

# TECHNISCHE UNIVERSITÄT MÜNCHEN

Lehrstuhl für Bodenordnung und Landentwicklung  
Institut für Geodäsie, GIS und Landmanagement

## **Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts**

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## Abstract

Zambia is one of the countries in Africa with a high frequency of land conflicts. The conflicts over land lead to tenure insecurity. In response to the increasing number of land conflicts, the Zambian Government has undertaken measures to address land conflicts, but the measures are mainly curative in nature. But a conflict sensitive land governance framework should address both curative and preventive measures. In order to obtain insights about the actual realities on the ground, based on a case study approach, the research examined the role of existing state land governance framework in improving tenure security in Lusaka district, and established how land conflicts affect land tenure security.

The research findings show that the present state land governance framework is malfunctional which cause land conflicts and therefore, tenure insecurity. The research further reveals that state land governance is characterised by defective legal and institutional framework and inappropriate technical (i.e. land use planning, cadastre and registration, and land allocation procedure) and operational (i.e. funding, human resource and equipment) issues. According to research findings, presently curative measures (though dysfunctional) exist but there are no preventive measures at all. Thus, the present land governance framework is unable to prevent state land conflicts and subsequently tenure insecurity. As a result there is a high incidence of state land conflicts and high degree of tenure insecurity in Lusaka District. Land conflicts and tenure insecurity have implications such as loss of life and damage to property, high litigation costs, decrease food production, deny the government to raise revenue, and hinder investment.

In order to address the prevailing problems, the study suggests a framework for improving state land governance in Zambia and suggests the preconditions necessary to adopt the framework in Zambia in particular and in other African countries in general.

**Keywords:** Land governance, Land Management, tenure security, land conflicts, state land, land rights, Lusaka, Zambia

## Zusammenfassung

Sambia gehört zu den Ländern in Afrika mit den meisten Landkonflikten. Diese haben zur Folge, dass es Unsicherheiten darüber gibt, wem die Grundstücke gehören. Um das Problem der wachsenden Zahl dieser Konflikte zu lösen, hat die sambische Regierung eine Reihe von Maßnahmen eingeleitet, die zur Lösung beitragen sollen; jedoch sind diese Maßnahmen meistens nur kurativ. Ein Rahmen von wirklich konfliktlösenden Maßnahmen zur Regelung solcher Grundstücksprobleme müsste beides, kurative und vorsorgende, Eingriffe enthalten. Um einen Einblick in die tatsächlichen Verhältnisse zu gewinnen, basierend auf einer Fallstudie, hat diese Untersuchung die Rolle des vorhandenen Regelwerks zur Verbesserung der Absicherung des Landbesitzes im Bezirk Lusaka analysiert und herausgearbeitet, wie Landkonflikte die Landbesitzsicherheit beeinflussen.

Die Ergebnisse der Untersuchung zeigen, dass das gegenwärtige Regelwerk Funktionsmängel aufweist, was bedeutet, dass Konflikte über Landbesitz entstehen und als Folge davon der Landbesitz unsicher ist. Die Untersuchung ergibt ferner, dass die staatlichen Landregelungen in rechtlicher, institutioneller wie auch in technischer Hinsicht defizitär bzw. unangemessen sind (z.B. was die Planung der Grundstücksnutzung betrifft oder die Katasterregelung, die Registrierung und die Verfahren zur Zuweisung von Landbesitz); dies gilt auch für die Durchführung (z.B. im Hinblick auf Finanzierung, Beschäftigung und Ausrüstung). Die Ergebnisse der Untersuchung zeigen, dass es derzeit zwar kurative Maßnahmen gibt (wenn diese auch nicht funktionieren), aber überhaupt keine vorsorgenden Regelungen. Dadurch ist das gegenwärtige Regelwerk weder in der Lage, Konflikte über staatlichen Grundbesitz zu verhindern noch imstande, die Sicherheit des Landbesitzes zu gewährleisten. Als Folge davon gibt es im Bezirk Lusaka eine große Zahl von Konflikten über Grundbesitz und dementsprechender Unsicherheiten. Konflikte über Land und Unsicherheit, was den Landbesitz betrifft, haben zur Folge, dass Menschen ihr Eigentum und ggfls. Leben verlieren; all dies führt zu hohen Prozesskosten, zu verminderter Lebensmittelproduktion, zu reduzierten Steuereinnahmen des Staates und zur Behinderung von Investitionen.

Um die vorherrschenden Probleme zu lösen, schlägt diese Studie ein neues Rahmenwerk für die Verbesserung der Grundstücksregelungen in Sambia vor. Sie stellt die Vorbedingungen dar, die nötig sind, um ein solches Regelwerk in Sambia im Besonderen und in Afrika im Allgemeinen zu schaffen.

**Stichworte:** Grundbesitzregelungen, Sicherheit des Landbesitzes, Grundstückskonflikte, Staatsgrundstücke, Rechte an Grundstücken, Land Governance, Land Management, Lusaka, Sambia

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## List of Acronyms

ADB:	Asian Development Bank
AfDB:	African Development Bank
ARLPI:	Acholi Religious Leaders Peace Initiative
AU:	African Union
CDC:	Center for Disease Control
CDKN:	Climate and Development Knowledge Network
CFHH:	Civic Forum on Housing and Habitat
CIA:	Central Intelligence Agency
CLGF:	Commonwealth Local Government Forum
CSO:	Central Statistical Office
DILAPS:	Dar es Salaam Institute for Land Administration and Policy Studies
ECA:	Economic Commission for Africa
FAO:	Food Agriculture Organisation
FDC:	French Development Cooperation
GLTN:	Global Land Tool Network
GTZ:	German Agency for Technical Cooperation
IBP:	International Business Publications
ICN:	International Competition Network
IDP:	Integrated Development Plan
IDS:	Institute of Development Studies
IFAD:	International Fund for Agricultural Development
IGS:	Institute of Governance Studies
IIED:	International Institute for Environment and Development
ILC:	International Land Coalition
KCC:	Kitwe City Council
LEI:	Land Equity International
LGAZ:	Local Government Association of Zambia
LRRRI:	Land Rights Research and Resources Institute
MLGH:	Ministry of Local Government and Housing
MLNREP:	Ministry of Lands, Natural Resources and Environmental Protection

MMD:	Movement for Multi-party Democracy
MRC:	Mekong River Commission
NAZ:	National Assembly of Zambia
NHP:	National Housing Policy
PCB:	Prevention of Corruption Bureau
PF:	Patriot Front
PREM:	Poverty Reduction and Economic Management
SCC:	Swedish Cooperative Centre
SSWM:	Sustainable Sanitation and Water Management
TFILA:	Task Force on Illegal Land Allocation
TILG:	Telelaws International Legal Guide
TIZ:	Transparency International Zambia
UBOS:	Uganda Bureau of Statistics
UNECE:	United Nations Economic Commission for Europe Commission
UNESC:	United Nations Economic and Social Council
UNESCAP:	United Nations Economic and Social Commission for Asia and the Pacific
UN-Habitat:	United Nations Human Settlements Programme
UNIP:	United Nation Independence Party
URI:	United Religions Initiative
URT:	United Republic of Tanzania
USAID:	United States Agency for International Development
ZBPI:	Zambia Bribe Payers Index
ZLA:	Zambia Land Alliance

## Measurements and Equivalents

1 Hectare (ha)	10,000 m <sup>2</sup>
1 Square kilometre (km <sup>2</sup> )	1,000,000 m <sup>2</sup>
1 United States Dollar (US\$)	10.11 Zambian Kwacha (ZMW) [as at 15 <sup>th</sup> August 2016]
1 Euro (EUR)	10.44 Zambian Kwacha (ZMW) [as at 15 <sup>th</sup> August 2016]

## Zambia's Geographical Indicators

Latitude 15° 00' S

Longitude 30° 00' E

Altitude: (Minimum) 329 meters / (Maximum) 2,170 meters

Total surface area 752,614km<sup>2</sup>

Area under land 740,724km<sup>2</sup>

Area under water 11,890 km<sup>2</sup>

Temperature 10 - 35° C

Rainfall 500 - 1800 mm/year

## **Glossary of Terms**

Corruption:	The misuse of entrusted power for private gain.
Land access:	Opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of recreation and rest.
Land Conflict Curative Measures:	Using land conflict resolution mechanisms (e.g. courts) to resolve land conflicts.
Land Conflict Preventive Measures:	Having a well-functioning legal and institutional framework as well as appropriate technical and operational issues to prevent land conflicts.
Land delivery:	The initial grant or assignment of rights over land, usually green-fields, either by government edict or via voluntary exchange for use, development or other purposes (Musole, 2007).
Land governance:	The rules and structures through which decisions regarding access to land and securing rights to that land are made and implemented.
Land policy:	Guidelines or rules that will state how land will be governed in the country.
Land rights:	Socially or legally recognised entitlements to access, use and control areas of land.
Land tenure security:	The certainty that an individual's rights to land will be recognised by others and protected in cases of specific challenges.
Land tenure:	The way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land.



# Chapter One: Introduction

*“Good Governance is perhaps the single most important factor in eradicating poverty and promoting development”* Kofi Annan- Former UN Secretary-General (cited in UNESCAP and UNDP, 2006, p.1)

## 1.1 Tenure Security and Land Governance: African Context

Security of tenure is the certainty that a person’s rights to land are recognised by others and protected in case of specific challenges (FAO, 2005, p.22; Herrera and Guglielma da Passano, 2006, p.28; Palmer et al., 2009, p.34). The term ‘person’ in the definition does not only mean a single person but could be a company, organisation, family or a community. In this regard, tenure security means a single person, company, organisation, family or a community should enjoy rights (use, income, manage, transfer, exclude, and compensation) over land without any disturbance. In other words, land tenure security is based on the security (secure land rights) of the holder of land and the respect for his or her ownership as long-term and inviolable, whether it is held individually or used by a collective or community (ILC, 2015). Moreover, the concept is not limited to only formal rights people have in land holdings in form of statutory tenure, but security of tenure is also attainable through arrangements under customary law (Durand-Lasserve and Royston, 2002), which largely is the case in most African countries.

Secure land rights (tenure security) are very crucial to achieving development objectives, whether from a rural, urban, regional or national level (Chigbu et al., 2015). Literature abounds with various reasons why secure land rights are very crucial. Secure land rights;

(i) increase investment incentives. They increase the incentives of land users to invest labour and capital to develop, improve and maintain properties such as residential, commercial, industrial and agricultural, and the ability to use land (and improvements if any) as security for loans eases credit access, something that help them make such investments (Deininger, 2003; Roth and McCarthy, 2013; UN-Habitat, 2008). Some studies have reported a doubling of investment on land with secure tenure with figures reported to be between 30 and 80 percent higher than for land where there is a higher probability of losing it (Deininger, 2003), (ii) reduce the time and resources individuals have to spend trying to secure their land rights, thereby allowing them to invest these resources elsewhere (Deininger, 2003; Palmer et al., 2009). If land rights are poorly defined, individuals and entrepreneurs will be compelled to

spend valuable resources on defending their land (in the form of developing or maintaining boundary marks, fencing, etc.), thereby diverting effort from other purposes such as investment (ibid),

(iii) increase agricultural productivity which in turn lead to agricultural growth, food security, and poverty reduction (Anseeuw et al., 2012; CAPRI, 2006; DFID, 2004; IFAD, 2006, 2015; ILC, 2010; Oxfam, 2015; Palmer et al., 2009). There is widespread evidence that, whether a tenure system is communal or individual, freehold or leasehold, farmers are more likely to invest in their land – and achieve productivity gains – when they have secure land rights (DFID, 2004). Moreover, farmers are much more likely to invest in sustainable agricultural practices, such as soil conservation and agroforestry, if they have secure rights to land (Kirk and Nguyen, 2009a, 2009b),

(iv) improve housing services and living conditions for marginalised groups (UN-Habitat, 2015),

(v) enable sustainable use of land. Security of land rights has been shown to provide landholders with greater assurance that they will be able to enjoy the fruits of their labour, thus encouraging them to manage land in a sustainable fashion (Besley, 1995),

(vi) increase government revenue from land based taxes. As explained earlier, providing security of tenure increases investment in properties such as residential, commercial, industrial and agricultural, and this in turn enable government taxation systems to increase public coffers for undertaking infrastructure development (i.e. roads, hospitals, schools, water and electricity) and public service delivery (Roth and McCarthy, 2013), and

(vii) promote social stability by reducing uncertainty over land (UN-Habitat, 2008).

In sum, secure land rights are a firm springboard for economic growth, poverty reduction, social stability, and sustainable resource use (Giovarelli et al., 2013; GLTN/UN-Habitat et al., 2014; Roth and McCarthy, 2013; UN-Habitat, 2008).

Despite their importance as shown above, securing of land rights is still a major challenge in most African countries. This is confirmed by literature review which shows that many African countries have a high degree of tenure insecurity (see GLTN/UN-Habitat et al., 2014; IFAD, 2015). Tenure insecurity according to Arko-Adjei (2011) in Africa is caused by haphazard and unregulated land development, as a result of a change in land use from agricultural to residential use; illegal and informal land transactions; and illegal land occupations and the proliferation of informal settlements. The other causes of tenure

insecurity are land grabbing which is a big challenge for African countries because of increased interest by foreign agricultural investors to acquire massive pieces of land in rural Africa (Anseeuw et al., 2012; Cotula et al., 2009; de Schutter, 2011; Friis and Reenberg, 2010; Graham et al., 2011; Kachika, 2010; World Bank, 2011), and land conflicts that impede these countries development (Arko-Adjei, 2011; AU et al., 2010, 2011; GLTN/UN-Habitat et al., 2014; IFAD, 2006; Kironde, 2009; LRRRI, 2009; Mwesigye, 2014; Peters, 2004; Rugadya, 2009; UN-Habitat, 2010; Yamano and Deininger, 2005). So, compellingly, one is prompted to ask, why are these causes of tenure insecurity still prevailing? Weak land governance is identified as one reason why these causes of tenure insecurity still persists (see Bruce and Holt, 2013; Byamugisha, 2013; ECA, 2004; Kagwanja, 2016; Mathieu, 2011; Munzerere, 2013; Rukuni, 2016; Zakout et al., 2006).

In order to understand the concept of weak land governance, the term land governance has to be defined. Literature review shows that the term land governance came into existence in the 1980s. In spite of the term being in existence for more than three decades, there is no agreed-upon definition for it. This study therefore refers to land governance as “*the rules and structures through which decisions regarding access to land and securing rights to that land are made and implemented*” (adapted from Deininger et al., 2012; FAO, 2012). Rules for land governance include laws, policies, regulations, bye-laws, procedures, customary or traditional practice and customs, as well as hybrid practices that draw on both “formal” and “informal” or “traditional” rules and procedures (Palmer et al., 2009). On the other hand, structures for land governance include the executive, parliament, the judiciary, public land agencies, traditional councils, professional bodies, to mention a few (Palmer et al., 2009).

In most African countries land governance is characterised by among other things; insufficient or inconsistent legal provisions, many different legal frameworks governing land and competing with one another, low levels of implementation, over-bureaucratized centralised institutions, lack of clear hierarchy or other form of co-ordination amongst the different land institutions, lack of human resources/technical expertise and finance, corruption due to poor remuneration of civil servants and lack of rule of law, high cost for land services only accessible to the rich in society, insufficient information to the public, lack of transparency, and lack of responsibility and accountability (Bell, 2007; Cotula et al., 2004; Djeroh and Ojibo, 2010; EU Support to the Land Policy Initiative, 2009 cited in Van Der Zwan, 2010; Mathieu, 2011; GIM International, 2006; McAuslan, 2007; Wehrmann, 2008;

Zimmermann, 2006). These characteristics denote weak land governance. The main reason for the foregoing predicament is low political will and commitment by African governments (EU Support to the Land Policy Initiative, 2009 cited in Van Der Zwan, 2010).

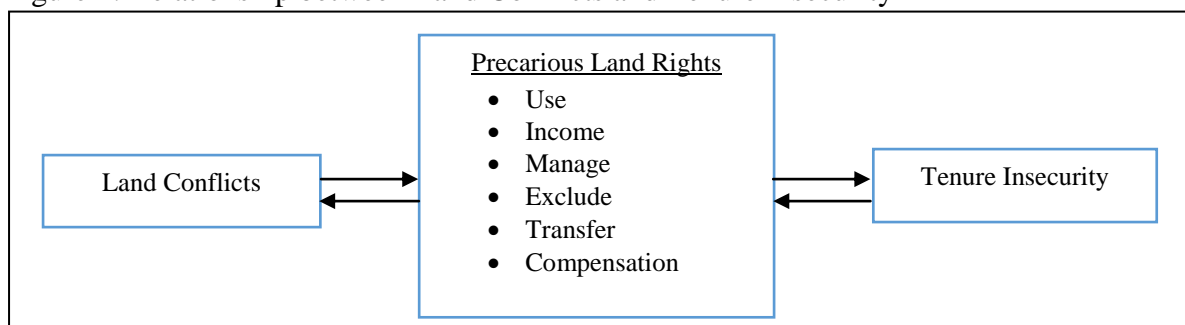
In the face of this problem, in the past two decades, some African countries have undertaken land sector restructuring with the view of improving land governance. Despite this restructuring, literature review shows that limited results have been achieved (see Anseeuw and Alden; 2010; AU et al., 2010, 2011; Burns, 2007; ECA, 2004; Van Der Zwan, 2010). This implies that there are still substantial gaps in the governance of the land sector in most African countries.

## 1.2 Land Conflicts and their Influence on Tenure Security

### 1.2.1 Land Conflict – Tenure Security Interrelationship

Before discussing the land conflict - tenure security situation in Zambia, the meaning of land conflict and its link to tenure (in)security is worth understanding as the interrelationship between these two concepts (land conflict and tenure [in]security) is fundamental to this study. A land conflict can be defined as a “social fact in which at least two parties are involved, the roots of which are different interests over the rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it” (Wehrmann, 2008, p.9). A land conflict, therefore, can be understood as a misuse, restriction or dispute over land rights (ibid). So, whenever there is a conflict over land rights, tenure insecurity arises because these rights are precarious, due to the risk of dispossession by actions of other individuals, communities or the state (adapted from USAID, 2005). Figure 1 illustrates the relationship between land conflicts and tenure insecurity.

Figure 1: Relationship between Land Conflicts and Tenure Insecurity



Source: Author

The figure shows that where there are land conflicts, rights over land may not be practiced and this leads to tenure insecurity. On the other hand, tenure insecurity leads to weak land rights and subsequently land conflicts. The relationship between land conflicts and tenure security is further elaborated in chapter two.

### 1.2.2 Land Conflicts and Tenure Insecurity in Zambia

Zambia is one of the countries in Africa with a high incidence of land conflicts. According to Chitonge and Mfuno (2015), Oakland Institute (2011), and Tygesen (2014), land conflicts in Zambia are occurring with greater frequency. This was also confirmed by the Acting Chief Justice (Lombe Chibesakunda), as she swore in members of the Lands Tribunal on 23 February 2013. She indicated that the country had recorded a huge number of conflicts on customary and state land (Zambian Reports, 2013). In addition to the high occurrences of land conflicts, some conflicts have degenerated into violence where people have been injured or even killed as well as property being damaged. Table 1 shows examples of land conflicts reported in the media between 2013 and 2016.

Table 1: Examples of Incidences of Land Conflicts

Name of Media	Date	Land Conflict Details
Muvi	09 December 2016	Solwezi Town Clerk (Venture Kafula) has warned over Five Hundred residents of Humphrey Mulemba villa in Solwezi (North Western Province) who have built on land belonging to Zambia Air Force to vacate or face demolition.
Muvi	29 November 2016	Stakeholders in Kabwe (Central Province) have expressed concern at the delay by law enforcement agencies to bring to book people behind the illegal allocation of Mpima graveyard in which developers exhumed human remains with impunity.
Daily Nation	10 November 2016	A Chinese national has demolished structures on land being developed by four Zambians in Ndola District, Copperbelt Province. The four Zambian developers sitting on a two-hectare piece of land said the destroyed properties were valued at over US\$ 60,000.00. A Chinese national in the company of police officers approached the piece of land with a front end loader and started demolishing three semi-detached blocks of flats and concrete block boundary walls. Both the Chinese national and the four Zambians were claiming ownership of the land. >> p.6

Muvi	24 October 2016	Residents of Zombe village in Lusaka West (Lusaka District) have maintained that they will not leave the land despite a 15-day ultimatum given to them by government. On 21 October 2016, government through the Minister of Lands, Natural Resources and Environmental Protection (Jean Katapa) issued a fifteen day grace period for over twenty families whose houses were demolished by the state police to vacate Zombe village before police officers can be unleashed on them. The residents, who have been spending nights in the cold for the past three weeks, have been accused of having illegally settled on land belonging to Office of the President.
Muvi	20 October 2016	Land conflicts in the country have reached crisis levels.
Muvi	17 October 2016	Settlers of Lusaka's Dolomite area (Lusaka District), whose structures were demolished by a local investor, have marched to the Patriotic Front-PF (ruling political party) Secretariat in protest against what they are calling unfair treatment. Protestors who have been claiming ownership of the land, say the PF party leadership is the one which facilitated their relocation from Maaloni area in Lusaka West Mumbwa Road to Dolomite area. Early this year, an investor evicted and demolished over 800 houses in Maaloni area where the settlers initially settled before being relocated to Dolomite area.
Daily Nation	12 October 2016	Over Three hundred and fifty one people have sued the Chongwe District Council and the Attorney General, demanding an order that the defendants make them legal owners of various plots on the former quarantine land of Silverest. The plaintiffs stated that Chongwe District Council and the Commissioner of Lands seem not to be attending to the production of legal documents in respect to their individual plots.
Muvi	30 September 2016	Over 400 houses in Lusaka's Makeni Villa are earmarked for demolition. The houses were built illegally on someone's farm. Benny Chundu, the registered land owner recently won a court case in which he had dragged the squatters to court for encroaching on his farm.
Muvi	30 September 2016	A Livingstone (in Southern Province) man (David Gwanda) is battling to secure his land from more than 150 squatters despite winning a court case. A visibly shaken David Gwanda who won a bitter court battle over his land says squatters' persistence has escalated with death threats issued against him. He says living on his land has caused him grief hence he wishes government to come to his aid and protect him. >> p.7

Muvi	24 September 2016	Over 40 houses in Lusaka's Kabanana Township (Lusaka District) are on the verge of being demolished. The houses have been built on someone's five acre piece of land whose ownership has been upheld by the court of law.
The Post	27 August 2015	Zambia Wildlife Authority (ZAWA) in Western Province evicted over 1000 farmers, claiming that these farmers encroached in the Kafue National Park. ZAWA officers burnt the farmers' houses, kiosks and sheds.
Zambia Daily Mail	16 July 2015	The President of Zambia (Edgar Lungu) ordered the Ministry of Local Government and Housing to curb land conflicts.
Lusaka Times	03 June 2015	Over 3,000 people sued President Lungu, Galaun Holdings Limited and the Attorney General over a piece of land between Mutumbi Cemetery and Ngwerere farm in Lusaka District which they had been pursuing through the Ministry of Lands, Natural Resources and Environmental Protection.
Zambia Daily Mail	21 May 2015	Over 32 families in Lusaka's Chinika light industrial area, Lusaka Province were left homeless after an investor claiming ownership of the land demolished their houses.
Africa News Hub	03 March 2015	Over 100 houses in Choma's Kamunza settlement in Southern Province were to be demolished by Choma Municipal Council (CMC). The Council claimed that the houses were built on illegally acquired land.
Zambia Daily Mail	02 March 2015	Kabwe Municipal Council (KMC) in Central Province was to demolish houses that were constructed within Old Mukobeko Cemetery.
Times of Zambia	21 February 2015	A case in which Disadvantaged Children Pathfinders Association Trust (DCPFT) was seeking the demolition of more than 200 houses in Libala Township in Lusaka Province was taken for arbitration.
Times of Zambia	28 January 2015	A thirty seven-year-old man of Mazabuka District in Southern Province was hacked to death by his cousin after a dispute over a piece of land. This came barely a few weeks after two brothers of Kalomo in the same province also beat up a villager of the same area following a dispute over land.
Lusaka Times	09 January 2015	Squatters encroached on Choma Central Prison land in Southern Province. It was alleged that the Choma Municipal Council (CMC) allocated the land belonging to the Zambia Prisons Service to some other developers. >> p.8

Times of Zambia	11 August 2014	More than 150 houses were demolished in Kalukanya Township in Mufulira, Copperbelt Province by Mufulira Municipal Council. Here, the council claimed that the houses were constructed in an unplanned area.
Times of Zambia	06 June 2014	About 100 houses in Mindolo North Township in Kitwe, Copperbelt Province were demolished by Kitwe City Council. The council claimed that houses were built on illegally acquired land.
The Post	28 September 2013	Forty-two people were arrested while a police officer was injured in Solwezi District in North Western Province following clashes between squatters and state and council police during the demolition of about 100 illegally built structures at Humphrey Mulemba Villa Park.
African News Hub	06 September, 2013	A former Member of Parliament (Barnabas Chella) was axed to death by peasant farmers over the Mfubu Ranch land in Kitwe. Chella was among the few prominent businessmen and politicians in Kitwe, Copperbelt Province that were claiming ownership of the Mfubu Ranch land which has hundreds of peasants. The land is 300 hectares in extent.
The Post	14 August 2013	Over 1,000 peasant farmers of Kitwe's Mfubu Ranch in Copperbelt Province protested against reports that their land had been sold to prominent businessmen and politicians. The small-scale farmers accused the council of giving preference to businessmen and politicians whom they said had bought part of the 1,750 hectares of land they had been occupying for many years.
Lusaka Times	15 June 2013	Two residents in Kapasa Township in Lusaka District, Lusaka Province were shot dead by Zambia National Service (ZNS) personnel who were carrying out an eviction exercise. ZNS ordered residents to vacate the land insisting that it belonged to them.

Source: Author based on various sources

Considering the foregoing predicament, the big, ineluctable question must therefore be, what then are the causes of land conflicts? The causes of land conflicts in Zambia are varied. The causes are twofold: causes of state land conflicts and causes of customary land conflicts. State land conflicts are caused by institutional fragmentation. On the one hand, there is lack of institutional coordination because of various institutions dealing with land matters in Zambia. These institutions include the Ministry of Local Government and Housing, Office of the Vice President, Ministry of Agriculture, Ministry of Tourism, and Ministry of Lands, Natural Resources and Environmental Protection. Lack of coordination of these institutions



often leads to duplication of authority and responsibilities thereby leading to conflicting decision-making processes. On the other hand, institutional fragmentation often delays acquisition of title to land. To get a title deed, it takes anything between 2 months and 10 years (Machina, 2012 cited in Oakland Institute, 2012). There are often delays as application papers are shuffled from one office to another (Mulolwa, 2002). As a result, some people end up using shortcuts to acquire land, which sometimes leads to acquiring land belonging to someone else.

A further source of state land conflicts is corruption. Corruption is seriously affecting land governance in Zambia (Tygesen, 2014). Particularly, Ministry of Lands, Natural Resources and Environmental Protection and Ministry of Local Government and Housing are seriously infected by corruption (Mbinji, 2012; McShane and Nilsson, 2010; Republic of Zambia, 2012a; ZLA, 2012b). Box 1 is illustrative.

#### Box 1: Corruption at Councils in Zambia

Lands, Natural Resources and Environmental Protection Minister Wilbur Simusa said for a long time many Zambians were denied of their land due to corruption that surrounded the allocation of land. Mr. Simusa noted with sadness the high levels of corruption in councils (which are under the Ministry of Local Government and Housing) has since seen rich people acquiring huge chunks of land at the expense of the poor majority.

Source: Lusaka Times (16 July 2013)

Corruption in turn leads to the Ministries being inefficient and ineffective to deliver the equitable services that citizens require. Thus, the consequence of corruption is that it is very difficult for the great majority of the people, especially the poor, to acquire or secure land. This is because the poor (currently 60 percent of Zambians live below the poverty line – ECA, 2015; Republic of Zambia, 2010a) lack resources to compete with those able and willing to pay bribes.

In addition, there is lack of a decentralised system for processing title deeds (Republic of Zambia, 2006; 2012a). The processing of title deeds is only done at the Ministry of Lands in Lusaka (the capital city of Zambia) and Ndola (the Provincial capital of Copperbelt Province). The centralisation of title registration has led to inefficiency, and like institutional fragmentation, delays acquisition of title to land (Mudenda, 2007). This makes the process of acquiring land costly in terms of time and financial resources (Mudenda, 2007; Republic of Zambia, 2006). As a result, some people who cannot manage acquiring state land end up

occupying any available vacant land illegally and this leads to conflicts between the land owners and squatters.

The major cause of customary land conflicts is informality (without written records) of customary land rights. About 60.5 percent (7,919,216) of Zambia's population live in rural areas (Republic of Zambia, 2010a), under customary tenure. Many of these households do not have formal land rights thereby making proof of ownership difficult. Nonetheless, the Lands Act of 1995 (section seven subsection one) provides for the conversion of customary tenure to statutory tenure. The conversion can be done by occupants of customary land as well as local and foreign investors. However, the former are not well informed about the possibility of the conversion of tenure, and the procedure is bureaucratic, complicated and expensive (Van Asperen and Mulolwa, 2006). The issue of expenses is confirmed by Machina (2012 cited in Oakland Institute, 2012, para. 16), who states that... *“for occupants of customary land (who are well informed about the possibility of the conversion of tenure) in rural areas, obtaining a title deed for their land is very costly. They have to pay transport fares as well as pay for meals and lodging facilities every time they travel to Lusaka or Ndola (processing of title deeds is only done in these two towns) to make a follow-up. It can cost them up to about 2,000 US dollars just in the process. As a result, many of them just sit back and continue occupying customary land without written records”*.

In view of the foregoing, local and foreign investors take advantage of the situation by grabbing large tracts of customary land for purposes of undertaking activities such as agriculture, mining, tourism, and manufacturing. This is also referred to as large-scale land investments (LSLIs). A combination of factors on the global stage has over the last decade led to a rapid expansion in large-scale land investments by foreign and local investors on customary land (Mushinge and Mwando, 2016). These factors include improved investment prospects given anticipated future demand for water, food and energy, increased demand for resources by emerging economies, rising and unstable commodity prices, and policy commitments to biofuels and renewable energy (Anseeuw et al., 2012; Cotula, 2011; de Schutter, 2011, World Bank, 2011). The investors are supported by traditional leaders and government. Consequently, land grabbing leads to displacement of people (see table 2) from the land they have occupied for a number of years.

Table 2: Displacements due to Large-scale Land Investments in Zambia

Case Name	Location	Sector	Approx. No. of affected households	Amount of land acquired
Kalumbila Minerals Limited	Solwezi District	Mining	570 Households	50,000 ha
Chiansi Irrigation Project	Kafue District	Agriculture	120 Households	1,575 ha
Lusaka Multi-Facility Economic Zone	Lusaka/Kafue District	Urban/Industrial development	247 Households	2,100 ha
Ferrostaal	Mpika District	Agrofuel	Unknown	150,000 ha
Chayton Africa	Mpongwe District	Agriculture	Unkown	100,000 ha
Zambeef	Mpika	Agriculture	45 Households	16,000 ha

Source: Chu et al. (2015) modified by Mushinge and Mwando (2016)

The problem with such displacements is that they are undertaken without compensation for losses. And in instances where compensation is given, it is usually inadequate. For example, in Masaiti District, on the Copperbelt Province, over 2,000 farmers were evicted from their land in 2011 following the acquisition of over 200 hectares by a Nigerian (Dangote) cement manufacturer (Oakland Institute, 2012). They were later only paid 250 US dollars per hectare as compensation (ibid). Therefore, such displacements and lack of compensation or inadequate compensation have led to land conflicts.

Land conflicts thus lead to tenure insecurity on both customary land and state land. There is a high degree of tenure insecurity (on customary and state land) in Zambia (Crabtree-Condor and Casey, 2012; Habitat for Humanity, 2014; Persha et al., 2015; Sambo et al., 2015; ZLA, 2015) caused by land conflicts. Although, both state land and customary land conflicts have been discussed, this study focuses on state land conflicts.

### 1.3 Role of Land Governance in Land Conflict Prevention in Zambia

In response to the increasing number of land conflicts, the Government of Zambia has undertaken different measures under the current land governance framework. For example, the Lands Tribunal (specialised land court) has been established and alternative conflict resolution mechanisms (ACRMs) i.e. mediation and arbitration have been introduced. The Lands Tribunal was created in 1996 under the Lands Act of 1995 (Republic of Zambia, 1995). Between 1996 and 2009, the Tribunal had limited jurisdiction of handling state land

conflicts only. However, in 2010, the Lands Tribunal Act was enacted to expand the jurisdiction of the Tribunal. From 2010, the Tribunal has been handling both state and customary land conflicts (Republic of Zambia, 2010b). Furthermore, mediation was established under Statutory Instrument Number 71 of 1997, and arbitration was introduced under the Arbitration Act of 2000 (Mwenda, 2006).

Despite these measures being undertaken to address land conflicts, all are mainly curative in nature. But a conflict sensitive land governance framework<sup>1</sup> should address both curative and preventive measures. This therefore calls for a new strategic framework of Conflict Sensitive Land Governance which will deal with both curative and preventive measures. A Conflict Sensitive Land Governance Strategic Framework (CSLGSF) is a “structure intended to serve as a guide for resolving and preventing land conflicts through addressing prevailing legal, institutional, technical and operational framework to achieve tenure security”.

Much as it is recognised that there is obvious need to also address land conflicts through preventive measures in Zambia, there has been very little (if any) empirical evidence and knowledge base on preventive measures in the country. This research serves to fill this knowledge gap and will help to restructure the framework of land governance for the sake of improving tenure security. In this regard, the purpose of this study is to propose a Conflict Sensitive Land Governance Strategic Framework (CSLGSF) for preventing land conflicts to achieve tenure security in Zambia in general and Lusaka District in particular. This is aimed at complementing the existing curative measures with preventive measures to fully achieve tenure security.

#### **1.4 Research Objectives, Questions and Hypothesis**

To achieve the previously discussed purpose, this study addresses the following objectives:

- a) To examine the role of existing land governance framework in improving tenure security in Zambia.
- b) To establish how land conflicts affect land tenure security in Zambia.

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<sup>1</sup> “Framework in this context means a set of assumptions, procedures, concepts and practices that constitutes a way of viewing in reality (Bennet, 2007). It is an oversimplification of a complex reality and should be treated merely as a guide or lens through which to view the world in analytical way (Rakodi and Lloyd-Jones, 2002 in Magigi, 2008, p.37)” [cited in Gwaleba, 2016, p.6].

c) To make recommendations on how existing land governance framework in Zambia can address land conflicts effectively to ensure tenure security.

This research is evaluative in nature. Based on the foregoing objectives, the following research questions are answered:

a) What is the present status of land governance framework in Zambia? How is it addressing the issue of tenure security? What can be learnt?

b) What are the different types of land conflicts in Zambia? How do land conflicts affect land tenure security in Zambia? How are land conflicts addressed in existing land governance framework in Zambia?

c) How efficient is the present land governance framework in preventing land conflicts in Zambia?

d) What kind of land governance framework for preventing land conflicts is needed in Zambia? What are the requirements for such a framework? What are the likely challenges for implementing this framework and how could these challenges be overcome?

The study set out to investigate the **hypothesis** that:

*Tenure insecurity continues to prevail in Zambia because the current land governance framework is unable to address prevention of land conflicts. Though the present land governance framework has given focus on curative measures to address land conflicts, to achieve tenure security fully, there is need for a new strategic land governance framework that will also incorporate prevention of land conflicts.*

## **1.5 Structure of the Thesis**

The **current chapter** provides a general overview of the research. This includes land conflicts and its influence on tenure security, and role of land governance in land conflict prevention in Zambia. The chapter then presents research objectives, questions and hypothesis, outlines the structure of the thesis and concludes by outlining an overview of the research process.

**Chapter two** provides the theoretical discussion on tenure security, land conflicts, and land governance. It starts by defining the concept of land tenure security and land conflicts, and then elaborates the theory of land governance. Thereafter, the chapter presents the conceptual

framework of the research which is derived from the theoretical framework. The conceptual framework provides a linkage between the theories in relation to the research problem under investigation.

**Chapter three** explains the research methodology. Specifically, the chapter discusses the selection of research paradigm and rationale, units of analysis and research strategy, types of data collected, data validation and reliability, and ends by providing the procedure for analysis of quantitative and qualitative data used in the study.

**Chapter four** analyses the land governance framework in Zambia focusing on evolution of land governance, land tenure categories, instruments, institutions and actors.

**Chapter five** examines the status of state land governance. Specifically, the chapter analyses the status of legal framework, status of institutional framework, status of technical issues, and status of operational issues.

**Chapter six** analyses the status of land conflicts and tenure security. Particularly, the chapter discusses the prevalence of state land conflicts, types of state land conflicts, resolution of state land conflicts, state land conflicts and its effects on tenure security, and implications of land conflicts and tenure insecurity.

**Chapter seven** presents the major findings, recommendations, conclusion and future research. This final chapter suggests a new framework for improving state land governance in Zambia. Since most African countries face the problem of land conflicts and tenure insecurity, the suggested framework can be adopted and contextualised by other African countries to improve the governance of land under statutory tenure in Africa.

## **1.6 Overview of Research Process**

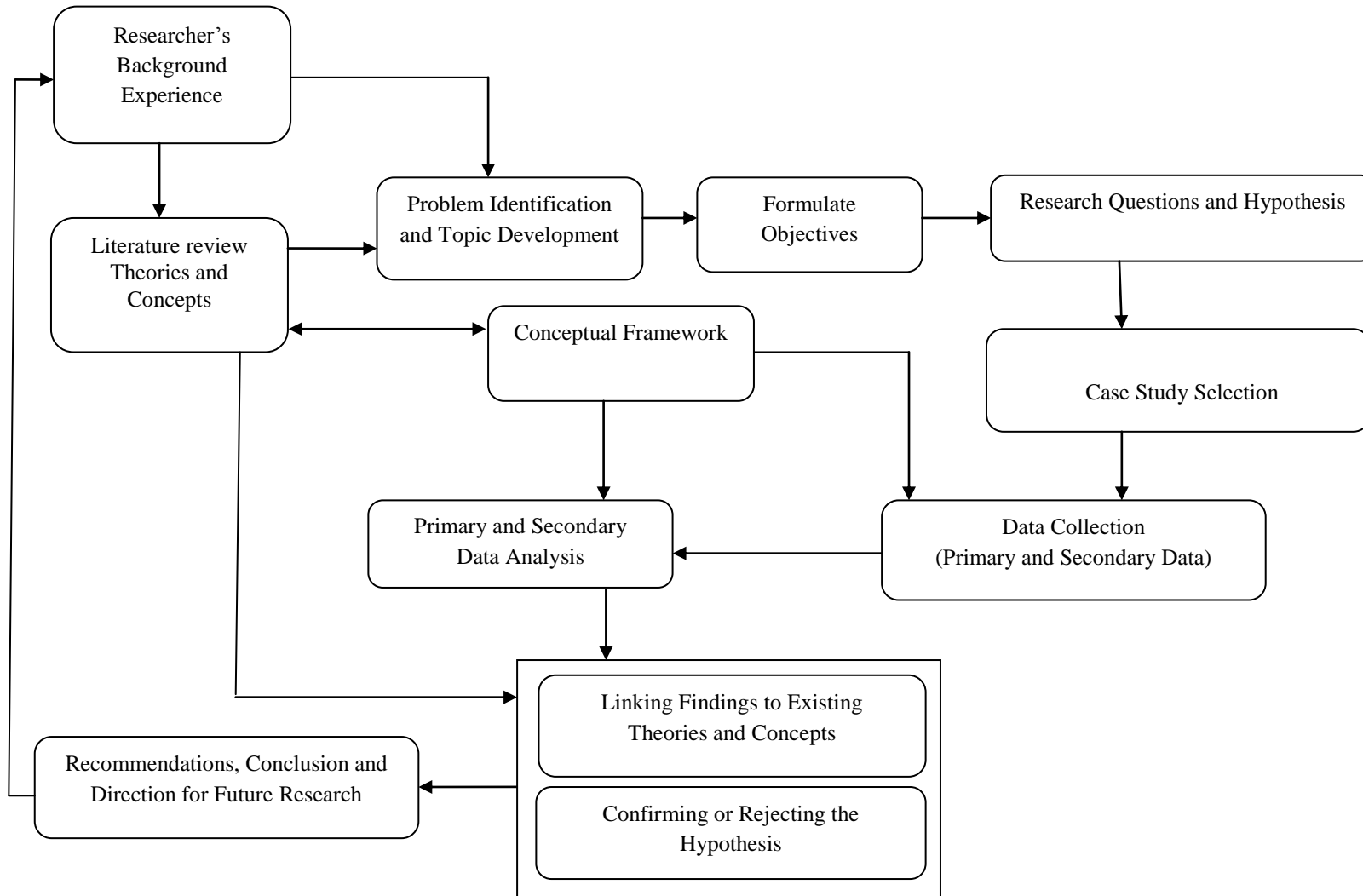
This section provides an overview of research process which is illustrated in figure 2. The research process began with the researcher's own experience and literature review (including media reports) about the increasing land conflicts in Zambia. This led to identifying the research problem on land governance in Zambia and developing a topic. Based on the research problem captured from literature review and personal experience, objectives, research questions and hypothesis were formulated to guide the research. Existing theories and concepts were reviewed and this led to the formulation of the conceptual framework that

enabled coming up with appropriate research methodology. Data collection instruments such as questionnaires and an interview guide were developed and pre-tested to ensure that the research questions are answered.

Thereafter, data collection and analysis of the research findings were undertaken. Data collection was carried out for four months from 20<sup>th</sup> May 2016 to 18<sup>th</sup> September 2016. Primary data was collected from key respondents from state land institutions, non-governmental organisations, land conflict resolution mechanisms, law firms, private land surveying firms, and politicians from both the ruling and opposition parties. Further, interviews were conducted with academics (from Copperbelt University and University of Zambia) and households in Lusaka District in order to determine the consistency of empirical data from key respondents, thereby also enhancing data validation and reliability. Primary data was validated, refined and coded before the final analysis and interpretation of the research findings.

Finally, the findings were linked to the existing theories and concepts and the research hypothesis was confirmed or rejected. Recommendations and conclusion were made out of the research findings. Among the key outputs of the research was a framework for improving state land governance in Zambia.

Figure 2: Overview of Research Process



Source: Author



## **Chapter Two: Theoretical Orientation and Conceptual Framework**

*“It is the theory that decides what can be observed” (Einstein, n.d. cited in Musole, 2007, p.25)*

### **2.1 Introduction**

Land is a prized, limited commodity carrying great economic, political, cultural and symbolic value (USAID, 2013a). It is vital to billions of people around the world, and underpins human social, cultural and economic activity so pervasively that it is often a motivating factor of conflict, violence and war (ibid). Today, land conflicts are at the core of many global hotspots (ibid). These conflicts lead to tenure insecurity which undermines social stability, investment, economic growth and sustainable development. Land conflicts are caused by among other things weak land governance. An important factor in preventing land conflicts to achieve tenure security is to foster good governance in land sector. Good governance is recognised as a platform for achieving development potential, implementing effective and efficient systems and ensuring good management through all levels of society (Burns and Dalrymple, 2008).

This chapter provides the theoretical and conceptual frameworks. Theoretical framework is a logically structured representation of the concepts, variables (or constructs) and relationships involved in a scientific study with the purpose of clearly identifying what will be explored, examined, measured or described (Desjardins, 2010). Conceptual framework on the other hand is a set of broad ideas and principles taken from relevant fields of enquiry and used to structure a subsequent presentation (Reichel and Ramey, 1987 cited in Kombo and Tromp, 2006, p.49). It explains, either graphically or in narrative form, the main things to be studied - key factors, constructs or variables - and the presumed relationships among them (Miles and Huberman, 1994, p.18). Theoretical framework serves as basis for the conceptual framework. Whereas the theoretical framework is based on recognised theories (discussion of related theories attempting to predict a phenomenon), a conceptual framework is based on ideas that may be formulated from a researcher’s own perception - this may be from observation or experience (Kombo and Tromp, 2006, p.58).

This chapter is divided in six sections. It begins in section 2.2 by understanding tenure security. This is followed by sections 2.3, 2.4, 2.5 and 2.6 which discuss land conflicts, theory of land governance, link between land conflicts/tenure (in)security and land

governance, and conceptual framework. The chapter concludes in section 2.7 by way of a reflective/synthesis of the chapter.

## **2.2 Understanding Land Tenure Security**

### **2.2.1 Overview of Land Tenure**

Having an understanding of land tenure (people and land relationships) is fundamental for understanding tenure security. Thus, before discussing tenure security, land tenure and land tenure system have to be understood. The concept ‘tenure’ is derived from the Latin word ‘tenere’ meaning ‘to hold’ or ‘to possess’ and is most commonly associated with the feudal social system of medieval English (Bruce, 1998; Usamah, 2013). The concept is a social construct, defining the relationships between individuals and groups of individuals by which rights and obligations with respect to control and use of resources are defined (ECA, 2004). Land tenure on the other hand means the terms on which something is held: the rights and obligations of the holder (Bruce, 1998). It is the legal term that means the right to hold land rather than the simple fact of holding land (Bruce, 1998; UNECE, 1996).

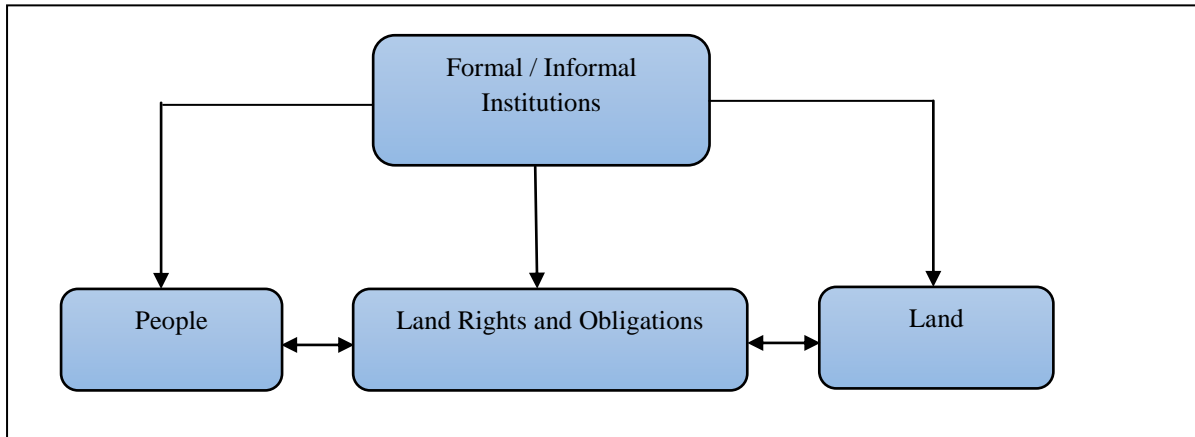
Land tenure is about the relationship amongst people with respect to land (FAO, 2002; Payne et al., 2014; UN-Habitat, 2008). This relationship may be legally or customarily defined, closely controlled, or poorly defined with ambiguities open to exploitation, conflict and instability (Dalrymple, 2005; FAO, 2005). Land tenure is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects (FAO, 2002). It is sometimes compared to a ‘bundle of sticks’ (Dale and McLaughlin, 1999), where each stick represents a right (USAID, 2013b). Rights to these sticks within the bundle include the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. People hold sticks of different lengths and thicknesses depicting the different strengths and weaknesses of people’s rights over land (Dalrymple, 2005).

