

FOOD SECURITY RESEARCH PROJECT

Agricultural Consultative Forum/Ministry of Agriculture and Cooperatives/Michigan State University

Submission to the Committee on Agriculture and Lands Study on:

**“The status of customary land and how it affects the
rights of indigenous local communities”**

January 18, 2010

Study On The Status Of Customary Land And How It Affects The Rights Of The Indigenous Local Communities

The Food Security Research Project has looked at the five land issues that the honourable committee requested the project to give evidence-based input on the status of customary land and how it affects the rights of the indigenous local communities. We are pleased to submit our detailed input on the first three (3) issues outlined in your request. Unfortunately, we are not in a position to provide detailed evidence-based input on the last two (2) issues because we do not have sufficient information at this time.

We also submit additional background information for the Committee, in the form of FSRP Policy Brief Number 34 which summarizes considerable empirical information and analysis on broader land and poverty reduction issues.

The three issues examined in this submission are as follows:

1. Overview of the land tenure system in Zambia with an emphasis on whether there is equal recognition of the customary land tenure system and the leasehold tenure system
2. Status of rights of land holders and users under the customary land tenure system and whether it is desirable to retain the provision allowing the conversion of customary land into leasehold land;
3. Whether the rights of the local communities occupying customary land are taken into account when alienating land for farm blocks as well as for other large scale investments

A. Background

Historically, land has been perceived as an abundant resource in Zambia. However, land constraints are emerging in many customary farming areas. Evidence discussed below indicates that limited access to land within the customary areas is impeding the government's ability to achieve important poverty reduction and agricultural growth objectives. These constraints will become more acute with time as the rural population grows. These emerging trends coincide with heightened interest in converting customary land to state land for farm blocks as well as other large-scale investments. We therefore, deal with the key issues raised above in the context of how the goals of productive land use are integrated with broad-based agricultural development in Zambia.

The following key questions immediately arise:

1. What are the impacts on local communities of alienation of customary land for farm blocks, settlements and other large-scale investments?
2. Beyond the impacts on local communities, what are the broader costs and benefits of converting customary land into state leasehold land for development of farm blocks and other large-scale investments?

3. Can conversion of communal land to leasehold tenure be undertaken in ways that contribute to national policy objectives of agricultural growth, national food security, and poverty reduction?

Therefore, this submission first gives a brief review of the land tenure system in Zambia, and then a detailed discussion on how best to integrate the goals of productive land use and broad-based agricultural development in Zambia.

A. An Overview: Land Tenure System in Zambia

Two land tenure systems exist in Zambia: the Statutory (state) and Customary land tenure systems. Both customary and state land are vested in the president who gives consent to a person who wishes to sell, transfer or assign any land. These powers are delegated to the Commissioner of Lands.

State land can be leased for a period of 99 years with the provision for automatic renewal. Note that, any person who holds land under customary tenure may convert the holding to a leasehold (State Land).

Usually, tenure under customary lands does not allow for exclusive rights in land. No single person can claim to own land as the whole land belongs to the community. Land is deemed as belonging to members of the community for their own use (Republic of Zambia, 1995). It is a valuable heritage for the whole community. Customary tenure is not expressly defined in the Lands Act of 1995 but it provides for the recognition of customary tenure as a form of landholding in the country. Customary land is taken to constitute all land that was previously or before the commencement of the Lands Act referred to as Reserve land and Trust land.

Reserves and Trust Lands are now referred to as customary land and the system of landholding is referred to as customary tenure. In general however, land tenure describes the manner in which rights in land are held. It is defined by a broad set of rules, some of which are formally defined through laws concerning property while others are determined by custom. Tenure therefore, refers to control, or the way in which people hold, individually or collectively, rights to land and all or part of the natural resources upon it.

In administering customary land, Headmen and Chiefs play an important role of ensuring that the land in their localities is administered for the benefit of their subjects. These are known to have authority to administer the unwritten customary law based on their respective tribal customs and traditions.

It should be pointed out that under customary land tenure, women in Zambia do not enjoy the same rights to land as men. Cultural beliefs have not ceased to sideline women in terms of access to land although several attempts have been made to sensitize communities on the importance of ownership of land by women. Laws on customary inheritance have been a major determining factor to accessing land by women. The Zambian land legislation has formally recognized the importance of land ownership by women and has allocated 30% of state land for women. However, customary law remains silent on the matter.

