recite the key provisions (for example, the rule of three) even if they did not know which specific documents it came from. Thus land tenure was not inhibited by the lack of knowledge, but rather communities' inability to use this knowledge as a bargaining power in the face of a strong central power (scheme manager/induna) in local land governance. Thus a key recommendation in this area is to provide easy-to-read and access references for communities. This is not simply about providing documentation but perhaps tools that fit in the context like noticeboards and signs that reference laws and guidelines that govern land tenure.

4.2 DEVOLUTION OF AUTHORITY

In each instance there is a strong central role that appeared to resist devolution of power or creating structures to better allow communities' voice in land governance issues. In the village this was the induna who did not express an interest in forming a land board despite the communities' own willingness to be part of the board and ability to voice this to the interviewers in the presence of the induna.

Furthermore, the people living in the scheme were not that much better off than those in the village as their security of tenure was threatened by poor administrative process, lack of collective bargaining power, and limited access to centers of power.

A key recommendation in this vein is the establishment of structures that support a decentralized approach to land administration in these areas. This particular recommendation is supported by existing rules and guidelines that facilitate this process. Furthermore, there is an opportunity to bring the oversight of these processes closer to communities in the ongoing devolution process in Zambia that aims to transfer key functions and resources of the central government to provincial and district levels.

4.3 CONSIDERATION OF CULTURAL NORMS

While it was evident that the residents of both Mpsasi village and Village Three were open and even welcoming of both state led and non-state actor led interventions in land administration, there seemed to be a friction when these interventions did not align with cultural norms.

More effort to align with cultural norms are needed where possible, while still promoting rights recognition. For example it is important to recognize that men are the head of the household. As a result, promoting the desired behavior thorough this role, such as promoting that responsible heads of households empower their wives/daughters by providing access to land and including them in decision-making, may prove to be more acceptable than completely dismissing the norms. Thus a piecemeal

progression towards improving women's land tenure may succeed better than a complete removal of the current way of doing things.

It is also key to note that there is already an awareness of, if not acceptance of, best practices when it comes to balanced land administration and that formal practices are already influencing cultural norms. The case of the young man Fabian Mumbia and his strong urging of the women in his community to be more vocal about their own rights highlights this. The excerpt below highlights a trend where matrilineal systems are threatened by statutory law procedures.

And the pattern of inheritance was changing from maternal nephews having a claim to their deceased uncle's estate as that now goes to the surviving widow and children, mainly due to the introduction of the Intestate Succession Act, which was said to have had brought a lot of squabbles in families.

5.0 CONCLUSIONS

Land administration continues to be a complex issue in Zambia due to a dual system of tenure and the pervasiveness of traditional customs that hinder change. The actual case of land administration in Sandwe Chiefdom presents a snapshot of four dimensions of land tenure juxtaposing the matrilineal systems of inheritance to highlight how these complexities interplay in the real world. The portrait one finds is that while certain progressive notions such as gender equality have made their way to rural customary land settings, knowledge does not equal practice. Additionally even in statutorily managed areas, power dynamics may exist that disadvantage women more than men and thus “affirmative land administration” may need to be applied more stringently.

ANNEX I: FOCUS GROUP DISCUSSION

The aim of this activity is to get a collective history of the area and women’s role in decision-making and planning surrounding land.

FGD will be conducted with groups of 6-12 respondents. Separate groups will be held for men, women and mixed groups in each village.

Date	
Number of participants	
Location	
FGD Type :	
1. Mixed group	
2. Women	
3. Men	

Preamble: We understand many people in this village own land. Can you help us confirm what happens in this area when it comes to land?

- 1) Is everyone here from the Nsenga tribe?
 - a) What is the role of men in your community? (Probe for farming/cultivation)
 - b) What is the role of women in your community? (Probe for farming/cultivation)

[Probe to find out if land is owned collectively by families, individuals or both]

- 2) In general, how do people in this village acquire land?

[Describe in as much detail as possible the different ways in which people acquire land in this village]

- a) For each way to acquire land mentioned by the respondents, please probe to find out if the acquirer usually is the one who:
 - i) decides what to grow on the parcel?
 - ii) keeps produce grown on the parcel?
 - iii) keeps revenue generated from the parcel?
 - iv) decides who can and cannot use the parcel?
 - v) decides to sell the parcel?
 - vi) decides to rent the parcel?
 - vii) decides to give the parcel to someone else?

- 3) How does one acquire land for farming in your village? (Probe for different ways of obtaining land)
 - a) Who does this land belong to?
 - b) Can women own land on their own in this village?
 - c) In what cases can this happen?
- 4) How do you decide what to grow on your farm land?
 - a) What do you grow on your farm land?
- 5) Are there any cases where someone marries a spouse from outside this village?
 - a) Who owns the land in this case?
 - b) What happens if the woman is from outside of the village and the husband dies, can the woman stay on the land?
- 6) We also heard that with inheritance land, property goes to the children of a man's sister (his nephew) is this true?
 - a) What do you think of this system of inheritance that support the mother's side –does it benefit women?

Validation of formal land administration procedures

- 7) We understand there is a process for people have an issue with their land who do they see?
 - a) Do you feel this process is good enough? Why or why not?
 - b) How would you change this process?
- 8) Do people want to have any form of documentation for their land?
 - a) If not would you like to have documentation and why?
- 9) Have you heard of Traditional Land Holding Certificates?
 - a) Do you think these are a good idea? Why or why not.

Women and land: We would like to talk more about women and land in your community.

- 10) Are there women in your community who own/hold/use land without men?
 - a) Probe to find out the types of women (divorced, widowed, natives or from outside the area)
 - b) What do you think of these women?
- 11) In your view should women own land? Why or Why not?

(For women only group)

- 12) Do women feel disadvantaged in land access?
- 13) When can their land be taken away?
- 14) Is it taken away more from women?

15) What happens in the case of divorce... are these traditions changing?

16) What would you change about how people get land in your area?

End the discussion and thank all participants for their time.

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