### **2.2.2 Land Tenure Systems and Classification**

People and land relationship is regulated by a ‘tenure system’ comprising sets of formal and informal rules and institutions (UN-Habitat, 2008). Land tenure system determines who can use what resources, for how long, and under what conditions (Brown and Crawford, 2006; FAO, 2002; Grover et al., 2006; Payne and Durand-Lasserve, 2012; USAID, 2007). A land tenure system consists of different elements which include formal and informal institutions,

people, land rights and obligations, and land (see figure 3). Since land tenure is a system, security of tenure or tenure insecurity results from an interaction of these elements of the system (tenure security is discussed under 2.2.3).

Figure 3: Land Tenure System



Source: Modified from Simbizi et al. (2013)

Formal institutions also known as public institutions are administrative structures articulated in constitutive documents (Mann and Jeanneaux, 2009). They regulate any relationship to land from allocation, recognition, protection and enforcement (Simbizi et al., 2013). Informal or customary institutions are made by inter alia socio-cultural norms, and rules that regulate land relationships (ibid). People act like an engine of a land tenure system (Simbizi et al., 2013). Land rights and obligations include a range of different relations that exist over land (Lemmen, 2010). Land rights are defined as the right of physical or legal persons to use the land, earn income from it, transfer it to another party (Davis, 1996), as well as right to manage the land, to exclude others from the land, and the right to compensation for it. An obligation is something by which a person is bound or obliged to do certain things and results from custom or law (Dictionary.com, 2015). In terms of land, interactions within the land tenure system mainly involve land as a physical object.

There are various forms of tenure systems. Literature review shows that there are four common categories of land tenure systems namely statutory tenure, customary tenure, religious tenure and informal tenure (see FAO, 2002, 2003; GTZ, 1998; IFAD, 2008; Payne and Durand-Lasserve, 2012; Payne, 1996, 2000, 2001). These forms of land tenure and their characteristics are explained in table 3.

Table 3: Tenure Systems and their Characteristics

Tenure system	Characteristics	Advantages	Limitations
Statutory	Established by law. Can either be freehold or leasehold tenure.	High degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value. Potential for increases in asset values.	Costs of access are generally high. Collateral value may not be relevant if incomes are low or financial institutions are weak. Property values can go down as well as up.
Customary	Ownership is vested in the tribe, group, community or family. Land is allocated by customary authorities such as chiefs.	Widely accepted. Simple to administer. Maintains social cohesion.	May lose its legal status in urban areas. Vulnerable to abuse under pressure of urban and market development. Poor customary leadership may weaken its legitimacy.
Religious (e.g. Islamic)	Islamic tenure has four main categories: 'Waqf' is religious trust land and addresses landlessness; 'mulk', is full individual ownership; 'miri', is state owned/controlled land which carries usufruct rights, whilst 'musha/mushtarak', is collective/tribal ownership.	Facilitates family/group tenures and accessible and affordable land management procedures.	Because they are outside the commercial land market, waqf lands are often inefficiently managed. Inheritance disputes can cause land conflicts.
Informal	These include many categories with varying degrees of legality or illegality. They include regularised and unregularised squatting, and unauthorised subdivisions on legally owned land.	Some of these informal categories, such as squatting, started as a response to the inability of public allocation systems or formal commercial markets to provide for the needs of the poor and operated on a socially determined basis.	Inadequate access to safe water and sanitation, poor quality of housing, overcrowding, and insecure residential status.

Source: UN-Habitat (2008), Modified

## 2.2.3 Land Tenure Security

### 2.2.3.1 Meaning of Land Tenure Security

Before providing the meaning of land tenure security, it is worth mentioning that reviewed literature shows that tenure security has different terminologies: land tenure security, security of tenure, secure land rights, and security of property rights. These terminologies are used

interchangeably: they neither refer to a particular meaning nor to a specific field of study (Simbizi et al., 2013). For the purpose of this study, tenure security is the terminology that is used interchangeably with security of tenure, secure land rights and secure property rights.

Land tenure security has been defined in several ways by different organisations and authors. Land tenure security according to UN-Habitat (2008) can be defined as the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it. Dekker and Matondi (2011) further elaborate that security of tenure can be referenced in terms of different rights: use rights, transfer rights, and exclusion rights. These authors state that: use rights are related to the rights that land owners have to grow crops and make improvements on their parcels of land as well as harvest their rewards; transfer rights are rights that are available to land owners to transfer land (rights to sell, give, mortgage, lease); and exclusive rights are said to be rights that enable land owners to exclude others from enjoying any of the foregoing rights. However, as explained earlier (under 2.2.1), these are not the only rights over land. Other rights include right to manage the land, to generate an income from the land, and the right to compensation for it. Therefore, it can be said that, where security of tenure exists, the land owner must have all the six rights and when threatening cases arise, these must be protected.

In addition, Lamba (2005) explains that security of tenure is the assurance land owners have about the land that they occupy and benefit from the land resources without the risk of involuntary removal and that eviction can only occur by agreed means or legal procedures which are objective, equitable, contestable and independent. Not dissimilarly, Dalal-Clayton et al. (2003) point out that security of tenure means: robust land rights - land owners/users absolute to permit genuine control; adequate duration - a land owner/user has to be assured of control over the land till the anticipated benefits from investment accrue; legal certainty - land rights alone do not offer adequate incentives without confidence in sufficient enforcement mechanisms. This applies to both informal mechanisms in local communities and formal mechanisms.

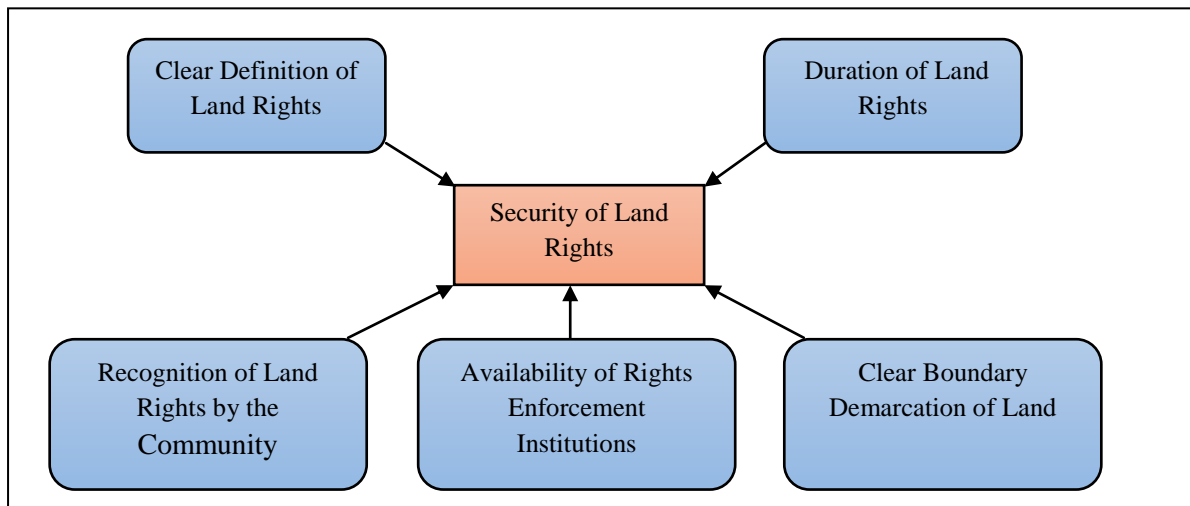
All the definitions provided above have a similarity, which is the feeling of safety that land owners have about the land they hold. Nonetheless, for the purpose of this study, the definition provided by authors and an organisation like FAO (2005), Herrera and Guglielma da Passano (2006), and Palmer et al. (2009) is adopted, and this is: security of tenure is the certainty that a person's land rights (use, income, manage, transfer, exclude, and

compensation) are recognised by others and protected in cases of specific challenges (see chapter one). In other words, security of tenure is a situation where the land rights held, are not challenged without reason, and are reaffirmed if they are contested without due cause (FDC, 2009).

### 2.2.3.2 Ingredients of Land Tenure Security

To achieve tenure security certain ingredients should be available. According to Abdulai (2006 cited in Nyametso, 2010, p.33) the ingredients of tenure security are recognition of land rights by the community, duration of land rights, clear definition of land rights, availability of rights enforcement institutions, and clear boundary demarcation of land. Figure 4 is illustrative.

Figure 4: Ingredients of Land Tenure Security



Source: Abdulai (2006 cited in Nyametso, 2010)

Abdulai (2006 cited in Nyametso, 2010) states that: (a) tenure security occurs if the land rights of people are recognised by the society. It occurs if the members of the community who have common borders with the said land recognise the rights of the person who exercises ownership rights over land. With such recognition, infringement on the rights of others will be reduced; (b) confirmation of the duration of land rights is necessary to make land rights secure. Duration refers to the length of time that a land right holder exercises ownership over the land. The level of motivation and enthusiasm people have to develop a property will depend on how long they can lay claim to the said land; (c) for land to be secure, an unequivocal spelling out of the terms and interests that are associated with the said land rights or clear definition of land rights must be provided. This is indispensable for

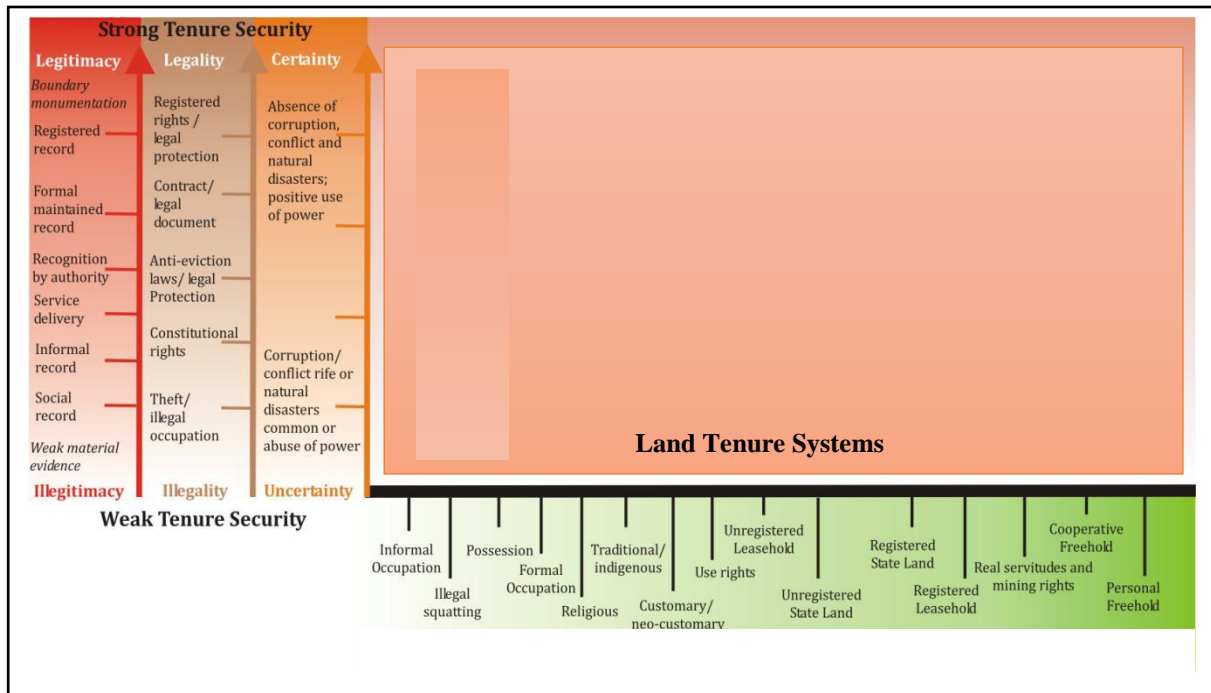
people to be certain about the extent of their rights to the land; (d) there must be land rights enforcement and conflict adjudicating institutions in order to ensure that the land rights of people are protected and respected. The existence of such institutions is necessary to prevent and diffuse tensions and disagreements over land; and, (e) the boundaries of the piece of land must be well demarcated (clear boundary demarcation) and respected by the neighbours of the land holder.

### **2.2.3.3 Measures of Land Tenure Security**

According to Whittal (2014), there are three measures of tenure security: (1) legitimacy is understood to be the popular acceptance of a practice, system of governance or leadership. In terms of rights over land, material evidence strengthens legitimacy. This usually takes the form of records of rights, restrictions and responsibilities in land and land transactions and demarcations using beacons and/or visible boundary markers; (2) legality is the protection of rights, restrictions and responsibilities and transactions in land through formal law. These can be both positive and negative, conferring rights and requiring action as well as preventing arbitrary loss of rights and restricting action; and (3) certainty - an additional measure of land tenure security is situational certainty versus uncertainty/complexity. Measures of tenure security are illustrated in figure 5. The range of land tenure systems are mapped along the horizontal axis while the strength of tenure is measured in the vertical dimension using the triple vertices of legitimacy, legality and certainty.

Strong tenure security is characterised by legitimacy comprising boundary monumentation, registered record, formal maintained record, recognition by authority, and service delivery. Other characteristics of strong tenure security are legality and certainty. Legality consists of registered land rights/legal protection, contract/legal document, anti-eviction laws/legal protection and constitutional rights. Similarly, certainty comprises absence of corruption and land conflicts and use of power in a responsible manner (Whittal, 2014). Weak tenure security on the other hand is characterised by illegitimacy, illegality and uncertainty. Illegitimacy comprises informal record, social record and weak material evidence. Illegality consists of theft/illegal occupation of land while uncertainty comprises high rate of corruption, high incidence of land conflicts and abuse of power.

Figure 5: Measures of Tenure Security



Source: Whittal (2014), Modified

#### 2.2.3.4 Sources of Land Tenure Security

The sources of tenure security may vary from context to context (FAO, 2002). According to FAO (2002, 2005) sources include:

- People - when neighbours recognise and enforce a person's rights, that person's security increases;
- Governments represent another source of security as they may provide political recognition of some rights. For example, a government may accept the illegal encroachment and settlement of a community on state forest lands and undertake not to evict it. However, in doing so, a government usually recognises the right of the community to occupy the land, but does not go as far as recognising the rights of individual people within the community; and
- Administrative state and the formal legal system. The state may provide security in general by affirming the rights that people hold as well as through specific measures such as providing protection against trespass. Security is often seen to come from protections provided through land registration and cadastral systems, with adjudication of disputes taking place in the formal court system.



### 2.2.3.5 Types of Land Tenure Security

There are two kinds of tenure security that exist and these are; de jure tenure security and de facto tenure security. De facto tenure security is twofold; customary tenure security and perceived tenure security. The types of tenure security are explained below.

- De jure (legal/statutory) tenure security according to Van Gelder (2010) implies that rights over land are documented. For instance, existence of a written document can be in form of an individual/group/communal certificate of title, occupancy license or any other recognised written document. Thus, the strength of this kind of tenure security lies in its documentation. Moreover, there is a known set of rules, and land rights are justifiable.
- De facto (customary) tenure security is synonymous with rural areas where customary tenure regimes are common. It derives its power of access to and use of land from unwritten traditional rules. De facto tenure is in some African countries considered socially legitimate through broad social acceptance but often exists without legal recognition (Palmer et al, 2009), hence generally perceived to be insecure.
- De facto (perceived) tenure security is a form of tenure security as it is perceived by dwellers (Van Gelder, 2010). This tenure security is synonymous with informal settlements which are common in most urban areas of developing countries. It is derived from a probability estimate of chance of eviction or other factors that threaten a tenure situation and may cause involuntary relocation (Van Gelder, 2007 cited in Usamah, 2013). Land under perceived tenure is mostly occupied by low-income households who cannot afford land under statutory tenure. They might be protected under anti-eviction laws, which are a form of security at a general level; and this is based on circumstances and not on individually secured rights (Usamah, 2013). However, these laws do not provide sufficient protection for the poor (ibid). Thus, households are often prone to evictions (UN-Habitat, 2003).

Literature review shows that while documentation enhances tenure security, de facto tenure security is characterised by lack of documentation, which makes customary and perceived (informal) tenure insecure. In the face of this problem, innovative approaches in providing tenure security have been developed. On the one hand, recognising informal settlements and recording their existence in city plans as well as recording de facto land rights in register has been and is being done in many developing countries (Usamah, 2013). On the other hand,

through the paradigm of adaptation which was developed since the 1990s, it has been acknowledged that customary land rights need formal legal recognition (David, 1990). Under this line of thinking, security is associated with the proof of rights - title, tenancy contract or customary land rights certificate (Simbizi et al., 2013). This social dominated notion advocates registration of all rights held in land including group and use rights (ibid).

## **2.3 Land Conflicts Understood**

### **2.3.1 Conceptualising Land Conflict**

Having an understanding of the difference between ‘conflict’ and ‘dispute’ is fundamental for understanding land conflicts. According to Loode et al. (2006), there is a difference between conflict and dispute in that a conflict is much larger, often not necessarily obvious phenomenon common to all human societies and disputes as more focused, articulated expressions of difference over particular resources, needs and interests. It should be pointed out that although there is a difference between conflict and dispute as stated by Loode et al, in this study, the researcher treats them as meaning the same and therefore the two terms are used interchangeably.

There are various definitions of conflict in the available literature and a few of them are provided here. A conflict according to Brown and Marriot (1993) exists where there is an incompatibility of interests. Similarly, conflict is defined as differences or incompatibilities in interests, goals, or perception (UN-Habitat, 2012a; Yasmi et al., 2010). Further, Heinrich (1997) defines a conflict as a social relationship that is determined by a perceived and articulated contradiction about perceptions, judgments and expectations. Heinrich in addition, explains that this definition embraces three types of conflict: (a) a conflict about the perception of how things are (conflict about facts); (b) a conflict about how things should be (conflict of values); and (c) conflict about who is entitled to have what (conflict of interests). The third type of conflict is synonymous with land conflicts.

In sum, conflict is a situation in which specific individual or collective interests (why people want what they say they want) are in confrontation (Herrera and Guglielma da Passano, 2006). Differences arise between parties who see their interests being damaged by a particular course of action (ibid). Conflict situations are characterised by three elements: behavior (coercion or cooperation), attitudes (perceptions, beliefs, emotions), and underlying structure (competing material interests; relational structure) (Carpenter, 2010).

Conflicts require being addressed properly. If this is not done, conflicts can ultimately lead to violence. According to Lombard (2012, p.7):

*“Violence is defined as the intentional use of physical force or power resulting in injury or harm (Moser, 2004). Violence can be categorised as political, economic or social, depending on the primary motivating factor behind its use (Moser and McIlwaine, 1999)”.*

While both conflict and violence are concerned with power, the former does not necessarily inflict harm, while the latter characteristically does (Moser, 2004 cited in Lombard, 2012).

Having discussed the concept of conflict in general, it is now instructive to define land conflict. Land conflict as explained in chapter one has been defined as a “social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land; the right to use the land, to manage the land, to generate income from the land, to exclude others from the land, to transfer it and the right to compensation for it” (Wehrmann, 2008, p.9). In other words, it is a disagreement over land and occurs when specific individual or collective interests relating to land are in conflict (Herrera and Guglielma da Passano, 2006). A land conflict therefore, can be understood as a misuse, restriction or conflict over land rights (Wehrmann, 2008). Yasmi et al. (2010, p.4) explain that:

*“Land conflict is usually viewed as a negative phenomenon, a force that disrupts the status quo and generates hostility, distrust, and hatred. Scholars, however, have moved beyond dichotomising conflict as strictly positive or negative and increasingly conflict is acknowledged as an opportunity for positive change. Where conflict is managed adequately, positive outcomes routinely emerge such as reaching agreements and improved land management via better collaboration. On the other hand, if poorly addressed, negative impacts may dominate”.*

It is therefore important to deal with land conflicts in a constructive manner, instead of ignoring them or simply trying to stop them (Wehrmann, 2008). This can be done by figuring out “**why**” the land conflict happened. Studying the background of the conflict through establishing who was involved, what happened, when did it happen, and where did it happen can help to figure out why the land conflict happened.

Land conflicts within a country will occur at either the interpersonal level (micro-societal dimension) or intrasocietal level (meso-societal and macro-societal dimensions) (Wehrmann,

2008). These conflicts may involve traditional leaders, family heads, government, physical or legal persons, and groups permutations – inter-ethnic and intra-ethnic; between groups; between traditional leaders and their people; government and communities; communities and investors; and between physical or legal persons, who have a claim or derivative rights in land (Aryeetey et al., 2007).

### 2.3.2 Types of Land Conflicts

In order to successfully resolve and prevent land conflicts, it is important to be aware of the many different types of land conflicts that exist (Wehrmann, 2008). One difference is found in the identity of the actors involved, some of them being legitimated to act in the way they do, others not (ibid). Other differences are found in aspects of the land itself, whether the conflicts occur on state, private or communal owned land (Wehrmann, 2008). Conflicts over land fall into four general categories namely conflicts occurring on all types of property, special conflicts over private property, special conflicts over common and collective property, and special conflicts over state property. The different types and sub-types of land conflicts are explained in table 4.

Table 4: Types and Sub-types of Land Conflicts

<b>Land conflicts on all types of property</b>	
<b>Types</b>	<b>Sub-types</b>
Boundary conflicts	<ul style="list-style-type: none"> <li>• Between individuals (over private land)</li> <li>• Between clans (over common property) due to oral tradition and physically unfixed boundaries.</li> <li>• Between administrative units (villages, communes, municipalities, districts).</li> <li>• Between private individuals and the state (over private or state land).</li> </ul>
Ownership conflicts linked to inheritance	<ul style="list-style-type: none"> <li>• Inheritance conflicts within a family.</li> <li>• Inheritance conflicts within a clan.</li> </ul>
Ownership conflicts due to legal pluralism	<ul style="list-style-type: none"> <li>• Overlapping/contradictory rights due to legal pluralism (customary/indigenous rights vs. statutory law).</li> </ul>
Ownership conflicts due to lack of land registration	<ul style="list-style-type: none"> <li>• Several people claim the same property because a) no land registration exists, b) it is in bad conditions or c) it has been destroyed.</li> <li>• Distribution of intermediate tenure instruments which cannot be registered.</li> <li>• Due to unequal knowledge and financial means only the well-off register land – even that of others.</li> </ul>
Ownership conflicts between state and private, common or collective owners	<ul style="list-style-type: none"> <li>• Unclear and non-transparent demarcation of state land by armchair decision resulting in unintended expropriation of individuals and groups.</li> <li>• Illegitimated conversion of collectively owned agrarian land into state land.</li> </ul>
Multiple	<ul style="list-style-type: none"> <li>• Multiple sale of privately owned land by private individuals &gt;&gt; p.29</li> </ul>

sales/allocations of land	<ul style="list-style-type: none"> <li>• Multiple sale of common property.</li> <li>• Allocation of same land parcels by the land registration office due to technical shortcomings or corruption (acceptance of faked titles).</li> <li>• Overlapping/contradictory rights due to double allocation of land titles by different institutions all legitimized to do so</li> <li>• Multiple sale of state land by public officials.</li> </ul>
Limited access to land due to discrimination by law, custom or practice	<ul style="list-style-type: none"> <li>• Women often only get access to land through a male relative making them vulnerable in case of divorce or widowhood.</li> <li>• Ethnic minorities are often discriminated against by law or practice.</li> <li>• Orphans are often de facto excluded from inheriting their parents' property.</li> </ul>
Informal land acquisitions without evictions	<ul style="list-style-type: none"> <li>• Illegal occupation of state, private or common land (for example squatter settlements).</li> <li>• Extensions of property on neighbouring private, public or common land.</li> <li>• Market-driven displacements within which speculators or developers pay less than the real market value due to information asymmetry.</li> </ul>
Violent land acquisitions	<ul style="list-style-type: none"> <li>• Violent attacks on property owners, including chasing them from their property by criminals - often (former) military, para-military, military police, guerrillas, political cadres etc.</li> <li>• Illegal occupation of common or collective land by an individual or company for private use (often with support of corrupt public officials).</li> </ul>
Evictions by land owners	<ul style="list-style-type: none"> <li>• Evictions of semi-legal settlers (those who violate building regulations) from state, private or common property.</li> <li>• Evictions of illegal settlers (those who have no legal rights to the property) from state, private or common property.</li> <li>• Unjustified termination of tenancy/lease contract by property owner.</li> </ul>
Illegal evictions	<ul style="list-style-type: none"> <li>• Illegal evictions by state officials acting without mandate on their own behalf.</li> </ul>
Market evictions and distortion of local land market/values	<ul style="list-style-type: none"> <li>• Poor people not being able to afford to stay on their property due to increases in its value and correspondingly in tax or rent due to upgrading, formalization, legalization or also due to foreign investment, including investment funds.</li> </ul>
Disputes over the payment for using or buying land	<ul style="list-style-type: none"> <li>• Refusing to pay the state for lease of state land.</li> <li>• Refusing to pay rent for renting private property.</li> <li>• Disagreement between landlord and tenant over the amount of crops to be paid in case of sharecropping.</li> <li>• Refusing to pay (full amount) in case of land purchase, including cheating (for example writing invalid cheques).</li> </ul>
Disputes over the value of land	<ul style="list-style-type: none"> <li>• Between citizen and the state in case of compensation or tax.</li> <li>• Between private persons (for example to define indemnity for sibling in case of inheritance).</li> </ul>
Conflicts between human/cultural and natural use	<ul style="list-style-type: none"> <li>• Misuse and overuse of agricultural land.</li> <li>• Salination of irrigated land.</li> <li>• Contamination of land.</li> <li>• Unsustainable land uses such as conversion of forests into construction land or settlements at risk prone locations.</li> <li>• Conflicts between natural protection and farming or mining.</li> <li>• Conflicts between wildlife and peasants. &gt;&gt; p.30</li> </ul>

Destruction of property	<ul style="list-style-type: none"> <li>• Violent attacks on land (e.g. destruction of farmland).</li> <li>• Destruction of buildings owned by the owner of the property.</li> <li>• Destruction of buildings illegally put on a property.</li> </ul>
<b>Land conflicts on private property</b>	
Expropriations by the state without compensation	<ul style="list-style-type: none"> <li>• Expropriation of landowners without (adequate) compensation to use the land for public purposes.</li> <li>• Expropriation of owners from private or common land without (adequate) compensation to allocate the land to private companies – and new informal occupations by the original (customary) owners to receive the land back.</li> <li>• Displacement of land owners without giving them adequate land and/or sufficient rights to it.</li> </ul>
Sales of somebody else's private property	<ul style="list-style-type: none"> <li>• Private person selling the property of another person.</li> </ul>
Leasing/renting of somebody else's private property	<ul style="list-style-type: none"> <li>• Private person leasing or renting the property of another person.</li> </ul>
Illegitimated expropriations by banks	<ul style="list-style-type: none"> <li>• Banks systematically accumulating land in a poor but well located neighbourhood by pushing the poor to take a credit with excessive interest rates which they are unable to afford</li> </ul>
Conflicts due to land reforms	<ul style="list-style-type: none"> <li>• Expropriated farmers asking for compensation or the return of the land or illegally taking it back.</li> <li>• Peasants receiving insecure rights only such as provisional titles.</li> <li>• Unfairness in the selection of beneficiaries of land reforms.</li> </ul>
Illegal/improper uses of private land	<ul style="list-style-type: none"> <li>• Use of other people's property (for example as a parking lot, playground, waste dump, pasture, or for agriculture to mention only a few).</li> <li>• Private owner ignoring land use regulations on his property (for example commercial use of land zoned for residential purposes only).</li> <li>• Illegal subdivisions of parcels.</li> <li>• Exceeding the maximum height permitted by building regulations.</li> <li>• Leaving land vacant for speculative purposes (only a conflict if forbidden by law).</li> <li>• Trespassing on other people's property.</li> <li>• Refusal to honour an existing right of way.</li> </ul>
Intra-family conflicts	<ul style="list-style-type: none"> <li>• Disfavoured wife and children not receiving access to fertile land.</li> </ul>
<b>Land conflicts on common and collectively owned property</b>	
Competing uses of and rights to common or collective property	<ul style="list-style-type: none"> <li>• Conflicting interests in common property by farmers and pastoralists, or between different users of a forest such as small-scale farmers doing rotational agriculture, coffee producers, collectors of firewood and others.</li> <li>• Unequal distribution of common or collective land.</li> </ul>
Illegal/improper uses of common property	<ul style="list-style-type: none"> <li>• Parcellation and allocation of common land to be used as construction land (for example ejidos in Mexico).</li> </ul>
Unauthorized sales or leases of common or collectively owned property	<ul style="list-style-type: none"> <li>• Unauthorized sale of customary land by chief.</li> <li>• Unauthorized sale of collectively owned land by head of village.</li> <li>• Illegal sale or lease by leaseholder of collective land.</li> </ul>
Disputes over the	<ul style="list-style-type: none"> <li>• Special case of Ghana where the state administration of stool &gt;&gt; p.31</li> </ul>

distribution of revenue from customary land	land collects the revenues from customary land.
<b>Land conflicts on state property</b>	
Illegal/improper uses of state land	<ul style="list-style-type: none"> <li>• Illegal private use of state land.</li> <li>• Illegal subleasing of state land/illegal allocation of state land.</li> <li>• Illegal public use of state land (for example, of open space as dump).</li> </ul>
Competing uses and rights on state property	<ul style="list-style-type: none"> <li>• Unclear responsibility over state land, different state authorities claiming ownership.</li> <li>• Conflicting interests over state land by farmers or pastoralists and leaseholders of (forest, agricultural to mention but a few) concessions.</li> <li>• Land allocation in protected areas.</li> </ul>
Land grabbing	<ul style="list-style-type: none"> <li>• Registration of state land in their own names (or in those of family members and friends) by high ranking public officials.</li> </ul>
Illegal sales of state land	<ul style="list-style-type: none"> <li>• Illegal sale of unused state land by private person.</li> <li>• Illegal sale of unused state land by public official.</li> <li>• Illegal sale of publicly used state land by public official (or rarely by private person).</li> <li>• Illegal sale of legally privately used state land by public official (or rarely by private person).</li> <li>• Illegal sale of illegally privately used state land by public official (or rarely by private person).</li> </ul>
Illegal leases of state land (including concession land, forests, mining licences to mention but a few)	<ul style="list-style-type: none"> <li>• Illegal lease of unused state land by private person.</li> <li>• Illegal lease of unused state land by public official.</li> <li>• Illegal lease of publicly used state land by public official (or rarely by private person).</li> <li>• Illegal lease of legally privately used state land by public official (or rarely by private person).</li> <li>• Illegal lease of illegally privately used state land by public official (or rarely by private person).</li> </ul>
Disputes over revenues from state land generated through lease, sale or transformation of its use	<ul style="list-style-type: none"> <li>• Between public institutions at the same level.</li> <li>• Between public institutions at different levels.</li> <li>• Between the state and state officials.</li> <li>• Between the state and private sector.</li> <li>• Between state official/customary authority and the public.</li> </ul>
Improper land privatization	<ul style="list-style-type: none"> <li>• Overlapping claims during restitution (in the case of former multiple expropriations/nationalizations).</li> <li>• Irregularities during (re)distribution or auctions.</li> <li>• Illegal applications for land (family/household splitting).</li> <li>• Unfair title distribution during legalization of informal settlements.</li> </ul>

Source: Wehrmann (2008, pp.15-20)

### 2.3.3 Causes of Land Conflicts

It is necessary to find out the causes of land conflicts in order to seek an appropriate way to resolve and prevent the conflicts (Hap, 2010). According to GLTN/UN-Habitat (2013), Mahaphonh et al. (2007), MercyCorps (2011), Sekiguchi and Hatsukano (2013), Thet (2014),

URI and ARLPI (2012), and Wehrmann (2008), land conflicts are caused by various issues discussed in Table 5.

Table 5: Causes of Land Conflicts

Group Causes	Specific Causes
Political Issues	<ul style="list-style-type: none"> <li>• Political corruption, state capture and land grabbing</li> <li>• Political (and economic) support for big farmers to the disadvantage of poorer peasants.</li> <li>• Lack of political will to tackle land issues and non-transparent decision-making processes.</li> <li>• Weak rule of law - limited state capacity to enforce decisions and ensure accountability.</li> <li>• Political interference in the operations of land institutions.</li> </ul>
Socio-cultural Issues	<ul style="list-style-type: none"> <li>• Unregistered land transactions.</li> <li>• Fraud by governmental administration and/or individuals.</li> <li>• Low level of education and lack of information on land institutions.</li> </ul>
Socio-economic Issues	<ul style="list-style-type: none"> <li>• Poverty or poverty-related marginalisation/exclusion.</li> <li>• Extremely unequal distribution of power and resources (including land).</li> </ul>
Legal and juridical Issues	<ul style="list-style-type: none"> <li>• Legislative loopholes.</li> <li>• Contradictory legislation.</li> <li>• Legal pluralism.</li> <li>• Traditional land law without written records or clearly defined plot and village boundaries. Lack of valid legal documents to prove ownership, leads to evictions without compensation or with inadequate compensation, even if parties have possessed the land for a long time.</li> <li>• Limited/no access to law enforcement and jurisdiction by the poor/disadvantaged.</li> <li>• Insufficient or weak implementation of land policy and legislation.</li> <li>• Archaic land laws.</li> <li>• Missing or inactive mechanisms for sanctions.</li> <li>• Insufficient establishment of rule of law principles (e.g. lack of independent courts).</li> <li>• Formal law which is not sufficiently disseminated or known.</li> <li>• Limited/nonexistent public participation in the formulation of legal instruments.</li> </ul>
Institutional Issues	<ul style="list-style-type: none"> <li>• Centralisation (for example centralised processing of title deeds).</li> <li>• Corruption.</li> <li>• Insufficient control over state land.</li> <li>• Insufficient or weak implementation of formal regulations.</li> <li>• Lack of communication, co-operation, and co-ordination within and between different government agencies.</li> <li>• Inconsistent decisions by different levels of public institutions.</li> <li>• Lack of responsibility/accountability.</li> <li>• Limited access to land administration, especially for the poor and rural population (distance, illiteracy, costs etc.).</li> <li>• Insufficient information to the public (lack of information on land allocation procedures and people not aware of the law and land rights).</li> <li>• Limited/nonexistent public participation (e.g. in land use planning and demarcation of concession land).</li> <li>• Lack of transparency. &gt;&gt; p.33</li> </ul>



	<ul style="list-style-type: none"> <li>• Insufficient supply of affordable and legally recognised land, forcing people to occupy land without secure land rights (illegal occupation of land).</li> <li>• Insufficient monitoring of land.</li> </ul>
Operational Issues	<ul style="list-style-type: none"> <li>• Improper and inappropriate land conversion.</li> <li>• Low qualifications of public employees.</li> <li>• Very low wages in the public sector.</li> <li>• Insufficient staff and technical equipment / financial resources at public agencies.</li> </ul>
Technical Issues	<ul style="list-style-type: none"> <li>• Missing or inaccurate surveying.</li> <li>• Minimal cadastral coverage</li> <li>• Land records are either incomplete, leaving most land rights unrecorded, have not been updated consistently, or have been subject to fraud and tampering.</li> <li>• Missing, outdated or only sporadic land use planning or planning not adapted to local conditions.</li> <li>• Cumbersome and opaque land allocation procedures.</li> </ul>
Economic Issues	<ul style="list-style-type: none"> <li>• Evolution of land markets.</li> <li>• Increasing land prices.</li> </ul>
Demographic Issues	<ul style="list-style-type: none"> <li>• Strong population growth and rural exodus (caused by push factors- for example low productivity, unemployment and underdevelopment [lack of or inadequate health facilities, schools, electricity, clean water, sanitation and better roads], poor economic conditions, and lack of opportunities for advancement).</li> </ul>

Source: Adapted from Wehrmann (2008)

## 2.4 Theory of Land Governance

Over the last two decades, the expressions “land governance” or “governance of the land sector” and, consequently, “good land governance” have been raised by the international community of land-experts as concepts emerging from a series of principles, conditions or success factors necessary for the establishment of sound land sectors (Espinoza, 2012, p.3). A number of institutions - governmental and non-governmental - even argue that good land governance is a crucial pre-requisite for sustainable development and that the old fashioned concept of government in the context of land issues should no longer be the focal point of international discussions, but rather the processes behind and how these perform and contribute to the achievement of broader objectives (ibid).

This section is on land governance. However, before discussing land governance, it is fundamental to understand the concept of governance. In this regard, first, the origin of the concept of governance, meaning of governance, and good governance and its principles are discussed. Thereafter, the link between land management and land governance, what land governance is, and factors shaping land governance are discussed.

## 2.4.1 Understanding Governance

### 2.4.1.1 Origin of Concept of Governance

Use of the word “governance” dates back to ancient Greek times, when the term applied to government and simply meant to steer (Jessop, 1998 cited in Lautze et al., 2014, p.26). Thus, the idea of governance has a long past, but as a conceptualised concept it has a short history (Hardt, 2012). Its short history began in the 1970s when the concept had been used in areas such as business organisation, economics and neo-corporatism (Cajvaneanu, 2011; Grindle, 2008; Hewitt de Alcantara, 1998). Towards the end of the twentieth century, the term governance gained the prominent attention of donor agencies (like World Bank, United Nations and International Monetary Fund), social scientists, philanthropists and civil society (UNESCO, 2006, p.3). This popularity stems from the fact that it applied to a wide range of issues, relationships and institutions involved in the process of managing public and private affairs (ibid). Recently, the term governance has gained great usage. It is difficult to find a publication on development issues put out by international organisations such as the World Bank, International Monetary Fund, and United Nations and many others; and academics or private voluntary organisations that does not rely heavily on its use (Hewitt de Alcantara, 1998).

### 2.4.1.2 Meaning of Governance

Different institutions have defined the concept of governance in different ways. While an exhaustive search for definitions of governance could likely produce hundreds of results, few definitions sourced from some institutions are provided here. The definitions of governance are provided in table 6 below.

Table 6: Governance Definitions

Institution	Year	Governance Definition
World Bank	1989	“Governance is the exercise of political power to manage a nation’s affairs”.
World Bank	1992	“Governance is the manner in which power is exercised in the management of a country’s political, economic and social resources for development”.
AusAID	2000	“Governance is the exercise of power or authority-political, economic, administrative or otherwise-to manage a country’s resources and affairs. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences”. >> p.35

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ADB Institute	2005	“The processes by which governments are chosen, monitored, and changed; the ability of government to create and implement public policy; the systems of interaction between the administration, the legislature, and the judiciary”.
FAO	2007	“Governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws”.
IGS	2008	“Governance is the sum total of the institutions and processes by which society orders and conducts its collective or common affairs”.
UN-Habitat et al	2013	“Governance is the exercise of political, economic and administrative authority in the management of a country’s affairs at all levels. Governance is a neutral concept comprising the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences. Governance is also about the process of decision-making, as well as the implementation of the decisions taken”.

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Source: Author based on Literature

In view of the foregoing, Palmer et al. (2009, p.9) argue that while many institutions have developed their own definitions, four specific characteristics of the concept are now generally accepted and these are: first, **governance is conceptually broader than government**. An inclusive approach is fundamental because, in many countries, state actors co-exist with their customary, religious and/or informal counterparts. The stakeholders thus reflect a broad spectrum of state actors, customary authorities, non-state actors, and the private and professional sectors; second, **governance emphasises processes and institutions**. Processes define how issues are put on the agenda, how decisions are made and by whom, how those decisions are implemented, and how differences and grievances are managed. The focus on processes also highlights the importance of different ways actors can interact: dialogue, cooperation, conflict, unilateralism, negotiation, compromise and exit, to mention but a few. As interaction can change from one mode to another, a governance paradigm also implies a dynamic system; third, with its emphasis on authority, **governance recognises the importance of politics and power**. Politics and power relations have a significant impact on the understanding of a given context or issue, and in developing approaches for reform; and

finally, **governance is conceptually neutral**. The quality of governance can be good or weak, improving or declining. In order to determine whether governance is effective or weak, one must look at processes as well as outcomes. However, for any sector in an economy to be successful, governance should be good. Good governance is the subject of the next section.

### 2.4.1.3 Good Governance and its Principles

Good or effective governance is a key condition of success to ensure everyone’s well-being, contribute to economic development and also foster peace and stability (Akhmouch, 2012). There are principles that define good governance and these are explained in table 7.

Table 7: Principles of Good Governance

Principles	Definition
Participation	Participation by both men and women is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision making. Participation needs to be informed and organised. This means freedom of association and expression on the one hand and an organised civil society on the other hand.
Rule of law	Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.
Transparency	Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media.
Responsiveness	Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.
Consensus oriented	There are several actors and as many viewpoints in a given society. Good governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community. >> 37

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Equity and inclusiveness	A society's wellbeing depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, but particularly the most vulnerable, have opportunities to improve or maintain their wellbeing.
Subsidiarity	Institutions should be decentralised based on the principle of subsidiarity, which is, taken at the lowest appropriate level.
Effectiveness and efficiency	Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.
Accountability	Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organisations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies depending on whether decisions or actions taken are internal or external to an organisation or institution. In general an organisation or an institution is accountable to those who will be affected by its decisions or actions. Accountability cannot be enforced without transparency and the rule of law.

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Source: Modified from UNESCAP (2009); Palmer et al. (2009)

## **2.4.2 Link between Land Management and Land Governance**

Having an understanding of the link between land management and land governance is fundamental for understanding the concept of land governance. Thus, before discussing land governance, the connection between land management and land governance has to be understood.

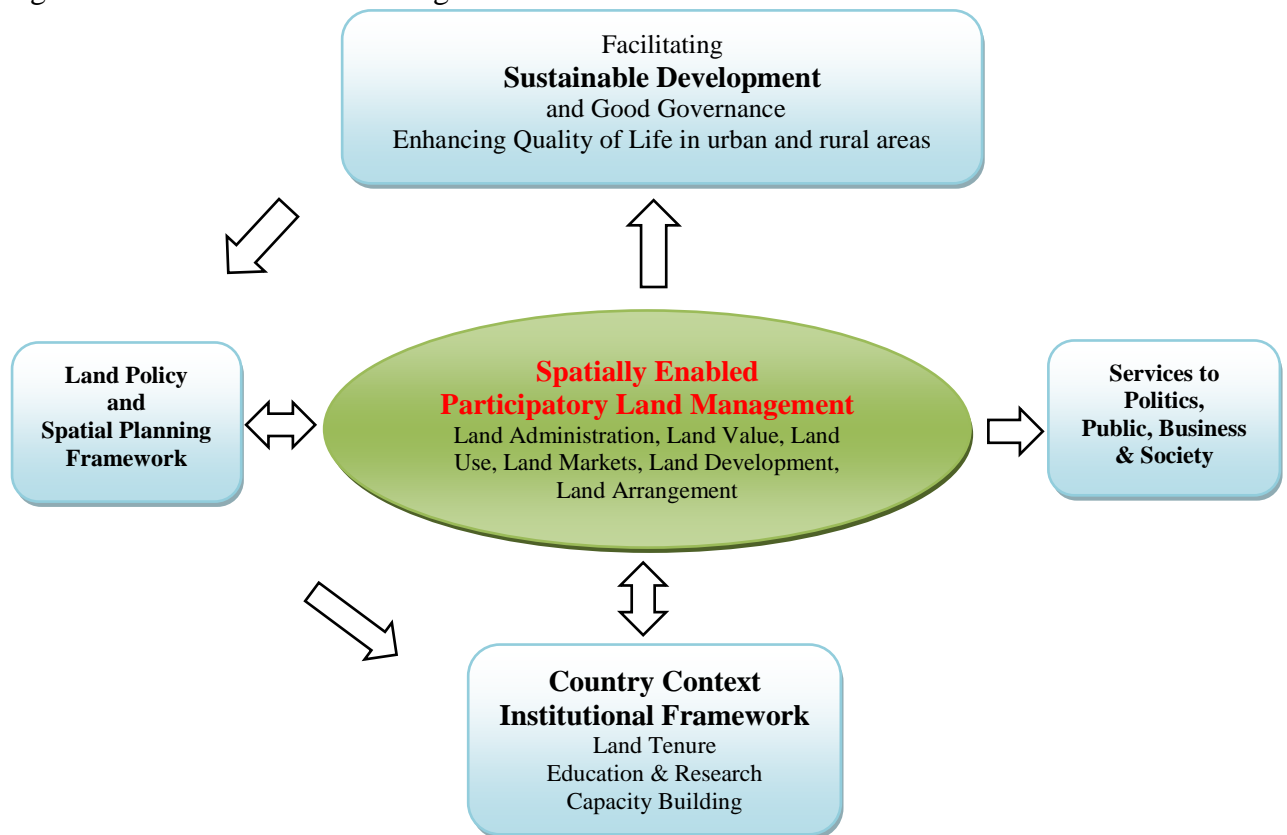
### **2.4.2.1 Concept of and Vision for Land Management**

Land management, as an area of concern, has no generally accepted international definition (Munro-Faure, 1996). In this regard, while an exhaustive search for definitions of land management could likely produce various results, few definitions from key thinkers on the topic are provided here. According to Magel (2003), land management is about policies and fields of action for efficient advice, planning, controlling and coordination of all measures and instruments for access, availability, use and change of use, development, allocation and building up of land including buildings for urban, ecological, economic and other purposes in urban and rural areas. Larsson (1997, p.9) defines land management as a comprehensive expression for activities aiming to fulfill established goals for the use of certain land resources. These activities may have the purpose of promoting efficient land use within an

existing pattern, i.e. they may be mainly of a monitoring, administrative and controlling nature (ibid). Alternatively, they may have the main aim of developing the land, by making substantial investment in the land or changing existing land usage (ibid). Munro-Faure (1996) states that land management is the process of making decisions about the allocation and use of resources to meet defined goals and objectives. All the foregoing definitions have a similarity, which is putting land into good effect. In sum, land management involves all activities associated with the management of land as an environmental, an economic and socio-cultural resource, and therefore, include land tenure, the implementation of land policy, land administration, and land use planning (Magel and Wehrmann, 2002).

The overall vision of land management is to facilitate sustainable development and good governance in order to improve the quality of life in urban and rural areas (Enemark, 2006). Figure 6 is illustrative. However, FIG (1999) points out that sustainable development is not attainable without sound Spatial Planning, Land Policy and Land Administration and comprehensive Land Management.