It should be noted that customary land could be leased and once land in a customary area is converted into leasehold tenure, the Chief no longer has the authority or control over the administration of that land. On the basis of this authority, it can be restated that once land has

been converted from customary to leasehold tenure, it ceases to be subject to customary law and the law on leasehold tenure takes over in determining the rights of the lessee.

B. Impacts On Local Communities Resulting From Alienation Of Land For Farm Blocks And Other Large-Scale Investments

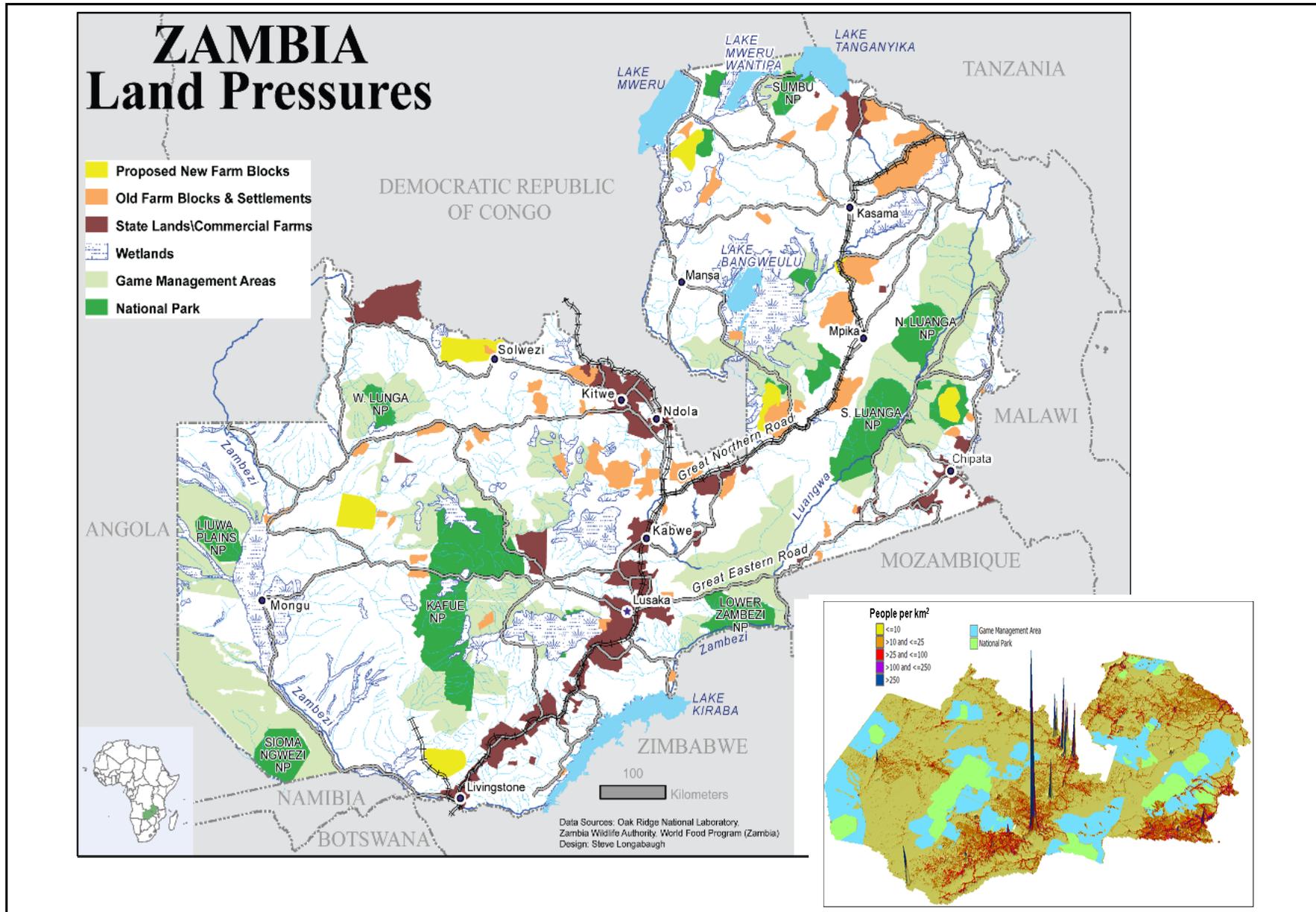
There is a common belief that land is abundant in Zambia. Yet CSO surveys indicate that there are major land pressures in all the communal land areas of Zambia and especially in Southern and Eastern Province. CSO surveys indicate that in many customary areas, unallocated land appears to be unavailable, particularly in areas close to urban areas and district towns, and along major highways. By 2008 marketing season, the national average farm size, including cultivated and fallow lands, for small and medium-scale farmers in Zambia declined to 1.9 hectares, down from 2.1 in 2001. Figure 1 shows the dispensation of land in Zambia. After accounting for state lands, commercial farms, wetlands, game management areas, national parks, and proposed new farm block schemes, it becomes clear that the potential for expansion of customary farm land is not as great as commonly perceived. Moreover, the inset map shows that Zambia's rural population is relatively densely clustered in certain areas, such as the Eastern Province plateau around Chipata, the areas of Southern Province near the line of rail and the areas surrounding the main roads in Northern Province. In fact, the main road network in Zambia can be clearly seen by the concentration of rural population in Figure 1.