Figure 6: A Common Land Management Vision



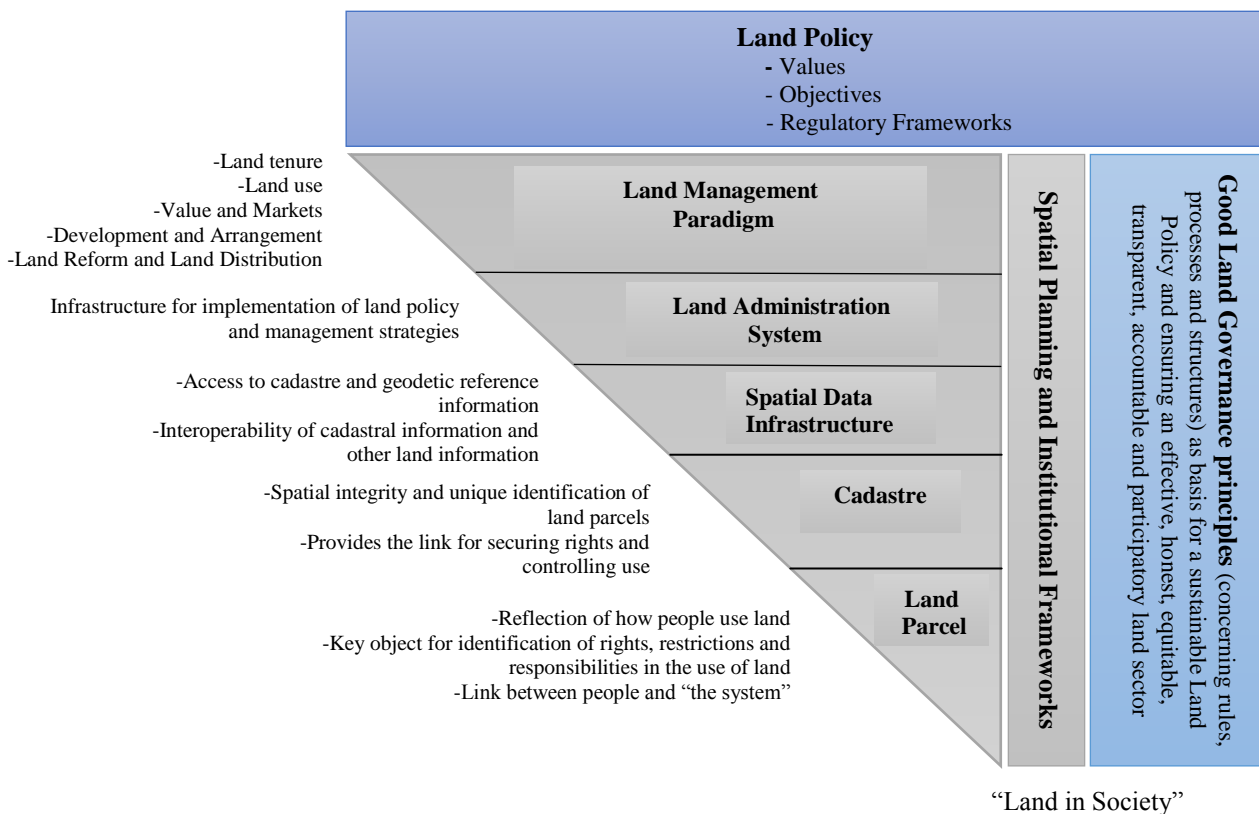
Source: Adapted by Magel from findings of Expert Group Meeting 9 – 11 November 2005, University of Melbourne

According to Enemark (2006) the idea of land management vision is that spatial enabling of land administration systems managing tenure, valuation, planning, and development will allow the information generated by these activities to be much more useful. Further, the achievement of sustainable development goals will be easier to evaluate since adaptability and useability of modern spatial systems will encourage much more information to be collected and made available (ibid). For governments, building a suitable land policy framework will be assisted by better information chains while the services available to private and public sectors and to community organisations should commensurably improve (ibid).

### 2.4.2.2 From Land Management to Land Governance

Magel et al. (2009) argue that talking about land management is also talking about land governance. Land management and land governance covers all activities associated with the management of land that are required to fulfill political, economic and social objectives and achieve sustainable development (Enemark, 2009). The connection between land management and good land governance is illustrated by figure 7 below.

Figure 7: Linking Land Management and Good Land Governance



Source: Magel et al. (2009), based on Land in Society Article of Enemark (2006)

The figure shows that there are a number of hierarchical levels. The hierarchy illustrates the complexity of organising policies, institutions, processes, and information for dealing with land in society (Enemark, 2009). According to Enemark (2009, p.8):

- *Land policy* determines values, objectives and the regulatory framework for management of a society's major asset, its land.
- The *land management paradigm* applies to land administration system (LAS) design to drive a holistic approach to the LAS, and forces its processes to contribute to sustainable development. The paradigm allows LAS to assist land management generally. Land management activities include the core land administration functions: land tenure, value, use and development, and encompass all activities associated with the management of land and natural resources that are required to achieve sustainable development.
- The *land administration system* provides the infrastructure for implementation of land policies and land management strategies, and underpins the operation of efficient land markets and effective land use management. The cadastre is at the core of any LAS.
- The *spatial data infrastructure* provides access to and interoperability of the cadastral information and other land information.
- The *cadastre* provides the spatial integrity and unique identification of every land parcel usually through a cadastral map updated by cadastral surveys. The parcel identification provides the link for securing rights in land, controlling the use of land and connecting the ways people use their land with their understanding of land.
- The *land parcel* is the foundation of the hierarchy because it reflects the way people use land in their daily lives. It is the key object for identification of land rights and administration of restrictions and responsibilities in the use of land. The land parcel links the system with the people.

The backbone of the hierarchical structure should be composed by spatial planning and institutional frameworks originating from good land governance principles for the organisation, implementation and proper operation of the land sector (Espinoza, 2012). A failure in this arrangement leads to a malfunctioning system with consequences which can be quite dramatic, for instance, land conflicts and tenure insecurity (Magel et al., 2010). It should be pointed out that the need for good governance in land management and administration is obvious all over developing nations (Mabikke, 2014). As many countries grapple with an increase in land conflicts and insecurity of tenure, high transaction costs,



informal property markets, reduced private sector investment, land grabbing, landlessness and inequitable land distribution, social instability, social exclusion and political instability among others, the demand for good land governance has become eminent (ibid).

## **2.4.3 Land Governance Understood**

### **2.4.3.1 Land Governance - what it is**

Land is a major resource in all societies and it is the single greatest source of wealth in many countries (Bell, 2009; Grover and Grover, 2011). The governance of land therefore has an important influence on the welfare of a society and the living standards of its citizens (Grover and Grover, 2011). While both “land” and “governance” are familiar terms, their combination as “land governance” (Palmer et al., 2009), came into existence in the 1980s. In fact, with numerous land problems especially in developing countries, land governance has emerged as perhaps the most important topic in the international land community in the twenty-first century (adapted from Lautze et al., 2014).

Literature review shows that in spite of the term (land governance) being in existence for more than three decades, there is no agreed-upon definition for it. Therefore, as explained in chapter one, this study refers to land governance as “*the rules and structures through which decisions regarding access to land and securing rights to that land are made and implemented*” (adapted from Deininger et al., 2012; FAO, 2012). Land governance is about the policies, processes and institutions by which land is managed (Enemark et al., 2009). This includes decisions on access to land, land rights, land use, and land development (ibid).

Land governance is a techno-legal, procedural and political exercise (AU et al., 2010). This is because the process of allocation and enjoyment of land rights cannot be separated from the civil, political and human rights, of the citizenry and are dependent on the political, administrative and professional will to ensure fair treatment and equal opportunities for all (AU et al., 2010). Land governance includes statutory and customary institutions. It includes state structures such as land agencies, courts, and government ministries and municipalities responsible for land, as well as non-statutory actors such as traditional bodies and informal agents (Palmer et al., 2009). Put another way, land governance includes all relevant institutions from the state, traditional leaders, civil society and the private sector (ibid).

Land governance covers both the legal and policy frameworks for land as well as traditional and informal practices that enjoy social legitimacy (Palmer et al., 2009). It means

implementation of laws and policies to manage land in a more transparent, all-inclusive and accountable manner (Palmer et al., 2009; Enemark et al., 2009).

Land governance should be good or effective. It (land governance) can be called “good” when decision-making over access to and use of land as well as its enforcement and the reconciliation of conflicting interests is done in a fair and transparent way, allowing everyone to equitably participate and to receive an adequate share while at the same time guaranteeing economically, socially and environmentally sustainable land development (Wehrmann, 2008). Good land governance therefore requires the honest and serious application of certain principles of good governance: to land policy, land legislation, land management, land administration, land reforms, land conflict management, to mention a few. These principles are explained in table 7 in subsection 2.4.1.3. Introducing the principles of good governance in land sector aims to protect the land rights of individuals and enterprises as well as of the State (Zakout et al., 2006).

#### **2.4.3.2 Factors Shaping Land Governance**

Land policy, legal framework, institutional framework, operational issues, technical issues, and political conditions are key and central aspects in establishing good governance in land sector. According to Magel (2015), the whole is more than the sum of the parts. Thus, land governance should be understood as a system comprising the foregoing components (factors). These components should work as a whole and not as separated or independent components. The factors shaping land governance are discussed as follows.

##### **(i) Comprehensive Land Policy**

National land policy is the most fundamental level of decision-making with respect to land (Palmer et al., 2009). Before a land law can be passed, a country must first come up with a land policy. Land policy reflects a country’s values and objectives, determining the laws and other strategies that the government uses to implement its goals (FAO, 2009a). Thus, a land policy guides the decision of the government (Munzerere, 2013). It outlines what a government is going to do and what it can achieve for the citizens as regards land issues. Policy-making is one of the core functions of government, so land policies and the land policy-making process must ultimately be owned by government (FAO, 2013, p.15).

Land policies lie at the heart of economic and social development (EU, 2004). According to EU (2004, p.3):

*“A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing rights over land ... as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, that is, how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and resolution of conflicts”.*

In view of the above quote, a land policy is the foundation on which the systems in a country for land management, land administration and development are built (Burns and Dalrymple, 2008). A policy should be based on principles of good land governance focusing on efficiency, equity and accountability (ibid). Deininger et al. (2012) add two more principles. According to them, land policy should be developed in a participatory and transparent process that clearly articulates policy goals. This is supported by the AU et al. (2010) which state that land is a highly sensitive political issue and as such the process of land policy development, implementation and evaluation, needs to be as inclusive and participatory as possible. Deininger et al. (2010) add that, land policy decisions that affect sections of the community should be based on consultation with those affected, and their feedback on the resulting policy should be sought and incorporated in the resulting policy.

In addition, Deininger et al. (2010, p.266), state that the following land policy issues are necessary:

- Implementation of land policy should be costed, expected benefits identified and compared to cost, and there should be sufficient budget, resources and institutional capacity for implementation; and
- Land institutions should be reporting on land policy implementation in a regular, meaningful, and comprehensive way, with reports being publicly accessible.

Successful implementation of land policies contributes to improved governance (AU et al., 2010), of land sector. This in turn leads to an improvement in people’s livelihood through the presence of tenure security, social security and protection of human rights. On the other hand, the implications of weak governance from deficiencies in land policy include but not limited to increased land conflicts and tenure insecurity (Burns and Dalrymple, 2008). Weak

governance, whether in formal land administration or customary tenure arrangements, means that the land rights of the poor are not protected (FAO, 2007, p.1). It affects the poor in particular and may leave them marginalised and outside the law (ibid).

Since national circumstances change over time, policies should be dynamic (FAO, 2009a). They must be flexible enough to address current national issues and government's evolving objectives, although not so malleable that they change too often, causing uncertainty amongst the regulated community (FAO, 1995). Importantly, as new policies are created or current policies amended, existing land legislation must also be reviewed to ensure consistency and harmonisation.

## **(ii) Legal Framework**

After establishing its land policy, a government must craft strategies to bring the policy to fruition (FAO, 2009a, p.62). One of the strategies is legal framework which relates to land laws. The law is a complex set of rules that have evolved within each society to ensure its orderly running and the peaceful behaviour of its members (UNECE, 1996, p.22). Land legislation is a primary tool to implement land policy. It (land legislation) inter alia forms the basis for land rights and institutional jurisdictions. For instance, the land law recognises the land rights of women, widows, minority groups as well as rights of men, without any discrimination whatsoever (Uwayezu and Mugiraneza, 2011); and safeguards these rights by providing for cadastral surveying and registration of land. On the other hand, within a country, the Constitution or national laws generally set out the functions of land institutions.

The law may take several forms. For example, statutory law in which all rules and regulations are written down and codified; customary law in which there is no written record but the code is assumed to be well known by all members of society; and in some jurisdictions there is the common law, which grew out of customary law but where over time the judgments of the courts have been written down to create precedents whereby new cases can be judged (UNECE, 1996, p.22). There are four main areas of the law that particularly affect land: first, the law of real property that affects dealings in land; second, the laws on land reform such as the privatisation of State-owned land, the restitution of former private land, and land consolidation; third, the laws that govern the conduct of land administration such as the regulation that control the operation of the cadastre and land registration; and finally, the laws on intellectual property that affect such matters as the ownership of information and ideas, the protection of data and personal privacy (UNECE, 1996, p.22).

Good land legislation is a key element of good land governance. Good land legislation is one which is well-designed, participatory and inclusive. Good legal frameworks allow governments to implement and enforce policies to ensure sustainable and equitable allocation of land. Good land legislation should at least reflect three main characteristics. It should be clear; it must provide secure rights; and it must contain enforcement mechanisms that are both adequate and feasible and that can be applied consistently (FAO, 2009a). These characteristics have been explained by FAO (2009a, pp.65-67) as follows:

- **Simplicity and clarity:** regulated parties as well as regulators must know what their legal obligations are. Laws must clearly describe the basic principles behind the legislation so that subsequent implementing regulations can build on the original intent of the law. The law must also clearly define the process and procedures for rule-making, including the degree of transparency and participation;
- **Security of rights:** land rights attempt to confer on the right-holder a degree of legal security. Therefore, land legislation must clearly define land rights; and
- **Implementation and enforceability:** the government's administration and enforcement capacity, as well as users' capacity to comply with the new legislation, should be assessed during the drafting process and duly accounted for in the procedures set out in the law. The experiences of several countries reveal that considering implementation requirements while preparing new legislation improves the quality and realism of the legislation. Legislation must also resolve several questions regarding enforcement. First, who is subject to the law's restrictions? Second, the legislation must define which agencies and actors can enforce the law. Enforcement may be solely the obligation of government agencies or as in some countries; traditional leaders may also enforce legislation. Third, legislation needs to designate the correct forum for enforcement: do parties have to go through an administrative process, pursue mediation or arbitration or seek enforcement through the judicial system? Finally, legislation should designate the proper remedies for violation. Remedies may include injunctions, restitution, fines, damages or imprisonment.

To the contrary, ambiguity and inconsistency or contradiction in land law is an obstacle to good land governance. For instance, in examining land governance in Ghana, Roth et al. (1996) state that weaknesses in land legislation were to blame for property rights uncertainty,

land conflicts and high litigation costs. Munzerere (2013 citing Byamugisha, 2013; Elhawary and Pantuliono, 2013) also support Roth et al. by stating that broken land laws often lead to broken land governance, social instability and sometimes even lie behind civil wars.

Weaknesses in the land legislation could more easily be mitigated by regular amendments or repealing. Good governance requires that a wide range of stakeholders must be consulted throughout the process of either amending or repealing land law. Governments should consult professionals in the field of law; non-governmental organisations; land administrators who face the practical challenges of implementation; and citizens representing a variety of land uses (FAO, 2013). True consultation requires a commitment to listen to and understand the needs, objectives, insights and capacities of the intended users and others potentially affected by the law, and to find ways to accommodate the multiple interests at stake (FAO, 2009a). By helping create a broad-based consensus in favour of the law, participation improves compliance and fosters a wide sense of ownership (ibid). Moreover, public participation publicises the legislation to society at large (FAO, 2009a).

### **(iii) Institutional Framework**

Institutional framework relates to institutions (for example public and customary institutions) responsible for land regimes (USAID, 2005). Public institutions regulate any relationship to statutory land (Simbizi et al., 2013). These institutions are responsible for the land use planning, survey, demarcation and mapping of land, recording of land rights and transactions, and provision of documentary evidence of land rights (UN-Habitat, 2008). Public institutions are generally managed by specialist formal land institutions, established by government (ibid). However, responsibilities for land allocation, documentation and the management of rights can be devolved to local authorities and some services may be delivered by the private sector (UN-Habitat, 2008). On the other hand, customary institutions also known as social institutions are made by social-cultural norms, rules and associated authoritative structures that regulate customary land relationships from allocation, recognition, protection and enforcement (Simbizi et al., 2013). Here, the legitimacy of a set of rules that regulate relationship to land derives from a customary authority such as a chief, community, clan or association (Herrera and Guglielma da Passano, 2006).

Functions related to land are normally performed by different institutions and therefore there is need to have clarity of institutional mandates (Deininger et al., 2010). To the contrary, unclear or overlapping mandates and functions can create opportunities for discretion that

undermine good governance (Deininger et al., 2012). Unclear or overlapping mandates and functions can also create parallel structures that threaten the integrity and reliability of the documents and information provided by land sector institutions (ibid).

To ensure good land governance, institutions should adopt certain principles of good governance. These principles are transparency, effectiveness and efficiency, responsiveness, subsidiarity, accountability, and control of corruption (AU et al., 2010; FAO, 2007; Palmer et al., 2009).

#### **(iv) Technical Issues**

Here, four elements are key to land governance and these are land use planning, cadastre, land allocation and land registration.

##### **(a) Land Use Planning**

Land use planning is the process of allocating resources, particularly land, in order to achieve maximum efficiency while respecting the nature of the environment and the welfare of the community (UNECE, 1996). It (land use planning) involves many actions and decisions aimed at guiding the allocation and use of land; in order to situate or influence different land-based activities in patterns that enable improvements in peoples' standard of living and the environment (Chigbu et al., 2015). The manner in which land use planning is conducted depends on the country's political system and on the division of responsibility between different parts of government (UNECE, 1996). Some responsibilities will lie with the central government while others may be devolved to the local level (ibid).

Land is required for various uses in both the urban and rural areas of all society (Aribigbola, 2008). It is found that as population for a country increases, demand for land for different purposes also increases. This requires adequate land use planning to ensure harmonious development and functional efficiency of these uses and settlements (ibid). To achieve this fundamental and acceptable activity, layouts of various land uses such as residential, commercial, industrial, open spaces and recreation, circulation and institutional uses among others are undertaken to standardise and control physical developments and ensure harmonious growth (ibid). Land use planning should be undertaken in both rural and urban areas. In both areas, efficiency is needed in the land use planning process (Deininger et al., 2012). According to Deininger et al. (2012, p.42), land use plans and regulations should be

justified, effectively implemented, should not drive large parts of the population into informality, and should be able to cope with population growth.

Literature review shows that land use planning policies in some Sub Sahara African countries have been developed in response to growing conflict over land and the need for improved tenure security. For instance, documentation of participatory land use planning at the village level has been greater in Tanzania (Hart et al., 2014). Before embarking on village land use planning, land use conflicts were rife and led to increased poverty, inequality and land degradation (ibid). The government of Tanzania, through the National Land Use Planning Commission, introduced guidelines for Village Land Use Planning (VLUP) as a tool for inter alia preventing land use conflicts (ibid). In other words, land use planning can be used to prevent land conflicts (GIZ, 2012).

#### **(b) Cadastre**

Cadastre is a parcel-based and up-to-date land information system containing a record of interests in land - e.g. rights, restrictions and responsibilities (FIG, 1995). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, and ownership or control of those interests, and often the value of the parcel and its improvements (FIG, 1995). Cadastres allow people to interpret land information (Wallace, n.d.). They form the basis of land governance. They reflect the way people actually use and think about their land (ibid). Lamba (2005) states that cadastres can be classified according to the primary purpose for which they have been developed: (1) juridical-to support the registration of legal land rights; (2) fiscal-to support property valuation for land taxation purposes; and (3) multipurpose-to support the integration of cadastral information with other related land information e.g. natural resources, physical infrastructure to mention but a few.

According to Wallace (n.d.), a successful cadastre should have the following characteristics; it should: be simple and clear, provide current and reliable information at low cost, be correct, unambiguously defines parcel boundaries both in map form and on the ground through cadastral surveys, be publicly accessible, and be complete (100% cadastral coverage for respective countries). Such a cadastre helps inter alia to prevent land conflicts (ibid).

#### **(c) Land Allocation**

Land allocation is the process of assigning land rights to individuals, groups, communities, private or public entities (Rock, 2004). Countries have procedures for allocation land to

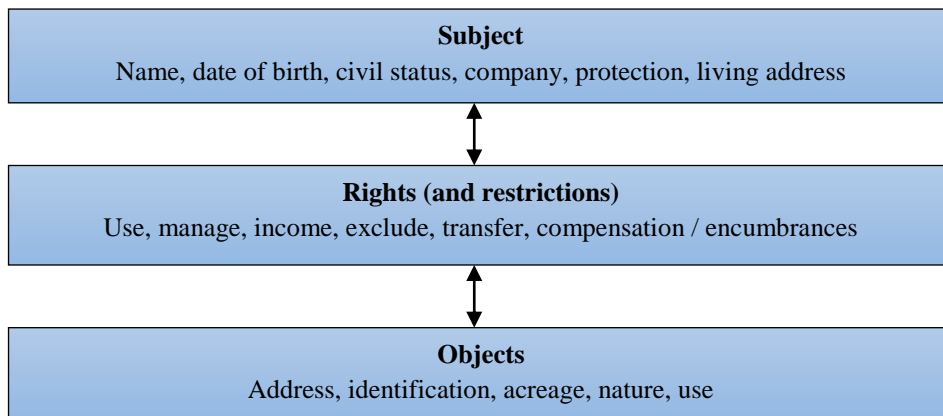


people. For instance, in most sub - Sahara African countries, the land allocation procedure is twofold: procedure for allocating land in statutory tenure system and procedure for allocating land in customary tenure system. The procedure for allocating customary land is usually short and takes few days. Literature review shows that, the problem in some sub - Saharan African countries is with the procedure for allocating statutory land and converting customary land to statutory land. Here, the procedure is long and takes more months or even years for one to get land title (Oakland Institute, 2012). Moreover, the process of obtaining title is costly and this adversely affects a lot of people especially the poor (Oakland Institute, 2012; Zevenbergen et al., 2012). The end result is that people who cannot manage will use short cuts to acquire land, for instance occupying vacant land illegally (Chitonge and Mfunne, 2015). However, through good land governance, the procedure should be made transparent, simple, fast and cheap (UN-Habitat et al., 2013). This means that there should be only few and well known procedures/steps and few days for one to get land title, as well as low costs/fees. This enables majority of people in a particular country to have fair and equitable access to land.

#### **(d) Land Registration**

Land registration is the process of recording recognised interests in defined land units (Lamba, 2005). Apart from documenting the nature and spatial extent of interests in land, registers also enable the transfer of such interests; provide evidence for the resolution of conflicts and information for a variety of other public functions (Dale and McLaughlin, 1999). Henssen (1995) explains that the basic elements of land registration are the registrable land unit, that is, the land object, the legal person to whom rights are assigned (i.e. the legal subject) and the relationship between the land and the legal person (the land rights). Lamba (2005, p.21) states that “the land object in land registration is the basic unit of cadastral record”. In parcel-based cadastral systems, the basic spatial unit is the parcel (ibid). A parcel can be defined as the spatial extent over which homogenous property rights are recognized (ibid). The legal subject may be a person, a company, the state, a municipality, a trustee or other parties that may hold land rights as sole proprietor, jointly or in common with others (Lamba, 2005, p.21). Land rights as explained under 2.2.2 include the right to use the land, earn income from it, transfer it to another party as well as right to manage the land, to exclude others from the land, and the right to compensation for it. Restrictions include things which the land owner cannot do on the land. The three basic elements are illustrated in figure 8.

Figure 8: The Basic Elements of Land Registration



Source: adapted from Henssen (1995)

Land registration systems perform differently in different countries. Nonetheless, Dale and McLaughlin (1999, p.39) identify five criteria for assessing the performance of land registration systems:

- **Coverage** – the more parcels that are registered, the more effective the registration system (may imply the need for compulsory registration).
- **Quality control** – the more reliable the information that is held in the registry, the more useful the system (requirement for certification of documents and modern information management techniques).
- **Currency** – keeping the information in the registry up to date so that the register reflects the actual situation on the ground.
- **State guarantee** – for example the Torren's system features a positive warranty of the information in the register (as well as a negative warranty against the effects of anything that is not in the register).
- **Indemnification** – compensation of anyone suffering loss because of an error in the register.

In addition, Henssen (1995) prescribed four basic legal principles of land registration (either deeds or titles): (1) booking – the creation or change of a real right is not legally effected until the creation or change is booked (entered) in the land register; (2) consent - the real entitled person who is booked as such in the register must give his consent for a change of the entry in the land register (unless the change is legally sanctioned by a court of law); (3) publicity –

the legal registers are open for public inspection, and protected by law; and (4) specialty – the concerned legal subject and land object must be unambiguously identified.

In sum, land registration records help in the prevention of land conflicts by providing evidence of boundary location and/or land ownership (Lamba, 2005).

#### **(v) Operational Issues**

Operational issues relates to human, financial and technical capacities. Adequate highly qualified and well paid public employees; and sufficient technical equipment as well as financial resources at public agencies are important elements of good land governance. These lead to provision of good land services. For instance, adequate, highly qualified and well paid human resources and sufficient financial and technical capacities are needed by social and public institutions to inter alia ensure that “any right or restriction within the continuum is (1) recognised, can be (2) protected and (3) enforced” (Simbizi et al., 2013, p.18).

Adequate highly qualified and well paid human resources have qualities which include but not limited to avoidance of corruption, efficiency and competence. However, lowly qualified and poorly paid human resources are characterised by corruption, inefficiency and incompetency. On the one hand, literature shows that corruption among land officers is the biggest challenge to good land governance (Moller-Jensen, 2010 cited in Munzerere, 2013). For example in Netherlands, Tanzania, Pakistan, India, Sri-Lanka, Bangladesh, Kenya, Vietnam, Lithuania and other countries, corruption is common among land officers (Tuladhar, 2007). Corrupt practices and other forms of misgovernance may result in double allocation, misallocation, forced evictions (McAuslan, 2002), land conflicts and tenure insecurity. According to Transparency International (2010 cited in UN-Habitat et al., 2013, p.11), corruption is divided into two: ‘according to rule’ corruption and ‘against the rule’ corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute ‘according to the rule’ corruption (ibid). Against the rule corruption is a bribe paid to obtain services the bribe receiver is prohibited from providing (ibid). On the other hand, inefficiency and incompetency lead to poor land services, such as delay in land allocation.

For land policy and land legislation to be successfully implemented and enforced, land institutions should be adequately funded. This is because implementation and enforcement requires vehicles and equipment like global positioning systems and computers. Inadequate

funding on the other hand adversely affects the implementation and enforcement of land policy and legislation. The end result is poor land services and this is an obstacle to good land governance.

#### **(vi) Political Conditions**

Land issues are highly political in nature (UN-Habitat, 2012a). Although different countries have different systems of land tenure, in many countries the absolute owner of all land is either the state or Head of State (UNECE, 1996). In most countries governments are formed by political parties, and political conditions in the country can affect governance of land in different ways. Put another way, the governance of land is influenced by political will (Zevenbergen and Augustinus, 2011). Political decisions guide the allocation of land rights and strongly influence the nature of institutions in which power is vested over governance of land (Mabikke, 2014). Institutions require political support in financing and facilitating land interventions, for example building land administration system to improve access and ownership rights require financial support from the state (ibid). Political will is also necessary in designing land legislation as well as supporting the institutions that are responsible for implementation and enforcement. For instance, Parliament which is the legislative arm of government should be at the forefront for advocating gender-sensitive and pro-poor land laws that protect the rights of all citizens (Mabikke, 2014).

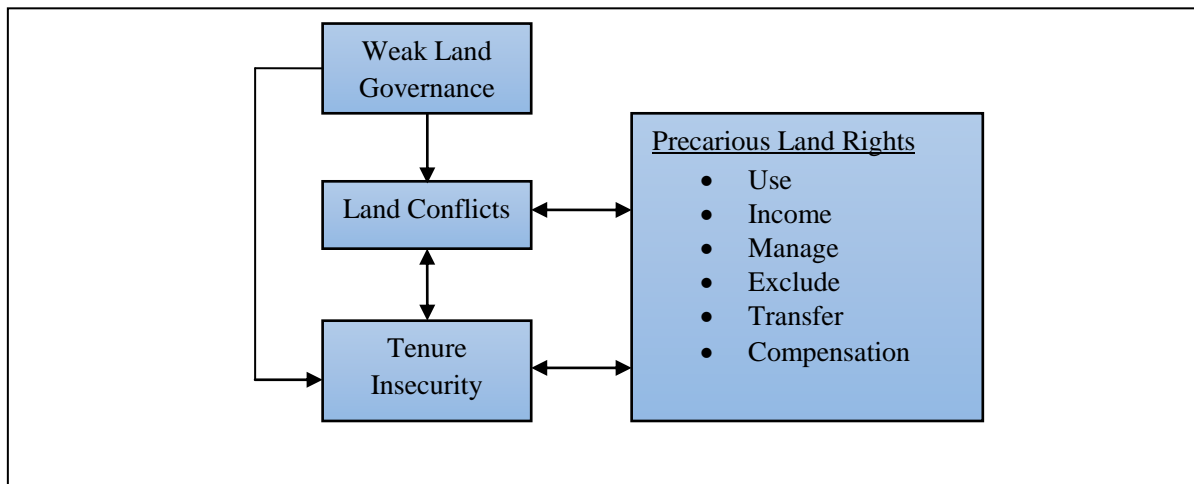
Strong political will in addressing land issues is an important element of good land governance. For example, where there are weaknesses in the land policy, legal framework, institutional framework, technical issues, and operational issues, strong political will enable restructuring to be undertaken with the view of making improvements. To the contrary, weak or no political will leads to the situation where the weaknesses in the land policy, legal framework, institutional framework, technical issues, and operational issues will be ignored and this has serious implications such as land conflicts and tenure insecurity.

## **2.5 Link between Land Conflicts/Tenure (In)Security and Land Governance**

As explained in chapter one, land conflicts lead to tenure insecurity. According to Arko-Adjei (2011), GLTN/UN-Habitat et al. (2014), IFAD (2006), Mwesigye (2014), and Place (2009), tenure insecurity arises from inter alia conflicts over land rights. Nonetheless, the opposite is also true that tenure insecurity lead to land conflicts. Tenure insecurity is a situation whereby

land rights are precarious, due to the risk of dispossession by actions of other individuals, communities or the state (USAID, 2005). In other words, tenure insecurity exists where land users and land-using communities are in danger of losing their land (Bruce and Holt, 2011). Figure 9 illustrates the relationship between land conflicts/tenure insecurity and land governance.

Figure 9: Link between Land Conflicts/Tenure Insecurity and Land Governance



Source: Author

The figure shows that where there are land conflicts, rights over land are precarious and this leads to tenure insecurity. On the other hand, tenure insecurity also leads to precarious land rights and subsequently land conflicts. It is found that countries experiencing land conflicts and tenure insecurity have a fundamental problem of weak land governance (FAO, 2007). This scenario has negative effects on individual households and enterprises as well as on the nation's economy. According to MercyCorps (2011), UN-Habitat (2008), and Wehrmann (2008), the effects of land conflicts and tenure insecurity include:

- Farm productivity is undermined. This adversely affects food security, and increase poverty;
- Local and central governments are denied revenues from property taxes and service charges, which could help improve living environments and the provision of essential services;
- May result in the loss of property;
- Hinder both local and inward investment in both urban and rural areas. For instance, people who fear eviction are not likely to operate to their maximum potential, or invest in improving their homes, farms, villages or neighbourhoods;

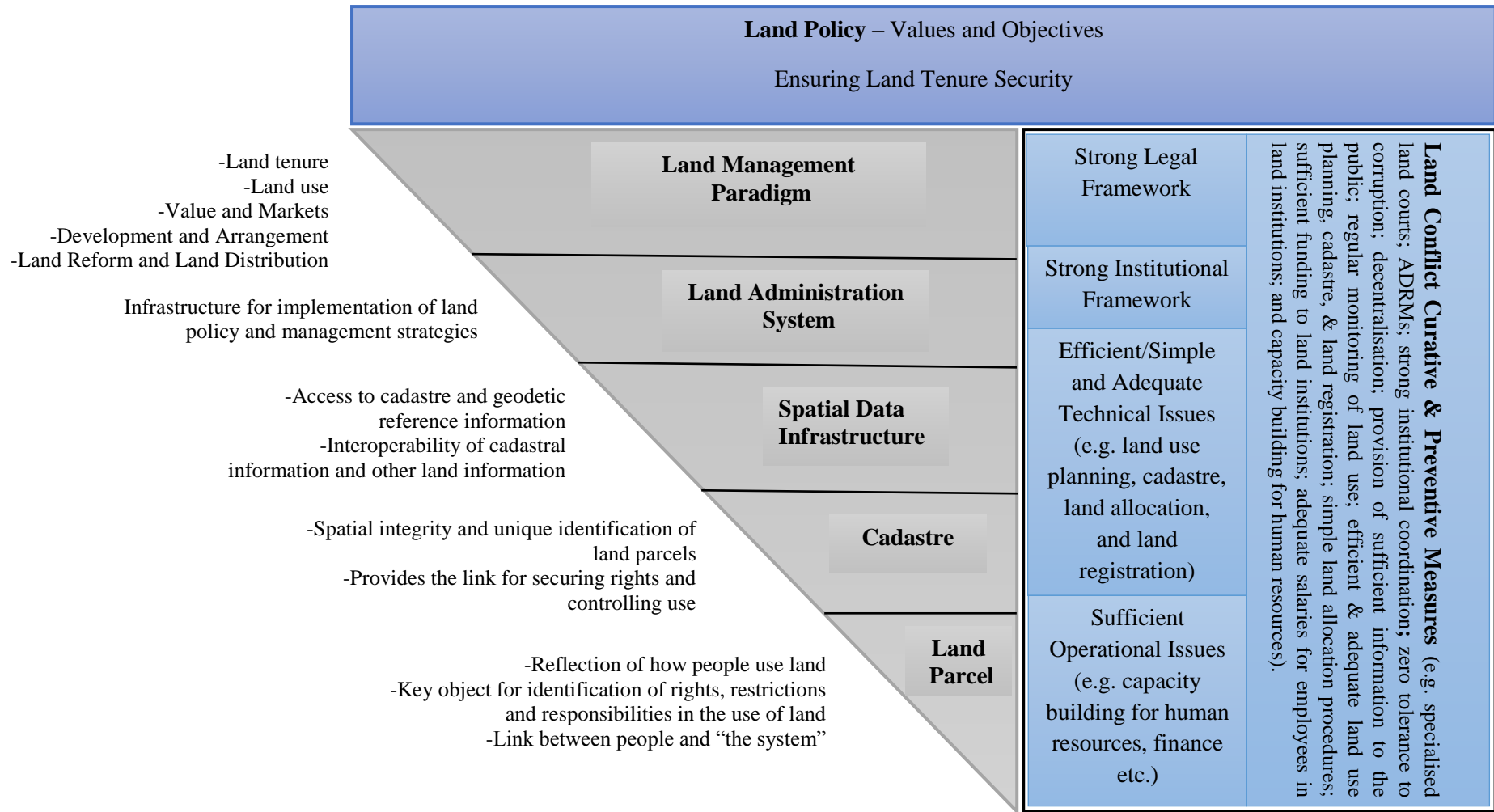
- Increase social and political instability. Where there a lot of multiple sales, evictions, land grabbing etc occur, people lose confidence in the state and start mistrusting each other. Social and political stability suffers even more when land conflicts are accompanied by violence. Violence may result in loss of life, injury as well as damage to property;
- Lead to limited infrastructure development projects. They may hinder the construction of infrastructure such as schools, roads, and health centers;
- Land conflicts and tenure insecurity affect different groups in different ways. Not only do they generally have a stronger impact on the livelihood of the poor than that of the rich, but they also impact differently on men and women, urban and rural populations, farmers and pastoralists etc., with groups such as squatters, ethnic minorities or orphans being extremely marginalized; and
- Land conflicts and tenure insecurity generally have a negative impact on the poor or on the natural or building environment. They either decrease quality of life for parts of society or, if they are addressed and ameliorated, contribute to additional state expenditures and therefore have an impact on the national wealth.

In sum, land conflicts and subsequently insecure land rights and vice versa adversely affect economic growth, poverty reduction, social stability, and sustainable resource use.

## **2.6 Conceptual Framework**

The purpose of a conceptual framework in this study is to provide a Conflict Sensitive Land Governance Strategic Framework aimed at resolving and preventing land conflicts to achieve tenure security. A Conflict Sensitive Land Governance Strategic Framework (CSLGSF) as explained in chapter one, is a structure intended to serve as a guide for resolving and preventing land conflicts through addressing prevailing legal, institutional, technical and operational framework (i.e. factors shaping components of the structure) to achieve tenure security. The framework consists of land policy, hierarchical structure from land management paradigm to land parcel, and land conflict curative and preventive measures. Figure 10 illustrates the conceptual model for Conflict Sensitive Land Governance Strategic Framework. **This conceptual model provides a base for research methodology, data analysis and recommendations, which are the subjects of subsequent chapters.**

Figure 10: Conceptual Model for Conflict Sensitive Land Governance Strategic Framework



Source: Author based on Magel et al. (2009)

### **2.6.1 Land Policy**

As discussed earlier, before a land law can be passed, a country must first come up with a clear land policy mapping out the values and objectives. Land policy consists of a whole complex of socio-economic and legal prescriptions that dictate how the land and the benefits from the land are to be allocated (UNECE, 1996). Therefore, land policy is important and in fact necessary because it guides the way countries use, manage and administer land (Mbaya, 2000; EU, 2004). Successful implementation of the land policy enables effective and efficient prevention and resolution of land conflicts and subsequently ensures land tenure security. This results in socio-economic development and peace and stability. Generally speaking, a good land policy is the foundation for good land governance.

### **2.6.2 Hierarchical Structure from Land Management Paradigm to Land Parcel**

Land management is the process of putting land to good effect (UNECE, 2005). It encompasses all activities associated with the management of land that are required to achieve sustainable development (Enemark, 2006). Land administration is the infrastructure that supports good land management (UNECE, 2005). It should be treated as a means to an end, not an end in itself (ibid). Land administration infrastructure is managed on the basis of appropriate spatial data infrastructure providing adequate, complete, reliable, consistent, and up to date land information. It is argued that a cadastre is a basic building block of the spatial data infrastructure (Manisa and Nkwae, 2007). A cadastral system stores information about ownership rights, parcel extents or boundary information, land use, land value, and may provide an information component of land registration (ibid). A well-functioning land management, land administration, spatial data infrastructure, and cadastre assist in effective and efficient resolution and prevention of land conflicts which in turn lead to tenure security on a land parcel.

In this study, it is conceptualised that effectiveness and efficiency of land management, land administration, spatial data infrastructure, and cadastre which contribute to effective and efficient resolution and prevention of land conflicts (to ensure land tenure security on a land parcel and thus achieving land policy objectives) depends on the combination of factors. These factors include strong legal framework (e.g. adequate land laws), strong institutional framework (e.g. effective, efficient and competent land institutions), efficient/simple and adequate technical issues (e.g. efficient and adequate land use planning, cadastre, and land



registration as well as simple land allocation procedures), and sufficient operational issues (e.g. adequate well trained human resources, adequate funding, adequate computers etc.).

### **2.6.3 Land Conflict Curative and Preventive Measures**

For land conflict curative and preventive measures to be effective and efficient, certain factors are necessary and should either be existing already or be put in place. These factors include strong legal framework, strong institutional framework, efficient/simple and adequate technical issues, and sufficient operational issues. It is worth mentioning that the foregoing factors also shape the hierarchical structure from land management paradigm to land parcel as discussed under 2.6.2. These factors shaping land conflict curative and preventive measures are explored in more detail in the next subsections.

#### **2.6.3.1 Strong Legal framework**

Literature review shows that general courts (i.e. courts handling all types of cases - civil and criminal) have been facing numerous problems – including accessibility, lack of legal and technical expertise, high litigation costs, delay (due to backlog of cases), decision quality, lack of public information and participation, and public trust – which are seen as limiting access to land justice (see Mwenda, 2006; Pring and Pring, 2009). Reversing this negative scenario require strong legal framework. Strong legal framework includes, inter alia, land laws which provide for Specialised Land Courts (SLCs) and Alternative Dispute Resolution Mechanisms (ADRM). On the one hand, SLCs have many different names, such as Land Tribunals, Cadastral Commissions or Land Courts, but their objective is the same, that is, to deal explicitly and exclusively with land related conflicts (Wehrmann, 2008). SLCs have very different legal jurisdictions, from very broad (including and integrating all laws that relate to land for instance, statutory and customary laws in most sub - Sahara African Countries) to very narrow (sometimes even limited to a single law, like statutory law). The most powerful SLCs have comprehensive legal jurisdiction and a range of enforcement powers. Pring and Pring (2009) argue that SLCs are better because there are characterised by expertise, efficiency, cost effectiveness, transparency, and flexible rules of procedure and evidence (i.e. employ informal and less intimidating proceedings). These enable greater public participation and confidence in the land conflict resolution process.

On the other hand, resolving land conflicts and achieving tenure security often requires a multi-faceted approach that goes beyond SLCs and include use of ADRMs such as mediation,

conciliation, and arbitration. The use of ADRMs, when appropriate, tends to produce a high settlement rate as well as innovative solutions to problems, potentially resulting in better outcomes for the parties and reducing the number of land conflict cases which must have a full hearing (Pring and Pring, 2009). In addition, ADRMs can increase public participation and access to justice by including interested stakeholders in collaborative decision-making or mediation prior to a judicial decision, and can reduce costs to the parties and the courts (ibid).

Regarding preventive measures, weak legal framework adversely affects prevention of land conflicts. Weak legal framework is characterised by inter alia legislative loopholes, contradictory/inconsistent legislation or sections in statutes, and is complex, obsolete, ambiguous, and exclusive. To effectively and efficiently prevent land conflicts, the legal framework should be strong, i.e. no loopholes, consistent, transparent, clear, simple, and inclusive as well as recognising a continuum of land rights as shown in box 2.

#### Box 2: Recognition of a Continuum of Land Rights

- ✓ Existing legal framework recognises rights held by most of the urban population.
- ✓ Group tenure in informal urban areas is formally recognised, and clear regulations regarding the internal organisation and legal representation of groups exist.
- ✓ The law provides for land boundary demarcation and surveying or mapping, land use planning as well as land registration for communal and individual properties. Here, the major reason for introducing land recordation is for preventive justice: society invests in preventing conflict ahead of time by creating land records which show evidence of land rights and contractual relations.
- ✓ The law provides for fair compensation for land users.

Source: Deininger et al. (2012); Van Der Molen and Tuladhar (2007); Zevenbergen (2011); Zevenbergen et al. (2012, 2013)

In sum, a well-designed, participatory, consistent, simple, clear, transparent, and inclusive legal framework creates an enabling environment for effective land conflict resolution and prevention which in turn enhance land tenure security.

#### **2.6.3.2 Strong Institutional Framework**

Weak institutional framework hampers effective and efficient resolution and prevention of land conflicts. Weak institutional framework is characterised by centralisation (for example centralised SLCs and processing of title deeds), limited access to land conflict resolution mechanisms and land institutions (especially for the poor and rural population due to distance, illiteracy, costs etc.), corruption and lack of transparency, lack of co-ordination within and between different government agencies, lack of accountability, insufficient

information to the public (i.e. lack of information on land conflict resolution and land allocation procedures, and people not aware of the law and land rights), insufficient supply of affordable and legally recognised land especially in urban areas, forcing people to occupy land without secure land rights (illegal occupation of land), and insufficient monitoring of land (see Mahaphonh et al., 2007; Wehrmann, 2008).

Reversing the above negative trend so as to effectively and efficiently resolve and prevent land conflicts require strong institutional framework and this implies:

(i) Decentralised land institutions. Day-to-day operations of institutions need to be performed close to communities (adapted from Zevenbergen et al., 2012). In this regard, land conflict resolution mechanisms (SLCs and ADRMs) and land institutions should be decentralised based on the principle of subsidiarity, i.e. taken at the lowest appropriate level (adapted from FAO, 2007). Decentralisation offers advantages, especially in a country where distances are great or travel is inconvenient (UNECE, 1996). Placing land governance offices (e.g. SLCs, land institutions etc.) at the district or local government level tends to ensure greater accuracy and effectiveness (ibid). For instance, decentralisation brings land governance facilities and services (e.g. land conflict resolution, land allocation etc.) closer to local communities (Bruce and Holt, 2011). In other words, decentralisation allows the overall land governance process to proceed more quickly and permits the system to respond more effectively to local community needs (UNECE, 1996). This in turn improves service delivery and access by local residents (Bruce and Holt, 2011). For instance, majority of people (including the poor and rural population) having access to land conflict resolution mechanisms, and land on title because the process of resolving land conflicts and acquiring land is cheaper in terms of time and financial resources.

(ii) Zero tolerance to corruption. Corruption and the resulting inequalities are very real in land conflict resolution and land allocation when land conflict resolution mechanisms and land institutions are opaque - secretive (UN-Habitat et al., 2013). Corruption comes in many forms: petty corruption (e.g. bribes or kickbacks), fraud, collusion (e.g. illegal allocation of land), coercion (e.g. threats), obstruction and undue influence (e.g. nepotism and favors) (Mabikke, 2014). Vulnerable individuals and groups often bear the brunt of the corruption outcomes including: difficult access to land and land conflict resolution mechanisms; ignorance of land policies, legal frameworks, land transactions and prices and; misallocation of land rights, land grabbing and evictions (UN-Habitat et al., 2013). Reversing this gloomy

scenario so as to effectively and efficiently resolve and prevent land conflicts require curbing corruption in the land sector.

(iii) Fragmentation of land administration processes into vertical functions, mandated to different institutions, is a common problem to many countries both developed and developing (Mulolwa, 2002). Process fragmentation leads to inefficiencies in the delivery of land services (ibid). In this regard, co-ordination within and between different government agencies is critical. Institutional mandates concerning the governance of land sector should be clearly defined, duplication of responsibilities avoided, and information shared as needed and this implies (Deininger et al., 2012):

- ✓ Clear separation in the roles of implementation of land policy and land laws;
- ✓ The mandated responsibilities exercised by the authorities dealing with land governance issues are clearly defined and non-overlapping with those of other land sector agencies;
- ✓ Assignment of land-related responsibilities between the different levels of government is clear and non-overlapping; and
- ✓ Information related to rights in land is available to other institutions that need this information at reasonable cost and is readily accessible, largely because land information is maintained in uniform way.

(iv) Accountability. Land institutions should demonstrate stewardship by responding to questioning, explaining its actions and providing evidence of how it functions (FAO, 2007).

(v) Provision of sufficient information to the public. Lack of accurate information about land allocation procedures, land rights, land laws and other land issues can fuel confusion and suspicion that can lead to land conflicts (USAID, 2005). Early public information and education campaigns about land-related issues should be undertaken and this can help to clarify issues and correct false assumptions (USAID, 2005), thus, preventing land conflicts. Similarly, provision of sufficient information to the public on the existence of land conflict resolution mechanisms and how to access them will enable more litigants to access these mechanisms.

(vi) Sufficient supply of affordable and legally recognised land especially in urban areas. Land services provided by especially land institutions should be responsive to the needs of

citizens and costs of acquiring services should be affordable as well as procedures being clear and simple (Palmer et al., 2009). Institutions should also serve all stakeholders within a reasonable timeframe (ibid). The foregoing may effectively and efficiently prevent land conflicts.

(vii) Regular monitoring of land use. Regular monitoring of land use should be done through site inspections coupled with the use of google earth. This enables identifying land problems early enough and this may effectively and efficiently prevent land conflicts.

### **2.6.3.3 Efficient/Simple and Adequate Technical Issues**

Inefficient and inadequate cadastre, land registration, and land use planning hampers effective and efficient land conflict resolution and prevention. In addition, cumbersome land allocation procedures hamper effective and efficient prevention of land conflict. Nonetheless, effective and efficient resolution and prevention of land conflicts require: 100% cadastral coverage and the cadastre should be up to date; compulsory land registration and the ownership information in the registry should be up to date; and adequate land use planning [public input should be sought in preparing and amending land use plans] (adapted from Deininger et al., 2012). Similarly, simple land allocation procedures may effectively and efficiently prevent land conflicts.

### **2.6.3.4 Sufficient Operational Issues**

Lowly qualified and poorly paid human resources and insufficient funding are obstacles to effective and efficient land conflict resolution and prevention. Further, insufficient vehicles, computers, Global Positioning Systems [GPSs] to mention a few are obstacles to effective and efficient land conflict prevention. Reversing these negative trends so as to effectively and efficiently resolve and prevent land conflicts require capacity building for human resources and this should be on-going, improving conditions of service (e.g. increasing salaries) for employees in land institutions, and improving funding to land institutions. In addition, providing sufficient vehicles, computers, and GPSs may effectively and efficiently prevent land conflicts.

## **2.7 Chapter Summary**

Both the theoretical and conceptual frameworks in the present chapter reveal that ensuring security of land rights requires both the effective and efficient prevention and resolution of

land conflicts. The identified prerequisite for efficient and effective prevention and resolution of land conflicts is adopting good governance in land management and administration. The ingredients for good governance in land sector include sufficient land policy and legislations, strong land institutions as well as adequate technical and operational issues. This entails having:

- Sufficient legal instruments provisions and ensuring high levels of implementation;
- Decentralised land institutions, strong institutional coordination amongst the different land institutions, regular monitoring of land use, zero tolerance to corruption, and sufficient information to the public;
- Adequate land use planning, cadastre and land registration as well as simple land allocation procedures; and,
- Adequate and well qualified human resources, sufficient financing to land institutions, and adequate equipment such as vehicles, computers to mention but a few.

Moreover, good governance in land sector can significantly be achieved if there is strong political will and commitment by governments.

## **Chapter Three: Research Methodology**

*“By conducting research, researchers attempt to answer age-old questions, acquire new knowledge, describe how things work, and ultimately improve the way we all live” (Marczyk et al., 2005, p.1).*

### **3.1 Introduction**

Research methodology is a way to systematically solve the research problem (Kothari, 2004, p.8). It may be understood as a science of studying how research is done scientifically (ibid). Essentially, the procedures by which researchers go about their work of describing, explaining and predicting phenomena are called research methodology (Rajasekar et al., 2013, p.5). The purpose of methodology is to describe and to examine the logic of research methods and techniques, revealing their powers and limitations, generalising successes and failures, finding domains of appropriate, and predicting possible contributions to knowledge (Krippendorff, 1980 cited in Masum, 2009, p.63).

This chapter describes how the research was undertaken. The chapter is divided in six sections. It begins in section 3.2 by discussing the selection of research paradigm and rationale. This is followed by sections 3.3, 3.4, 3.5 and 3.6 which discuss units of analysis and research strategy, types of data collected, data reliability and validity, and data analysis. The chapter concludes in section 3.7 by way of a chapter summary.

### **3.2 Selection of Research Paradigm and Rationale**

Over the years there has been a paradigm war between proponents of qualitative research approach (also referred to as interpretivism approach) and quantitative research approach (also referred to as positivism approach) (see Constas, 1992; Denzin and Lincoln, 2000; Johnson and Onwuegbuzie, 2004; Maxwell and Delaney, 2004; Messick, 1995; Rocco et al., 2003; Sandelowski, 1986; Schrag, 1992; Sechrest and Sidani, 1995). The war is on which approach is more scientific than the other. To stop the war between proponents of these two schools of thought, various researchers (see Creswell, 2003; Onwuegbuzie and Leech, 2005; Sogunro, 2002; Wickens, 1999) have made theoretical contributions which have strongly influenced the direction of recent methodological developments in social research. This has led to the evolution of a ‘hybrid’ or mixed (pragmatism) approach, the defining characteristic

of which is the flexibility it allows the researcher in combining both qualitative and quantitative research approaches (Wickens, 1999), to best understand research problems.

The question to ask now is, what then influences, a choice of one approach over another or the combination of both approaches in a study? According to Creswell (2003), the selection of a research approach or the combination of both approaches is based on the nature of the research problem or issue being addressed. Therefore, given that the nature of this study aims at enhancing tenure security by preventing land conflicts through conflict sensitive land governance in Zambia, a qualitative research approach was selected to be the most appropriate. Nonetheless, quantitative approach was also adopted to collect supporting data. This is something that is explored in more detail in the next subsections.

### **3.2.1 Qualitative Research Approach: Main Approach Adopted**

Qualitative approach to research is concerned with assessment of attitudes, opinions and behaviour (Kothari, 2004, p.5). Research in such a situation is a function of researcher's insights and impressions (ibid). In this approach to research, the inquirer often makes knowledge claims based primarily on constructivist perspectives (i.e. the multiple meanings of individual experiences, meanings socially and historically constructed, with an intent of developing a theory or pattern) or advocacy/participatory perspectives (i.e. political, issue-oriented, collaborative or change oriented) or both (Creswell, 2003, p.18). Qualitative research uses text as empirical material (instead of numbers), starts from the notion of the social construction of realities under study, is interested in the perspectives of participants, in everyday practices and everyday knowledge referring to the issue under study (Flick, 2007, p.2). Boeije (2010 cited in Usamah, 2013, p.8) summarises the purpose of qualitative research as follows:

*“The purpose of qualitative research is to describe and understand social phenomena in terms of the meaning people bring to them. The research questions are studied through flexible methods enabling contact with the people involved to an extent that is necessary to grasp what is going on in the field. The methods produce rich, descriptive data that need to be interpreted through identification and coding of themes and categories leading to findings that can contribute to theoretical knowledge and practical use”.*

To sum up, qualitative research seeks to describe and analyse the culture and behaviour of humans and their groups from the point of view of those being studied (Kombo and Tromp,



2006, p.9). In qualitative research, feelings and insights are considered important (Orodho and Kombo, 2002).

There are various reasons for using qualitative approach in research. According to Kombo and Tromp (2006, pp.9-10):

*“The qualitative approach is applicable when the subject matter is unfamiliar and the study seeks to relate particular aspects of behaviour to the wider context; and it is also applicable when meanings rather than frequencies are sought and when flexibility of approach is needed to allow for discovery of the unexpected and in-depth investigation of particular topics”.*

Since empirical research on social phenomena is in question - land conflicts and tenure (in) security are behavioural and influenced by political, economic, socio-economic, socio-cultural, demographic, legal, institutional, technical, ecologic, and psychological issues - understanding and addressing the nature of the subject research problem (i.e. high incidence of land conflicts and high degree of tenure insecurity in Zambia) required a qualitative approach.

### **3.2.2 Quantitative Research Approach: Supplementary Approach**

As explained earlier, the qualitative approach is the main paradigm for this study, but quantitative approach was used to collect supporting requirements. According to Creswell (2003 p.19) a quantitative approach is one in which the investigator primarily uses post-positivist claims for developing knowledge (i.e. cause and effect thinking, reduction to specific variables and hypotheses and questions, use of measurement and observation, and the test of theories). This approach involves the generation of data in quantitative form (numbers) which can be subjected to rigorous quantitative analysis in a formal and rigid fashion (Kothari, 2004). In other words, quantitative approach refers to counts and measures of things (Berg, 2001). In this study, some quantitative data such as demographic data, some land governance issues, population of case study area among others were collected to supplement the qualitative approach.

### **3.3 Units of Analysis and Research Strategy**

The units of analysis in this research are the components of state land governance framework, that is, land policy, legal framework, institutional framework as well as technical and

operational issues. In order to establish the status of these components, narratives from land experts (at various levels), politicians and urban citizens were obtained and analysed.

Regarding research strategy, every research requires a choice of research strategy to answer research questions. For instance, qualitative researchers can choose from among the possibilities, such as narrative, phenomenology, ethnography, action research, grounded theory, and case study (Bell, 2010; Creswell, 2014). Thus, to answer research questions for this study, a case study strategy (particularly single case study) was selected. The use of this strategy is supported by the fact that case studies are most commonly associated with qualitative research and qualitative data, but quantitative data can readily be incorporated into a case study where appropriate (Rose et al., 2015). This applies to this study. In this regard, the following subsections discuss case study strategy, selection of case study area, and description of the case study area.

### **3.3.1 Case Study Strategy**

A case study is defined as an empirical inquiry that investigates a contemporary phenomenon in depth and within its real life context, especially when the boundaries between phenomenon and context are not clearly evident, and uses multiple sources of evidence (Yin, 2009). The case study is the most flexible of all research strategies, allowing the researcher to retain the holistic characteristics of real-life events while investigating empirical events (Schell, 1992). Benbasat et al. (1987), Creswell (2014), Evans and Gruba (2002), Salkind (2003), and Yin (2004), provide key characteristics of case study research that are applicable to this study:

- Useful in the study having research questions that are descriptive (“what has been happening?”) or explanatory (“how or why has it been happening?”);
- Phenomenon is examined in a natural setting (i.e. the scenario is not artificial). Qualitative researchers tend to collect data in the field at the site where participants experience the issue or problem under study. They do not bring individuals into a lab;
- Data are collected by multiple means such as interviews, questionnaires, focus group discussions, observations, documents, and audiovisual information rather than rely on a single data source;
- One or few entities (person, group, or organization) are examined, which allows for very close examination and scrutiny and the collection of a great deal of detailed data;
- No experimental controls or manipulation are involved;

- Help to arrive at generalisations;
- The focus is on contemporary events; and
- The researcher makes direct observations and collect data to produce a first-hand and in-depth understanding of people and events.

Land conflicts and tenure insecurity could be considered as real life phenomena which are being experienced on a daily basis by different land users. Land conflicts, tenure insecurity and land governance have a cause – effect relationship. Therefore, through the case study strategy the specific contexts on cause – effect relationships were analysed and detailed investigations on the phenomenon were carried out (Masum, 2009).

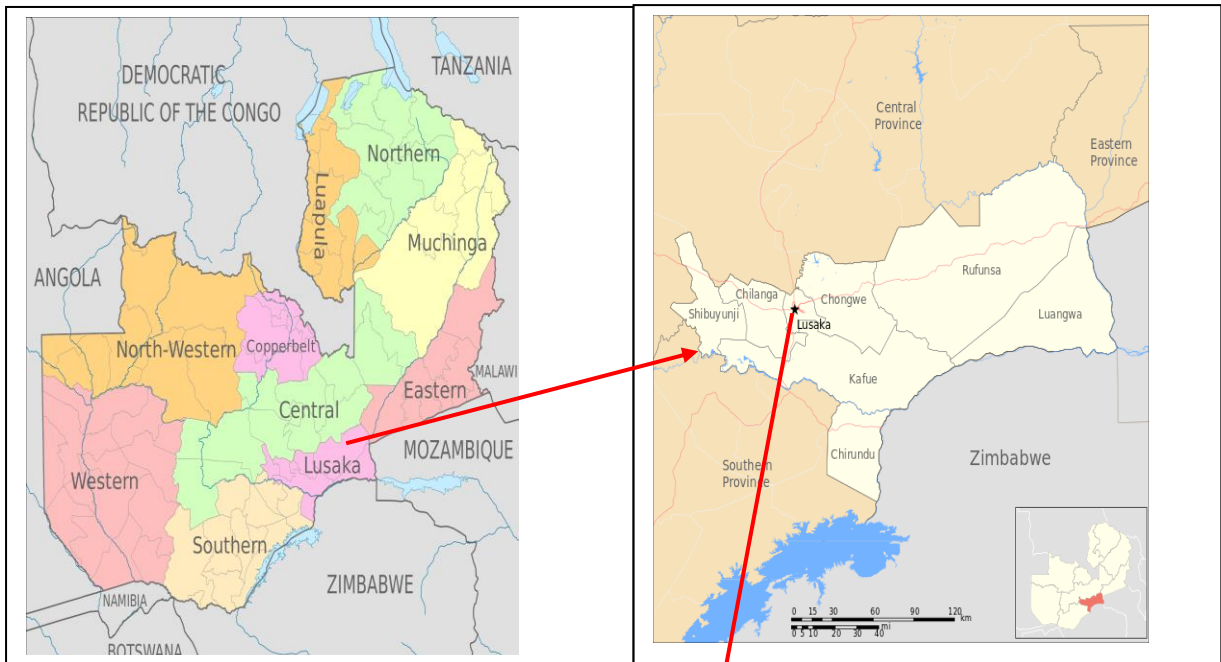
### **3.3.2 Selection of Case Study Area and Justification**

The selected case study area (Lusaka District) for the research is located in Lusaka province (see map 1). Two factors were mainly considered in selecting this case study area. First, Lusaka District is a hotspot for state land conflicts. Second factor is that Lusaka District has a large number of actors such as government institutions, non-governmental organisations and private firms involved in land governance. The criteria for the selection of the case study area were established after consultation with several land experts. The consultation was conducted by email and telephone communication. Through this communication, it was established that, though state land conflicts occur in almost all the 106 districts in Zambia, Lusaka District has the highest incidence of state land conflicts.

### **3.3.3 Description of Case Study Area**

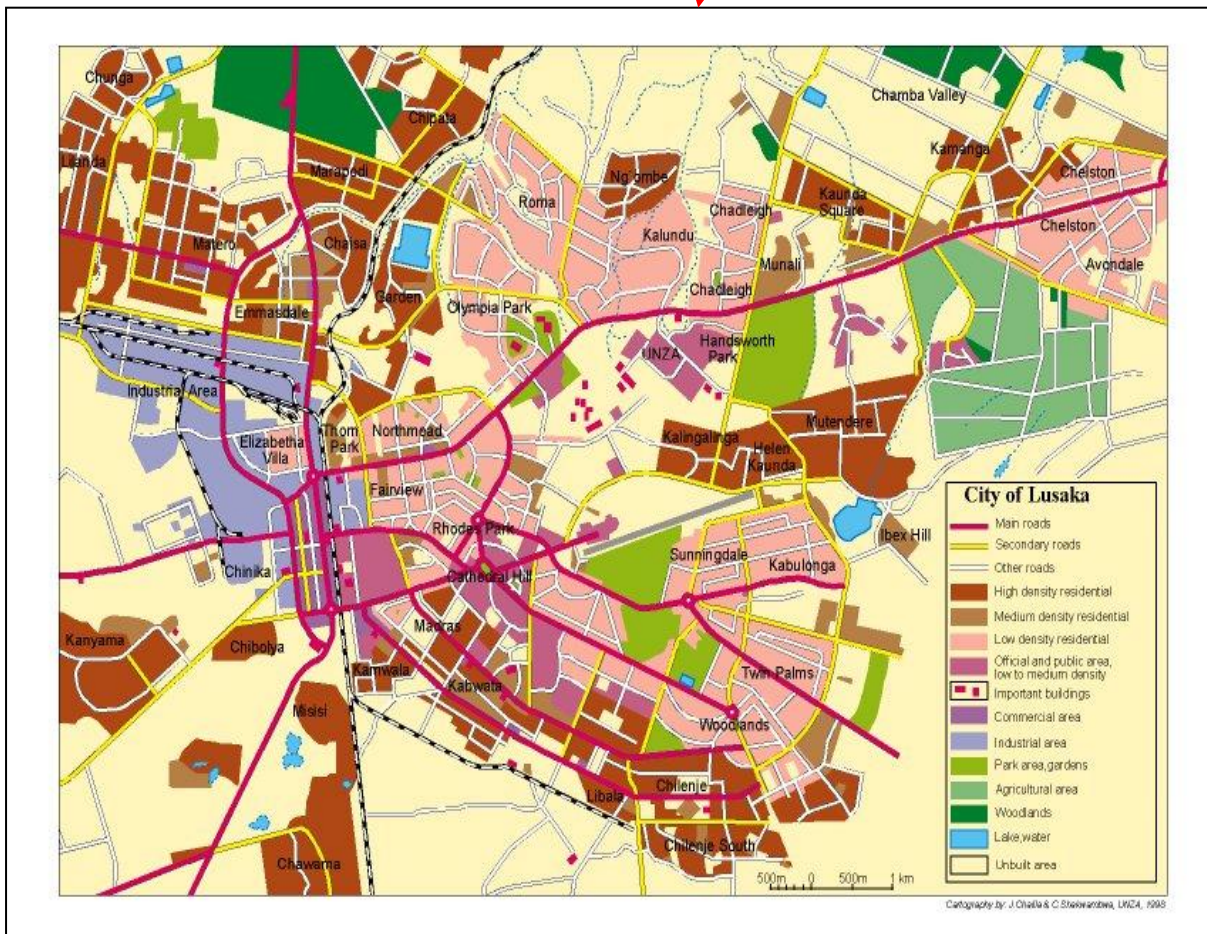
Lusaka District is located in Lusaka Province. Lusaka Province is one of Zambia’s ten provinces. The other provinces include Central, Northern, North Western, Luapula, Muchinga, Southern, Copperbelt, Western, and Eastern. Prior to 2011, Lusaka Province had four districts; Lusaka, Chongwe, Luangwa and Kafue. However, the Patriotic Front government which came into power in September 2011 subdivided the Province to create four more districts; Chilanga, Chirundu, Rufunsa and Shibuyunji Districts, implying that the Province now has eight districts.

Map 1: Provinces in Zambia and Districts in Lusaka Province



Source: Republic of Zambia (2010a)

Map 2: Townships in Lusaka District



Source: <http://www.rzhrg.org/pictures.html>

Lusaka District is the provincial capital of Lusaka Province as well as the national capital of Zambia. It dominates the country's urban system and accounts for 34.2 percent of the total urban population in the country (see table 8). According to table 8, the District's population increased from 123,146 in 1963 to 262,425 in 1969. The population doubled between 1969 and 1980 from 262,425 to 535,830. Further, the population increased from 535,830 in 1980 to 769,353 in 1990 and from 769,353 in 1990 to 1,103,413 in 2000. The most recent Census of Population and Housing conducted in 2010 puts the District's population at 1,742,979. This indicates an increase of about 639, 566 persons between 2000 and 2010. The current annual growth rate is 4.9% and this population growth rate is more than twice the national growth figure of 2.8% (Chitengi, 2015).

Table 8: Population of Lusaka from 1963 - 2010

Year	Population	Annual Growth Rate	Percentage of National Population	Percentage of Total Urban Population
1963	123 146	-	3.5	17.2
1969	262 425	13.4	6.5	22
1974	421 000	9.9	9	25.3
1980	535 830	4.1	9.4	21.9
1990	769 353	3.7	10.4	26.5
2000	1 103 413	4	10.7	29
2010	1 742 978	4.9	13.3	34.2

Source: CSO cited in Chitengi (2015)

Lusaka district has a land mass covering a total area of 423 square kilometres (Chitonge and Mfune, 2015) of mostly flat relief, and is located in the southern part of the central plateau of the country, at an elevation of 1280 meters. Land in the area is under statutory tenure. The district became the national capital in 1935 replacing Livingstone (provincial capital for Southern province) as the capital of the British colony of Northern Rhodesia (now Zambia). This was due to its fairly central location, its situation on the railway and at the crossroads of the Great North Road and Great East Road.

According to Mulenga (2003, p.4):

*“The economy of Lusaka District has become more diversified with its physical expansion and population growth. It has in fact grown from the provision of a few services to commercial farmers who had established themselves around it to provision of higher order services, such as financial and technical services, construction and even manufacturing activities. As the capital city of Zambia, Lusaka also provides services including administrative functions to Zambia as a whole. Moreover, Lusaka also plays a significant role in the country's manufacturing. Most manufacturing enterprises*

are located in Lusaka. Food processing enterprises, such as milling, meat processing and production of essential commodities such as detergents and other domestic chemical products seem to be concentrated in Lusaka”.

Furthermore, the city has the best developed economic and social infrastructure and facilities like electricity, shopping malls, tarred roads, schools, hospitals, water, and telecommunications as well as aviation facilities (see photo 1). Given its economic and social status, the city is favorably considered as an attractive centre capable of serving the interests of many.

Photo 1: Levi Shopping Mall and Lusaka International Airport



Zambia Advisor (2016)

### **3.4 Types of Data Collected**

Every research requires data, which could either be secondary or primary data. In this regard, two types of data - primary and secondary data- were collected for this study. These types of data are discussed below.

#### **3.4.1 Secondary Data Collection**

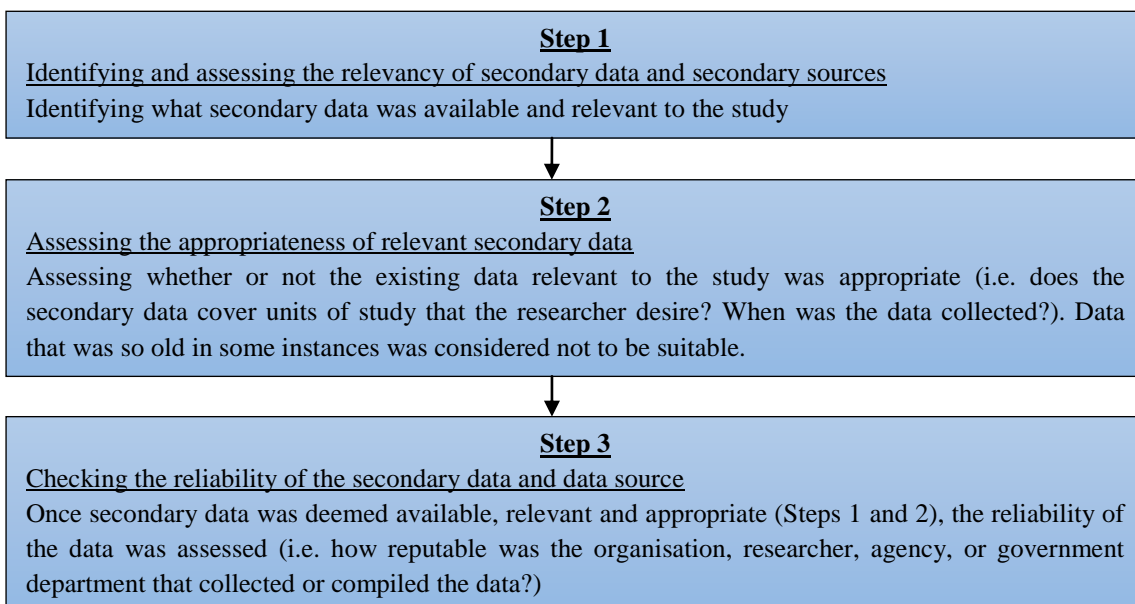
Secondary data is information that has already been collected and is usually available in published or electronic form (Curtis, 2008, p.1). This data has the main advantage that the material is readily available and so is cheap and easy to use (Browne, 2011). The secondary data for this study was collected from inter alia:

- Acts of Parliament and Parliamentary debates;
- Government Reports;

- Published and unpublished reports from NGOs like Zambia Land Alliance, Zambian Governance Foundation for Civil Society, and Civic Forum on Housing and Habitat;
- Expert review reports;
- Media sources (like The Post, Times of Zambia, Zambia Daily Mail, Daily Nation, Muvi, and Lusaka Times); and
- Doctoral dissertations on land management and administration.

It should be pointed out that three steps were followed to assess secondary data for use in this study, as illustrated in figure 11.

Figure 11: Steps Followed to Assess Secondary Data



Source: Adapted from WFP (n.d.)

### 3.4.2 Primary Data Collection

Primary data consists of information collected from the field (Lusaka District) by the researcher and his four assistants. Here, data was collected specifically to address the problem in question. Primary data collection was undertaken after the researcher had gained some insight on land conflicts, tenure (in)security and land governance by reviewing secondary data. There are various instruments for collecting primary data in case studies. According to Punch (2011), Salkind (2003), and Yin (2009), the instruments include but not limited to interviews, direct observation, participant-observation, questionnaires, and focus group discussions. In order to capture the feelings and insights of the stakeholders on land conflicts, tenure (in)security, and land governance, questionnaires and interview (with

households and academics) were used for primary data collection. This is something that is explored in more detail in the next subsections.

### **3.4.2.1 Key Informants Questionnaires**

The first phase of primary data collection involved administering questionnaires to key informants involved directly or indirectly in land governance in Zambia. A questionnaire is a data collection instrument consisting of a series of questions and other prompts for the purpose of gathering information from respondents (Abawi, 2013). A questionnaire is a well-established tool within social science research for acquiring information on participant social characteristics, present and past behaviour, standards of behaviour or attitudes and their beliefs and reasons for action with respect to the topic under investigation (Bulmer, 2004 cited in Bird, 2009, p.1307). Questionnaires are effective mechanisms for efficient collection of certain kinds of information (Miller, n.d., p.4). According to Miller (n.d., p.4) advantages of questionnaires are:

- They permit respondents time to consider their responses carefully without interference from, for example, an interviewer;
- Cost. It is possible to provide questionnaires to large numbers of people simultaneously;
- Uniformity. Each respondent receives the identical set of questions. The data gathered is standardised and therefore, easy to analyse; and
- Can address a large number of issues and questions of concern in a relatively efficient way, with the possibility of a high response rate.

Purposeful sampling was used to identify key respondents. Purposeful sampling purposively select organisations or individuals that exhibit the desired features that are the focus of the researcher's study (Attewell and Rule, 1991 cited in Glasow, 2005). In purposeful sampling the sample is not selected from the population based on certain variables prior to the study, rather the initial sample is determined to examine the phenomena where it is found to exist (Chenitz and Swanson, 1986). In this regard, the Key Informants for this study were employees of the selected public institutions (central and local government), land conflict resolution mechanisms (LCRMs), private firms, and Non-Governmental Organisations (NGOs) with experience in land conflicts, tenure (in)security, and land governance. In addition, questionnaires were administered to selected politicians from the ruling and



opposition political parties. The data collected from these institutions and politicians inter alia included:

- The role of the respondents in land governance;
- Prevalence of land conflicts;
- Types of land conflicts;
- How land conflicts affect tenure security; and
- If public land institutions are doing an adequate job in terms of preventing land conflicts to ensure tenure security, etc.

The list of key informants involved in this study is summarised in Table 9.

Table 9: List of Key Informants

Category	Public Institution/NGO/ Private Firm	Department/Remarks (where applicable)	No.
Central Government	Ministry of Lands, Natural Resources and Environmental Protection	Lands, Land and Deeds, Surveying, Forestry; Land Taskforce against Illegal Land Allocation, and Land Survey Control Board	6
	Ministry of Local Government and Housing	Planning Department: Assistant Director and Provincial Planner	2
	Office of the Vice President	Land Resettlement	1
	Ministry of Agriculture	Land Use Planning Section	1
	Lusaka Regional Survey Office		1
Local Government	Lusaka City Council	Planning, Legal, Survey and Informal Settlement Unit	4
Politicians	Councillors of ruling government		3
	Councillors of opposition party		3
Land Conflict Resolution Mechanisms	Chartered Institute of Arbitrators	Alternative Dispute Resolution Mechanism	1
	Mediation Annexure	Alternative Dispute Resolution Mechanism	1
	Lands Tribunal	Specialised Land Court	1
	Subordinate Court		1
	High Court		1
	Supreme Court		1
NGOs	Zambia Land Alliance	Network of NGOs working for just land policies and laws that take into account the interests of the poor. Former Director and Program Officer.	2

	Civic Forum on Housing and Habitat	Advocate for equal access to land especially among the vulnerable groups such as women and youths.	1
	People’s Process on Housing and Poverty in Zambia	Provide technical support to the Zambian Homeless.	1
	U.S. Agency for International Development (USAID)	Tetrattech Project	1
Private Firms	Land Surveying Firms		3
	Law Firms	Handling land conflicts	3
<b>Total Number of Key Informants</b>			<b>38</b>

Source: Author

### 3.4.2.2 Interviews with Academics and Households

Interview is one of the most important instruments for case study information. An interview is a formal or informal meeting between interviewer and interviewee for the purpose of obtaining information and/or evidence in a study (adapted from ICN, 2008). There are various forms of interviews: unstructured, structured, and semi-structured interviews. For the purpose of this study, semi-structured interview was used.

Semi-structured interviews are based on the use of an interview guide (Kombo and Tromp, 2006). An interview guide is a written list of questions or topics that need to be covered by the interview (ibid). Kombo and Tromp (2006) and Gill et al., (2008) state that, this form of interview is better because of the following reasons:

- It is flexible. This is because it consists of both open and closed-ended questions;
- In-depth information is gathered by closed ended questions;
- By using both the open and closed-ended approach, the researcher gets a complete and detailed understanding of the issue under research;
- Most appropriate where little is already known about the study phenomenon or where detailed insights are required from individual participants; and
- Also particularly appropriate for exploring sensitive topics, where participants may not want to talk about such issues in a group environment.

Semi-structured interview was chosen following the concept of qualitative analysis (Masum, 2009). Under semi-structured interview interviewees’ were academics and present residents of selected townships.

### **(a) Interview with Academics**

Selected academics from the Copperbelt University and University of Zambia were interviewed to obtain information on the;

- Status of land conflicts and tenure security;
- Status of legal and institutional frameworks as well as technical issues; and
- Respondent's general assessment of government action in the fight against corruption in land sector.

Six (6) land experts from the two universities were interviewed, that is, three from each university.

### **(b) Interview with Households**

Here, it is instructive to first describe the term household. Crehan has aptly observed that although a neat and formal definition of 'the household' may not exist, the basic units in which people live are households (Crehan 1992 cited in Chileshe, 2005, p.31). For the purpose of this study a household was understood to mean a family unit, or people who normally share a residential site (Chileshe, 2005).

Interviewees' were present residents of selected townships (i.e. Chilenje South and Libala) in Lusaka District. Map 2 (on page 68) is illustrative. In addition, photo 2 shows the researcher conducting interviews with household respondents.

Photo 2: Researcher Conducting Interviews



Source: Author

The type of questions captured under the household interview were categorised in five sections and helped to obtain information on;

- Demographic data of respondents;
- Situation analysis on land acquisition and tenure security;
- Prevalence of land conflicts;
- Status of legal and institutional frameworks as well as technical issues; and,
- Households' general assessment of government action in the fight against corruption in land sector.

Regarding the sample size, different researchers derived different formulae for calculating sample size. For the purpose of this study, the author used Yamane's (1967, p.886) simplified formula to calculate the sample size, at 95% confidence level and 7% level of precision.

$$n = \frac{N}{1 + N(e)^2}$$

Where;

N = Total population size,

n = Sample size,

e = Level of precision.

Based on the 2010 Zambia Population and Housing Census (2010 census figures formed the basis of the sample of this research because it is the most reliable source of statistics on the population of the households), Lusaka District is estimated to have a total of 358, 871 households (HHs) (see Republic of Zambia, 2010a). It must however be noted that 57, 496 households were eliminated from the population because these households are not prone to land conflicts (Response from Key Informant, 2016). Thus, 301,375 households were fit for selection. This meant that, the population of the households from which a sample was to be selected reduced. Based on Yamane (1967) therefore;

$$n = \frac{301,375}{1 + 301,375 (.07)^2} = 203.94 \text{ households} \approx 204 \text{ households}$$

Hence, a sample of 204 households was used. Taking into account the research strategy (i.e. case study), resources and time, this sample size was considered sufficient. Sampling of household respondents was done in random basis.

### **3.5 Data Reliability and Validity**

The accuracy, dependability, and credibility of qualitative research depend on validity and reliability (Simon, 2011). Patton (2002) supports this statement by stating that validity and reliability are two factors which any qualitative researcher should be concerned about while designing a study, analysing results and judging the quality of the study. On the one hand, reliability refers to the consistency, stability and repeatability of the informant's accounts as well as the investigators' ability to collect and record information accurately (Selltiz et al., 1976, p.182). Ensuring reliability requires diligent efforts and commitment to consistency throughout data collection and analysing the findings (O' Connor and Gibson, 2015). On the other hand, validity in research refers to the accuracy and truthfulness of scientific findings (Le Compe and Goetz 1982, p. 32). Validity is related to research methodology because its primary purpose is to increase the accuracy and usefulness of findings by eliminating or controlling as many confounding variables as possible, which allows for greater confidence in the findings of any given study (Marczyk et al., 2005, p.66).

There are various strategies a researcher can use to address reliability and validity in qualitative studies, the most popular being: triangulation, receiving feedback from informants (member checking), and expert review (Simon, 2011). To address validity and reliability in this study, triangulation has been adopted. Triangulation refers to the combination of two or more data sources or methods in one study of a single phenomenon to converge on a single construct (Yeasmin and Rahman, 2012, p.156). Alexander (2001 cited in Yeasmin and Rahman, 2012, p.154) states that:

*“By combining multiple methods and empirical materials, researchers can hope to overcome the weakness or intrinsic biases and the problems that come from single-method and single data source. Often the purpose of triangulation in specific contexts is to obtain confirmation of findings through convergence of different perspectives. The point at which the perspectives converge is seen to represent reality”.*

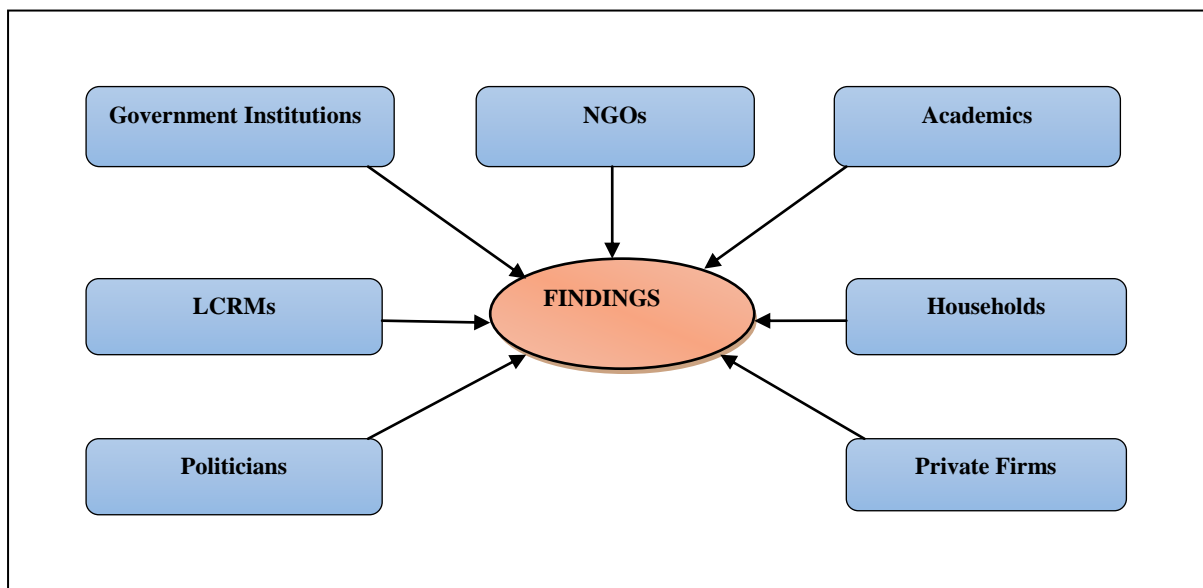
In terms of methods for data collection, for example, it can be said that none of the possible methods for data collection can be regarded as perfect and none can be regarded as obsolete;

none has the sole key to ‘truth’, and none can be dismissed as hopelessly irrelevant for enhancing knowledge (Denscombe, 2003). Hence, the deficiencies of any one method can be overcome by combining methods and thus capitalising on their individual strengths (Yeasmin and Rahman, 2012, p.155). There are four types of triangulation (Denzin, 1970), namely:

- Data triangulation: the use of different sources of data in a study;
- Investigator triangulation: use multiple researchers instead of a single researcher in the form of gathering and interpreting data
- Theoretical triangulation: using multiple theoretical positions in interpreting data; and
- Methodological triangulation: using more than one research method or data collection technique.

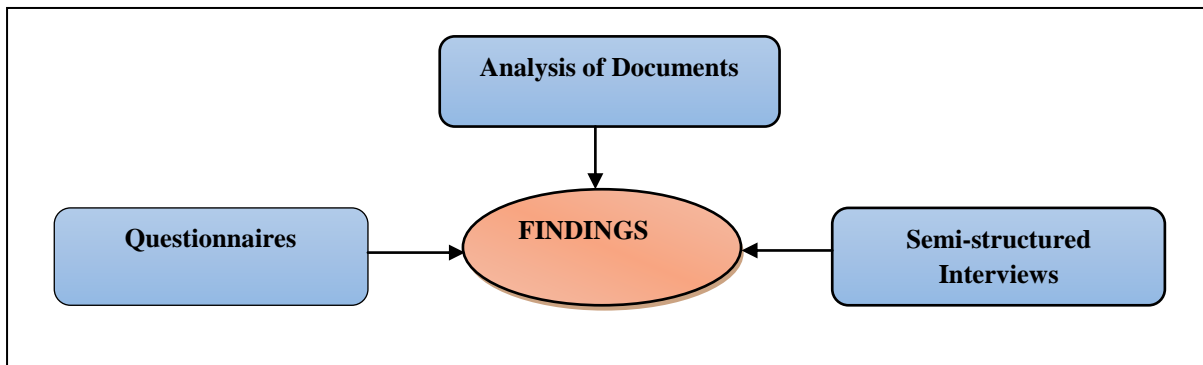
To ensure validity and credibility in this study, data and methodological triangulation were used. Through data triangulation, different sources of primary data were used and these include; government institutions, non-governmental organisations (NGOs), private firms, politicians, academics, land conflict resolution mechanisms (LCRMs), and households. Figure 12 is illustrative. The use of data triangulation in this study has facilitated the findings to be more dependable as they were confirmed by several independent sources. Similarly, through methodological triangulation, the validity and credibility of the findings were enhanced by using mutually reinforcing data collection methods which include documents, interviews, and questionnaires. Figure 13 is illustrative.

Figure 12: Data Triangulation



Source: Author

Figure 13: Methodological Triangulation



Source: Adapted from Yin (2009)

### 3.6 Data Analysis

Data analysis is a systematic search for meaning (Hatch, 2002, p.148). It is an important stage of a research as it provides a foundation of drawing conclusions of the research and thereafter recommendations (Masum, 2009, p.73). Data analysis means organising and interrogating data in ways that allow researchers to see patterns, identify themes, discover relationships, develop explanations, make interpretations, mount critiques, or generate theories (Hatch, 2002, p.148). Data analysis often involves synthesis, evaluation, interpretation, categorisation, hypothesising, comparison, and pattern finding (ibid). Researchers can undertake data analysis in two ways namely: quantitative data analysis and qualitative data analysis.

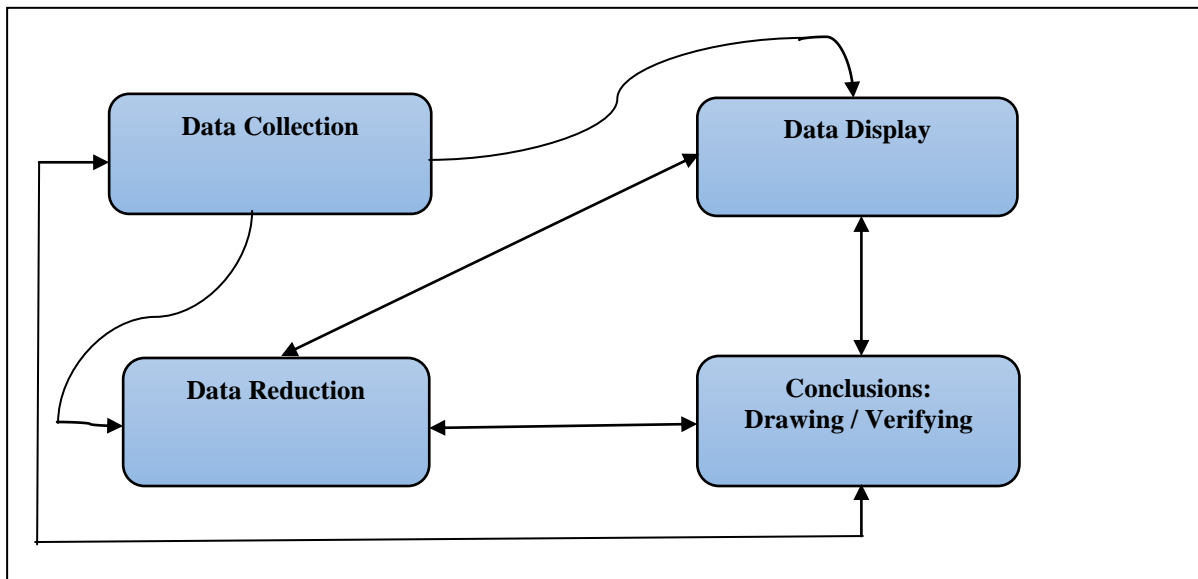
#### 3.6.1 Quantitative Data Analysis

Despite the study being mainly qualitative in nature, some quantitative data were collected and analysed with the view of supplementing qualitative findings. Demographic data, some land governance issues and types of land conflicts in the study area (Lusaka District) among others were quantitatively analysed using Statistical Package for Social Sciences (SPSS 20.0). The findings were summarised and presented using tables, charts and graphs.

#### 3.6.2 Qualitative Data Analysis

Qualitative analysis of the study findings began right from the field as the data were collected through administering questionnaires and interviewing the participants. According to Miles and Huberman (1994, p.10) qualitative data analysis comprises three concurrent flows of activity: data reduction, data display, and conclusion drawing/verification. This is illustrated in figure 14.

Figure 14: Components of Data Analysis: Interactive Model



Source: Adapted from Miles and Huberman (1994)

### 3.6.2.1 Data Reduction

Data reduction refers to the process of selecting, focusing, simplifying, abstracting, and transforming the data that appear in written-up field notes or transcriptions (Miles and Huberman, 1994, p.10). It is a form of analysis that sharpens, sorts, focuses, discards, and organises data in such a way that “final” conclusions can be drawn and verified (ibid, p.11). For the purpose of this study, data reduction was done through coding, summarising and making themes out of the generated data in the field.

### 3.6.2.2 Data Display

Data display is the second-level of qualitative data analysis, and can either be narrative or diagrammatic. According to Miles and Huberman (1994, p.11), data display is an organised, compressed assembly of information that permits conclusion drawing and action. The goal of data display is: (a) to provide new ways of arranging and thinking about textually embedded data, and (b) to extrapolate from the data enough to begin to discern systematic patterns and interrelationships (Sitko, 2013). In this study, demographic data, some land governance issues and types of land conflicts were displayed using figures and tables. Secondary data focusing on history of land governance and current land governance in Zambia was organised and displayed in form of historical profile.



### **3.6.2.3 Drawing Conclusions / Verification**

The final stage of data analysis is drawing conclusions and checking their validity. According to Miles and Huberman (1994), from the start of data collection, the qualitative analyst begins to decide what things mean and come up with “light conclusions”. Final conclusions may not appear until data collection is over (ibid). Conclusions have to be tested and verified, otherwise the analysts are left with interesting stories of unknown truth and utility (ibid). Based on the conclusions and recommendations, the study proposed a conflict sensitive land governance framework aimed at preventing land conflicts to achieve tenure security.

## **3.7 Chapter Summary**

The study used qualitative research approach as the main paradigm while quantitative approach was used to collect supporting data. Case study is the strategy selected in this study with Lusaka District being case study area. Further, the study utilised a spectrum of methods which include various documents (i.e. hardcopy and softcopy), questionnaires, and interviews. To ensure data reliability and validity in this study, triangulation was used. Last but not least, data analysis involved quantitative and qualitative data analysis. The question now is, how effective have all the foregoing been in achieving the objectives of the present research? These are reflected in the discussions and quality of analysis that are presented in the preceding and subsequent chapters.

## **Chapter Four: Land Governance Framework in Zambia - Instruments, Institutions and Actors**

*“When land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions” (Palmer et al., 2009, p.11).*

### **4.1 Introduction**

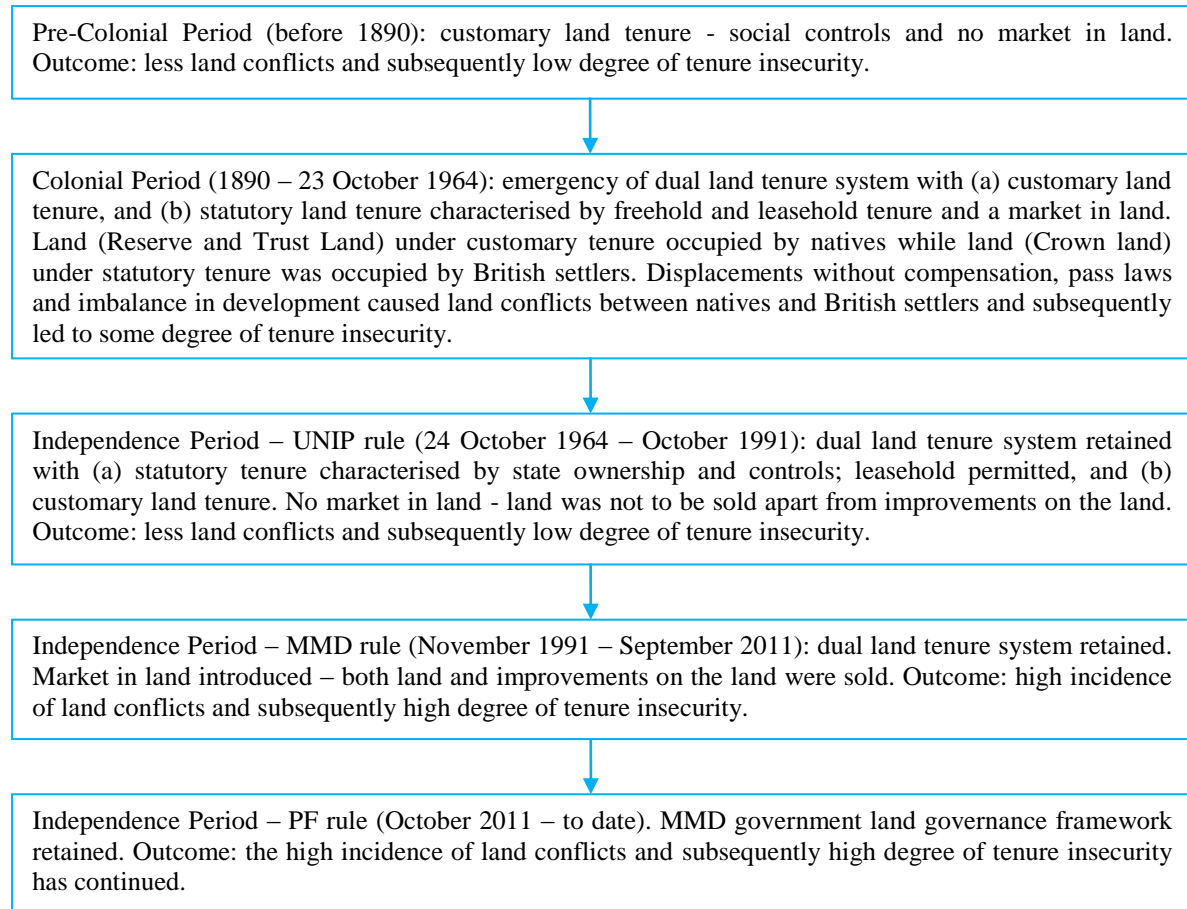
This chapter presents the current land governance framework in Zambia focusing on land tenure categories, instruments, institutions and actors. Before doing this, the chapter presents an overview of the historical background of the land governance framework. The chapter is divided into seven sections. It begins in section 4.2 by explaining the historical background to land governance framework. This is followed by sections 4.3, 4.4, 4.5, 4.6 and 4.7 which discuss demographical and economic context of Zambia, land tenure categories, instruments for land governance in Zambia, institutional framework for land governance in Zambia, and actors in land governance in Zambia respectively. The chapter concludes in section 4.8 by way of a summary of the chapter.

### **4.2 Overview of Historical Background of Land Governance Framework**

Zambia has experienced significant political changes throughout its history, changes which have resulted in changes in the land governance framework. From the customary way of living to British colonialism, from socialist years following the independence in 1964, and finally the capitalist driven free-market economy that exists today, land governance has greatly varied. Figure 15 is illustrative.

Figure 15 shows that the historical background to land governance framework covers three phases namely the pre – colonial period, colonial period, and the independence period. These three distinct political and historical phases in Zambia are associated with divergent policies in relation to land governance. During these periods, different governments guided by different political ideologies, have pursued divergent land governance frameworks.

Figure 15: Zambia Land Governance Timeline



Source: Author

Customary land tenure system predominated Zambia during the pre – colonial period (Lungu, 1994). During this period, traditional rulers (i.e. chiefs or village headpersons) governed land on behalf of the community (Brown, 2005; Colson, 1971; Mvunga, 1980; Platteau, 1992; Ranger, 1983), in accordance with respective customary laws. These customary laws regulated the manner and ways in which the indigenous people could acquire, exercise and enjoy rights over land (DILAPS, 2006; West 1982). During this period supply of land was unlimited owing to the small population (Lungu, 1994). Thus, there were less land conflicts and subsequently less degree of tenure insecurity.