Still, there does remain considerable under-utilized land in Zambia, much of it under customary tenure. Yet the economic value of this land is low because public investments in infrastructure and services have yet to be made to attract settlement into these areas. These basic investments include feeder roads linked to trunk highways, health care facilities, schools, electrification, and tax incentives for agribusiness investment. Important investments of this nature have been made through the Resettlement/Settlement Programmes of the Office of the Vice-President. But these have been relatively modest. Hence, the apparent paradox of inadequate access to land for many rural households in a country of low population density is partially reconciled when taking into account that economically viable arable land requires at least some degree of access to basic services, water, road infrastructure, and markets. The basic public investments to make settlement economically viable have not yet been made in many areas of Zambia.

This brings to the fore the need to distinguish between the total stock of unutilized land in Zambia and the stock of land that could feasibly and productively be utilized given available settlements, roads, health facilities and markets. In other words, much land in Zambia remains unutilized because it cannot feasibly support commercially-oriented farming systems due to its current remoteness, distance from markets, and lack of basic services to make it hospitable for migration and settlement.

Transfer of land from customary to state tenure is seen as an option to develop currently unutilized land through farm blocks and other large-scale investment. Views are divergent on this matter. Opposing views see such land transfer as a threat to the authority of chiefs and a disadvantage to the poor. Chiefs would lose power and the poor would lose access to land. Supporting views cite increased tenure security for those obtaining land title and reduced land conflicts as advantages. Many stakeholders also call for a national land audit to better inform issues of land availability and use/underutilization.

Figure 1: Land Use in Zambia (draft for review)



Growing land pressures in customary areas will impede achievement of national policy objectives especially for future generations, and the transfer of land from customary to state land is likely to exacerbate these land pressures in customary areas. Depending on future land allocation policy, access to good quality land with a market potential may become increasingly beyond the reach of many small-scale farm households, making it more difficult to achieve important national policy objectives of poverty reduction and smallholder-led agricultural growth.

C. Broader Consideration Of Strengths, Weaknesses, And Impacts Of Converting Customary Land Into State Leasehold Land

This section considers the broader strengths and weaknesses of three land development models: (a) keeping as much land as possible under customary tenure and concentrating public funds on developing the customary areas to make them more productive; (b) opening up new land for development by independent private investors; and (c) transferring land from customary to state land for multi-purpose farm block development. None of these options are strictly mutually exclusive, but land utilized under one arrangement cannot be utilized under the others. These options could also be expanded considerably if GRZ were to consider an option called for by many stakeholders to “introduce and register simple, affordable and secure “certificates of title” to be issued by traditional authorities under customary tenure to benefit rural communities.”¹

The strengths, weaknesses, and key issues associated with these three land development models are summarized in Table 1.

One of the main arguments in support of a smallholder-led approach to development is that except for a handful of city-states, there are virtually no examples of mass poverty reduction since 1700 that did not start with broad-based productivity growth on small family farms.

Farm blocks could potentially help to reduce rural poverty by providing a way for land-constrained smallholders to migrate to farm blocks. But farm blocks cannot be a substitute for development of existing smallholder areas. And there are major management challenges and risks associated with public funding of farm blocks: the potential for patronage, mismanagement, highly concentrated benefits, and little impact on poverty reduction. In addition, every Kwacha spent by the state on farm blocks is a Kwacha foregone that could contribute to the development of customary lands. It is sometimes argued that because farm blocks are located in remote and sparsely populated areas, their development does not take away resources from smallholder agriculture, but in fact the most important trade-offs are likely to be foregone public investments that otherwise could be devoted to developing customary lands.