The coming of the British settlers in the territory in 1890 led to the introduction of two land tenure systems namely statutory and customary. Land under statutory tenure was known as Crown land while land under customary tenure was known as Reserve and Trust land (Tucker, 2014). Crown land was occupied by the British settlers whereas the Reserve and Trust land was occupied by the natives. The coming of the British settlers had grave repercussions: (i) displacement of natives (Mvunga, 1980). Despite the displacements,

compensation was not offered to natives because the creation of reserves was justified as being in their best interest (Palmer, 1973); (ii) introduction of “pass” laws in various forms (Mvunga, 1980). The pass laws prohibited the access to Crown land by the indigenous people except if they were formally employed. As a result, at the expiry of their short-term employment contracts, the natives retreated to Reserves and Trust land; and (iii) imbalance in development. Crown land was designed with proper housing, transportation, access to piped water, sanitation and social services whereas Reserve and Trust land had none of these. The displacements without compensation, pass laws and inequality to which the indigenous people were subjected by the colonial government led to land conflicts (Chanock, 1991; Mupfuvi, 2014; Ng’ombe, 2010; Tembo, 2011), between natives and white settlers. Literature review shows that these land conflicts led to some degree of tenure insecurity during the colonial period (see Mupfuvi, 2014; Tembo, 2011).

On 24<sup>th</sup> October 1964, Zambia (formerly Northern Rhodesia) attained independence. The United National Independence Party (UNIP) was the first political party to rule Zambia after independence. The colonial categorisation of land and the dual land tenure system (i.e. statutory and customary tenures) were retained (Adams, 2003; Lungu, 1994; Mudenda, 2007; Mvunga, 1980; Sichone, 2010). Here, Crown land was renamed as State land while Reserve and Trust land continued. On 30th June 1975, the UNIP government made some changes to the colonial land governance framework through the enactment of the Land (Conversion of Titles) Act of 1975. The Act inter alia abolished market in land. In particular, no more undeveloped land in urban areas was to be sold apart from improvements on the land (Republic of Zambia, 1975). This means that where land was developed, only the market value of the improvements could be considered and not the value of land. Land not having value led to very few land conflicts during UNIP rule (APRM, 2013; Ng’ombe, 2010; Tembo, 2011). This is supported by GIM International (2006), which states that, as long as land has no monetary value land conflicts are rare. The low frequency in land conflicts implied low degree of tenure insecurity.

Elections were held in October 1991 and the Movement for Multi-party Democracy (MMD) was overwhelmingly voted into power and replaced the United National Independence Party (UNIP). The MMD government made changes to the UNIP government land governance framework through repealing the Land (Conversion of Titles) Act of 1975 and replacing it with the Lands Act of 1995. The Act among other things puts in place a market for bare land

(Chileshe, 2005). As a result, land conflicts became endemic during the MMD rule because the MMD government made land an economic commodity without seriously putting in place mechanisms that would guide land administrators on how land allocation should be done in an equitable and just way (adapted from Tembo, 2016). The high incidence of land conflicts subsequently caused a high degree of tenure insecurity (see Crabtree-Condor and Casey, 2012; Habitat for Humanity, 2014; Persha et al, 2015; ZLA, 2015).

The MMD government ruled Zambia until September 2011. Elections were held in September 2011; Patriot Front (PF) was voted into government and replaced the Movement for Multi-party Democracy (MMD). During their time in opposition, the Patriotic Front promised that they would address land governance challenges such as tenure insecurity caused by land conflicts that the country was facing under MMD rule. In this regard, in their Manifesto of 2011 (Patriotic Front Manifesto, 2011, p.31-32), the PF promised to address the challenges in land governance through inter alia: (i) preventing displacement of local communities by the urban elite; (ii) promoting good governance in land administration; (iii) eradicating inequalities amongst interested groups in gaining access to land in order to cater for the less privileged in districts; (iv) establishing a Lands Audit Commission to undertake a land audit countrywide in order to plan for sustainable use of land resources for agriculture, residential, commercial and industrial development; (v) regularising ownership of untitled properties in towns and cities; and (vi) amending the Lands Act of 1995 in order to achieve the foregoing. Out of the preceding mentioned activities, only National Land Audit Programme has been initiated, but its progress is slow (Republic of Zambia, 2015b). It should be pointed out that since less has been done in terms of restructuring land governance, the problem of land conflicts and tenure insecurity has continued. This is something that is explored in more detail in chapters five and six respectively.

### **4.3 Zambia: Geographical, Demographic and Economic Context**

Zambia being a landlocked country located in southern Africa, shares boundaries with the Democratic Republic of Congo and Tanzania to the north; Malawi and Mozambique to the east; Zimbabwe, Botswana and Namibia to the south; and Angola to the west. Map 3 is illustrative. Zambia is a vast country with a total surface area of 75, 261, 400 hectares.

Map 3: Zambia and the Neighbouring Countries



Source: SSWM (2016)

Regarding demographic issues, table 10 presents selected demographic indicators from the census years 1980, 1990, 2000 and 2010.

Table 10: Selected Demographic Indicators

<b>Indicator</b>	<b>1980</b>	<b>1990</b>	<b>2000</b>	<b>2010</b>
Population (millions)	5.7	7.8	9.9	13.1
Population Density (people per km <sup>2</sup> )	7.5	10.4	13.1	17.4
Urban Population (% of total population)	39.9	38.0	35.0	39.5
Life expectancy at birth:				
Male	50.4	46.1	48.0	49.2
Female	52.5	47.6	52.0	53.4

Source: CSO, 2012

According to CSO (2012), the population of Zambia increased from 5.7 million in 1980 to 7.8 million in 1990. It then increased from 9.9 million in 2000 to 13.1 million in 2010 (ibid). This gives an annual growth rate of 2.8 per cent between 2000 and 2010, down from 3.2 per cent between 1980 and 1990 (ibid). The population density in Zambia increased from 8 persons per square kilometre in 1980 to 17 persons per square kilometre in 2010. While the country's average population density is about 17 persons per square kilometre, there are significant regional variations. For instance, Lusaka Province (hosting the capital city of

Lusaka) has the highest population density of 100 persons per square kilometre while North Western Province has a lowest population density of 6 persons per square kilometre (Republic of Zambia, 2010a).

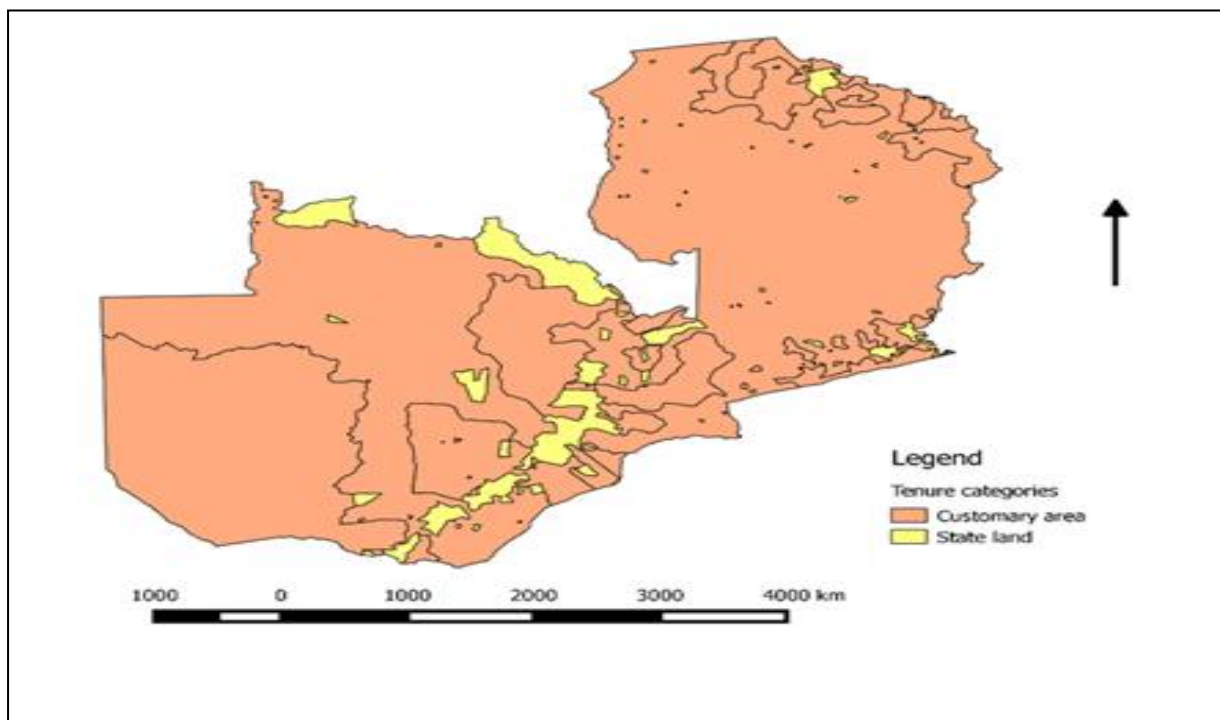
In recent years, the impact of urbanisation has been very high. This is a result of rapid growth of urban population and increasing rural-urban migration of people in search for urban opportunities (adapted from Massoi and Norman, 2010). Currently, 39.5% of the population of Zambia live in urban areas while 60.5% live in rural areas.

The economic environment is characterised by a heavy dependence on copper mining, which accounts for over 70 per cent of the country's export earnings and is a major source of formal employment (CSO, 2012). Gross Domestic Product is USD 21.20 billion [2015 figure] (World Bank, 2016) and composition by sector consists of agriculture 8.9 per cent, industry 30 per cent and services 61.1 per cent [2015 estimates] (CIA, 2016).

#### 4.4 Land Tenure Categories in Zambia

Zambia has two systems of land holding namely statutory and customary tenure. Map 4 is illustrative.

Map 4: Land Categories in Zambia



Source: Mulolwa (2016)

Land under statutory tenure system is known as state land and covers about 6% of the country while land under customary tenure is known as customary land (formerly reserve and trust land) and covers the remaining 94% (Chileshe and Shamaoma, 2014). However, these figures have not been updated and therefore fail to account for any title conversions from customary tenure to statutory tenure (Chileshe and Shamaoma, 2014), which have been undertaken since 1985. Due to the conversions of customary land to state land, Republic of Zambia (2015c) estimates that currently the area for state land may be as high as 10 percent (7, 526, 140 hectares). This implies that customary land is estimated at 90 per cent (67, 735, 260 hectares) of the country's land area. The characteristics of statutory tenure and customary tenure are provided in 4.4.1 and 4.4.2 respectively.

#### **4.4.1 Characteristics of Statutory Tenure**

State land is land held under statutory tenure and mainly covers urban localities. Statutory tenure entails formal registration of land ownership as arranged in the Lands and Deeds Registry Act of 1994. An application for ownership of land is deemed successful once the president (through the commissioner of lands) gives his consent by issuance of a certificate of title in respect of a subject parcel of land to the applicant (Mulolwa, 1998). This procedure is provided for under section 4 (1) of the Land and Deeds Registry Act of 1994 as follows:

*“Every document supporting to grant, convey or transfer land, or any interest in land, or to be a lease or agreement for a lease or permit of occupation for a longer term than one year, or to create any changes upon land, whether by mortgage or otherwise, must be registered”.*

Against this background, a registered proprietor of a certificate of title is protected against ejection or adverse possession (van Loenen, 1999). There are three types of registers kept in the lands registry namely; the lands register, common leasehold register and the miscellaneous register. The lands register contains documents relating to land other than customary land. The common leasehold register records documents relating to common leasehold schemes. Any other document is entered in the miscellaneous register (Mulolwa, 1998). The Ministry of Lands, Natural Resources and Environmental Protection used to grant two types of leases under statutory tenure: (1) a 14-year lease for unsurveyed land; and (2) a 99-year lease for surveyed land. Regarding a 14-year lease, a provisional certificate of title based on sketch plan was granted. This was intended to offset the delays in the granting of the leases due to lack of surveys (Mulolwa, 2016). It was renewable and, if a survey had been done and the corresponding diagram was approved, it could be extended to 99 years (ibid).



However, 14-year leases have since been discontinued due to challenges such as boundary conflicts. On the other hand, a 99-year lease with certificate of title is granted based on an approved survey diagram prepared from a survey done by a licensed land surveyor (Mulolwa, 2016). It should be mentioned that obtaining a 99-year lease with certificate of title is difficult to get (ibid). This is due to various problems such as shortage of licensed surveyors and high costs involved.

#### **4.4.2 Characteristics of Customary Tenure**

As explained in chapter one, the focus of this study is on state land which is held under statutory tenure. However, it is also important to briefly discuss the characteristics of customary tenure as it is the other existing tenure system in Zambia. Section 2 of the 1995 Lands Act defines customary land as land which was previously known as Reserve and Trust Lands. Customary land only guarantees the protection of use and occupancy rights without the registration of ownership rights (Mushinge, 2015). All members of a community have free access to land under customary tenure (ibid). Customary tenure recognises communal interests, concurrent interests, and individual ownership (van Loenen, 1999). According to van Loenen, (1999): (i) communal interests entail the local people using certain tracts of land, which are not individually owned; (ii) concurrent interests occur where people, besides the landholder can go onto a person's land and use it for their own purposes; and (iii) individual ownership refers to that landholder or occupant who has more rights in the land than any other person. The individual owns the land for as long as he likes.

Traditional leaders (chiefs and their headpersons) with the consent of the people govern land in customary areas. The chiefs and their headpersons function as regulators of the acquisition and use of land (Lungu, 1994). Land acquisition is possible through any of the following ways: marriage, sale of land (and improvements if any), clearing of virgin bush, as a gift, and transfer of land in exchange for services (Mvunga, 1982). The chief's permission will need to be sought for an outsider to inhabit in the area before acquiring a piece of land. In the same way a chief can stop a person from cultivating in a grazing area (Mulolwa, 1998).

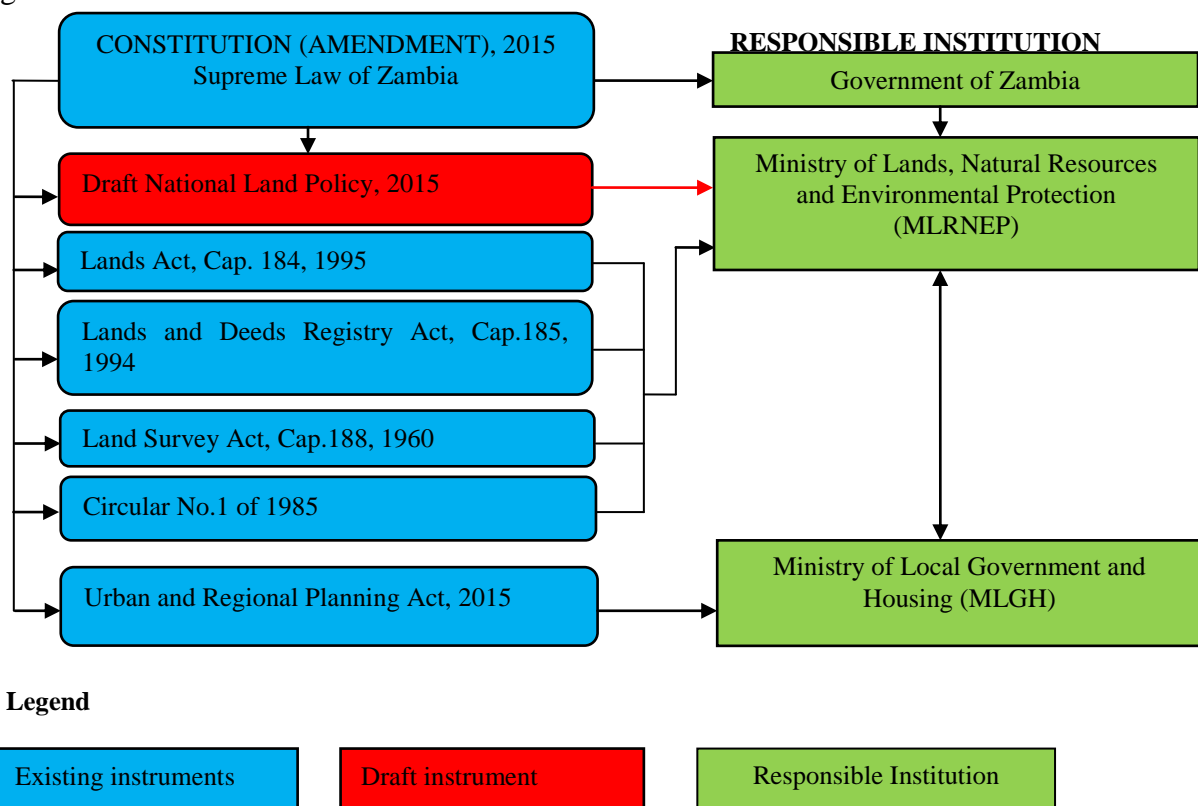
The major argument on customary tenure has been security of tenure. Republic of Zambia (2002a, p.11) notes that to some extent customary tenure provides security of tenure. However, when customary tenure is examined against statutory tenure, it (customary tenure) has limitations. World Bank (2003) argues that customary tenure encumbers

commercialisation; it is insecure, lacks certainty and frustrates rural land markets. In addition, security of tenure under customary tenure is impaired by the fact that there is often no proper physical description of boundaries and therefore land is prone to conflicts.

#### 4.5 Instruments for State Land Governance in Zambia

The main instruments of land governance in Zambia include: 2015 Constitution (Amendment), 1995 Lands Act, 1994 Lands and Deeds Registry Act, 1960 Land Survey Act, Circular No.1 of 1985, and 2015 Urban and Regional Planning Act. Figure 16 is illustrative.

Figure 16: Instruments of Land Governance



Source: Author

##### 4.5.1 The 2015 Constitution (Amendment) and Its Provisions on Land in Zambia

The 2015 Constitution (Amendment) of Zambia is the supreme law of the country. All land laws in Zambia are subject to the constitution. Any law that contravenes or is inconsistent with the Constitution is null and void. Part XIX of the 2015 Constitution (Amendment) provides that, land shall be held, used and managed in accordance with the following principles: (a) equitable access to land; (b) security of tenure for lawful land holders; (c) recognition of indigenous cultural rites; (d) sustainable use of land; (e) transparent, effective

and efficient administration of land; (f) effective and efficient settlement of land disputes; (g) river frontages, islands, lakeshores and ecologically and culturally sensitive areas to be accessible to the public, not to be leased, fenced or sold, and to be maintained and used for conservation and preservation activities; (h) investments in land to also benefit local communities and their economy; and (i) plans for land use to be done in a consultative and participatory manner (Republic of Zambia, 2015a).

#### **4.5.2 Draft National Land Policy, 2015**

From independence in 1964, Zambia has never had a codified land policy (Hansungule, 2007). For over two decades attempts have been made to prepare a codified land policy but there has been no success (Machina, 2009; Mbinji, 2006; Ng'ombe et al., 2012). Nonetheless, in October 2015, the draft National Land Policy was published and to date there are national wide public consultations regarding the contents of the draft land policy. The vision of the draft National Land Policy is to ensure an efficient and effective land governance system that promotes security of tenure, equitable access and utilisation of land for the sustainable development of the people of Zambia (Republic of Zambia, 2015c). It should be pointed out that the lack of a coherent national Land Policy throughout the over 50-year long post-colonial history has led to indiscriminate use of land and poor land development practices (Republic of Zambia, 2015c). Land conflicts and land tenure insecurity in Zambia are some of the symptoms of lack of land policy.

#### **4.5.3 Lands Act, Cap. 184 of 1995**

The Act has salient provisions: (a) vesting land in the President. The State through the President is the landowner and grant: (i) statutory leases of 99 years on state land to its people and other interested parties, through the Ministry of Lands, Natural Resources and Environmental Protection, and (ii) customary land rights on customary land to its people through traditional leaders; (b) Prohibition of unauthorised occupation of land. Any person who occupies land without lawful authority is liable to be evicted; (c) repossession of land by the President. Where the lessee breaches a term or a condition of a covenant (e.g. non-payment of ground rent), the President may repossess the land; and (d) establishing the Land Development Fund. This is money meant for opening up new areas for development (provision of infrastructure such as roads, electricity, water and sanitation). The Land Development Fund is vested in the Ministry of Finance and administered by the Ministry of Lands, Natural Resources and Environmental Protection. The current sources of finance for

the land development fund include the national budget, 50% of the ground rent<sup>2</sup> and 75% of the fee paid when land is allocated by the President.

#### **4.5.4 Lands and Deeds Registry Act, Cap.185 of 1994**

This Act provides for registration of state land. Under state land, land registration is normally compulsory and any unregistered interest is not recognised at law (Mulwanda, 2010, p.27). Land registration provides the means for recognising formalised land rights and for regulating the character and transfer of these rights (Dale and McLaughlin, 1999, p.36). Registration of documents in a public office provides some measure of security against loss, destruction and fraud; it can also be used as evidence in support of a claim to land (Mulwanda, 2010, p.28). In addition, the Act provides for restriction on ejection after issue of certificate of title, and protection against adverse possession.

#### **4.5.5 Land Survey Act, Cap.188 of 1960**

Land surveys in the country are regulated under the Land Survey Act which provides for the: (i) manner in which surveys are carried out and subsequent method in which diagrams and plans are prepared; (ii) protection of survey beacons and other survey marks; and (iii) establishment and powers of a Survey Control Board [SCB] which is responsible to regulate the practice of the survey profession, to conduct examinations and trial surveys for purposes of licensing surveyors, to maintain a register of Land Surveyors and to hear complaints against Land Surveyors (Republic of Zambia, 1960a).

Land surveys relate to the conduct of cadastral, geodetic and topographic surveys for the acquisition of primary data in the field (Sichone, 2010). It should be pointed out that in the process of land alienation and registration, it is a requirement that state land which is subject of alienation has to be surveyed, and survey diagrams should be produced for purposes of land registration (ibid). It is a legal requirement therefore that registration of land must be accompanied by an approved survey diagram, which is a prerequisite for obtaining a 99 year certificate of title in Zambia (Sichone, 2010; Chileshe and Shamaoma, 2014). This makes the

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<sup>2</sup> Ground rent is payment by tenant (lessee) to landlord (state) for specified period of time in accordance with lease agreement. Person holding land under statutory tenure is obliged to pay ground rent to the state (Republic of Zambia, 2015c).

survey diagram the focus of all cadastral surveying activities in Zambia (Chileshe and Shamaoma, 2014).

#### **4.5.6 Circular No.1 of 1985**

The Circular provides administrative guidelines on land allocation. It directs all local authorities (i.e. city, municipal and district councils) to be responsible for and on behalf of the Commissioner of Lands in the processing of applications, selection of suitable applicants, and making recommendations to the Commissioner of Lands for approval (Sichone, 2010). However, it is important to note that this Circular is merely an administrative document directed at councils with no force of law, and the Commissioner of Lands is not bound by it (ibid).

#### **4.5.7 Urban and Regional Planning Act of 2015**

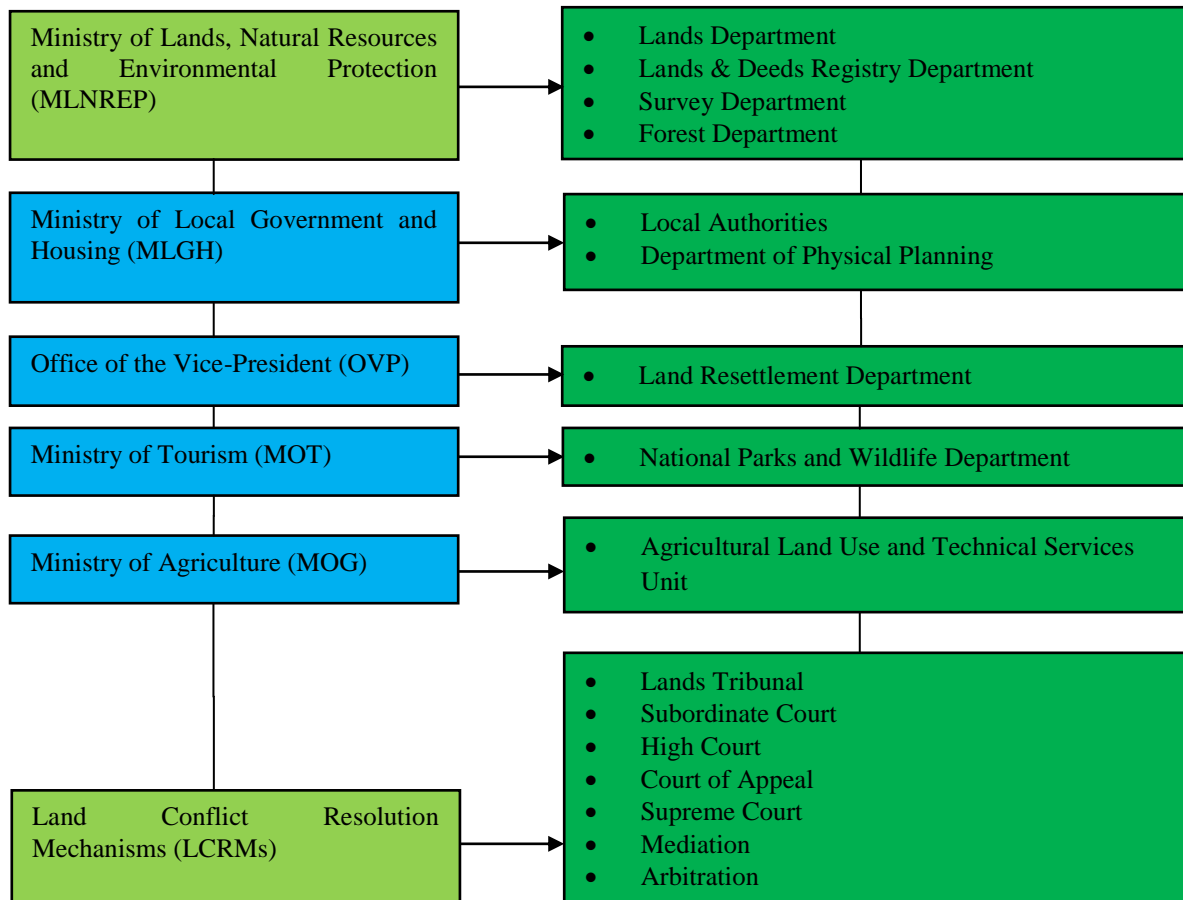
Urban land use planning in Zambia has been guided by the Town and Country Planning Act of 1962 (amended in 1997) which was recently replaced by the Urban and Regional Planning Act No. 3 of 2015. The Urban and Regional Planning (URP) Act No. 3 of 2015 is now the principal legislation for urban land use planning (Mulolwa, 2016). In the process of land alienation under state land, the relevance of this Act cannot be overemphasised. This is because the State cannot make grants of state land unless land has been planned (Sichone, 2010).

### **4.6 Institutional Framework for State Land Governance in Zambia**

Governance of state land is dealt with or handled by a multiplicity of institutions. These institutions are shown in figure 17. It should be pointed out that the main institutions directly involved in state land governance are the Ministry of Lands, Natural Resources and Environmental Protection and various Land Conflict Resolution Mechanisms. This implies that the Local Authorities and Department of Physical Planning under the Ministry of Local Government and Housing; Department of Land Resettlement under the Office of the Vice-President; National Parks and Wildlife Department under the Ministry of Tourism and Agricultural Land Use and Technical Services Unit under the Ministry of Agriculture are indirectly involved in state land governance. In this regard, even if Local Authorities may identify, plan and allocate land, plans have to be numbered, cadastral surveys have to be examined, and 99-year certificates of title have to be issued by the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP). Land Resettlement Department may

plan and allocate land to people for resettlement but cadastral surveys have to be examined and certificates of titles have to be issued by the MLNREP. Similarly, Agricultural Land Use and Technical Services Unit may plan and allocate agriculture land to people but cadastral surveys have to be examined and certificates of titles have to be issued by the MLNREP. In addition, state land under National Parks and Wildlife Department has certificates of title issued by the MLNREP.

Figure 17: Institutions involved in State Land Governance



**Legend**



Source: Author

The various land institutions involved in state land governance directly and indirectly are explored in more detail as follows.

### 4.6.1 Ministry of Lands, Natural Resources and Environmental Protection

As explained earlier, the Ministry of Lands, Natural Resources and Environmental Protection is the main Government Ministry mandated to carry out the functions of state land governance. The departments and their functions are provided in table 11.

Table 11: Departments and their Functions

Department	Head	Functions
Lands	Commissioner of Lands	Land identification and allocation. Ensuring that new parcels of land required for development are properly planned by Local Authorities and Planning Authorities. Issuing of offer letters and preparation of lease agreements.
Lands and Deeds	Chief Registrar	Issuance of certificates of title.
Survey	Surveyor General	Undertaking cadastral surveys and maintenance of survey records, compilation of property index maps, examination and processing of survey records. Advance the National Survey Control Network and to maintain and improve it. National mapping.
Forest	Director	Carries out and facilitates afforestation of barren land and reforestation in degraded areas. Ensuring sustainable management and utilization of forest resources. Identifies areas to be declared protected forest areas to avoid loss of biodiversity and land degradation.

Source: Author based on Literature

### 4.6.2 Ministry of Local Government and Housing

There are two agencies involved in state land governance under this Ministry namely Local Authorities and Department of Physical Planning Authorities. These are discussed below.

#### 4.6.2.1 Local Authorities

As mentioned earlier, the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) is the main Ministry mandated to carry out the functions of state land governance. However, the MLNREP has no offices at district level. Therefore, local authorities are appointed as agents to identify land, plan the land, process applications and select suitable candidates on behalf of the Commissioner of Lands. Thereafter,

recommendations are made by local authorities to the Commissioner of Lands who may accept or reject the recommendations.

The appointment of the local authorities as agents of the Ministry of Lands, Natural Resources and Environmental Protection began in the early 1980's, when the Government felt that local authorities (which exist in all 106 districts of Zambia) should participate in the process of land alienation at district level, since the MLNREP has no structure at that level. It should be pointed out that local authorities are called councils and there are 4 City Councils, 13 Municipal Councils and 89 District Councils in Zambia. City councils are located in those urban districts which have more population and diversification in economic activities, while the municipal councils cover the suburban regions (CLGF, 2015). District councils are located in those relatively rural districts which have less population and rely heavily on agriculture (ibid).

#### **4.6.2.2 Department of Physical Planning**

Functions of the Department of Physical Planning are provided for in the Urban and Regional Planning Act of 2015 (Republic of Zambia, 2015d). According to MLGH (2016), the functions of this department are: (i) formulation of policy, legislation and guidelines on physical and regional planning and housing development for effective and efficient development of human settlements; (ii) formulation of human settlement development strategies to promote development of human settlements; (iii) coordination of decentralised planning including community participation strategies in human settlements and housing development; (iv) preparation of land use plans for District Councils; and (v) development of appropriate human settlements, housing development database for local authorities to facilitate efficient and effective monitoring and evaluation of performance.

#### **4.6.3 Department of Land Resettlement**

The Department of Land Resettlement is under the Vice-President's office and its objectives are to: resettle the unemployed, retired, retrenched, displaced and disabled persons in order to make them self-sufficient; coordinate the provision of infrastructure to resettlement schemes in order to make them socially and economically viable; and mobilise and provide extension and other support services to settlers in order to promote household security (Makupa, 2014; Munshifwa, 2007). The creation of resettlement schemes arose from the Government's desire to increase agricultural productivity and reduce poverty (Mudenda, 2007). Faced with the



problem of rapid migrations from the rural areas and rising unemployment, especially in the peri-urban and urban areas, the notion of resettling people in productive agricultural areas and assisting them to develop farm plots demarcated and assigned to them was viewed as the most realistic remedy to unemployment (ibid). The department has a number of responsibilities which include the following: (i) devise a suitable land settlement policy and procedural guidelines; (ii) identify, appraise and select suitable sites in conjunction with local authorities; (iii) initiate the survey and planning of the sites; (iv) coordinate all resettlement activities; (v) mobilise resources; and (vi) supervise implementation and monitor projects in the settlement areas (Mudenda, 2007).

#### **4.6.4 The National Parks and Wildlife Department**

The National Parks and Wildlife Department is constituted under the Zambia Wildlife Act of 2015 and falls under the Ministry of Tourism. The function of the Department is to control, manage, conserve, protect and administer National Parks, Community Partnership Parks, bird and wildlife sanctuaries and Game Management Areas and coordinate activities in these areas (Republic of Zambia, 2015e).

#### **4.6.5 Agricultural Land Use and Technical Services Unit**

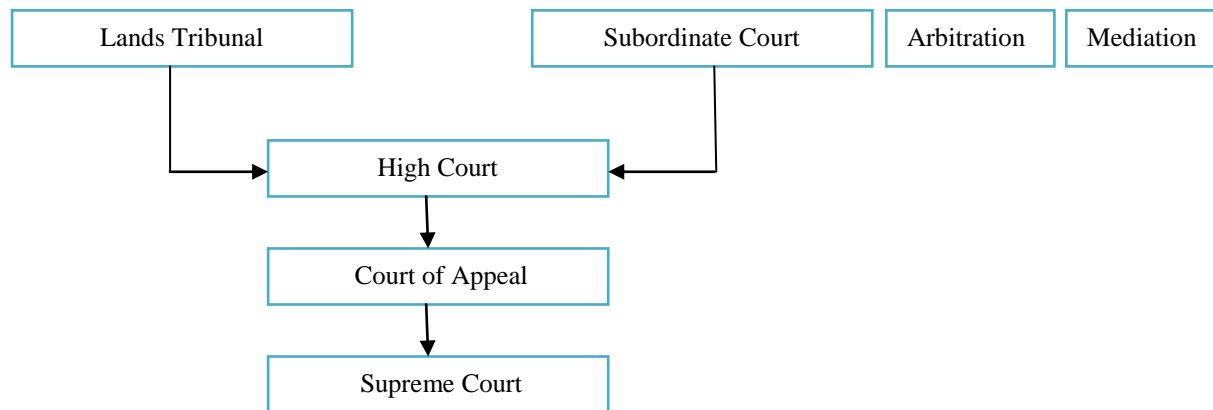
The Agricultural Land Use and Technical Services Unit in the Ministry of Agriculture is involved through its central, provincial and district offices with the preparation of farm plans and farm layouts, settlement planning, land allocation and demarcations, site preparations, land use and suitability assessments (Mudenda, 2007).

#### **4.6.6 State Land Conflict Resolution Mechanisms**

State land conflict resolution mechanisms in Zambia include the Lands Tribunal, Subordinate Court, High Court, Mediation, and Arbitration. A system is in place to appeal rulings on land cases in the judicial system (Mulolwa, 2016). Thus, if one wishes to appeal a judgment delivered by either the Lands Tribunal or the Subordinate Court he/ she can appeal to the High Court. Again, if one wishes to appeal a judgment delivered by the High Court he/she can appeal to the Court of Appeal, and finally, if one is aggrieved with the decision of the Court of Appeal he/she can appeal to the Supreme Court. In addition, Alternative Dispute Resolution Mechanisms (ADRM)s such as arbitration and mediation exist alongside the judicial system. The aim of these mechanisms is to ensure that land conflicts are resolved in a timely, informal and cost effective manner (Mulolwa, 2016). Other merits of ADRMs are to:

(i) relieve courts of congestion; and (ii) facilitate access to justice to a greater number of the populace (Mapulanga, 2013). The various state land conflict resolutions mechanisms are illustrated in figure 18.

Figure 18: State Land Conflict Resolution Mechanisms



Source: Author

The mechanisms for state land conflict resolution are explored in more detail in the next subsections.

#### 4.6.6.1 Subordinate Court

The Subordinate Court of Zambia is established by the Subordinate Courts Act of 1934 (Republic of Zambia, 1934) which was amended in 1998. The Subordinate Court is a Court with jurisdiction to hear both civil and criminal matters (Republic of Zambia, 1934). However, the jurisdiction of this Court is subject to certain limitations with regards the cases it can adjudicate on (ibid). For instance, according to section 23 of Subordinate Courts (Amendment) Act of 1998, if, in any civil cause or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon, if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the High Court to transfer such cause or matter to itself (Republic of Zambia, 1998). This implies that state land conflicts can only be resolved in the Subordinate Court if disputants agree to resolve land conflicts through the Subordinate Courts. Where the parties do not agree, then the conflicts will be transferred to the High Court.

#### **4.6.6.2 Lands Tribunal**

Lands Tribunal was established in 1996 by the Lands Act of 1995. The Lands Tribunal is a specialised land court set up to efficiently dispense of land conflicts and to have a cost effective land conflict resolution mechanism (i.e. reducing the cost of litigation in land matters). As explained in chapter one, between 1996 and 2009, the Tribunal had limited jurisdiction of handling state land conflicts only. However, in 2010, the Lands Tribunal Act was enacted to expand the jurisdiction of the Tribunal. From 2010, the Tribunal has been handling both state and customary land conflicts (Republic of Zambia, 2010b).

#### **4.6.6.3 High Court**

The High Court of Zambia is established by the High Court Act of 1960 (Republic of Zambia, 1960b). The Court has unlimited and original jurisdiction to hear and determine any civil (land matters included) or criminal proceedings under any law, with the only exception of matters for the exclusive jurisdiction of the Industrial Relations Court (TILG, 2016). It should be pointed out that although a person aggrieved with the decision of either the Lands Tribunal or the Subordinate Court may appeal to the High Court, the High Court is also a court of first instance for state land conflicts. This means that disputants may take state land conflicts direct to the High Court.

#### **4.6.6.4 Court of Appeal**

The Court of Appeal is a new Court established by the Court of Appeal Act of 2016. The Court has jurisdiction to hear appeals from judgments of the High Court (Republic of Zambia, 2016).

#### **4.6.6.5 Supreme Court**

The Supreme Court of Zambia is established by the Supreme Court Act of 1973 (Republic of Zambia, 1973). This Court is the final Court of Appeal in Zambia and has jurisdiction to hear and determine appeals in civil (land conflicts included) and criminal matters.

#### **4.6.6.6 Mediation**

Mediation was established in Zambia through Statutory Instrument Number 71 of 1997 (Mwenda, 2006). Mediation in Zambia is Court-Annexed (Kajimanga, 2013) and is ordered by the High Court. According to Kajimanga (2013, p.3), Order 31, rule 4 of the High Court Rules provides as follows:

*“Except for cases involving constitutional issues or the liberty of an individual or an injunction or where the trial Judge considers the case to be unsuitable for referral, every action may, upon being set down for trial, may be referred by the trial Judge for mediation and where the mediation fails the trial Judge shall summon the parties to fix a hearing date”.*

The above highlighted Order 31, rule 4 of the High Court Rules, provides for the High Court to refer matters such as state land conflicts to be resolved by mediation.

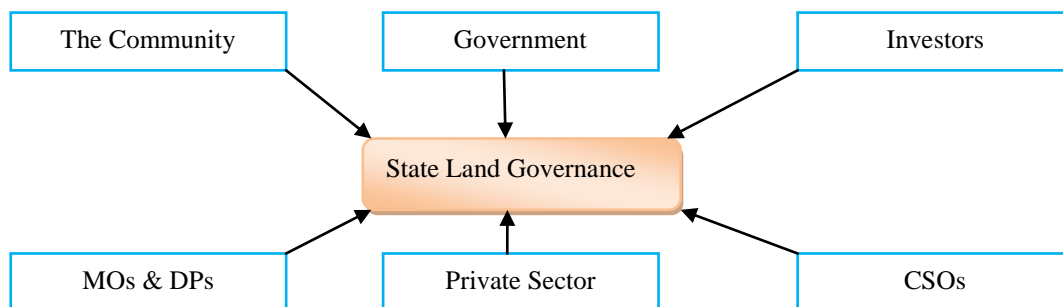
#### 4.6.6.7 Arbitration

Arbitration was introduced in Zambia through the Arbitration Act of 2000 (Republic of Zambia, 2000). Section 6 subsection 1 of the Act states that any conflict (including land conflicts) which parties have agreed to submit to arbitration may be determined by arbitration (ibid).

### 4.7 Actors in State Land Governance in Zambia

An actor is a person, group, organisation, institution, member or system who/which affects or can be affected by an issue or actions of another party. Actors in land governance start from community to national level; that is the people living on the land and depending on land for various uses to policy makers and implementers – people who hold power to control the governance of land in Zambia (SCC and ZLA, 2012). The major actors in state land governance in Zambia are the government, investors, Civil Society Organisations (CSOs), private sector, Multilateral Organisations (MOs) and Development Partners (DPs), and the community (land users/owners). Figure 19 is illustrative.

Figure 19: Actors in State Land Governance



Source: Author

The actors in state land governance are explored in more detail in the next subsections.

#### **4.7.1 Government**

Government undertakes the governance of state land through making laws and regulations as well as implementing these laws and regulations. Particularly, the government is involved in land use planning, surveying, registration, and allocation of land as well as land conflict resolution. As mentioned earlier, they do these through the Ministry of Lands, Natural Resources and Environmental Protection; Ministry of Local Government and Housing; Vice-President's office; Ministry of Tourism; and Land Conflict Resolution Mechanisms like Lands Tribunal, Subordinate Court, High Court, Court of Appeal, Supreme Court, Mediation, and Arbitration.

#### **4.7.2 Investors**

These include foreign and local investors who seek to set up business operations such as mining, tourism, and commercial agriculture in different parts of the country. Businesses can be large or small scale. Large scale investors usually seek to acquire huge tracts of land, hence making them actors in the land sector (SCC and ZLA, 2012).

#### **4.7.3 Civil Society Organisations (CSOs)**

These are non-governmental organisations which form an interface between the government and the public by holding the government institutions accountable, influence policy and public opinions, capacity building, awareness raising on land rights to name a few (Rukundo, 2013). Civil society organisations involved in land governance in Zambia include but not limited to Zambia Land Alliance, People's Process on Housing and Poverty in Zambia, and Civic Forum on Housing and Habitat.

#### **4.7.4 Private Sector**

This includes a number of private actors: lawyers, land surveyors, and others. The role of lawyers in land governance is to assist people in resolving land conflicts as well as help people in buying and selling property. In terms of land surveyors, land surveys in Zambia are carried out by both private practitioners and public institutions.

#### **4.7.5 Multilateral Organisations (MOs) and Development Partners**

Several MOs promote land governance through funding, capacity building, and public sensitisation. They include but not limited to Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), World Bank, and United States Agency for International

Development (USAID). These organisations have continued to identify access to land and ownership of land as a basic right and that government should make an effort to ensure that connectivity of land and livelihood security is secured through effective land governance (Muleba, 2012).

#### **4.7.6 The Community (Land Users/Owners)**

These are the people on the ground who are impacted by the actions of other actors (for example, government and investors). They use land for agricultural, residential, industrial, and commercial purposes. Land is the most fundamental factor of production. Thus, the way that land is allocated to people greatly determines the character, quality of life and pace of development (Republic of Zambia, 2015c). For instance, where there is equitable access to land, people will have good quality of life. On the other hand, if access to land is inequitable, quality of life is adversely affected. Here, people end up living in illegal settlements which are characterised by lack of proper access to basic social, physical and economic amenities.

### **4.8 Chapter Summary**

Literature review reveals that despite not having a codified land policy, Zambia has legislations and institutions to promote good land governance. The legislations include the Constitution, Lands Act, Lands and Deeds Registry Act, Land Survey Act, and Urban and Regional Planning Act. The main institutions involved in state land governance are Land Conflict Resolution Mechanisms and Ministry of Lands, Natural Resources and Environmental Protection. The courts of first instance for state land conflicts are the High Court, Lands Tribunal and Subordinate Court. The Ministry of Lands, Natural Resources and Environmental Protection main functions are to undertake and examine cadastral surveys, and issue certificates of title. However, the Ministry of Lands, Natural Resources and Environmental Protection is highly centralised. The Survey and Lands Departments have offices at provincial level and no offices at district level whereas the Lands and Deeds Department has offices in two provinces only namely Lusaka and Copperbelt. There is no doubt that this adversely affects service delivery to the people.

## **Chapter Five: Case Study Findings - Status of State Land Governance**

*“If the discussion is neither stimulating nor convincing about the meaning and importance of the findings, it does not really matter how the experiments were performed or what results were reported” (Annesley, 2010, p.1671).*

### **5.1 Introduction**

This chapter presents the status of state land governance in Zambia. The chapter is based on field findings obtained from academics, key respondents and households. Primary data is supported by evidence gathered from the documents. Before presenting the status of state land governance in Zambia, this chapter presents the characteristics of households, and describes households land size and methods of land acquisition in sections 5.2 and 5.3 respectively. Thereafter, section 5.4 describes the present status of state land governance framework. Finally, section 5.5 provides the summary of the chapter.

### **5.2 Characteristics of Households**

#### **5.2.1 Gender Distribution**

In order to obtain insights about the gender dimensions in the case study area, it was important to analyse the gender distribution of the household respondents. According to the study findings, 147 respondents representing 72% were male while only 57 respondents representing 28% were female. The unequal distribution of the household's respondents is not surprising because of the limited women's access to and ownership of land in many sub-Saharan African countries (Spichiger and Kabala, 2014). To promote inter alia equal access to state land, the Zambian government signed and ratified international and regional human rights conventions. Key among these are the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1985 (UN, 2009) and the African Charter on Human and Peoples Rights (OAU, 1981). These conventions were incorporated into the National Gender Policy which was prepared in 2000. The policy provides that the Ministry of lands, Natural Resources and Environmental Protection and Local Authorities should ensure that 30% of state land is allocated to women (Republic of Zambia, 2012b). This implies that 30% of parcels of land available are reserved and recommended for allocation to women and that 70% of the remaining parcels of land are

competed for by both women and men. Unfortunately, the Ministry of lands, Natural Resources and Environmental Protection and Local Authorities have not achieved the 30% allocation of land to women and there is no evidence to show that corrective measures have been taken (Machina, 2002; Republic of Zambia, 2012b; Spichiger and Kabala, 2014).

### **5.2.2 Age Composition and Size of Household**

Age is an important demographic variable and is a primary basis of demographic classification in vital statistics, censuses and surveys (URT, 2012 cited in Gwaleba, 2016). The findings show that majority (63 respondents representing 30.9%) of the population lies between 31- 40 years. Other age groups comprise 21-30 years (49 respondents representing 24%), 41-50 years (53 respondents representing 26%), 51-60 years (19 respondents representing 9.3%), and above 60 years (11 respondents representing 5.4%). The remaining 9 respondents representing 4.4% did not respond. In order to obtain authentic data regarding land conflicts, tenure security and land governance, the findings were drawn from a population aged 21 years and above. This is because respondents were considered to be of mature mind and could independently comment on land issues despite the political and sensitive nature of the land debate in Zambia. Moreover, in Zambia, a citizen could only own land when he/she attain the age of 21.

On the other hand, size of household in this study refers to the number of usual members in a household. Usual members include parents, children and dependents. Findings show that 158 households representing 77.5% have 4 to 8 persons per household. Noticeably, this size of persons per household increasingly pose a burden to some families as they are not able to afford the basic needs like decent housing, education, health, water, sanitation, and proper nutrition. In addition, 27 respondents representing 13.2% had household size less than 4 while 19 respondents representing 9.3% had household size more than 8.