The farm block plans also raise many issues regarding the “rules of the game” and who will determine them. For example, what will be the criteria for selecting investors? What would investors need to provide in return? What would be the terms and conditions over how the proceeds would be shared? In order to attract serious and talented investors, it is likely that

¹ Getting Agreement on Land Policies; The Process, Challenges, and Lessons Learnt: Land Policy Review Process in Zambia. 2005. Zambia Land Alliance. http://www.zla.org.zm/media/getting_agreement.doc

Table 1. Potential strengths, weaknesses, and key issues regarding alternative approaches to land development in Zambia

	ENHANCED SMALLHOLDER DEVELOPMENT APPROACH	INDEPENDENT PRIVATE INVESTMENT APPROACH	MULTI-PURPOSE FARM BLOCK APPROACH
Description	<ul style="list-style-type: none"> - Increase public investments to support productivity growth in customary areas, without creating farm blocks: electrification, road development, agronomic and seed research and extension systems, (potentially) water for irrigation, water for drinking 	<ul style="list-style-type: none"> - Lease or sell state land for development by public or private investors, including foreign capital investors 	<ul style="list-style-type: none"> - Convert land from customary to state land for development of farm blocks - Make heavy public investments in electrification, road development, agronomic and seed research and extension systems, (potentially) water for irrigation, water for drinking - Promote large-scale investment in the blocks - Also promote resettlement of smallholder households to farm block areas
Potential Strengths	<ul style="list-style-type: none"> - public funds reserved for smallholder-led development and poverty reduction goals - Does not require alienation of customary land, thus mitigating future land pressures in customary areas and potential conflict; - Increases the productivity of land where smallholder farmers already reside, avoiding direct and indirect resettlement costs; - Likely much lower cost per household assisted, compared to re-settlement/ farm block schemes; - Improves access to markets for remote communities; - likely to have greatest positive impact on rural wage employment opportunities, overall rural health and poverty reduction. 	<ul style="list-style-type: none"> - Private investors contribute most of the development costs and bear most of the risks. - Minimizes planning, management and administration demands on GRZ compared to implementation of complex farm blocks; - May increase demand for year-round labor; - Facilitates foreign direct investment by providing security of tenure through lease or title contracts. 	<ul style="list-style-type: none"> - If done well, concentrates a critical mass of infrastructure, services, and population in specific areas, leading to economies of scope: traders, input dealers, and agricultural service providers could be attracted by the size of the market; - Highly visible, providing political benefits to government; - Facilitates contract farming arrangements between large-scale investors and smallholders, thus potentially improving performance of input and credit markets for smallholder farmers re-settled on farm blocks.
Potential weaknesses	<ul style="list-style-type: none"> - High population densities in some areas constrain land expansion; - Government may be constrained from making some investments (e.g. irrigation canals) on land not under state leasehold. 	<ul style="list-style-type: none"> - There may be little spillover benefits for smallholder agriculture; - May be politically unpopular, seen as “land grabs” by foreigners; - Some loss of local control if sold to foreign investors; - Reduces available land for future generations of smallholder households; - Depending on crop production focus, new large-scale farms may adversely affect smallholder agriculture by affecting crop market prices. 	<ul style="list-style-type: none"> - Very high cost to state budget; compete against funds for developing smallholder areas where most of the rural population resides - Many opportunities for rent seeking by public officials; - Heavy demand on state planning and implementation capacity. - If not developed in collaboration with private sector investors, could end-up an isolated outpost of relocated smallholder farmers; - High transactions costs related to defining terms and conditions, ensuring transparency; - Farm blocks pose significant management challenges and have weak track record for success in contributing to poverty reduction;
Key issues	<ul style="list-style-type: none"> - What if any specific factors prevent government from making a full range of investments on customary land? 	<ul style="list-style-type: none"> - On what basis would investors be recruited and selected? - how would land lease terms be determined? - how would proceeds from large-scale farm investment be allocated? - How can large-scale private investment be structured to support rather than compete with local smallholder farmers? - What kinds of capacity building is needed to make this approach effective? 	<ul style="list-style-type: none"> - Does the state have the planning and implementation capacity to do this?; - Is the state committed to developing the blocks in active collaboration with private sector investors?; - Are these investors committed to working with smallholders as employees and citizens whenever economically feasible? - What kinds of capacity building is needed to make this approach effective?