### **5.2.3 Education Attainment**

Education is always valued as a means of deliverance from ignorance and enables one to perform effectively to any given task within a specified period (Kasanga, 2005 cited in Mlozi, 2011). In other words, education builds people's abilities in terms of skills and the ability to receive and process information for livelihood choices (Republic of Zambia, 2006). It is critical in enhancing a country's socio-economic development (ibid). Findings show that the majority of the respondents (90 respondents representing 44.1%) had attained secondary

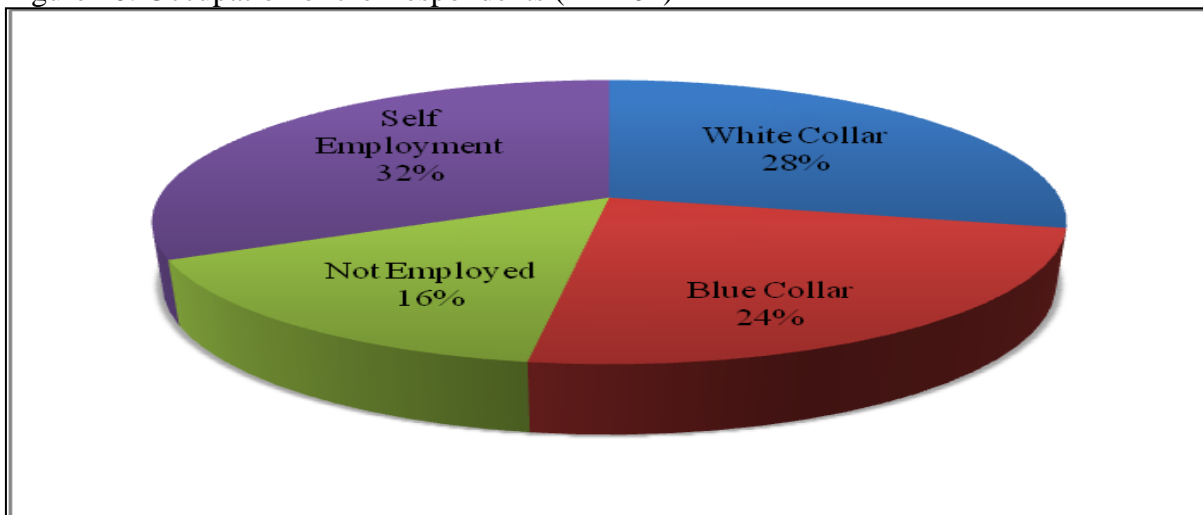


education while 44 respondents representing 21.6% had attained tertiary (College and University) education. Further, 36 respondents representing 17.6% of the respondents interviewed had attained primary education whereas 34 respondents representing 16.7% of the respondents had no formal education. The results therefore suggest that the majority of community members had basic education and therefore able to understand land issues.

### 5.2.4 Employment Status

The nature of employment is varied. The research findings in figure 20 show that 16% (33 respondents) of the respondents were not employed. This indicates that respondents had no wage employment in recognised establishments in public or private sectors. Further, findings show that 32 % (65 respondents) of the respondents were self-employed. Those in self-employment are engaged in activities such as backyard vehicle repairs, running shops (i.e. grocery) or shebeens (i.e. informal, usually illegal bars) etc. ‘Blue collar’ workers were 49 representing 24%. These are mostly domestic servants and unskilled or semi-skilled labour. Teachers, nurses, policemen, soldiers and others fill the ranks of ‘white collar’ workers and these were 57 representing 28%.

Figure 20: Occupation of the Respondents (n = 204)



Source: Survey Data, 2016

### 5.2.5 Households Monthly Income

Income is one of the monetary dimensions for measuring well-being (UBOS, 2010). For the purpose of this study, household income is defined as the sum of income in cash that accrues from economic activities performed by household members (ibid). Particularly, household income is from enterprises (business and trade), salaries and wages, and donations and gifts.

In this study, the income is expressed in US dollars (US\$). It is worth mentioning that the Zambian currency is Kwacha and 1 US\$ is equivalent to 10.11 Kwacha (as at 15<sup>th</sup> August 2016). Household's monthly incomes are provided in table 12 below.

Table 12: Household's Monthly Income

Monthly Income (US\$)	Frequency (f)	Percentage (%)
≤ 100	34	16.7
101- 200	39	19.1
201 - 300	78	38.2
301 - 400	26	12.7
> 400	15	7.4
No Response	12	5.9
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

Research findings show that 34 respondents representing 16.7% spend less than US\$ 100 a month and 39 respondents representing 19.1% spend between US\$ 101 - 200 a month. Further, 78 respondents representing 38.2% spend between US\$ 201 - 300 a month, 26 respondents representing 12.7% spend between US\$ 301 - 400, while 15 respondents representing 7.4% spend more than US\$ 400. However, 12 respondents representing 5.9% did not respond to the question on monthly income. This is because for some individuals details of personal incomes are difficult and sensitive and thus these survey participants did not like to divulge information.

### 5.3 Households Land Size and Methods of Land Acquisition

Household respondents were asked about the size of their land parcels and their responses are provided in table 13 below.

Table 13: Household's Land Size

Land Size (m <sup>2</sup> )	Frequency (f)	Percentage (%)
≤ 1000	88	43.1
1001 - 2000	44	21.6
2001 - 3000	31	15.2
3001 - 4000	26	12.7
> 4000	15	7.4
<b>Total</b>	<b>204</b>	<b>100.0</b>

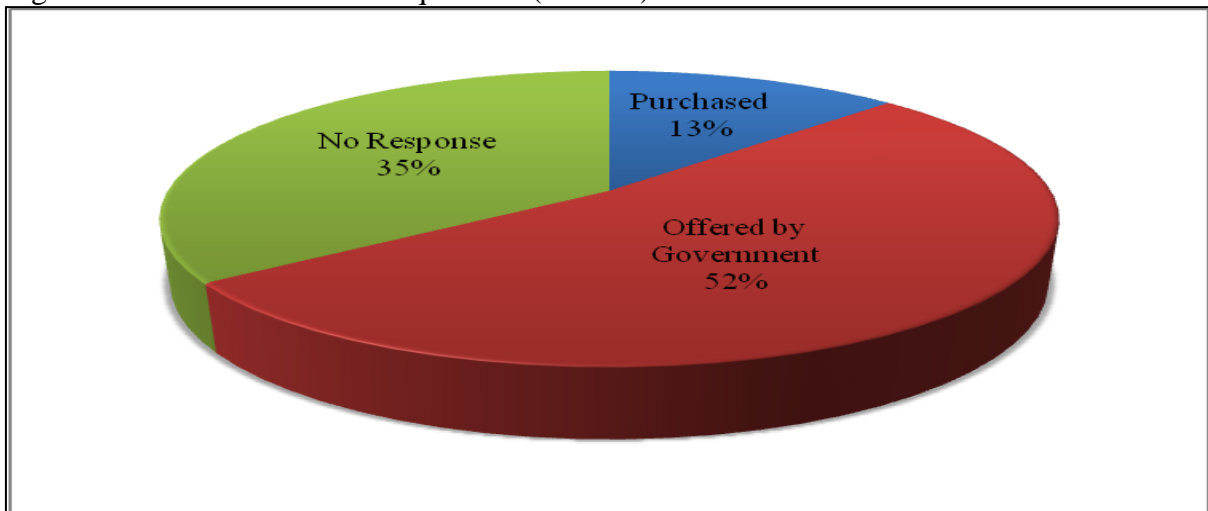
Source: Survey Data, 2016

According to table 13, the majority of respondents (88 respondents representing 43.1%) had land size measuring less than 1000m<sup>2</sup> while 44 respondents representing 21.6% had land size

measuring between 1001m<sup>2</sup> - 2000m<sup>2</sup>. Further, 31 respondents representing 15.2% had land size measuring between 2001m<sup>2</sup> - 3000m<sup>2</sup>, 26 households representing 12.7% had land size measuring 3001m<sup>2</sup> - 4000m<sup>2</sup>, and only 15 households representing 7.4% had land size measuring more than 4000m<sup>2</sup>. The majority of respondents have land measuring less than 1000 square metres because of unsustainable migration trends and internal population growth that have led to high population growth in Lusaka District. High levels of in-migration into the district can be attributed to a diversified economy, relatively better access to social services and employment opportunities (Chama, 2007).

The way in which land is acquired has a significant influence on land development and determines the nature of tenure security of the occupant (Mugambwa, 2007). Thus, in order to ascertain the level of land tenure security, it was important to investigate the methods in which land is acquired within Lusaka District. Figure 21 below illustrate the methods of land acquisition.

Figure 21: Methods of Land Acquisition (n = 204)



Source: Survey Data, 2016

The findings show that the majority of respondents (106 respondents representing 52%) got land from government while 27 respondents representing 13% bought their land from private persons. The figure for those who bought land from private persons is small because the prevailing land values in Lusaka District are so high that considering the income levels (see table 12) of the majority of the study participants, they cannot manage buying land at the current market rates. For instance, research findings show that the minimum market rate per square metre is US\$ 15. In addition, according to the study findings, 71 respondents

representing 35% did not declare how they acquired the land. This is mainly because of the fear for losing the land especially when it was acquired through illegal means like invasion of idle or undeveloped private or public land, violent land acquisition by political cadres, and illegal allocation by some politicians and government officials.

## **5.4 Present Status of State Land Governance Framework**

### **5.4.1 Status of Legal Framework**

The study intended to establish whether or not the legal framework guiding state land governance was adequate. In addition, the study intended to find out whether or not the local people participate in the formation of legal instruments. The research findings show that some land laws which comprise the Lands and Deeds Registry Act, and Urban and Regional Planning Act are adequate. However, the major problem with these laws is weak implementation or enforcement. The other laws guiding state land governance namely the Lands Act and Land Survey Act are inadequate. The Lands Act major weakness is not providing for the procedure for land allocation whereas the Land Survey Act is outdated. Further, the participation of the local people in the formulation of legal instruments is limited. The status of legal framework is explained in more detail in the next subsections.

#### **5.4.1.1 Weak Implementation or Enforcement of Land Laws**

Research findings show that the major problem with the adequate land laws is weak implementation or enforcement. One of the key respondents from a land surveying firm commented:

*“Some land laws are adequate, but the bigger challenge is mainly related to implementation or enforcement of such laws”* (Key Respondent # 1).

In view of the above, the weak implementation or enforcement of the Lands and Deeds Registry Act, and Urban and Regional Planning Act are discussed below.

##### **(a) Weak Enforcement of the Lands and Deeds Registry Act**

According to Part III Section 35 of the Lands and Deeds Registry Act of 1994 chapter 185 “after land has become the subject of a Certificate of Title, no title thereto, or to any right, privilege, or easement in, upon or over the same, shall be acquired by possession or user adversely to or in derogation of the title of the Registered Proprietor” (Republic of Zambia, 1994). This implies that the law provides protection to the person who is given a certificate of

title. However, research findings show that people with land on title are not entirely protected. This is also confirmed by Bertelsmann Foundation (2014 cited in Business Anti-Corruption Portal, 2016) that although land rights in Zambia are well-defined by law, they are poorly protected and not properly enforced. Particularly, ruling political party cadres have been grabbing titled land from unsuspecting land owners and demarcating plots for sale (boxes 3 and 4 are illustrative). In this regard, Lusaka residents called for sanity in the way state land is governed in the country especially in Lusaka District, sighting numerous media reports of political party cadres grabbing state land from citizens (ZLA, 2012a). This shows that the rule of law had broken down in the country.

#### Box 3: Patriotic Front Cadres invade a Farm in Lusaka West

One cadre was shot dead and two police officers suffered serious injuries following a clash over a land wrangle in Lusaka West. Lusaka Police were responding to plaintive cries for assistance by land owners raided by Patriotic Front cadres who were demarcating land. The cadres who were armed with machetes and shovels attempted to intimidate and beat back the police officers when the confrontation occurred. A land owner said that it was very sad that the rule of law had virtually broken down in the country as the cadres believed that they were above the law and could take over titled land without being challenged by the law including police officers on whom they had poured scorn.

Source: Lusaka Times (25 March 2014)

#### Box 4: Patriotic Front Cadres grab Private Land in Lusaka West

Patriotic Front (PF) - the ruling party - cadres are invading on private land in Lusaka West and are terrorising land owners. The cadres have been grabbing titled land from unsuspecting land owners and demarcating plots for sale. An affected land owner, Simeon Zyambo in an interview in Lusaka said that the cadres have gone on rampage grabbing any piece of land they can lay their hands on. Mr. Zyambo, who resides in Livingstone where he is working, said some cadres invaded his land and told his worker that they had come to take over the titled land. He said the cadres started digging foundations on his plot and also marked some roads as well as removing roofing sheets from his servant quarters. In fact, Mr. Zyambo's worker was not on the land as he had fled for fear of losing his life at the hands of cadres.

Source: Lusaka Times (30 December, 2012)

#### **(b) Weak Implementation of the Urban and Regional Planning Act**

The Urban and Regional Planning Act No. 3 of 2015 provides for the preparation of structural and local area plans for urban land use. A structural plan sets out broad policies and proposals relating to land use (LGAZ, 2014). It usually consist of a written component, supported by maps, photographs, sketches, tables and diagrams and a 'plan' component consisting of one or more plans illustrating land use and infrastructure proposals for the area being planned (Wikipedia, 2015). A local area plan on the other hand elaborates the policies

and proposals in more detail relating them to precise land use areas thus providing the detailed basis for a flexible planning regulatory mechanism (LGAZ, 2014).

Findings show that structural and local area plans are available (although outdated) at most local authorities (Lusaka City Council included, i.e. Comprehensive Urban Development Plan 2009) as it is a statutory requirement for all City, Municipal and District Councils to prepare these plans. Nonetheless, local authorities do not strictly follow the laid down procedures when implementing these plans (Mulolwa, 2016). For instance, any person who has acquired land and wants to develop, change the use of or subdivide the land must first obtain planning permission from the local authorities (see Urban and Regional Planning Act, Part VI). However, only 30 to 50 percent of all new developments, changes to urban land or subdivisions that occur have planning permission (Mulolwa, 2016, p.40). Over 50 percent of developments or land uses are granted retrospective (planning) permission which promotes disorderly and illegal development since planning regulations and standards are often overlooked (ibid). Developers who contravene this requirement are supposed to be fined, have their structures demolished without compensation or ordered to restore the land to its original use as designated in the Local Area Plan in cases of changes to land use (ibid). However, only in a few cases are sanctions and penalties imposed, even in retrospect (ibid).

#### **5.4.1.2 Major Weakness in the Lands Act**

Research findings show that the Lands Act does not provide for the procedure for state land allocation. The absence of any provision for procedure in the Act, has made institutions dealing with land allocation to continue relying on Land Circular No. 1 of 1985 (see section 4.5.6 in chapter 4) for guidelines on land allocation (Sichone, 2010). The absence of the procedure for land allocation in the Act has led to local authorities applying different terms and conditions to be satisfied by the applicants of land (ibid). According to Simwinga (2008 cited in Sichone, 2010, p.229):

*“There are no written rules and regulations by which the local authorities are guided when considering applications for land. Although we have Circular No. 1 of 1985 in place, it is very difficult to adhere to it in practice, because its provisions are not practical. Each application is determined on its own merits”.*

In view of the above quote, local authorities can give land to any person it considers appropriate. Evidence gathered from the questionnaires, interviews and documents indicate

that the current state land delivery in the country is not based on the principle of equity. All the key respondents and academics indicated that the poor are not able to easily access state land. One of the key respondents from a law firm commented:

*“Although land is an undeniable right bequeathed to all citizens regardless of status and place in life, the current land distribution system is characterised by inequitable state land allocation that give too much power to the rich and disadvantage the poor”* (Key Respondent # 2).

Further, in random street interviews conducted by Zambia Land Alliance, various interviewees commented:

*“Only the rich get state land in Zambia, there is really no chance for people without money. That is why people end up going to political party cadres hoping that it will be faster and cheaper, but they end up being cheated as well. The Zambian government must consider the plight of the poor when it comes to issues of access to state land; it sad to note that even non-Zambians are given priority over Zambians when it comes to state land allocation. Government must first look at its own people; many Zambians are already poor, if we lose our land where are we going to go? Are we going back to colonial era?”* (ZLA, 2016, para. 4, 7 and 8).

In this regard, the Lands Act has been criticised by international organisations and non-governmental organisations (Machina, 2002; UN-Habitat, 2005; ZLA, 2005). In particular, the criticism is on the lack of focus in the Lands Act on the needs of the poor (Van Asperen, 2014). As a result the poor invade any vacant land (public or private) in cities and towns.

Research findings further show that the government’s continued failure to listen to the poor has created anxiety among the citizens which has resulted in public protests and riots over land. The protests and riots are against the government’s system of state land delivery. All key respondents and academics indicated that the government should take this as a warning of the brewing tension in the country.

#### **5.4.1.3 Outdated Land Survey Act**

The Land Survey Act was enacted in 1960. Land surveying practice in terms of methods, procedures and technology has changed tremendously since 1960 which renders this Act inadequate to regulate cadastral surveys (Chileshe and Shamaoma, 2014). Most surveys are now performed using digital equipment (ibid). Despite the wide use of digital equipment the records still have to be converted to hard copy format to satisfy the law (ibid). There is no

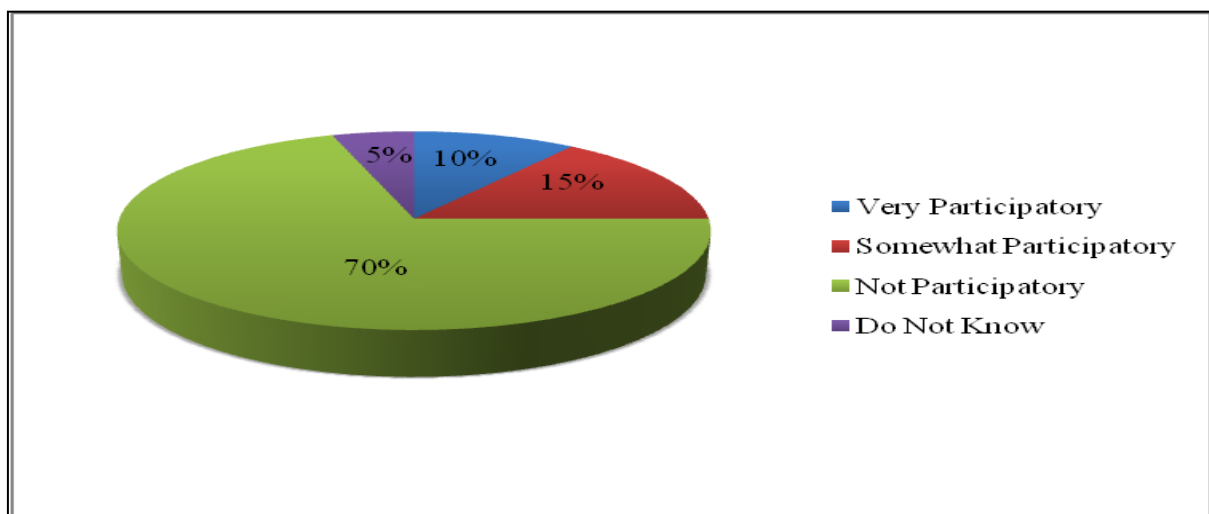
doubt that the current Act limits the medium of archival, accessibility, management and delivery of cadastral services to clients (ibid).

#### 5.4.1.4 Limited Participation of Local People in Legal Instruments Formulation

Prior to 1996, the government was using top - down approach when formulating land instruments. Here, the land laws were drafted by the Ministry of Justice in consultation with the implementing ministries such as the Ministry of Lands, Natural Resources and Environmental Protection, and the Ministry of Local Government and Housing. Thereafter, the draft bills were tabled before Parliament for legislation. Thus, participation of local people was rarely prioritised. It is found that laws prepared by experts only, irrespective of their soundness, cannot inspire the people to participate in their implementation (Rahman, 2005). In this regard, the Zambian Government recognised that the key to successful implementation of the laws lies among citizen participation in order to avoid non-compliance. Hence, in 1996, the issue of public participation in national affairs including formulation of land laws was provided for as a basic right in the Constitution - chapter one of 1996 of the Laws of Zambia - now amended. However, literature shows that despite public participation being introduced 20 years ago, very few local people are involved in law making (adapted from Munyinda and Habasonda, 2013).

The foregoing is also confirmed by evidence from interviews with household respondents. Figure 22 is illustrative.

Figure 22: Participation in Legal Instruments Formulation (n = 204)



Source: Survey Data, 2016



The findings in figure 22 show that most local people (143 respondents representing 70%) think that the formulation of land laws is not participatory. Further, the findings show that only 20 respondents (representing 10%) think that legal instruments formulation is participatory. Those who think that participation was somewhat participatory are 31 (15%) while 10 respondents (5%) did not respond. In most cases, government agencies responsible for formulating laws are highly selective in determining who to participate. As a result many local people are rarely consulted; even when they are invited their views are not given high priority. The failure to incorporate public knowledge in the laws explains why there is a low compliance to most government laws.

#### **5.4.2 Status of Institutional Framework**

It will be recalled from chapter four that there are various institutions involved in state land governance directly and indirectly. For the purpose of this section and section 6.3 in chapter six, only three institutions are discussed and these are the Ministry of Lands, Natural Resources and Environmental Protection (here only three departments namely Lands, Lands and Deeds, and Survey are discussed), Ministry of Local Government and Housing (Local Authorities and Department of Physical Planning), and Land Conflict Resolution Mechanisms. In this section, only two institutions namely the Ministry of Lands, Natural Resources and Environmental Protection, and the Ministry of Local Government and Housing are discussed. Reasons for this are twofold. Firstly, these are the institutions which mainly guide (i.e. directly and indirectly) the governance of land for residential, commercial, industrial, and some agriculture use in urban areas, and secondly, findings show that many state land conflicts are caused by the inefficiency and ineffectiveness of these two institutions. Mechanisms for land conflict resolution are discussed in section 6.3 of chapter six.

##### **5.4.2.1 Centralisation of MLNREP**

Prior to the adoption of the National Decentralisation Policy in 2002, the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) - the main institution in state land governance - was highly centralised. The Ministry had offices only in Lusaka District (Lusaka Province) and Ndola District (Copperbelt Province). The aim of this policy is to transfer authority, functions and responsibilities as well as appropriate resources to district level in order to improve quality of service delivery (Republic of Zambia, 2002b). Research findings show that despite the existence of the policy, the Departments of Lands and Survey

in the Ministry have offices at provincial level but no offices at district level. Moreover, the Lands and Deeds Department is still highly centralised with offices only in Lusaka District (Lusaka Province) and Ndola District (Copperbelt Province).

Further, although the Lands Department has offices in all the ten provinces of Zambia, lease agreements (i.e. document specifying the obligations of the Government and a land user), which are prepared before certificates of title are prepared can only be signed in Ndola and Lusaka Districts. The Lusaka office signs leases from Southern Region which comprises five provinces: Central, Lusaka, Western, Southern and Eastern. Moreover, leases from Southern Region can only be signed by one person (i.e. Commissioner of Lands who heads Lands Department). On the other hand, the Ndola office signs leases from Northern Region which also comprises five provinces: Copperbelt, North Western, Luapula, Northern and Muchinga. Here also, leases from Northern Region can only be signed by one person (i.e. Chief Lands Officer). It should be pointed out that the Commissioner of Lands can also sign leases from Northern Region. In other words, the Commissioner is the only person allowed to sign leases from all ten provinces.

Similarly, the preparation and signing of certificates of title is only done at Ndola and Lusaka offices. Regarding signing of certificates of title, only one person (i.e. Chief Registrar who heads Lands and Deeds Department) signs titles from Southern Region (i.e. signing is done at the Lusaka office) while titles from Northern Region (i.e. signing is done at the Ndola office) are signed by the Registrar. Nonetheless, the Chief Registrar can also sign titles from Northern Region. In other words, the Chief Registrar is the only person allowed to sign certificates of title from all ten provinces.

The foregoing scenario adversely affects the provision of state land services to the people. For instance, the centralisation of title registration has led to inefficiency and delays in the acquisition of title to land and has rendered the whole process costly as people have to travel from far flung areas to either Lusaka or Ndola where the Deeds Registry are located (Mudenda, 2007).

#### **5.4.2.2 Lack of Coordination between Land Institutions**

As explained in chapter four, since the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) has no offices at district level, it has delegated some state land governance functions such as land identification, land use planning, interviewing

land applicants, and land allocation to the local authorities. This is because local authorities have offices in all 106 districts in Zambia. By establishment, local authorities fall under the Ministry of Local Government and Housing and not the Ministry of Lands, Natural Resources and Environmental Protection.

Considering the foregoing scenario, these institutions are expected to collaborate to ensure the collective goal of effective state land governance. However, all the key respondents from government land agencies admitted that coordination is lacking. For example, the researcher witnessed a case of lack of coordination whilst collecting a questionnaire at the Survey Department (Ministry of Lands, Natural Resources and Environmental Protection). This case involved two undeveloped neighbouring parcels of land in Lusaka District. One parcel did not have an access road and the owner of this land made a road on the neighbouring land without consulting the owner. The person whose land was affected went to Lusaka City Council who in turn advised her to go the Survey Department at the Ministry of Lands, Natural Resources and Environmental Protection. However, the senior land surveyor at the Survey Department referred the lady back to the council stating that this case was supposed to be handled by the council. The two institutions were supposed to resolve this case together unlike referring the lady from one institution to another. Cases like this one and others involving lack of coordination are very common (Key Respondent # 3). Difficulties in coordination between land institutions account for considerable delay and confusion (Bruce et al., 1995).

The issue of lack of coordination between land institutions is also confirmed by various authors (Bruce et al., 1995; MLNREP, 2014; Mudenda, 2007; Mulolwa, 2016; Musole, 2007; Republic of Zambia, 2012a; Sichone, 2010; UN-Habitat, 2012b). For example, Musole (2007, pp.169 – 170) states that:

*“... coordinating the various activities and players, dispersed far and wide in multiple departments under different ministries, becomes virtual intractable. First, each ministry has its own priorities and objectives, which may not necessarily coincide with the other ministry. Indeed, the Ministry of Lands, Natural Resources and Environmental Protection has quite separate priorities from that of the Ministry of Local Government and Housing, although both ministries are mandated to tackle the land delivery problem. Second, in executing their respective tasks, there is bound to be conflict or misunderstandings regarding who should do what, where and when. In fact, this is quite evident in the way the process has been managed. Take the allocation stage, for instance, it is stipulated that Local*

*Authorities (under the Ministry of Local Government and Housing) are the agents of the Commissioner of Lands: their task is to select applicants and make recommendations to the Commissioner. Very often, however, there are squabbles between the Local Authorities and the Ministry of Lands, Natural Resources and Environmental Protection regarding breach of protocol. From time to time, there are press reports highlighting the tension between the two players”.*

It is evident from the preceding text that it is asking too much to expect the two land institutions to make expeditious decisions in a seamless fashion (Mulolwa, 2002; Sichone, 2010). Lack of inter-agency coordination significantly reduces the efficiency of land governance (adapted from Farvacque and McAuslan, 1992).

#### **5.4.2.3 Perception of Stakeholders on Corruption**

The study intended to find out whether or not there is corruption in state land delivery system. Thus, households respondents were asked to rate corruption in state land delivery system following simple ordinal scale of ‘YES’, ‘NO’, ‘No Response’ and ‘Do Not Know’. The findings in table 14 indicate that 156 respondents representing 76.5% think that there is corruption in state land delivery system while 11 respondents representing 5.4% think that there is no corruption in state land delivery system. Further, 17 respondents representing 8.3 did not respond while 20 respondents representing 9.8% did not know anything on corruption in state land delivery system.

Table 14: Perception of Stakeholders on Corruption

<b>Perception of Stakeholders on Corruption</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
Yes	156	76.5
No	11	5.4
No Response	17	8.3
Do Not Know	20	9.8
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

Particularly, Ministry of Lands, Natural Resources and Environmental Protection and local authorities (under the Ministry of Local Government and Housing) are corrupt (MLNREP, 2014; Musenge, 2015; Musole, 2007; Nyirenda, 2013; Republic of Zambia, 2012b; Schwab, 2015; Tygesen, 2014). Zambia’s land institutions are among the most corrupt institutions in the country (ZBPI, 2014 cited in Business Anti-Corruption Portal, 2016). For example, officials in these land institutions allocate themselves or relatives state land without following procedure. Boxes 5 and 6 are illustrative.

### Box 5: Kabwe Councillors in 'Plot' Rush

Kabwe councillors on Monday (31 October 2016) awarded themselves parcels of land during their first full council meeting (i.e. the councillors were voted into office on 11 August 2016, when Presidential, Parliamentary, and Local Government elections were held). Reporting to the full council meeting, the chairperson (Evans Mumba) said the Director of Legal Services made a report that the local authority had received applications from various individuals, including the mayor and all councillors as well as other leaders of government. However, some councillors who declined to be named expressed ignorance about them applying for land to the council. “We were surprised to learn that our names are appearing on the list of people who have applied for land when we never made any such application. We wonder what is going on,” said one of the councillors who spoke on behalf of the others.

Tumfweko (05 November 2016)

### Box 6: Lusaka City Council irks Minister

Minister of Local Government and Housing (Brian Chituwo) has suspended Lusaka City Council with immediate effect because the local authority has been perpetrating rampant corruption in the way it has been allocating plots. The Lusaka City Council has been illegally allocating land to itself without following the law governing the allocation of land. In one instance, out of 102 plots, the councillors got 45 plots, 10 plots were given to the Mayor while the deputy Mayor got five plots and members of the public were only allocated 11 plots.

Source: Lusaka Times (22 January 2011)

The issue of corruption was also confirmed by academics and key respondents from land surveying firms, law firms, and non-governmental organisations as well as politicians. One of the respondents from a land surveying firm asserted:

*“There is no proper system of accountability in the delivery of title to applicants. For example while others can get title within one week others can take as many as ten years or more without explanation. While others can acquire multiple pieces of land using the system others cannot even afford one even with equal capability”* (Key Respondent # 4).

Further, in random street interviews conducted by Zambia Land Alliance, an interviewee bemoaned the level of corruption in land acquisition. The interviewee stated:

*“There is corruption in land institutions. I can start the application quite alright but next time I go the Ministry of Lands, Natural Resources and Environmental Protection, my file will be missing or the land which was on offer is suddenly unavailable unless you produce a ‘brown envelop’. There is need to clean up the system”.* (ZLA, 2016, para. 6).

The whole state land delivery system is corrupt because just for one to have his/her land issue addressed they should part away with some money (Key Respondent # 5). The reason is that

officials in public land institutions and politicians (i.e. councillors) have turned land as source of livelihood. Thus, corruption benefits those with money and the poor are ignored. In other words, the poor cannot afford to access state land, only the rich manage to access state land.

In view of the foregoing scenario, the study intended to find out how effective and efficient the current government's actions in the fight against corruption are. Thus, households, academics, and key respondents from land surveying firms, law firms, and non-governmental organisations as well as some politicians were asked to rate the government effort in the fight against corruption following simple ordinal scale of 'Very Effective and Efficient', 'Somehow Effective and Efficient', 'Very Ineffective and Inefficient', 'Do Not Know', and 'No Response'. Findings from household respondents indicate that the majority (146 respondents representing 71.5%) think that the current government's actions in the fight against corruption is very ineffective and inefficient while only 21 respondents representing 10.3% think that current government's actions in the fight against corruption is somehow effective and efficient. The other 23 respondents representing 11.5% did not know anything on corruption while 14 respondents representing 6.7% did not respond. Table 15 is illustrative.

**Table 15: Rating Government Efforts in the Fight against Corruption**

<b>Government's Fight Against Corruption</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
Very Effective and Efficient	0	0.0
Somehow Effective and Efficient	21	10.3
Very Ineffective and Inefficient	146	71.5
Do not Know	23	11.5
No Response	14	6.7
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

The government's ineffective and inefficient fight against corruption was also confirmed by the academics and key respondents. One of the respondents from academics asserted:

*“Corruption cases which are reported go cold. For example in 2007 there was a presidential order for the Zambia Police to surround the Ministry of Lands (as it was called then) and many officers were found to have fraudulent land dealings but none was prosecuted and the same officers were later promoted to higher positions and are still serving in the Ministry. The number of land related prosecutions involving land officers is negligible”* (Interview with lecturer at the Copperbelt University, August 2016).

Besides, news on corruption is regular in the media. Boxes 7, 8, 9 and 10 are illustrative.

#### Box 7: President Edgar Lungu speaks about Corruption

President Edgar Lungu said that he was concerned with the increasing cases of corruption which had beset the country. The President observed that he was specifically concerned that he had received reports linking some Ministers to corrupt activities. He noted that corrupt activities were not just being committed at Ministerial level but even at lower levels of Government. The President wondered how some people had amassed property rapidly at the expense of poor Zambians. Meanwhile, the President took a swipe at the Anti-Corruption Commission (ACC) for being inept because of their failure to prosecute corruption cases. President Lungu wondered why the ACC no longer availed reports to the Office of the President as was the case before, when they were so many corrupt activities which were being conducted with impunity.

Lusaka Times (31 October 2016)

#### Box 8: Corruption still standing in way of developing Baobab Land

Corruption and controversy around Baobab land in Makeni, Lusaka District have continued hindering the development of the prime land. There is nothing happening at the construction site despite heavy interest in the land. On April 4, 2013, the Anti-Corruption Commission (ACC) recorded a warn and caution statement against former President Rupiah Banda over his alleged corrupt role in the controversial Baobab land in Makeni area. The brief background of Baobab land controversy is that, in 2006, the Lusaka City Council, which was dominated by Patriotic Front (PF) - the then main opposition political party - councillors, earmarked the 1,900,000 square metres land for allocation to more than 1,000 private people and other commercial developers. But typical of PF, the councillors shared the land among themselves and gave the rest to PF cadres and relatives with a few genuine buyers. President Mwanawasa (who was also the leader of the Movement for Multiparty Democracy - the then ruling party) grabbed the land from the corrupt PF city council and sold it to Legacy Holdings to develop infrastructure. People who bought plots were refunded. In 2009, after President Mwanawasa's death, President Rupiah Banda (who succeeded late President Mwanawasa) decided to grab back the land. He unreasonably and with a plan to get the land corruptly gave Legacy Holdings a 3-month ultimatum to construct shopping malls, golf course and housing complex. No one can do that within three months. But, since that was his aim, President Banda grabbed the land by forcing Legacy Holdings to 'sale' it to Bantu Capital Corporation Limited. After the Patriot Front assumed office in 2011, a former mayor of Lusaka (Daniel Chisenga) advised the then new PF Government to terminate and reverse the corrupt transaction on Baobab. In November 2012, a concerned citizen told the Watchdog that he was of the view that the Anti-Corruption Commission (ACC) officers were bribed to stop investigating Baobab land. The ACC responded by saying that they were still investigating the owners of Bantu Capital Corporation Limited on how they purchased about 1,900,000 square metres of Baobab land. The owners of Bantu Capital Corporation claim that they paid US\$ 1,384,767.56 for 1,900,000 square metres of Baobab Land. This case is not yet resolved and therefore Baobab land remains undeveloped.

Source: *Zambian Watchdog* (12 June 2015)

#### Box 9: Corruption in Land Allocation in Kasama

A near punch-up ensued in Kasama (Northern Province) when residents and the provincial administration met to discuss the corrupt land allocation. The residents became furious when an official from the Ministry of Lands, Natural Resources and Environmental Protection justified the opaque allocation of plots in Forest 47 to some Ministry officials and other civil servants. And the Ministry of Lands, Natural Resources and Environmental Protection has refused to release the list of civil servants alleged to have benefitted from the plots at the controversial land.

Muvi (11 October 2016)

## Box 10: There is no Fight against Corruption in Zambia

The fight against Corruption in Zambia has continued to remain a pipedream as the body charged with the responsibility to fight the vice pays the crusade leap service without pragmatic action. The Anti-Corruption Commission's action towards corrupt individuals depends on who is involved in the vice. There are many sacred cows and gross executive interference; a trend that hampers efforts to stamp out the cancerous and evil act. The anti-graft fight in Zambia has been undermined due to the invisible hands interfering in the operations of the institutions that are legally mandated to curb corrupt practices in Zambia. If the person involved in corruption is connected to the system, the Anti-Corruption Commission will be inactive because some people in Zambia are regarded as sacred cows. There is no fight against corruption in Zambia but there is a debate about corruption.

Source: Simuwe (14 November 2016)

Although corruption is still part of the society, the Zambian government has set up institutions such as the Anti-Corruption Commission (ACC) and enacted relevant laws like the 2012 Anti-Corruption Act aimed at fighting corruption. In spite of progress made, corruption remains a serious issue in Zambia, affecting the lives of ordinary citizens and their access to public services (Daily Nation, 07 January 2016; Chene, 2014; MLRNEP, 2014). There has been loss of public confidence in the manner state land is governed in the country due to reported cases of corruption (MLRNEP, 2014).

Research findings show that the Anti-Corruption Commission (ACC) has taken high profile politicians including the former Presidents and ministers, among others to court over land. However, most high ranking politicians formerly implicated in corruption cases have been acquitted of all charges by the Courts on grounds of absence of incriminating evidence to prosecute them. In some instances, the high ranking politicians are acquitted of all charges by the Courts due to political interference in the judiciary. This sends a negative impression to the public.

### **5.4.2.4 Provision of Insufficient Information to the Public**

Land institutions were poorly rated regarding dissemination of information to the public on land allocation procedures, land laws, land rights and other land issues. According to table 16, out of 204 household respondents, 164 respondents (80.4%) ranked the government as very inefficient and ineffective. Only 15 respondents (7.4%) rated the government as somehow efficient and effective. The other 9 respondents (4.4%) did not respond while 16 respondents (7.8%) did not know anything on the dissemination of information.



Table 16: Dissemination of Information to the Public

Land Institutions Dissemination of Information to the Public	Frequency (f)	Percentage (%)
Very Efficient and Effective	0	0.0
Somehow Efficient and Effective	15	7.4
Very Ineffective and Inefficient	164	80.4
No Response	9	4.4
Do Not Know	16	7.8
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

The issue of provision of insufficient information to the public is also confirmed in the Strategic Plan 2014 – 2016 and Seventh National Development Plan 2017-2021 prepared by the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) and Ministry of National Development Planning (MNDP) respectively. According to MLNREP (2014) and MNDP (2017), the public has little information on land issues. In addition, random street interviews conducted by Zambia Land Alliance revealed that many residents feel there is not enough education on land laws, land allocation procedures, land rights and responsibilities, a situation they credited as the cause of high levels of corruption in areas such as land allocation (ZLA, 2016). One of the interviewees commented *“honestly speaking as a young person, I have no idea; I do not know where I should start from if I decide to acquire land today. There is need for more information; the land institutions should educate the public on land issues”* (ZLA, 2016, para.2).

In view of the above, household respondents for example were asked whether or not they are familiar with the five main land laws namely the Constitution - Amendment - 2015, Lands Act 1995, Land Survey Act 1960, Lands and Deeds Registry Act 1994, and Urban and Regional Planning Act 2015. Research findings show that the majority of these households were not familiar with the legal instruments (see table 17).

Table 17: Familiarity with Legal Instruments (n = 204)

Legislation	Familiar (%)	Frequency (f)	Not familiar (%)	Frequency (f)
Constitution (Amendment) 2015	22.5	46	77.5	158
Lands Act 1995	17.5	36	82.5	168
Land Survey Act 1960	10	20	90	184
Lands and Deeds Registry Act 1994	15	31	85	173
Urban and Regional Planning Act 2015	7.5	15	92.5	189

Source: Survey Data, 2016

It is very unfortunate that even when information about land allocation procedures, land laws, and land rights is disseminated by land institutions, it is written in English with no translation into local vernaculars. Moreover, the legal terminology used in land laws cannot easily be understood even among the small literate population except among a few legal professionals (Mabikke, 2014).

#### **5.4.2.5 Insufficient Supply of Affordable and Legally Recognised State Land**

Findings show that the exhaustion of serviced state land coupled with the increase in demand for land has put pressure on the Ministry of Lands, Natural Resources and Environmental Protection and Local Authorities to find alternative land. The Ministry and Local Authorities are experiencing increased workloads arising from inability to cope with state land applications. For example, Chitengi (2015, p.166) reported an instance when Lusaka City Council was only able to supply 200 plots against 3,000 applications. In the face of this problem, the government introduced land development fund through the Lands Act of 1995. The fund is meant for opening up new areas for development. Particularly, the fund is used for land use planning, cadastral surveying, and provision of services such as roads, electricity, water and sewerage. However, over time, the opening up of new areas has been adversely affected by unpredictable and inadequate funding from the Treasury (Ministry of Finance). Table 18 is illustrative. Table 18 clearly shows that apart from 2011 when funding was reasonable, the disbursement of the land development fund for the years 2012 – 2016 has been low and inconsistent. Research findings show that low funding has been the most prominent hindrance in trying to achieve the goals and objectives of the Land Development Fund. Thus, the Ministry and Local Authorities are unable to sufficiently supply affordable and legally recognised state land.

Table 18: Disbursement of the Land Development Fund

<b>Year</b>	<b>Amount (US\$)</b>
2011	1,169,492.30
2012	163,893.58
2013	134,219.99
2014	30,168.15
2015	32,640.95
2016	33,135.51

Source: Ministry of Finance, 2011, 2012, 2013, 2014, 2015, 2016

#### 5.4.2.6 Insufficient Monitoring of Land Use

Research findings show that land institutions - particularly Ministry of Lands, Natural Resources and Environmental Protection and Local Authorities - have not been monitoring land use through site inspections. Thus, these land institutions are unable to identify land problems early enough. In other words, land institutions are reactive and not proactive. For instance, Local Authorities (Lusaka City Council included) wait until people have built and then demolish their properties on allegations that they built on illegal land (Daily Nation, 15 December 2015). This has brought tension in the country (ibid). The first concern that arises is whether any person must be allowed to spend a lot of money developing a property that the council later comes to demolish, which is not fair to poor citizens (ibid). The demolition of property leads to riots over land being experienced in Zambia in general and Lusaka District in particular (see photo 3). Findings show that land institutions are unable to monitor land use due to lack of transport, insufficient staff and inadequate financial resources.

Photo 3: Example of Riots over Demolition of Houses in Lusaka District



Source: Photos provided by The Post, 2016

#### **5.4.2.7 Poor Land Record Management**

There has been poor record keeping at land institutions - i.e. Ministry of Lands, Natural Resources and Environmental Protection, Department of Physical Planning, and Local Authorities [city, municipal and district councils] (Sikazwe, 2005; UN-Habitat, 2012b). For example, the issue of poor record keeping in councils was also confirmed by the then Central Province minister (Davies Chisopa) who was quoted by the Post (18 March 2015, para. 1 and 2) saying that:

*“...poor record keeping by Local Authorities has compounded the illegal land challenges being faced by councils countrywide. Without addressing the challenge of record keeping in councils, illegal land allocation would continue as that was the loophole people continued to use”.*

Poor record keeping is still rife at Local Authorities (Lusaka City Council included) and Department of Physical Planning (Key Respondent # 6). The Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) has made some efforts to ensure that the land records are stored in such a way that they are both sufficiently accessible and are safeguarded against any misplacement. Particularly, the Ministry established the Zambia Integrated Land Management Information System (ZILMIS) in 2014. This computer system was procured and installed to trigger the migration from manual to the computerised land governance to improve efficiency in records management. The ZILMIS includes an integrated Geographical Information System (GIS) component to facilitate effective land governance. The ZILMIS was meant to replace the process used which was largely manual-in-nature with only several automated functions. This led to delay in the issuance of certificates of title and was not able to meet the challenges in land governance (Republic of Zambia, 2014b).

Furthermore, the Ministry (MLNREP) had procured scanners for the purpose of scanning all hard copy files so as to digitalise them (Republic of Zambia, 2014b). In this regard, the Ministry's target was to digitalise 80% of the physical records by 2016 (MLNREP, 2014). However, as at 2016, the Ministry (MLNREP) has only digitised 40% of physical records (Key Respondent # 7). This implies that the Ministry still faces problems of poor record keeping and slow processing of certificates of title (Republic of Zambia, 2014a). Photo 4 show poor record keeping at the Ministry of Lands, Natural Resources and Environmental Protection.

Photo 4: Example of Poor Record keeping at MLNREP



Source: Author

According to Mulolwa (2016, p.74), *“the poor record keeping on land has made the information not to be maintained in a uniform way. It is fragmented, and do not seem to aid decision-making on land based issues. It has been observed that inadequate land information management has led to lack of transparency and accountability in the process of land governance”*.

It is evident from the foregoing that, although ZILMIS is a very good system, it is not being put to good use. In the light of the foregoing, the issue of missing files is very common. For example, within an hour of waiting for the questionnaire at the Lands Department at MLNREP, the researcher witnessed five (5) cases of missing files. This derails the process of land allocation and clients are expected to keep reporting to government offices to check on the progress. Thus, land governance challenges such as illegal allocation, double or multiple land allocations, to mention but a few are common. Considering the foregoing, it can be said that the government is unable to adequately provide its citizens with secure land tenure. This has led to a loss of public confidence in the governance of state land in the country.

To assess the public confidence in the governance of state land, a simple ordinal scale of ‘Very Confident’, ‘Somewhat Confident’, ‘Not Confident’, and ‘No Response’ was used. The findings indicate that 150 respondents (households) representing 73.5% have no confidence in the current government’s governance of state land. Only 9 (4.4%) respondents are very confident while 20 (9.8%) respondents are somewhat confident of the governance of state land. The remaining 25 (12.3%) respondents did not respond. Table 19 is illustrative.

Table 19: Public Confidence in the Governance of State Land

Assessing Public Confidence in the Governance of State Land	Frequency (f)	Percentage (%)
Very Confident	9	4.4
Somewhat Confident	20	9.8
Not Confident	150	73.5
No Response	25	12.3
<b>Total</b>	<b>204</b>	<b>100</b>

Source: Survey Data, 2016

#### 5.4.2.8 The Absence of an Appropriate Structure for the Customer Service Centre

The Customer Service Center at the Ministry of Lands, Natural Resources and Environmental Protection was opened in 2008 at the Ministry Headquarters (in Lusaka). The centre was established to act as the single location in which all land transactions take place, ensuring that clients do not carry documents between departments within the Ministry. This was meant to speed up the processing of applications relating to land acquisition, transfer of certificate of titles and other registration formalities (MLNREP, 2014). Despite being established 8 years ago, Customer Service Centre does not have an appropriate structure as officers are assigned to the Centre on an ad hoc basis (ibid). Particularly, the Centre relies on ad hoc assignments of officers from different departments for part of each day, to accept land applications (Weiser and Balasundaram, 2009). This has greatly reduced the ability of the Customer Service Centre to function as intended (ibid). As a result, the processing of land applications is adversely affected.

#### 5.4.2.9 Political Interference

Findings show that there is political interference in the operations of land institutions. Particularly, politicians - i.e. the President, Ministers, Members of Parliament, and Councillors - have exercised extensive improper influence over the operations of land institutions. All key respondents from central and local government confirmed that there is political interference in their operations. For instance, implementation or enforcement of land

laws is a key challenge due to political interference (Key Respondent # 8). One key respondent asserted:

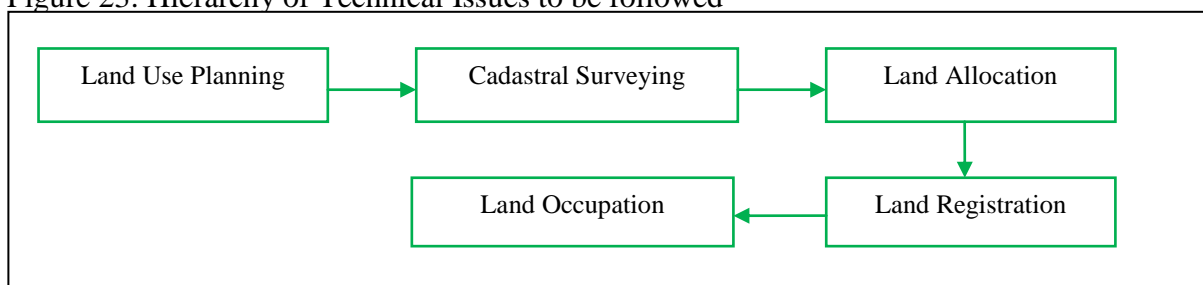
*“Public land institutions can work well, but the problem we have or facing is political interference. Much as you put things in place, it does not work because the politicians want things to be done by their way. For instance, section 9 subsections 1 and 2 of the 1995 Lands Act provide that a person shall not without lawful authority occupy or continue to occupy vacant land, and any person who occupies land without lawful authority is liable to be evicted. Despite this provision in the Act, some people have been occupying land illegally and any effort to evict them is in most cases stopped by officials (e.g. Ministers, Members of Parliament, and Councillors) of the ruling political party” (Key Respondent # 9).*

The involvement of politics in land governance leads to questionable land governance decisions. In instances where land experts have advised against a particular decision, politicians carry the day as they have the final say. For example, speaking in Parliament, an opposition Member of Parliament, a former Lusaka Town Clerk, blamed political leaders for allowing the country to degenerate into unprecedented levels of lawlessness as town planners are overtaken by political planners (Chama, 2007). Difficult decisions cannot be made as politicians are afraid of losing votes (CFHH, 2015, p.33). As much as political will is inevitable in the governance of the land sector, too much of it in institutions such as the Ministry of Lands, Natural Resources and Environmental Protection and Local Authorities, result in unjustified political interference and finally has repercussions on land governance (adapted from Shawa-Siyunyi, 2004).

### 5.4.3 Status of Technical Issues

The main processes in the Zambian state land governance framework (technical issues) are land use planning, cadastral surveying (establishment and re-establishment of land boundaries), land allocation, land registration, and land occupation. Figure 23 is illustrative.

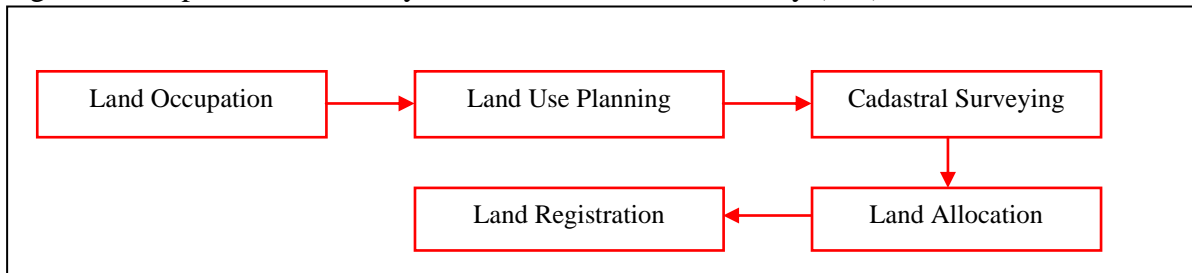
Figure 23: Hierarchy of Technical Issues to be followed



Source: Survey Data, 2016

To achieve effective and efficient state land governance, this hierarchy (in figure 23) should be followed, and each component in the hierarchy should function effectively and efficiently. However, findings show that this hierarchy is not followed and each component in the hierarchy is not functioning well. For example, there are situations where land is occupied and then land use planning, land surveying, land allocation, and land registration is done later. Figure 24 is illustrative.

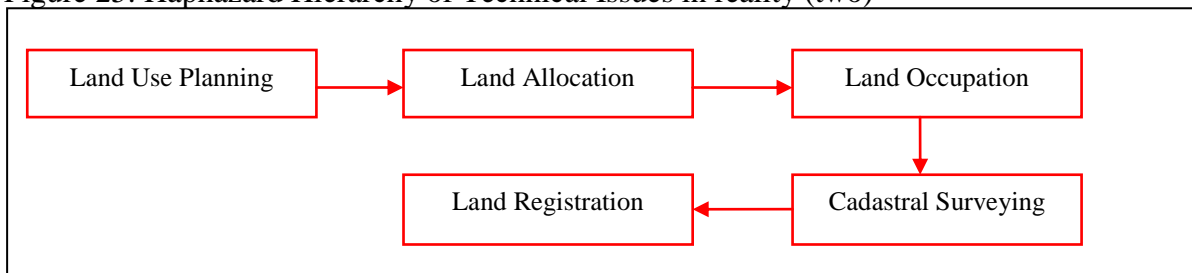
Figure 24: Haphazard Hierarchy of Technical Issues in Reality (one)



Source: Survey Data, 2016

Not dissimilarly, land use planning could be done and then land allocation will be done skipping cadastral surveying (due to various challenges discussed under 5.4.3.2 and 5.4.4). Since surveying is not done, temporary pegs are used to indicate land boundaries. However, these pegs are easily removed. Further, land occupation will be done skipping land registration because land cannot be registered without a cadastre. It is after land occupation is done that cadastral surveying and land registration will be undertaken (see figure 25).

Figure 25: Haphazard Hierarchy of Technical Issues in reality (two)

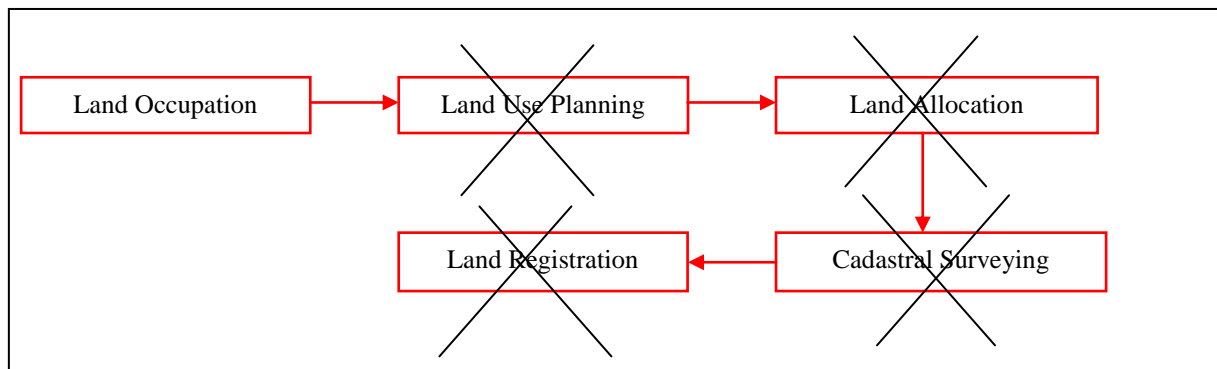


Source: Survey Data, 2016

In addition, findings show that it is also very common to find a situation where land is occupied and the other technical issues such as land use planning, land allocation, cadastral surveying and land registration are never undertaken (see figure 26). This is why about 70 percent of the urban population in Zambia resides in unplanned urban settlements, which lack proper access to basic social, physical and economic amenities (CFHH, 2015; Chitengi, 2015; IBP, 2015; Lusaka Voice, 03 October 2014; UN-Habitat, 2012b; USAID, n.d.).



Figure 26: Haphazard Hierarchy of Technical Issues in reality (three)



Source: Survey Data, 2016

The foregoing clearly shows that technical issues are defective in Zambia. The status of land use planning, cadastral surveying, land allocation, land registration, and land occupation is the subject of the next subsections.

#### 5.4.3.1 Land Use Planning (LUP)

##### (a) How is LUP Performing?

Land use planning involves the identification of available land, preparation of the layout plan (i.e. showing which part of land is to be used for residential, industrial, commercial, agricultural or other urban uses and which parts are to be retained as open spaces), and provision of services such as water, roads, electricity and sewerage. The local authorities are responsible for undertaking land use planning. City and Municipal Councils prepare layout plans for their localities whilst layout plans for District Councils are prepared by the Department of Physical Planning in the Ministry of local Government and Housing. Land use planning involves a number of activities which range from land identification to providing services. The stages in land use planning are explained below.

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

**Step 2:** Local Authority establishes the suitability of the use of land through carrying out of a reconnaissance survey of the area, the terrain of the land with consideration of existing developments if any and surrounding areas.

**Step 3:** City/Municipal Councils or Department of Physical Planning (i.e. prepare layout plans for district councils) prepares a layout plan and requests Lands Department at the

Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) to check for land availability.

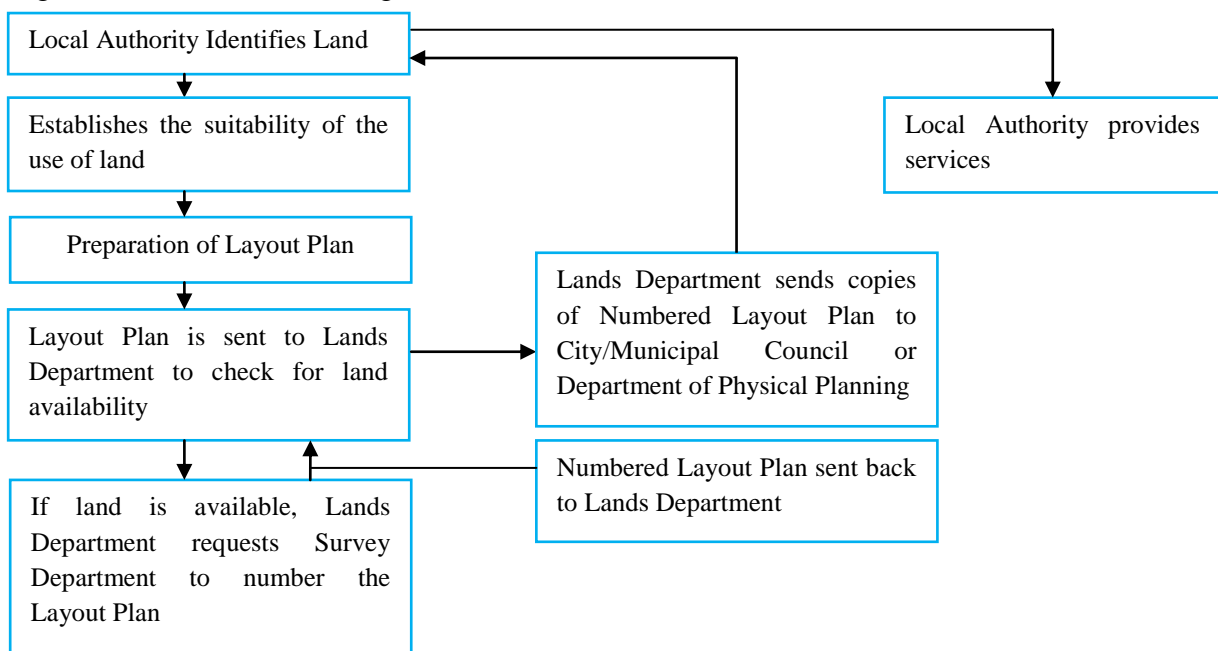
**Step 4:** If land is available, Lands Department requests Survey Department to number the layout plan. Survey Department checks and numbers the layout plan, and enters the numbers in the Property Register of the Zambia Integrated Land Management Information System (ZILMIS). Once this is done the numbered layout plan is sent back to Lands Department.

**Step 5:** When the Lands Department receives numbered plans from Survey Department, they send copies to City/Municipal Councils or Department of Physical Planning. Department of Physical Planning subsequently sends the numbered plans to District Councils.

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

The stages in land use planning stages are summarised in figure 27.

Figure 27: Land Use Planning Procedure



Source: Author

Considering the importance of land use planning, the study intended to find out whether or not land use planning was performing well. Research findings show that land use planning is done in an ad hoc manner. The overall effect is piecemeal, highly compartmentalised, haphazard, uncoordinated and disorderly land development (UN-Habitat, 2006, 2013). For instance, land is allocated where there are services such as roads, underground water and

sewerage pipes. This is also confirmed by the Daily Nation. According to Daily Nation (24 August 2015, para. 5):

*“... a number of plots have been created in Lusaka District, one along Great North Road which restricts residents from going through. A plot was created at the end of Mumbulu Road where a church has been built. A warehouse has been built along the roadside of Mwatiamvu Road in Emmasdale, under power lines and over the drainage”.*

An example of the foregoing scenario is shown by photo 5 (foundation excavation). Here, land was allocated on existing underground water pipes.

Photo 5: Example of Land Allocation on existing underground Services



Source: Author

The foregoing predicament is due to the inadequate capacity by Local Authorities to monitor and control land development due to lack of equipment, inadequate personnel and financial resources, sheer complacency, and political interference (UN-Habitat, 2007; Wragg and Lim, 2013). Other reasons include lack of services or facilities map (i.e. you only notice when there is a problem or when constructing your structure), allocation of land in unplanned areas by both planners and political cadres, and allocation of land by political cadres in planned areas.

In addition, when land has been identified and planned, local authorities are required to provide services such as water, roads, electricity and sewerage. However, in practice, land parcels are allocated to people (in most cases) without the provision of services despite land users paying service charges (see photo 6).

Photo 6: Example of Land Allocated where there are no Access Roads



Source: Author

Further, the statutory requirement is that the land use plans should be reviewed every five years. But the current Comprehensive Urban Development Plan (CUDP) for Lusaka District which has been the major Land Use Plan was prepared in 2009 and has not been reviewed since then. Similarly, land use plans for other districts in Zambia have not been reviewed (Key Respondent # 10). As a result, the land use plans tend to be outdated and distorted due to population growth and rapid urbanisation. This has led to a situation where for example about 65% of Lusaka's population live in unplanned settlements (Chitonge and Mfuno, 2015; Path, 2015 cited in CDKN, 2016). This would suggest poor urban land use planning despite having the law and institutions to guide the process.

### **(b) Is LUP Participatory?**

Participatory Land Use Planning (PLUP) approach to local governments has taken to be a developmental procedure and aims to overcome the poor land use planning of the past (Gwaleba, 2016). The poor land use planning of the past was rigid, top-down and expert-led. People, the very users and managers of land, were never consulted concerning their opinion (GIZ, 2011). They were only considered in a brief socio-economic survey by questionnaires, which did not play a great role in the process (ibid). This lack of consultation led to the exclusion of local people and their knowledge, to production of plans that were not appropriate to local circumstances and plans that had hardly been implemented (ibid). To solve this problem, section 40 subsections 1, 2, 3 and 4 of the Urban and Regional Planning Act of 2015 provides for public consultation and participation in the preparation or proposed amendments of land use plans. This was also provided for in the repealed Act (Town and

Country Planning Act). Particularly, section 40 of the Urban and Regional Planning Act provides that:

(1) A planning authority shall, within fourteen days of the preparation or proposed amendments of a regional development plan, an integrated development plan, local area plan or sectoral plan, display a notice in public places in its area, at its offices and on its website, in the prescribed manner and form, informing the public of the availability of the draft regional development plan, integrated development plan, local area plan or sectoral plan.

(2) A planning authority shall make the draft regional development plan, integrated development plan, local area plan or sectoral plan available for public scrutiny and comments at its office and at other public offices in its area, for a period of sixty days.

(3) A planning authority shall establish mechanisms to collect and respond to public comments, concerns and questions relating to the draft regional development plan, integrated development plan, local area plan or sectoral plan, including public debates and hearings.

(4) A public hearing for a draft regional development plan, integrated development plan, local area plan or sectoral plan shall be conducted in the prescribed manner.

In view of the foregoing, the question to ask now is, are urban land use plans based on a clear public process and input by all stakeholders? To answer this question, households, academics and key respondents from non-governmental organisations, law firms as well as politicians were asked if urban land use plans were based on a clear public process and input by all stakeholders. Table 20 shows the responses from the household respondents.

Table 20: Is Land Use Planning Participatory?

<b>Variable</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
Yes	15	7.4
No	141	69.1
Do Not Know	21	10.3
No Response	27	13.2
<b>Total</b>	<b>204</b>	<b>100</b>

Source: Survey Data, 2016

According to table 20, only 15 (7.4%) household respondents said land use planning is participatory, 21 (10.3%) respondents did not know anything on participatory land use planning while 27 (13.2%) did not respond. Unfortunately, the majority (141 households

representing 69.1%) feel that land use planning is not participatory. This was also confirmed by academics and key respondents from non-governmental organisations, law firms as well as politicians. One of the academics in his publication entitled *Improving Land Governance in Zambia: Implementation of the Land Governance Assessment Framework*, states that:

*“The weak institutional capacity has contributed to weak public participation in urban development”*  
(Mulolwa, 2016, p.43).

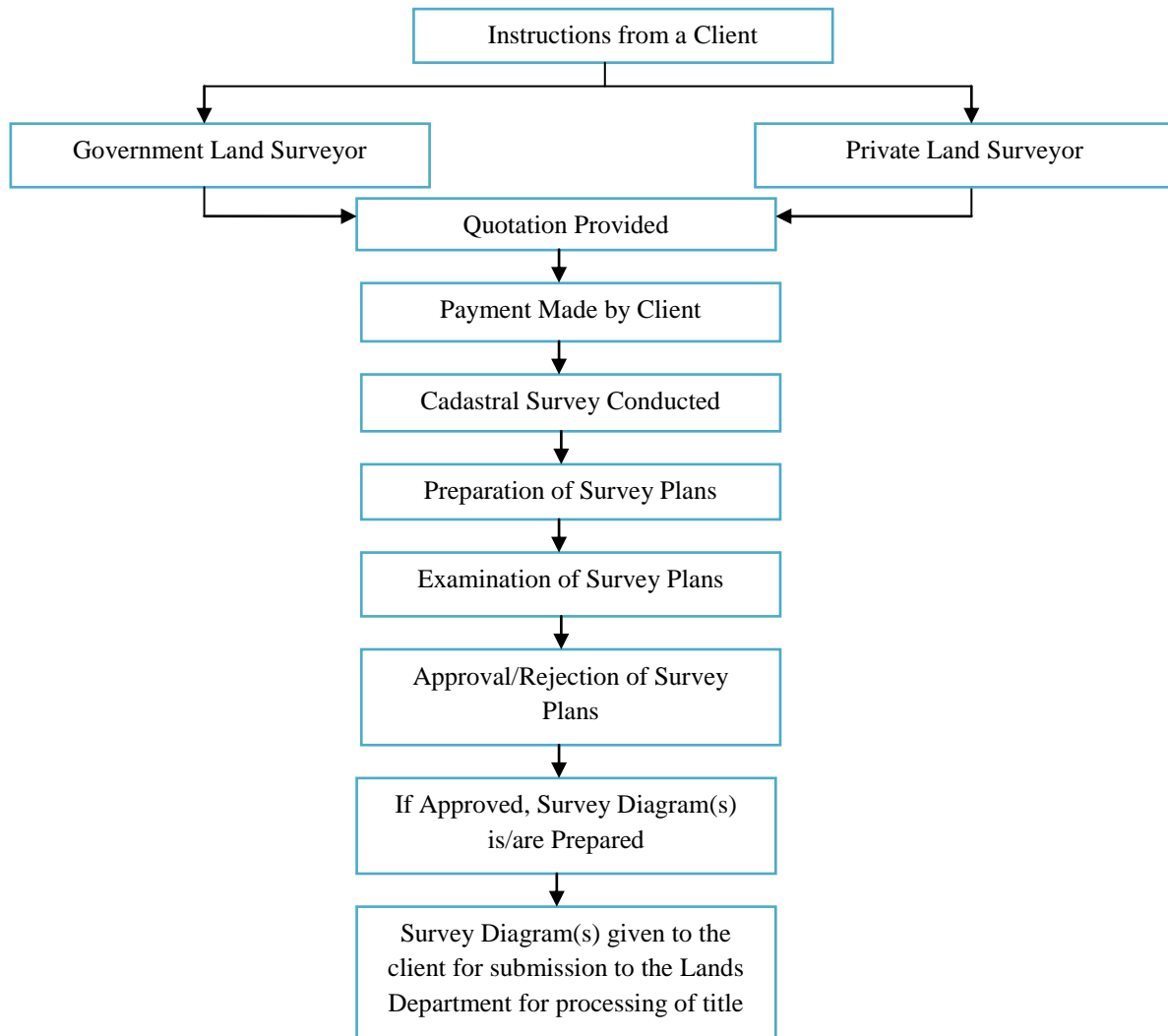
The lack of clear communication strategy has resulted in inadequate public participation and community awareness of development plans (Mulolwa, 2016, p.44). Communication methods in form of posters, leaflets in local languages, road shows etc are inadequate (ibid). Public agencies have not fully taken advantage of technologies such as the internet and participatory GIS to make information on land use plans available to the public (ibid). Limited or lack of participation of local people in the production of land use plans does not inspire the local people to participate in their implementation.

#### **5.4.3.2 Cadastral Surveying**

The primary purpose of a cadastral survey is to determine for each land parcel its location, the extent of its boundaries and surface area and to indicate its separate identity both graphically on a map and physically on the ground (Republic of Zambia, 2006, p.21). The Government maintains a cadastral property register which serves the public with survey data that defines or re-establishes boundaries of state land or land held under statutory tenure (ibid). The register contains approved cadastral survey records, constituting textual and graphic map data (ibid).

Cadastral surveying is only undertaken if a numbered layout plan is correct. A number of activities are involved in cadastral surveying as shown in figure 28. The activities range from a client giving instructions to either a government land surveyor or licensed private surveyor to giving a survey diagram to the client.

Figure 28: Cadastral Surveying Procedure



Source: Author

Activities in cadastral surveying are explained below.

**Step 1:** A client (e.g. local authorities, companies, individuals, and group of people) gives instructions (to undertake a cadastral survey) to either a government land surveyor or licensed private land surveyor. By law, cadastral surveys are carried out by both public institutions, and private practitioners (Mulwanda, 2010; Sichone, 2010).

**Step 2:** The government land surveyor or licensed private land surveyor will provide a quotation to a client. For instance, government charges a minimum of US\$ 376 to carry out a survey on a residential parcel. However, private surveyors charge more than US\$ 376 to survey a residential parcel.

**Step 3:** When the payment is made, a survey is conducted. According to Mutambo (2003), the following activities are involved in the survey:

- **Data collection:** This includes connecting data from old surveys, Control Points and their coordinates, the Cadastral index map to check the nearest surveyed properties, the General Plan for pre-computations.
- **Mobilising resources:** The surveyor then mobilises all the required resources (survey team, instruments and vehicle) for the fieldwork.
- **Field survey and computations:** Theoretical coordinates are computed based on the site plan. The cadastral survey is then carried out implementing the theoretical computations. Post survey computations are carried out at the end of the survey for the areas, coordinate list and any deviations from the theoreticals etc. All these activities are carried out in accordance with the Land Survey Act of 1960 and Regulations.

**Step 4:** Drawing – The surveyor then submits his/her field book and coordinate list to the Drawing Office where the Cartographers prepare the Survey Plan. Survey plans comprise a working plan and a general plan. A working plan shows how a survey was conducted (Mulolwa, 2002). General plans are prepared for blocks of parcels and depict all the parcels with their side distances and bearings, and a list of coordinates (ibid).

**Step 5:** The survey plan(s) is/are lodged at the Surveyor General's office through the Plan Room for examination. The survey is checked for conformity with the Land Survey Act and Regulations (Mutambo, 2003).

**Step 6:** If everything is fine, the survey plan(s) is/are approved. Where there is something wrong, for instance, if the survey was not properly done, the survey plan(s) is/are rejected, and subsequently sent back to the surveyor who carried out the survey for corrections. Findings show that on average about 40% of survey plans submitted for examination are rejected.

**Step 7:** Where the survey plan(s) is/are approved survey diagram(s) is/are prepared. Particularly, survey diagrams are extracted from general plans (Mulolwa, 2002). If only one parcel is surveyed, a survey diagram is directly prepared (ibid).



**Step 8:** Finally, the survey diagram(s) is/are given to the client(s) who subsequently submit it/them to the Lands Department at the Ministry of Lands, Natural Resources and Environmental Protection for processing of 99 year certificate of title(s).

The principal purpose of cadastral surveys in Zambia is to give unambiguous spatial locations, sizes and shapes of land parcels specifically for land registration (adapted from Silayo, 2005). Despite its importance, state land is characterised by minimal cadastral coverage. To verify this, household respondents were asked whether or not they have cadastre for their land. According to table 21, only 41 respondents representing 20.1% have cadastre on their land while 30 respondents representing 14.7% did not respond. Unfortunately, the majority of respondents (133 respondents representing 65.1%) did not have cadastre.

Table 21: Do you have Cadastre for your Land?

Variable	Frequency (f)	Percentage (%)
Yes	41	20.1
No	133	65.2
No Response	30	14.7
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

The issue of minimal cadastre coverage for state land was also confirmed by academics and all key respondents. One key respondent from a private surveying firm stated that:

*“Generally, cadastre coverage for the entire state land is less than 40%”* (Key Respondent # 11).

Evidence gathered from documents, interviews and questionnaires indicate overwhelmingly that cadastral surveying in Zambia is facing numerous challenges. The challenges include but not limited to:

**(a) Centralised Reference Information**

Survey control data (i.e. geodetic control records and all approved cadastral survey records) is archived at the Ministry of Lands, Natural Resources and Environmental Protection headquarters located in Lusaka District. This information is in hard copy format and cannot be accessed via internet (Chileshe and Shamaoma, 2014). Thus, land surveyors not based in

Lusaka have to travel to Lusaka to collect this information (ibid). The collection of required survey information is a big contributor towards the high cost of cadastral surveys (ibid).

**(b) Unpredictable Delivery Period**

There is a Service Charter on the Ministry of Lands, Natural Resources and Environmental Protection web-site and service standards are set out although they are not fully adhered to or implemented (Mulolwa, 2016). The Service Charter is quite clear as shown in table 22, but the actual delivery of services does not conform to reality (ibid). The time frame stipulated in the customer service standards as regards the provision of survey services is rarely achieved. Often surveying involves long waiting periods (Chitonge and Mfuno, 2015), extending beyond several months, or even years. For instance, the approval of the survey diagrams is a lengthy process taking up to two years (UN-Habitat, 2012b). Some jobs take longer owing to the absence of a first-in, first out protocol (Mulolwa, 2016). Moreover, the Charter is silent on the remedies that clients have if its provisions are not adhered to (Kironde, 2009). This has caused dissatisfaction of clients who apply for cadastral services (Chileshe and Shamaoma, 2014).

Table 22: Customer Service Standards (Survey Services)

Activity	Time Frame
Issue Survey Diagrams for Surveyed Land	Issued within 7 working days
Lodge and Approve Survey Records	Completed within 5 - 21 working days

Source: MLNREP, 2016

**(c) Inadequate Storage Infrastructure**

The manual lodgement of cadastral records demands a lot of storage room and the existing storage infrastructure is inadequate (Chileshe and Shamaoma, 2014). Findings show that the manual survey records are so many such that they can no longer fit in the storage room. Thus, it sometimes takes days, to locate the records of interest due to misfiling and general poor management of the storage room where these records are archived (ibid).

**(d) Lack of Standards and Regulations for Using GNSS**

Findings show that there are no standards and regulations guiding surveys conducted using Global Navigation Satellite System (GNSS) techniques. This is a challenge when examining survey records. Moreover, the existing pool of survey examiners is not well abreast with GNSS which is another handicap in their ability to conduct thorough examination of such

records in the absence of standards and regulations (Chileshe and Shamaoma, 2014). As a result, there is a long queue of survey records to be examined which is a cause for delay and corruption (adapted from Mwanza, 2004). There is no doubt that the lack of standards and regulations for using GNSS limits the delivery of cadastral services to clients.

**(e) Inaccurate Cadastral Property Register**

The inadequacy in human and institutional capacity has over the years impacted negatively on service delivery (Republic of Zambia, 2006). As a result, there are a number of illegal surveys being undertaken by unauthorised surveyors thereby contributing to unreliable data in the cadastral property register (ibid). This has also been worsened by lack of human capacity to conduct survey inspections (ibid).

**(f) Lack of up-to-date Cadastral Maps**

Cadastral maps do not cover the whole state land and are not regularly updated as General Plans or Survey Diagrams are approved and thus are useless for most purposes (Key Respondent # 12). The out-of-date cadastral maps do not properly reflect the situation on the ground (ibid).

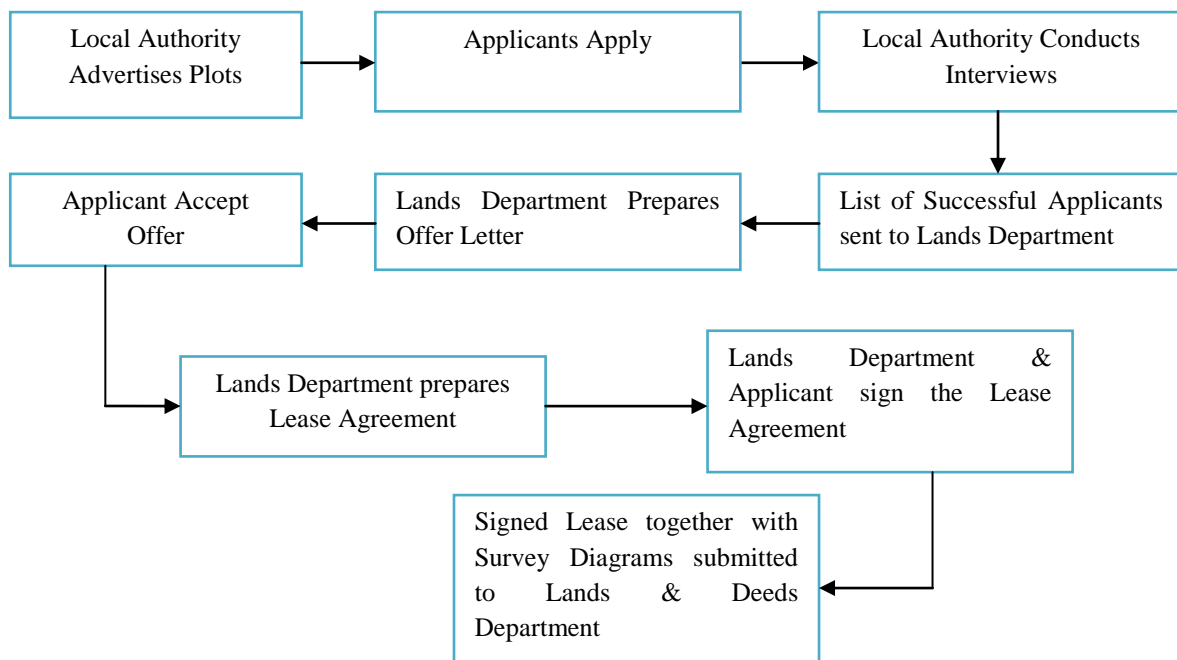
**(g) Missing Cadastral Surveying**

It will be recalled from chapter four that the Ministry of Lands, Natural Resources and Environmental Protection used to grant 14-year leases with provisional certificates of title based on a sketch plans. Sketch plans were granted where land had not been surveyed. Although, this system has been discontinued, it is estimated that considerable amount of land still has provisional certificates based on sketch plans (Key Respondent # 13). This implies that a lot of land has undefined boundaries on the ground. In other words, cadastre is missing.

**5.4.3.3 State Land Allocation**

Land allocation is the process of selection of the person to whom an area of land is to be allocated or allotted for the specific purpose of development for a particular and identified use (Kinyungu, 2007). Land allocation is done after land use planning and cadastral surveying is undertaken. There are a number of steps involved in the process of state land allocation (Republic of Zambia, 1985, 2006) and these are illustrated in figure 29.

Figure 29: State Land Allocation Procedure



Source: Author

The stages in the figure are discussed as follows.

**Step 1:** Local Authority advertises plots, inviting people to apply. Applicants apply for land by filling in application forms. The applicants are also expected to attach supporting documents, such as bank statements, as proof of ability to develop the plot applied for.

**Step 2:** Local Authority carries out interviews and sends the list of successful applicants to Lands Department (under the Ministry of Lands, Natural Resources and Environmental Protection) recommending them for plots. This is sent together with the applicants' letter of application.

**Step 3:** Lands Department receives the applications, prepares offer letter indicating the terms of lease, e.g. the duration of the lease which is 99 years.

**Step 4:** The Applicant accepts offer by paying lease charges stipulated on the offer within 30 days of receiving the offer.

**Step 5:** Lands Department prepares Lease Agreement. This document specifies the obligations of the Government and land user.

**Step 6:** Both the Applicant and Commissioner of Lands sign the Lease Agreement. The signed lease and survey diagram (cadastral survey procedure is carried as described in section 5.4.3.2) are then sent to the Lands and Deeds Department for registration and preparation of Certificate of Title.

Considering the importance of land allocation, the study intended to establish whether or not the state land allocation is functioning well. Findings show that state land allocation is characterised by cumbersome procedure and lack of transparency.

**(a) Cumbersome Procedure**

Household respondents, academics and all key respondents were asked to rate state land allocation following simple ordinal scale of ‘Cumbersome’, ‘Simple’, and ‘No Response’. The responses from household respondents are provided in table 23. According to table 23, 169 household respondents representing 81.9% think that state land allocation procedure is cumbersome while 31 respondents representing 15.2% did not respond. Only 6 respondents representing 2.9% think that state land allocation procedure is simple. A number of respondents did not respond because of the fear for losing the land especially when it was acquired through illegal means like invasion of idle or undeveloped private or public land, violent land acquisition by political cadres, illegal allocation by some politicians and government officials to mention but a few.

Table 23: Public Perception on State Land Allocation Procedure

State Land Allocation Procedure	Frequency (f)	Percentage (%)
Cumbersome	167	81.9
Simple	6	2.9
No Response	31	15.2
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

The issue of cumbersome state land allocation procedure was also confirmed by academics and all key respondents. One of the key respondents commented:

*“The procedure for state land allocation involves far too many separate stages and decision-makers. This gives rise to delays in execution of the entire land allocation process”* (Key Respondent # 14).

The key respondents and academics were of the opinion that the process was lengthy. The process was lengthy as it had the potential of extending beyond several months, or even years (Musole, 2007). To confirm this, 106 household respondents who got land from the

government (see figure 21 on page 107 ) were asked to state how long it took for them to get land from Lusaka City Council. Their responses are provided in table 24.

Table 24: Time taken to get formal Land Allocation by Lusaka City Council

<b>Variable</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
Less than Six Months	15	14.2
6 Months to 1 Year	7	6.6
1 Year to 3 Years	17	16.0
3 Years to 5 Years	57	53.8
Over 5 Years	10	9.4
<b>Total</b>	<b>106</b>	<b>100.0</b>

Source: Survey Data, 2016

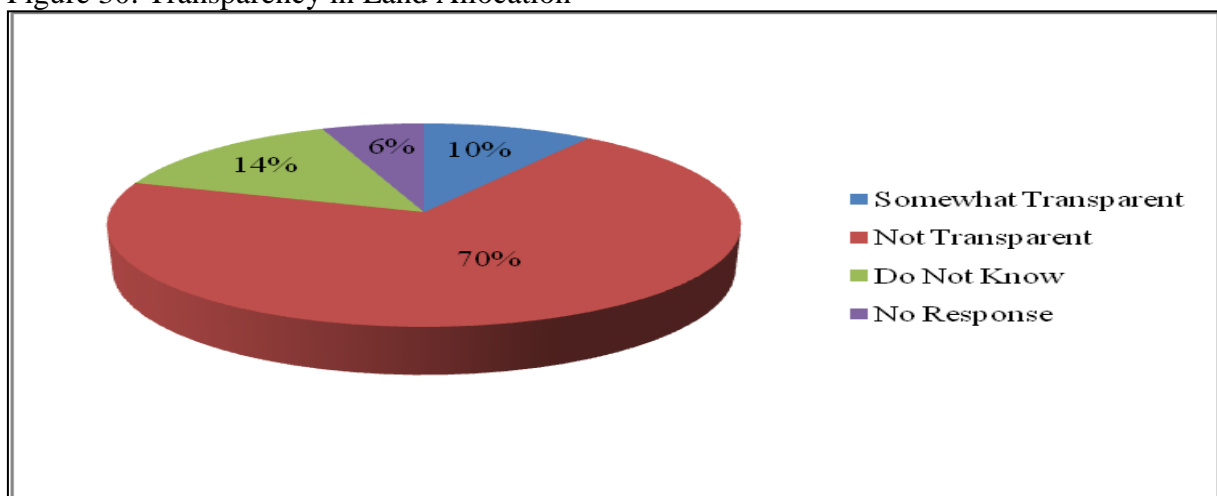
According to table 24, only 15 (14.2%) household respondents managed to get land within a period of 6 months from the date of submission of the application to the council. Unfortunately, the majority of the household respondents had to wait for a period between six months and over five years until they were allocated plots by the council, that is, 7 (6.6%) respondents asserted that their allocation for land was made between 6 months and 1 year from the date of submitting their application to the council, 17 (16%) respondents asserted that they managed to get land in a period between 1 year and 3 years, 57 (53.8%) respondents were allocated land in a period between 3 years and 5 years from the date of submission of the application while the remaining 10 (9.4%) respondents had to wait for more than 5 years until they were allocated land by the council.

Additionally, the Service Charter provided by the Ministry of Lands, Natural Resources and Environmental Protection web-site is quite clear on the time frame within which land allocation activities should be achieved. For instance, offer letter is supposed to be issued within 30 working days after approval of application, and a lease is supposed to be prepared within 10 days after acceptance of offer, and submission of survey diagram. However, findings show that issuing of offer letters and preparation of leases involves long waiting periods, extending beyond several months, or even years. It should be pointed out that the delay in generating letters of offer and preparation of leases by the Lands Department has led to the congestion or piling up of files and this has in one way encouraged corruption (Sikazwe, 2005). The delay in disposing of files at the Lands Department can be attributed to many factors inter alia shortage of staff and the available staff charged with the responsibility of dealing with files do not work on them with urgency and efficiency required (ibid).

### (b) Lack of Transparency

The study intended to establish whether or not the land allocation processes are open to all members of society. In this regard, household respondents, academics, and key respondents from non-governmental organisations, law firms, land surveying firms as well as politicians were asked to rate the transparency of government land institutions in land allocation following simple ordinal scale of ‘Very Transparent’, ‘Somewhat Transparent’, ‘Not Transparent’, ‘Do Not Know’, and ‘No Response’. Responses from household respondents are shown in figure 30.

Figure 30: Transparency in Land Allocation



Source: Survey Data, 2016

According to figure 30, the majority (143 respondents representing 70%) of household respondents believe that the government land institutions are not transparent when it comes to the allocation of state land. Only 20 respondents (representing 10%) think that land allocation is somewhat transparent. The other 29 respondents (representing 14%) do not know anything on land allocation while 12 respondents (representing 6%) did not respond. As explained earlier, some respondents did know anything on state land allocation mainly because of land institutions’ insufficient provision of information inter alia on land allocation which was discussed in section 5.4.2.4.

On the other hand, out of the 17 key respondents (from non-governmental organisations, law firms, land surveying firms as well as politicians), 12 respondents (representing 70.6%) think that land allocation is not transparent while 5 respondents (representing 29.4%) believe that land allocation is somewhat transparent. Similarly, out of the 6 academics, 5 lecturers

(representing 83.3%) think that land allocation is not transparent while only 1 lecturer (representing 16.7%) believes that land allocation is somewhat transparent.

Household respondents, academics, and key respondents who believe that land allocation is somewhat transparent stated that government land institutions (e.g. local authorities) do advertise when they have land to allocate. However, household respondents, academics, and key respondents who think that land allocation is not transparent pointed out that even if local authorities advertise land for allocation, the allocations are conducted way before the adverts and land is allocated to close associates. Research findings show that there is no transparency, in that there is already a list of names submitted to most Local Authorities by politicians (from the ruling party) waiting for land (Response from Key Informant, 2016). Thus, whenever there is land for allocation, the names on this list are given priority at the expense of the majority ordinary applicants (ibid).

In addition, evidence from the media shows that there are many scandals regarding unclear allocation of state land in Zambia in general and Lusaka District in Particular. Boxes 11 and 12 are illustrative.

#### Box 11: Member of Parliament halts Libala Land Grab

Stop construction on the Libala Stage 1 (located in Lusaka District) piece of land until the controversy surrounding the allocation is resolved, Kabwata Member of Parliament (Mr. Lubinda, who is Minister of Agriculture), has ordered. He has ordered that development on the controversial piece of land be halted until his investigations were concluded to ascertain how the land was allocated. Mr. Lubinda, who visited the area, said he was deeply concerned with the controversial land allocations in Libala Township following objections by affected residents. He requested Lusaka City Council assistant director of city planning (Roy Mwandunga) who accompanied him to the site in the presence of angered Libala residents to write to Mr. Chiza Gondwe, the man constructing on the land in question, to stop building. The allocation of land in Libala has sparked resistance among residents who suspect corruption could be taking place among some council officials in the allocation of land in the area. The council is also embroiled in the illegal allocation of the Libala Tennis Court land to a Chinese investor who was expressly given title within 24 hours after paying for the land in question. Mr. Lubinda was presented with documents which showed that in 2005 two residents had applied to the council for extension of their plots in the same area but were denied permission by the council, claiming that the land was gazetted. But in 2015, the piece of land was offered to Mr. Gondwe who is building a structure the residents fear would result in the closure of two road outlets, thereby inconveniencing motorists especially on Nationalist Road. "From what I have seen there are three issues that need to be answered. I will ask the council to explain when the land was de-gazetted to make the plot vacant; how it was given to a man who just applied for it in 2015 without considering those who applied for it 10 years ago; and also the raised issue that under the same land, there are underground electricity cables, sewer lines and water pipes," Mr. Lubinda said.

Daily Nation (23 September 2015)



## Box 12: NGOCC calls on Councils to take Land Allocation Seriously

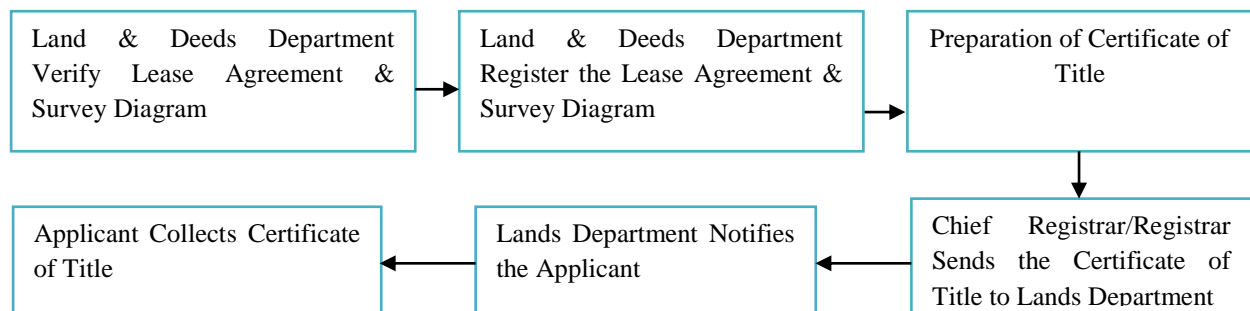
The Non-Governmental Organisation Coordinating Council (NGOCC) has called on local authorities' country wide to take the issue of land allocation seriously so as to avoid putting citizens in difficult and uncomfortable situations such as the demolitions of over 100 houses in Kitwe District (Copperbelt Province) where over 400 families had been left in the cold. It was alleged that these houses were built on illegally acquired land. NGOCC Executive Director Engwase Mwale noted that if land allocation is to become transparent there is need for local authorities' across the country to ensure that the systems are cleaned up and council officials who illegally allocate land to citizens are flushed from the system immediately.

Lusaka Times (11 June 2014)

### 5.4.3.4 Land Registration

Registration of a document comprises the filing of the document and entry in a register of the names of parties, date of the document, date of registration, and a brief description of the document (Republic of Zambia, 2006). The Lands and Deeds Department (under the Ministry of Lands, Natural Resources and Environmental Protection) issues certificates of title based on approved survey diagram for the period not exceeding 99 years. There are a number of steps involved in the process of land registration (see figure 31).

Figure 31: Land Registration Procedure



Source: Author

The steps in land registration are explained below.

**Step 1:** Lands and Deeds Department verify Lease Agreement and Survey Diagram.

**Step 2:** Lands and Deeds Department register the Lease Agreement and Survey Diagram.

**Step 3:** Lands and Deeds Department prepares the Certificate of Title.

**Step 4:** The Chief Registrar/Registrar sends the Certificate of Title to Lands Department.

**Step 5:** Lands Department notifies the applicant.

**Step 6:** Applicant collects Certificate of Title.

Taking into account the importance of land registration, the study intended to establish whether or not land registration is functioning well. Evidence gathered from documents, interviews and questionnaires indicate overwhelmingly that land registration in Zambia is not functioning well. On the one hand, several numbers attest to this. Firstly, less than 50% of the ownership information in the register is up-to-date and reflects ground reality (Mulolwa, 2016, p.64). Secondly, according to official records, there are only about 142,000 registered titles (ibid) in Zambia although the potential registrable land parcels are estimated to be over 900,000 (Key Respondent # 15). As a result over 80% of state land parcels are not registered in the land registration system (ibid). The majority state land users therefore lack tenure security. Finally, the department of Lands and Deeds has not been meeting its target of issuing 30,000 certificates of title annually as shown in table 25. Between 2007 and 2013, the department was supposed to issue 210, 000 titles but only 79,466 titles were issued leaving a deficit of 130,534.

Table 25: Target and actual number of Titles issued including the deficit

Year	Target	Number of Titles Issues	Deficit
2007	30,000	13,016	16,984
2008	30,000	9,184	20,816
2009	30,000	8,063	21,937
2010	30,000	10,788	19,212
2011	30,000	8,777	21,223
2012	30,000	14,938	15,062
2013	30,000	14,700	15,300
<b>Total</b>	<b>210,000</b>	<b>79,466</b>	<b>130,534</b>

Source: Adapted from Mulolwa, 2016; MLNREP, 2014

On the other hand, household respondents were asked if their land was registered with the Ministry of Lands, Natural Resources and Environmental Protection (Lands and Deeds department). Their responses from household respondents are shown in table 26 below.

Table 26: Is your Land Registered with the MLNREP?

Variable	Frequency (f)	Percentage (%)
Yes	37	18.1
No	142	69.6
No Response	25	12.3
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

According to table 26, 37 household respondents representing 18.1% have registered their land with the Ministry while 142 respondents representing 69.6% have land which is not yet registered. The remaining 25 respondents representing 12.3% did not respond. Considering the number of respondents having cadastre (see table 21 on page 137), it is expected that a cadastre being a prerequisite of land registration, 41 respondents would have their land registered. However, only 37 respondents have registered land leaving a deficit of 4 respondents. This implies that the 4 respondents have started the registration process but are yet to complete it.

Regarding the 142 (representing 69.6%) respondents with unregistered land, the study intended to establish the reason for this. Findings show that the majority of respondents did not register their land because it is too expensive for them, they do not know the registration procedure and the registration process is complicated. For example, anybody who has dealt with the Ministry of Lands, Natural Resources and Environmental Protection, and Local Authorities knows that obtaining a certificate of title is not only time consuming but is laborious involving many agencies that have to deal with planning, numbering, survey, and finally advertising, interviewing and allocation of the land to the successful applicant (Daily Nation, 23 September 2015). Moreover, since land registration is an activity which is undertaken after land use planning, cadastral surveying and land allocation, weaknesses in these activities affect land registration.

In addition, the Service Charter provided by the Ministry of Lands, Natural Resources and Environmental Protection web-site is quite clear on the time frame within which land registration should be achieved. For instance, a certificate of title is supposed to be issued within 7 days after joint signature of lease by the applicant and the Commissioner of Lands. However, the time frame stipulated in the customer service standards as regards the issuing of certificates of titles is rarely achieved. The process involves long waiting periods i.e. beyond several months, or even years.

#### **5.4.3.5 Land Occupation**

Land occupation is when a person exercises physical control over land (The Law Dictionary, 2016). For instance, a person may put up buildings. Thus, the occupant of land is in occupation of it as long as he/she has the power of entering into and staying there at pleasure, and the power of excluding all other persons from the use of it. Findings show that in Lusaka District in particular and Zambia in general, many people have occupied or are occupying

vacant private or public land illegally. One of the main reasons for this is that the state land delivery system is highly inequitable. Thus, many people especially those in low income group end up occupying any vacant private or public land without permission. The end result has been the majority of the urban population in Zambia residing in illegal urban settlements.