Note: descriptions are illustrative; there are many potential variations within each of the three alternative land development approaches.

the private sector would be allowed a hand in setting up the rules of the game. Will this be allowed?

Meanwhile, stakeholders should not lose sight of the enormous work that the **re-settlement program** being implemented by the Department of Re-settlement in the Vice-president's Office has done in contributing to the increase in the number of small-holder farmers on land with security of tenure. The re-settlement program is based on the principles of equity and growth for all citizens who are willing to use land for development. Through re-settlement programs, customary land is converted to statutory (leasehold) tenure thereby making it easy for land holders to access the much needed financial resources for development. Currently, this program has 80 settlements throughout the country.

Recent government land documents reflect the view that land can most productively be developed by converting land from underutilized customary land into state land so that it can be turned into highly utilized commercial farmland through farm blocks and other large-scale investment (Fifth National Development Plan 2006-2010, GRZ, 2006). The rationale for moving land from customary tenure arrangements to state-allocated and privatize-able land is to facilitate state investment in agricultural development. However, it is important to examine this view more carefully. Alternatively, customary land could be developed and made more productive through state investment in customary land. The vast majority of Zambia's rural population will continue to reside in customary areas even with massive resettlement efforts – why not make these areas the focus of public investment to agriculture?

Current discussions about focusing agricultural investment and intensification on state land may reflect an underlying assumption that the state is in a better position to allocate land in an equitable, pro-poor, and pro-growth manner than traditional authorities. However, many stakeholders in Zambia argue that this would be a highly questionable assumption. In the end, the ability to pursue a land policy that allows for equitable and pro-poor agricultural productivity and income growth will require the commitment of both state and traditional leaders to principles of equity and access to land for the millions of smallholder farmers in Zambia.

A policy environment conducive to business development can also attract new capital into newly settled areas with good agricultural potential. This public goods approach to poverty alleviation is an option to consider as an alternative or perhaps a complement to the farm block concept, in which land would be allocated in large tracts to commercial business entrepreneurs, but with uncertain effects on the poverty-related land constraints being faced by 25% or more of Zambia's rural population.

A second and complementary step would involve enlisting the support of paramount and local chiefs to contribute to national poverty reduction goals through the allocation of unutilized land to new small and medium-scale farmers. Incentives could be provided by the state to chiefs to assist in the allocation of unutilized land under their control in 5-10 hectare lots to smallholder households. It is likely that land lots of this size would discourage wealthy individuals and mainly attract poor and currently land-constrained families. However, acquiring land of this size would almost certainly enable currently land constrained households to increase their income from farming, add to agricultural growth, and contribute to national poverty reduction objectives.

D. Can Conversion Of Communal Land For Large-Scale Development Contribute To National Policy Objectives?

What is the right mix of policies and public investments to improve services (e.g., roads, electricity, health and sanitation, water, irrigation) in areas where smallholder farmers have already settled vs. sparsely settled customary areas (remaining explicitly as customary land for future generations of smallholders) some of which might be the target for farm blocks and other large-scale investment? Some land might also be the target for additional settlement/resettlement schemes.

Based on studies evaluating the returns to agricultural investments in Africa and past history of resettlement, it is likely that the returns to public funding to agriculture are likely to generate the highest returns to agricultural growth, national food security, and poverty reduction if the lion's share of public funds are allocated to the development of existing customary areas and development of under-utilized customary areas for smallholder farming (including public funding for research and extension to help raise sustainable smallholder productivity), and a relatively minor share of total public funds for development of farm blocks. Some balance between the two approaches is most likely desirable *if* substantial private sector capital can be leveraged into it.

To achieve the aforementioned, will most likely require more receptivity to private sector involvement in the design of the schemes up front. Since the most pressing trade-offs are likely to be in the use of public funds, to the extent that farm blocks and/or other large-scale investments can be achieved using mainly private capital, this will greatly reduce the magnitude of the trade-offs. But still many major questions remain, which might call for a pilot approach in one or two areas and a comprehensive assessment of their performance before proceeding with the full set of farm-block plans.

E Concluding Remarks

From the submission given above, it is clear that a lot of work and stakeholders meetings need to be undertaken in order to strike a mutually beneficial balance between customary land tenure and leasehold land tenure. It is also obvious that getting land policy correct is not a panacea for smallholder agriculture. Issues related to productivity, competitiveness, research, extension, development, sustainability, etc. need to be addressed in a holistic manner in order to achieve the government goals of poverty reduction and agricultural growth especially amongst smallholder farmers.