#### **5.4.4 Status of Operational Issues**

Operational issues such as finance, human resource and equipment are the factors that can highly affect the land governance performance and day to day activities of any institutions, in this case, the Ministry of Lands, Natural Resources and Environmental Protection, Department of Physical Planning, and Local Authorities. The achievements and unsuccessfulness in land governance depends on the sufficiency or insufficiency of operational issues. Thus, state land institutions were asked whether or not the operational issues are sufficient. Research findings show that operational issues are insufficient and this adversely affects the operations of land institutions. The status of operational issues is discussed in the following subsections.

##### **5.4.4.1 Funding**

The public land institutions (i.e. Department of Physical Planning under the Ministry of Local Government and Housing, and Ministry of Lands, Natural Resources and Environmental Protection) main source of funding is the Government (Ministry of Finance) through budgetary allocations. As for local authorities, they receive grants from Government (Ministry of Finance). Each institution makes its budget estimates and the final approval for each institution's budget is given by Parliament. The approved money is not provided as a lump sum (Mulolwa, 2002, p.60). Instead, money is released when available. This means the Ministry of Finance releases funds according to how much is collected through various taxes (ibid) and other sources of revenue.

Key respondents from Government land institutions indicated that there is inadequate or lack of funding from government. On the one hand, the issue of underfunding or lack of funding to the Ministry of Local Government and Housing (i.e. Department of Physical Planning and Local Authorities i.e. grants) has also been confirmed by various authors and the Government of Zambia (see, for example, Mukwena, 2002; Mulwanda and Mutale, 1994; Musole, 2007; Republic of Zambia, 2013). On the other hand, insufficient funding to the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP) has also been confirmed by the

Strategic Plan 2014 – 2016 prepared by the Ministry (MLNREP). According to MLNREP (2014), over time, the operations of the Ministry have been adversely affected by unpredictable and inadequate funding from the Ministry of Finance. For example, table 27 shows funding to the Ministry of Lands, Natural Resources and Environmental Protection for the period 2011 – 2016.

Table 27: Funding to MLNREP

Year	Budget (US\$)	Amount Received (US\$)	Percentage of Amount Received	Deficit (US\$)
2011	3,583,501.16	2,866,800.93	80	716,700.23
2012	62,448,021.77	49,958,417.42	80	12,489,604.35
2013	7,763,531.34	5,279,201.31	68	2,484,330.03
2014	32,048,367.56	21,792,889.94	68	10,255,477.62
2015	33,454,198.02	15,054,389.11	45	18,399,808.91
2016	22,841,878.44	4,568,375.69	20	18,273,502.75
<b>Total</b>	<b>162,139,498.29</b>	<b>99,520,074.40</b>	<b>61.38</b>	<b>62,619,423.89</b>

Source: Survey Data, 2016

Unpredictable and inadequate funding creates problems with the purchasing of equipment such as computer hardware and software, vehicles, global positioning systems, scanners, and typewriters. This has led to failure to adequately implement planned activities and compromised service delivery (MLNREP, 2014). However, this is not to say that “there is little or no investment in capital in the land sector” (Mulolwa, 2016, p.64). Zambia Integrated Land Management Information System (ZILMIS) provides an example of significant investment in the land sector (ibid).

It should be pointed out that some land institutions such as the Ministry of Lands, Natural Resources and Environmental Protection charges almost cost reflective fees in form of consideration and registration fees, survey fees, search fees and ground rent. However, this money is not retained by the Ministry as it is channelled to the Ministry of Finance National Treasury’s Control 99. Earnings by the Ministry are enough to pay for operational costs. However, non-retention of the fees collected adversely affects the operations of the Ministry.

#### 5.4.4.2 Staffing Levels

Research findings show that staffing levels do not meet the current demands of the land institutions to deliver services as required. Although key respondents from Lusaka City Council did not give numbers of staffing levels, they confirmed that the current employees are inadequate. A key respondent from the Department of Physical Planning (Ministry of

Local Government and Housing) indicated that the full establishment requires 160 employees but 83 employees are available leaving a deficit of 77.

Findings from the Ministry of Lands, Natural Resources and Environmental Protection show that there is insufficient staff at the departments of Lands, Survey, and Lands and Deeds. Even though a key respondent from the Lands and Deeds Department did not give numbers of staffing levels, he confirmed that the current employees are inadequate. Key respondents from the Lands and Survey Departments provided figures of staffing levels as follows:

(a) The full Lands Department establishment requires 106 land officers but only 29 are available leaving a deficit of 77. Table 28 is illustrative.

Table 28: Staffing Levels - Lands Department

Province	Staff Available	Staff Required	Deficit
Lusaka	10	15	5
Copperbelt	4	15	11
Central	2	15	13
North Western	2	10	8
Western	2	5	3
Southern	2	10	8
Luapula	2	10	8
Northern	2	10	8
Eastern	2	10	8
Muchinga	1	6	5
<b>Total</b>	<b>29</b>	<b>106</b>	<b>77</b>

Source: Survey Data, 2016

(b) At the Survey Department only 1/4 of the required positions (i.e. Land Surveyors, Cartographers, Photogrammetrists, Examiners, Draftsmen etc.) are filled leaving a deficit of 3/4. For instance, the establishment requires 14 licensed land surveyors but only 4 are available leaving a deficit of 10.

Regarding the land survey sector, as of 2016 there were only 33 licensed land surveyors in the country. Four of these surveyors work for the government and the rest (29) are in the private sector. This small figure is due to inter alia absence of a strong professional board leaving the control of the profession in the hands of the Government or Surveyor General and the process of licensing of land surveyors is cumbersome (Chileshe and Shamaoma, 2014; UN-Habitat, 2012b).

For land institutions to carry out their work efficiently and effectively, qualified and well paid personnel are required. Findings show that land institutions have specialised staff, though inadequate. In most of the departments these are able to offer specialised services competently as they undertake their daily duties. Nonetheless, staff at the Survey Department in the Ministry of Lands, Natural Resources and Environmental Protection still requires capacity building. One of the key respondents commented:

*“A lot of equipment (i.e. GPSs and others) have been abandoned in the Principle Surveyor’s office due to the fact that land surveyors are unable to use it. They have to wait for experts from outside Zambia to come and teach them how to use the equipment. But due to financial constraints this has not been done and it is not known when it will be done”* (Key Respondent # 16).

The foregoing is also confirmed by Chileshe and Shamaoma (2014, p.58) that the present danger is that the majority of the current pool of licensed land surveyors has little or no educational background on the use of the Global Navigation Satellite System (GNSS) technology.

Regarding remunerations, findings show that employees in public land institutions are lowly paid. This is one of the reasons why the majority of licensed land surveyors prefer to work in the private sector. These low salaries have also provided fertile ground for vices such as corruption (Chama, 2007).

#### **5.4.4.3 Equipment**

Research findings show that land institutions have insufficient technical equipment. This is mainly due to unpredictable and inadequate funding from Government as explained in 5.4.4.1. Although key respondents from Ministry of Local Government and Housing, and Lusaka City Council, did not give numbers of technical equipment they confirmed that the current equipment is insufficient.

In terms of findings from the Ministry of Lands, Natural Resources and Environmental Protection, even though a key respondent from the Lands and Deeds Department did not give numbers of equipment, he confirmed that equipment is insufficient. Key respondents from the Survey and Lands Departments provided figures of equipment as shown in table 29. The table shows that equipment at the Survey and Lands Departments is insufficient.

Table 29: Equipment at Survey and Lands Departments

Equipment	Available	Required	Deficit
GPSs (Survey Department)	15	>33	>18
Computers (Survey Department)	35	>54	>19
Vehicles (Survey Department)	20	>30	>10
Software (SURPAC) (Survey Department)	11	>54	>43
Typewriters (Lands Department)	1	>10	>9
Scanners (Lands Department)	10	>30	>20

Source: Survey Data, 2016

It is surprising that in the 21<sup>st</sup> century the Ministry is still using typewriters to type lease agreements. In fact there is only one typewriter being used to type lease agreements from the Southern Region (i.e. Central, Lusaka, Western, Southern and Eastern Provinces) and in some instances Northern Region (i.e. Copperbelt, North Western, Luapula, Northern and Muchinga Provinces). This seriously delays the typing of lease agreements. Generally, insufficient equipment adversely affects the provision of land services such as land use planning, cadastral surveying, land allocation, land registration and land use monitoring.

## 5.5 Chapter Summary

Empirical evidence and literature review reveal that the present state land governance framework is malfunctional. State land governance is characterised by defective legal framework, defective institutional framework, defective technical issues and defective operational issues. Specifically, this implies:

- Weak implementation or enforcement of land laws, inadequate land laws, and limited participation of local people in legal instruments formulation;
- Centralised land institution, lack of coordination between land institutions, corruption, provision of insufficient information to the public, insufficient supply of affordable and legally recognised state land, insufficient monitoring of land use, poor land record management, absence of an appropriate structure for the customer service centre, and political interference;
- Ad hoc land use planning, inadequate cadastre surveying, inadequate land allocation procedure, inadequate land registration, and inadequate land occupation; and,
- Insufficient funding to land institutions, insufficient employees in land institutions, and inadequate equipment.



## **Chapter Six: Case Study Findings - State Land Conflicts and Tenure Security**

*“Security of tenure is one of the most important catalysts in stabilising communities, improving shelter conditions, reducing social exclusion, improving access to services, leveraging corporate and individual investment and improving the environment” (UN- Habitat, 1999, p.5)*

### **6.1 Introduction**

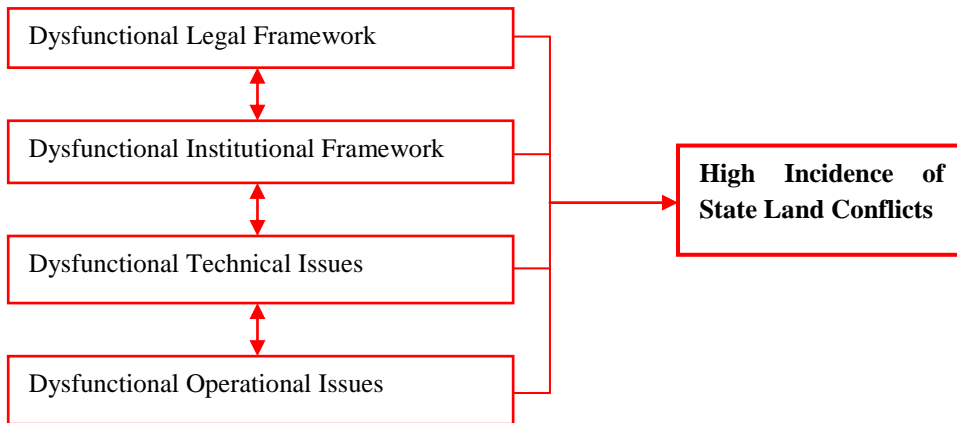
This chapter presents the current status of state land conflicts and tenure security in Zambia. It is based on field findings (empirical data) obtained from academics, key respondents and households. This primary data is supported by evidence gathered from the documents. The chapter begins by discussing status of state land conflicts in section 6.2. This is followed by sections 6.3, 6.4 and 6.5 which describe resolution of state land conflicts, state land conflicts and its effect on tenure security, and implications of land conflicts and tenure insecurity. Finally, section 6.6 provides the summary of the chapter.

### **6.2 Status of State Land Conflicts**

#### **6.2.1 Prevalence of State Land Conflicts**

It will be recalled from chapter five that the present state land governance framework in Zambia is malfunctional. Considering this, the big, ineluctable question must therefore be, if this present state land governance framework is able to prevent state land conflicts? According to all the key respondents and academics, the present land governance framework is unable to prevent state land conflicts such as invasion of idle or undeveloped private or public land, illegal allocation of land by some politicians and government officials, violent land acquisition by political cadres, boundary conflicts, multiple allocations of land, eviction by private landlord, and eviction by government agency. These state land conflicts are caused by dysfunctional legal framework, dysfunctional institutional framework, dysfunctional technical issues, and dysfunctional operational issues. Figure 32 is illustrative. Therefore, state land conflicts are occurring with greater frequency in the country in general and in Lusaka District in particular.

Figure 32: Causes of State Land Conflicts



Source: Author

It is clear that the main reason underlying the increased incidence of state land conflicts in the country is the failure of the prevailing state land governance framework (Key Respondent # 17). It is sad that for many years numerous land conflicts have left parties dead or at least vowing to kill each other (Rugadya, 2009).

Furthermore, to assess the prevalence of state land conflicts, household respondents were asked if they have experienced any form of land conflicts. Responses from household respondents are shown in table 30 below.

Table 30: Have you experienced any form of Land Conflict?

Variable	Frequency (f)	Percentage (%)
Yes	133	65.2
No	41	20.1
No Response	30	14.7
<b>Total</b>	<b>204</b>	<b>100.0</b>

Source: Survey Data, 2016

According to table 30, the majority (133 household respondents representing 65.2%) had experienced some form of land conflict, 41 respondents (representing 20.1%) had not experienced some form of land conflict while 30 respondents (representing 14.7%) did not respond. The high incidence of land conflicts in the country is also confirmed by the fact that land conflicts in the formal court system are between 30% and 50 % of the total court cases (Mulolwa, 2016).

## 6.2.2 Types of State Land Conflicts

A score of A, B, C, and D were used to assess the types of state land conflicts occurring in Zambia in general and Lusaka District in particular. A means most frequent land conflicts, B means second most frequent land conflicts, C means third most frequent land conflicts, and D means the least frequent land conflicts. All the academics and key respondents provided the ranking shown in table 31 below.

Table 31: Types of State Land Conflicts

Types of Land Conflicts	Score
Invasion of idle or undeveloped private or public land	A
Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc. and government officials)	A
Violent land acquisition by political cadres	B
Boundary conflicts	B
Multiple allocations of land	C
Eviction by private landlord	C
Eviction by Government Agency	C
Inheritance Conflicts	D

Source: Survey Data, 2016

Further, the 133 household respondents (see table 30 on page 154) who have experienced some form of land conflict were asked what type of land conflict they had experienced. Their responses are shown in table 32 below.

Table 32: Types of State Land Conflicts

Types of Land Conflicts	Frequency (f)	Percentage (%)
Invasion of idle or undeveloped private or public land	27	20.3
Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc. and government officials)	33	24.8
Violent land acquisition by political cadres	19	14.3
Boundary conflicts	21	15.8
Multiple allocations of land	16	12.0
Eviction by private landlord	8	6.0
Eviction by Government Agency	6	4.5
Inheritance Conflicts	3	2.3
<b>Total</b>	<b>133</b>	<b>100</b>

Source: Survey Data, 2016

The findings from academics, key respondents and household respondents show that invasion of idle or undeveloped private or public land and illegal allocation of land by some politicians and government officials are the most frequent state land conflicts. The second most frequent land conflicts are violent land acquisition by political cadres and boundary conflicts. The

third most frequent land conflicts are multiple allocations of land, and eviction by private landlord and government agency. The least most frequent land conflicts are inheritance conflicts. The different types of land conflicts are discussed in detail in the next subsections.

#### **6.2.2.1 Invasion of Idle or Undeveloped Private or Public Land**

Acquisition of land in Zambia has always being a thorny issue with some few privileged individuals owning huge chunks of land while the less fortunate in the society remain disadvantaged (Saluseki, 2015). Many people who are eager to own land tend not to be in the position to manage accessing land under the current malfunctional land governance framework i.e. state land delivery system is too inefficient (APRM, 2013; CFHH, 2015; Chitengi, 2015). It is been the same people who continue to have access to land (CFHH, 2015). Ordinary Zambians with low incomes have no access to land because it is being allocated to the rich and powerful who could afford it (Daily Nation, 09 May 2016; NAZ, 2015). The issue of limited access to land by many Zambians was also raised by the President (Edgar Lungu) who was quoted by Saluseki (2015, para.6) saying that:

*“Work with the Commissioner of Lands to be, and the Minister of Lands to ensure that Zambians have access to land, at affordable prices and easily available, it should not be the preserve of the elite but for every Zambian”.*

It is against this backdrop that some people in low income group have continued to try and find ways to access land. One way is invasion of idle or undeveloped private or public land. Chama (2007, p.12) identifies the two most common types of land invasion in the country as:

- Invasion of open state land which has been reserved for government use or land under the jurisdiction of local authorities but left open for a long time.
- Invasion of formally planned and allocated land by groups of people who threaten and bar legal land owners from taking possession of their land: such invasion also covers land that is held on title but not developed.

Responding to the question regarding capacity of state land institutions in providing land services to its citizens, one of the household respondents said:

*“If you wait for plot allocation from the local authority (e.g. Lusaka City Council) you cannot manage to acquire land in this town. I say so because it is about five years since I forwarded my application for a parcel of land but it has never been successful besides my efforts in making follow*

ups. Therefore, a lot of people are invading idle private or public land with the hope that the government will eventually legalise the land. State land institutions are not easily accessible especially by the poor, so invasion of land is the quickest way by the poor to own land” (Response from the interviewee, June, 2016).

According to Chitonge and Mfuno (2015, p.214), often, conflicts over invaded land involve violent confrontation as the authorities or the title holders seek to remove the ‘invaders’ from the land. Thus, in some instances, innocent title holders have ended up losing lives while trying to defend their pieces of land. Local Authorities (Lusaka City Council included) have been trying to evict these invaders but they have not been successful in most cases. This is because land invasion and attempted eviction has become a hot political issue. Invaders cannot be evicted because politicians are afraid of losing votes. Table 33 shows some examples of invasion of idle or undeveloped private and public land.

**Table 33: Some examples of Invasion of idle Private and Public Land in Lusaka District**

<b>Property Number</b>	<b>Land Extent (m<sup>2</sup>)</b>	<b>Source</b>	<b>Details</b>
Stand No. 20556, Chinika Area	7001	Lands Tribunal, 2016	This is private land belonging to Mr. Nchinga. The land stayed vacant for some time and some people invaded it and erected various structures within the said land, thereby, intimidating the owner and making it impossible for him to develop the land which lawfully belongs to him. Invaders invaded the land in 2013.
Stand No.33857, Libala South	41197	High Court for Zambia, 2016	This is private land belonging to a non-governmental organisation called Disadvantaged Children Pathfinder Association Trust. Whilst the NGO was waiting for funding to put up a school for the disadvantaged children, more than 92 people invaded the land and built houses in 2006. The NGO sued the land invaders through the High Court in 2007 and the case is still pending.
F/377a/37, Ibex Hill	40469	Lusaka City Council, 2016	The owner of this private land is Ms Kabwe. Only a portion of this land is developed by the owner. Invaders occupied 13000m <sup>2</sup> in 2010. When the owner tried to evict the invaders, government intervened and promised that they would give alternative land to Ms Kabwe. She has been pushing to be given alternative land for more than 6 years and still no alternative land has been given to her.
Stand No. 37881, Chinika Area	9999	Lands Tribunal, 2016	This is private land belonging to Katongo Chasaya. The land stayed vacant for some time and some people invaded it in 2013. These invaders >> p.158

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				built various structures thereby hindered the development by the owner.
F/441a/107 Roma Township	20271	Lusaka City Council, 2016		This is private land belonging to Ms Monze. Only a portion of this land is developed by the owner. Invaders occupied 3469m <sup>2</sup> in 2000. When the owner tried to evict these people, the government intervened by allowing the invaders to continue staying on the land whilst promising Ms Monze that they will find her alternative land. For more than 9 years she has been pushing the government to give her alternative land but still this land has not been provided.
L/10144, Lusaka West	Unsurveyed Land	High Court for Zambia, 2016		This land belongs to the Zambian Government. It was previously used as a training ground for Zambia Police. When the police stopped using it, 354 people invaded the land and subdivided the land into 354 plots. When the police realised that the land has been invaded, they entered the said land on 23 <sup>rd</sup> April 2013 and demolished some houses. The invaders have since taken the matter to court claiming that they have been living on the land for many years and therefore the government should allocate them this land. The case is still in court.
F/687/A/B/24, Makeni	Unknown	MLRNEP, 2016		This is private land belonging to Ms Phiri. This land was allocated to Ms Phiri before 1991 by the Ministry of Lands. The land stayed vacant for some time and some people invaded it in 2010. These people subdivided the land into more than 200 plots and have since built various structures. Efforts to evict these invaders have proved futile. Ms Phiri has since engaged lawyers to assist her in resolving this conflict.
F/687/43, Makeni	Unknown	MLNREP, 2016		This is private land belonging to Mr. Chuundu. He left the land undeveloped for some time and in 2007, some people invaded the land and built over 200 houses. Mr. Chuundu took the matter to the High Court, and in the second quarter of 2016, the court ordered that the owner (Mr. Chuundu) of the land should evict the invaders. However, as at 26 November 2016, the invaders were resisting eviction, saying they were ready to die for this land.

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### 6.2.2.2 Illegal Allocation of Land by Some Politicians and Some Government Officials

There are rampant illegal land allocations by some politicians such as councillors, ruling political party officials and some government officials in Zambia in general and Lusaka District in particular (Key Respondent # 18). The rampant illegal land allocations are also

confirmed by debates in the National Assembly of Zambia (NAZ) conducted on 15<sup>th</sup> October 2015. According to NAZ (2015), illegal allocations of land are a cancer sweeping across Zambia. Numerous reports have been made to the Minister of Local Government and Housing office concerning illegal land allocations (ibid). The high prevalence of illegality and lawlessness in land allocation are threatening law and order in the country (AllAfrica, 2016). It is estimated that 70% of land in Lusaka District is in the hands of illegal owners with councillors and mayors singled out as some of the actors involved in illegal land deals (The Post, 01 October 2013 cited in Chitonge and Mfunne, 2015, p.214).

The issue of illegal land allocation in the country is not a new thing but an old one which successive governments had failed to address (Daily Nation, 24 August 2015). In the face of this problem, the Patriot Front Government which came into power in September 2011 established the Task Force against Illegal Land Allocation (TFILA) on 23<sup>rd</sup> July 2014. Since the establishment of the taskforce, 230 cases of illegal allocation of land have been received and only 64 cases (representing 28%) have been worked on. The remaining 166 cases (representing 72%) are pending. Findings show that the taskforce is not functioning well due to insufficient staff, insufficient vehicles and inadequate funding from government. Thus, illegal land allocations have continued. The issue of the taskforce not functioning well is also confirmed by the Daily Nation. According to the Daily Nation (23 September 2015), the Task Force against Illegal Land Allocation which came to birth in a blaze of publicity appears to have gone into slumber as the illegal allocation of land continues unabated.

Additionally, newspaper reports on illegal land allocations are regular. Table 34 shows examples of stories of illegal land allocations.

**Table 34: Examples of news on illegal Land Allocation between 2014 and 2016**

<b>Source</b>	<b>Date</b>	<b>Detail of illegal land allocation</b>
Daily Nation	11 November 2016	President Edgar Lungu has directed a thorough investigation to be conducted into the illegal land allocation. The Presidential Affairs Minister (Freedom Sikazwe) revealed that currently there was total confusion in the country over issuance of land. He said Government has observed that there was no law and order in the manner that the issuance of land was being managed in the country. "People have stopped going through the councils whenever they want land. People have lost hope in getting land from the council and now they want to be getting it dubiously through cadres and fake agents," Mr. Sikazwe said. He said the illegal land allocations were confusing because Government was being told it was the councils that >> p. 160

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			had been giving out land while others were saying it were the party cadres.
Lusaka Times		06 November 2016	The Vice President (Inonge Wina) was in Ndola to get first hand information over the illegal allocation of land in the city and wondered where Ndola City Council has been while such illegality was happening. She noted that illegal land allocation was not just taking place in Ndola but also in other parts of the country. Mrs. Wina said this has also become a source of concern to President Edgar Lungu and his government.
Lusaka Times		31 October 2016	President Lungu warned against illegal allocation of land using political influence.
Daily Nation		09 October 2016	Lands Minister (Jean Kapata) has bemoaned the increasing irregularities involved in the allocation of land across the country. She said that she was aware of the illegal allocation and grabbing of land by unscrupulous people posing as agents and relevant authorities when, in fact, not.
Daily Nation		09 May 2016	The continued illegal land allocation in Lusaka has angered some residents who have called on Lusaka City Council (LCC) and other relevant authorities to intervene and ensure that all perpetrators are dealt with accordingly. They charged that land was everyone's asset and no one should be deprived of an opportunity to have access to it because of a few selfish individuals. They said it was important that the law enforcers took the issue of illegal land allocation seriously and stop the people from engaging in such vices.
Zambia Mail	Daily	11 February 2016	Minister of Local Government and Housing (Stephen Kampyongo) said his recent tour of the councils revealed rampant illegal land allocation perpetuated by some of the elected councillors and officers from councils.
Zambia Mail	Daily	05 February 2016	Government has suspended the allocation of land to new applicants until councils countrywide clear the backlog of people on the waiting list. Taskforce chairperson on illegal land allocation, (Panji Kaunda) who is also Deputy Minister of Home Affairs said at a press briefing that the measure is aimed at curbing rampant illegal allocation of land. He said there is a lot of land that has been allocated illegally.
Zambia Mail	Daily	23 January 2016	Minister of Local Government and Housing (Stephen Kampyongo) said people should realise that the land laws such as Urban and Regional Planning Act of 2015 cannot be implemented if the rampant illegal land allocation in local authorities is not dealt with. Illegal land allocation has led to people building in areas where they are not supposed to build.

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The Independent Observer	18 November 2015	Minister of Local government and Housing (Stephen Kampyongo) has warned that the Task force dealing with illegal land allocations will soon swing into action to tame the vice countrywide. He said illegal land allocation is a great challenge across the country and operations will soon be effected to demolish illegal structures.
Daily Nation	24 June 2014	Home Affairs Minister (Ngosa Simbyakula) has said there is high prevalence of illegality and lawlessness in land allocation in the country. Dr Simbyakula said it was regrettable that innocent citizens had lost their lives in defending their pieces of land and that government was deeply concerned with the manner in which some individuals were ignoring the law and laid down procedure in the acquisition of land.

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### **6.2.2.3 Violent Land Acquisition by Political Cadres**

Research findings show that Zambia has been witnessing violent land acquisition (also known as land grabbing) by political cadres for over two decades. Cadres of the ruling party terrorise people over their land (NAZ, 2015). Political cadres are more powerful than politicians and law enforcement agents (Key Respondent # 19). Macmillan Dictionary defines ‘political cadres’ as a small group of people within a larger organisation such as a political party. In Zambia, these are members of a political party who usually run political campaigns on voluntary basis when their political party is in opposition. However, when the political cadres’ party forms government, they consider land has their payback (Key Respondent # 20). One of the key respondents commented:

*“It is ironic that during the United National Independence Party (UNIP) government from 1964 (when Zambia became independent) to 1991 (when UNIP handed over power to Movement for Multi-party Democracy - MMD), there was no land grabbing by political cadres. Violent land acquisition by political cadres started when MMD formed government in 1991. Political cadres believed that they can have access to anyone’s land. During the MMD rule (1991 – 2011) land grabbing by political cadres was very rife. Unfortunately, this scenario has continued under the government of the Patriot Front (PF) which took over from MMD in 2011. Zambia has so much land at its disposal and if well governed, everyone can partake and enjoy legal rights over this precious resource” (Key Respondent # 21).*

Political cadres acquire and demarcate land belonging to genuine title-holders with open impunity even when they know that procedure has to be followed to acquire this land. In almost all the cases, the political cadres come armed with sticks, axes, used tyres, picks, machetes, slashers, shovels and stones with which they attack owners of the land (see photo

7). Although the violent land acquisition by political cadres is rife, there is no effective mechanism to remove political cadres from state land governance (Shakafuswa, 2016).

Photo 7: Example of violent Political Cadres



Source: Photo provided by The Post, 2016

Between August, 2008 and October, 2016, a number of cases of land grabbing by political cadres in Lusaka have been reported (see NAZ, 2010, 2015; TFILA, 2016). According to NAZ (2010, 2015) and TFILA (2016), these include but not limited to:

(a) In August, 2008 at Farm No. 1938 / Lusaka West, the owner of the farm was attacked by political cadres who were armed with stones and sticks with the intention to illegally take over the farm.

(b) In April, 2009, a large group of irate party cadres, armed with hoes, picks and machetes invaded Farm No.687/1/D/18 in Makeni Satwant area. The farm belongs to Mr. Manual Hamakoko. The family was attacked and Mrs. Hamakoko sustained injuries on her neck and arm.

(c) In August, 2009, a group of political cadres entered property No. 2978/M in Kabanana and using machetes, stones and other building instruments attacked the owner of the farm. Political cadres have since built houses on the farm.

(d) In September, 2009, Farm No.5664 in Lusaka West belonging to Mrs. Edna Sitwale, a widow, was encroached by a large number of political cadres armed with sticks and picks. They injured the owner and grabbed part of the farm and built houses on it.

(e) In November, 2009, a group of about 100 political cadres attacked Farm No. 2/37/M in Ibex Hill. They assaulted the caretaker who sustained serious injuries on both legs. They also looted and demolished two farms houses.

(f) On 10th December, 2009 at Mwiinga's Farm 144/M, Lusaka West, a group of irate political cadres descended on the bailiffs and some police officers who had gone to secure a farm. They attacked police officers and set ablaze a grader and a vannette.

(g) In July, 2010, at Lusaka SOS Children's Village dispute area, about 20 makeshift structures occupied by women of Ng'ombe displaced people were set ablaze by party cadres armed with iron bars, chains and machetes.

(h) In August, 2010, Farm 12780 in Lusaka West belonging to Mr. Saffieadine was invaded by political cadres, armed with iron bars, picks and axes and pulled down the wall fence, thus securing the farm.

(i) In the same month of August, 2010, Colonel Moses Phiri, in the company of Detective Inspector Mtonga of Lusaka Division, went to his farm Number 7050/M. At the farm, they found a group of party cadres armed with hoes handles, axes and slashers. They attacked and assaulted Colonel Phiri. He sustained serious injuries on his face whilst his motor vehicle, a Toyota Corolla, was badly damaged. The police officer sustained a mutilated right ear.

(j) In October, 2010 a large group of irate party cadres armed with sticks, axes and machetes encroached a farm for the National Institute for Scientific and Industrial Research. Police moved to the site and the invaders scampered in different directions.

(k) Between 2014 and October 2016, numerous cases of land grabbing have been reported to the Taskforce against Illegal Land Allocation. Land has and is being grabbed in areas such as Lusaka West, Obama Area, New Kasama, Foxdale Area, Chalala, Makeni, Chinika, Chilanga, and Lilayi. This is land belonging to individuals. Whenever owners try to evict these land grabbers, they raise sticks, axes, picks, machetes, slashers, used tyres, shovels and stones saying they were ready to die for land. Table 35 shows some parcels of land which have been violently acquired by political cadres between 2014 and 2016 in Lusaka District.

Table 35: Example of violently acquired Land by Political Cadres between 2014 and 2016

Property No.	Location	Registered Lessee
F/609/E/77/A480	Foxdale	Felix Mutati
F/609/E/77/A495	Foxdale	Davies Chakalanga
F/609/E/77/A101	Foxdale	Isaac Nyirongo
F/32a/E/2/2233	Obama Area	Elizabeth Mwanza
F/32a/E/2/1326	Obama Area	Bernard Jere
F/405a	Lilayi	City Investments Limited
CHILA/1236	Chilanga	Apostolic Evangelical Ministries Limited
L/3151/M/C	New Kasama	New Dawn Investments Limited

Source: TFILA, 2016

Due to rampant land grabbing by political cadres, land owners are using billboards and concrete block wall fences to try and stop the land grabbers. Photo 8 is illustrative. However, these measures are still not working because land grabbers pull down the billboards and demolish the wall fences with the view of acquiring the land. In addition, some land owners use firearms to protect their land from land grabbers but this is also not working.

Photo 8: Examples of Measures to curb Land Grabbing



Source: Author

#### 6.2.2.4 Boundary Conflicts

Boundary conflicts are mostly between the owners of two or more adjacent properties. Findings show that these conflicts are common: a) in areas with 14-year leases (given for state land which is not surveyed but a provisional certificate of title is issued); b) on land which is allocated and occupied without provision of services such as roads; and c) when land surveyors make errors when undertaking cadastral surveying. Firstly, unsurveyed land does not have clear boundaries of the individual land. Thus, a boundary conflict arises in

instances where there are two adjacent unsurveyed properties and one party takes a portion of the land belonging to another and the latter realises that his/her land has been encroached. Secondly, boundary conflicts also occur when land is allocated and occupied without provision of roads. Here, land owners who need access to their properties make their road(s) and in the process encroach on other properties in the area (see photo 9). The photos show a boundary wall being built by the owner of land to block an illegal access road. The road was put up by the owners of the neighbouring properties. These people complained that despite paying for service charges (meant for provision of services such as water, roads and sewerage) to the Council, the Council has failed to provide services (roads included). So they had no option but to make their own road. Unfortunately, this road was made on a portion of another person's land.

Photo 9: Example of Boundary Conflict



Source: Author

Finally, due to inadequate funding, land surveyors and equipment at the Survey Department (Ministry of Lands, Natural Resources and Environmental Protection) and inadequate land surveyors in private practice, there are a number of illegal surveys being undertaken by unauthorised surveyors. These usually use unreliable survey data thereby putting beacons on other peoples' property. This leads to boundary conflicts.

#### **6.2.4.5 Multiple Allocations of Land**

There are instances where a single piece of land could be allocated to two or more people and separate offer letters prepared in the names of different applicants. Cases of double or even

triple land allocation are common (Chitengi, 2015; KCC, 2012; Republic of Zambia, 2012a; UN-Habitat, 2012b). The factors responsible for this include the lack of coordination between institutions with authority to allocate land (i.e. Ministry of Lands, Natural Resources and Environmental Protection and Local Authorities), poor record keeping by land institutions and corruption in the land institutions. Regarding lack of coordination, there are instances where the same piece of land is allocated from the Ministry of Lands, Natural Resources and Environmental Protection and also by the Local Authority in the area (Republic of Zambia, 2012a). Further, the Ministry of Lands, Natural Resources and Environmental Protection has at times issued letters of offer in respect of the same piece of land to two or more persons due to poor record keeping (i.e. poor record keeping does not enable the staff to quickly know who has been allocated what and where) and corruption.

The following example illustrates a case of double allocation of land. Subdivision ‘N1’ of Farm Number 1938 Lusaka, measuring 5,099,813 square metres was allocated to Peter-Prus Wisniewski and Maria Rozalia Ogonowska Wisniewski in 1995. This lease is for 99 years from 1<sup>st</sup> March 1995 and the Certificate of Title number is 8047. Between 2003 and 2010 Lusaka City Council entered onto Subdivision ‘N1’ of Farm Number 1938 and subdivided 77000 square metres of land into 112 residential stands of various sizes which it allocated to various people. Table 36 shows some properties which were allocated on Subdivision ‘N1’ of Farm Number 1938. One would wonder why the Lusaka City Council, the Surveyor-General and Commissioner of Lands could not see the existence of this farm prior to planning, numbering, surveying and issuance of certificates of title.

Table 36: Example of Double Allocation of Land

Property No.	Certificate of Title No.	Date of Registration	Registered Lessee	Land Size (m <sup>2</sup> )
29050	83321	28.01.2009	Anthony Malamulo Lungu	431
29195	50789	11.05.2006	Patience Chasulwa	450
29157	45906	01.02.2006	Joseph Mafuta	432
29091	77011	05.05.2008	Clement Chipungu	432
29169	57761	27.12.2006	Albert Mwenya Bwalya	450

Source: Survey Data, 2016

#### 6.2.2.6 Eviction by Private Landlords

As explained earlier, undeveloped private land can either be invaded or illegally allocated to other people or violently acquired by political cadres. Findings show that title holders would usually try to peacefully engage the squatters with the view of removing them from the land.

However, in most cases this does not work because squatters resort to violence. Thus, title holders usually go to court and the court would order for an eviction of squatters (box 13 is illustrative).

#### Box 13: Families evicted from Private Land

Over 35 families in Lusaka's Chinika area were left homeless after the title holder executed a court order to remove them from the land and demolished houses in May 2015. The land belongs to TESNO General Dealers. Its property number is LUS/12923 and has an area measuring 11, 963 square metres. The Certificate of Title No. is 130624, registered on 09.09.2011. When this land was allocated to TESNO General Dealers in 2011, they left it undeveloped for some years. Thus, squatters invaded the land and built houses. Thus, TESNO General Dealers went to court and the court ordered for an eviction. The eviction was conducted by a team from the Office of the Sheriff of Zambia and Zambia police. Police in riot gear sealed the entire area while a bulldozer demolished the houses.

Source: Survey Data, 2016

These evictions adversely affect the families of squatters, as their houses are demolished (see photo 10). The squatters become homeless and their household goods get damaged as they are thrown carelessly on the ground. In some instances, bulldozers demolish houses with household goods inside. In some of the eviction cases the government assists through the Disaster Management and Mitigation Unit (DMMU) under the Office of the Vice President, by providing temporary tents and some food. However, due to the fact that the land delivery system is inefficient, these people would still not have access to land and eventually would look for other undeveloped land and invade it.

Photo 10: Eviction of Families





Source: Photos provided by The Post, 2016

#### 6.2.2.7 Eviction by Government Agency

In March, 2007, the Cabinet of the Zambia Government sat and resolved on a policy to combat illegal land allocation, land evasion and development in the country (Chama, 2007). It was resolved that Government would demolish all illegal and unplanned settlements throughout the country (ibid). The Chief Government spokesperson announced at a news conference in Lusaka that Government would use whatever means at its disposal to “restore order in the nation” (ibid). According to Government, the development had been necessitated by the increase in “acts of lawlessness, which had gone unabated” (ibid). Research findings show that despite this policy being in existence for 9 years, limited success has been achieved. This is because as explained in 6.2.2.1, land invasion and attempted eviction has become a hot political issue and therefore invaders are in most cases not evicted because politicians are afraid of losing votes. In spite of political interference, some evictions have still been undertaken by government agencies such as the local authorities, the military and the police (see boxes 14, 15, 16 and 17).

#### Box 14: Patriotic Front Leadership in Lusaka West upset with demolition of over 800 illegal Houses

The Patriotic Front [PF] (ruling political party) leadership in Lusaka Province is annoyed over the demolition of over 800 houses in Lusaka West area. PF Province Chairlady, Margaret Mumba says it is unfortunate that the Police went ahead to demolish the houses of innocent Zambians. Ms Mumba claims that at the time the demolition exercise was carried out she asked for the Court Order but was not given the document. And PF Provincial Youth Chairman, Kennedy Kamba said the affected families are supporters of the ruling Party who gave PF votes during the just ended Ward election.

Source: Lusaka Times (15 December 2015)



#### Box 15: Lusaka City Council demolish Houses in Chalala

A number of families have been left in the cold after the Lusaka City Council demolished their residential houses in Chalala area in Lusaka District. Some Patriotic Front (PF) cadres had encroached on idle land belonging to Lusaka City Council and built illegal structures. The residents affected by the demolition exercise appealed to President Edgar Lungu to come to their rescue because their families had been left in the cold. These residents claimed that their properties were legal. But correspondence between the residents and Lusaka City Council reveal that the local authority had been against the construction of houses in this area. The affected residents complained that, the council should have instead regularised the already constructed houses because the people in the area had been living in the same place for the last ten years.

Source: Daily Nation (21 May 2015)

#### Box 16: Lusaka City Council demolish illegal Structures

On Wednesday 3<sup>rd</sup> August 2016, Lusaka City Council demolished over 30 illegal structures in Lilayi Shaft five (05) area. Among the structures that were demolished were 18 houses at window level, four at roof level, three long wall fences and several slabs and foundations. The combined operation that started 20 minutes after midnight and lasted over one and a half hours was done in conjunction with the Zambia Police. The land where the illegal structures were built belongs to Lusaka City Council. The property number is F/915/A and the land size is 105,222 square metres. Lusaka Town Clerk (Alex Mwansa) advised people wishing to acquire land in Lusaka to go through the normal procedure by consulting through the Council.

Source: Lusaka Time (04 August 2016)

#### Box 17: Office of the President demolish Houses

On 15<sup>th</sup> November 2016, Office of the President in conjunction with the Zambia police demolished over 100 illegal houses in Lusaka West. The owners of the demolished houses have been living on this land for over six decades without documentation. The land now belongs to the Office of the President, who has documentation. The residents rioted following the demolition of their houses. They damaged vehicles in the process resulting in police arresting some people.

Source: Muvi (16 November 2016)

### 6.2.3.8 Inheritance Conflicts

Inheritance conflicts are between family members and therefore are not caused by defective state land governance framework. Inheritance conflicts occur when a property owner dies and he/she does not leave a will and the remaining family members fail to agree on how to share the property. According to section 5 subsection 1 of Intestate Succession Act Chapter 59 of 1989, a person dies intestate if at the time of his/her death he/she has not made a will disposing of his/her estate, and the estate of an intestate shall be distributed as follows (Republic of Zambia, 1989):

- (a) Twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one spouse survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the spouse's contribution to the deceased's property may be taken into account when justice so requires;
- (b) Fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;
- (c) Twenty per cent of the estate shall devolve upon the parents of the deceased; and
- (d) Ten per cent of the estate shall devolve upon the dependants, in equal shares.

Despite the existence of this law, sometimes the family members fail to agree on how to share the property. Thus, they sometimes resort to litigation that leads to a lot of friction, division and sometimes violence within the family members (Kariuki, 2005). According to table 32 (on page 155), 3 (2.3%) household respondents have experienced inheritance conflicts.

### **6.3 Resolution of State Land Conflicts**

With the evidence of increasing state land conflicts in the country in general and Lusaka District in particular, it was imperative to investigate how land conflicts are addressed in the existing land governance framework. As explained in chapter one, the existing land governance framework concentrates on curative measures. In this regard, it is important to evaluate the performance of the various land conflict resolution mechanisms. Before doing this, it is instructive to first establish: (a) if the reported land conflicts have not been resolved, the conflicts resolution mechanisms being used to resolve the unresolved cases; and (b) if land conflicts have been resolved, how they were resolved. Thereafter, the performance of the mechanisms is addressed.

Research findings on the unresolved and resolved cases are shown in table 37. According to the table, out of 133 land conflict cases (see table 30 on page 154), 88 land conflict cases representing 66.2% are not yet resolved while only 45 cases representing 33.8% are resolved.

Table 37: Has the Land Conflict been resolved?

<b>Variable</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
Yes	45	33.8
No	88	66.2
<b>Total</b>	<b>133</b>	<b>100.0</b>

Source: Survey Data, 2016

In terms of unresolved land conflicts, household respondents were asked about the land conflicts resolution mechanisms being used to resolve the unresolved cases. Unfortunately, the respondents could not give the exact mechanisms but only indicated that the cases are pending in various land conflict resolution mechanisms.

Regarding how the land conflicts were resolved, according to table 38 below, the majority (24 land conflicts cases representing 53.3%) were resolved through the High Court while 16 cases (representing 35.6%) were resolved through the Lands Tribunal. Other cases were resolved through mediation (3 cases representing 6.7%) and arbitration (2 cases representing 4.4%). Moreover, no cases were resolved through the Subordinate Court and out of court negotiation. Regarding resolving the cases through the Subordinate Court, it will be recalled from chapter four that state land conflicts can only be resolved in the Subordinate Court if disputants agree to resolve land conflicts through this mechanism. Considering that most land conflicts are thorny, it is not possible for disputants to sit together and agree to take the case to the Subordinate Court. Further, taking into account that most land conflicts are thorny, resolving land conflicts through out of court negotiation is unworkable.

Table 38: How was the Land Conflict resolved?

<b>Land Conflicts Resolution Mechanism</b>	<b>Frequency (f)</b>	<b>Percentage (%)</b>
High Court	24	53.3
Lands Tribunal	16	35.6
Subordinate Court	0	0.0
Mediation	3	6.7
Arbitration	2	4.4
Out of Court Negotiation	0	0.0
<b>Total</b>	<b>45</b>	<b>100.0</b>

Source: Survey Data, 2016

On the other hand, bearing in mind that state land conflicts were resolved through various land conflict resolution mechanisms, the study intended to establish whether or not these mechanisms are functioning well. Evidence gathered from documents, interviews and questionnaires indicate overwhelmingly that the mechanisms are not functioning well.

Research findings show that Courts such as High and Subordinate Courts as well as the Lands Tribunal incur unreasonable delays (i.e. a number of cases take long to be resolved, for instance, beyond several months or even years), due to numerous factors. Reasons for delay by the Courts (i.e. High and Subordinate Courts) include rigid and unduly complex procedures, lax case management practices that tolerate excessive adjournments and continuances, poor funding from government, shortage of well-trained staff (e.g. the number of judges or magistrates is too small for the large number of cases filed on a daily basis), and shortage of courtrooms (Kajimanga, 2013; Mapulanga, 2013; Michel et al., 2009; Mwenda, 2006).

Similarly, reasons for delay by the Lands Tribunal include inadequate staff and underfunding from government. Besides, the Tribunal is highly centralised (i.e. has offices in Lusaka District only). Centralisation of Land Tribunal implies that all land conflicts throughout the country have to be filed through the Lusaka office. The net effect is that many people outside Lusaka District have been denied the opportunity of having their conflicts resolved by the Tribunal.

To substantiate the delays in resolving land conflicts, 45 household respondents whose land conflicts have been resolved were asked how long it took for the land conflicts to be resolved. The responses from household respondents are provided in table 39 below.

Table 39: How long did it take for the Land Conflict to be resolved?

Variable	Frequency (f)	Percentage (%)
Less than 1 Month	0	0.0
Between 1 Months and 3 Months	3	6.7
Between 3 Months and 6 Months	4	8.9
Between 6 Months and 1 Year	6	13.3
Between 1 Year and 2 Years	21	46.7
Over 2 Years	11	24.4
<b>Total</b>	<b>45</b>	<b>100.0</b>

Source: Survey Data, 2016

According to the table, the majority of land conflict cases (32 cases representing 71.1%) were resolved in a period between 1 year and over 2 years. Moreover, findings from Courts indicate that some land conflict cases have been pending for more than 5 years. The share of long-standing (> 5 years) land conflict cases is greater than 20% of the total pending land conflict court cases (Mulolwa, 2016). There can be no doubt that delays impede access to

justice (Kajimanga, 2013), which is an essential instrument for the protection of human rights (Okogbule, 2005).

In addition, alternative dispute resolution mechanisms - i.e. mediation and arbitration - were established in 1997 and 2000 respectively and exist alongside the formal court system. The aim of these mechanisms is to ensure that land conflicts are resolved in a timely, informal and cost effective manner (Kajimanga, 2013; Mulolwa, 2016; Mwenda, 2006). Nonetheless, research findings (see table 38 on page 171) show that disputants rarely use these mechanisms and this is mainly because of lack of information. This is confirmed by Kabwe (2013, p. 72) that:

*“There is no publicity on how to access alternative land conflict resolution mechanisms such as mediation and arbitration or the advantages they offer. As a result, most people are unable to use these mechanisms and continue to go to court even though the courts cannot satisfy their needs”.*

It is evident from the preceding text that litigation is still the main mechanism that is used in land conflict resolution in Zambia (Kabwe, 2013).

#### **6.4 State Land Conflicts and their Effect on Tenure Security**

Considering the high incidence of state land conflicts (in the country in general and Lusaka District in particular) caused by malfunctional state land governance framework, the question now is: how is the present land governance framework addressing the issue of tenure security and what can be learnt? To assess how the present land governance framework is addressing the issue of tenure security, 133 household respondents who had experienced some form of land conflict were asked if they enjoyed the land rights – right to use the land, right to manage the land, right to generate an income from the land (it is common practice for households to either sublet part of the house or construct outbuildings which are put on rent), right to exclude others from the land, and right to transfer it – during the period of the land conflict.

According to findings (see table 40), majority of household respondents did not enjoy their land rights during the period of the land conflict. This shows that the high incidence of land conflicts lead to high degree of tenure insecurity. Therefore, it can be concluded that the present malfunctional land governance framework is unable to address the issue of tenure security adequately.

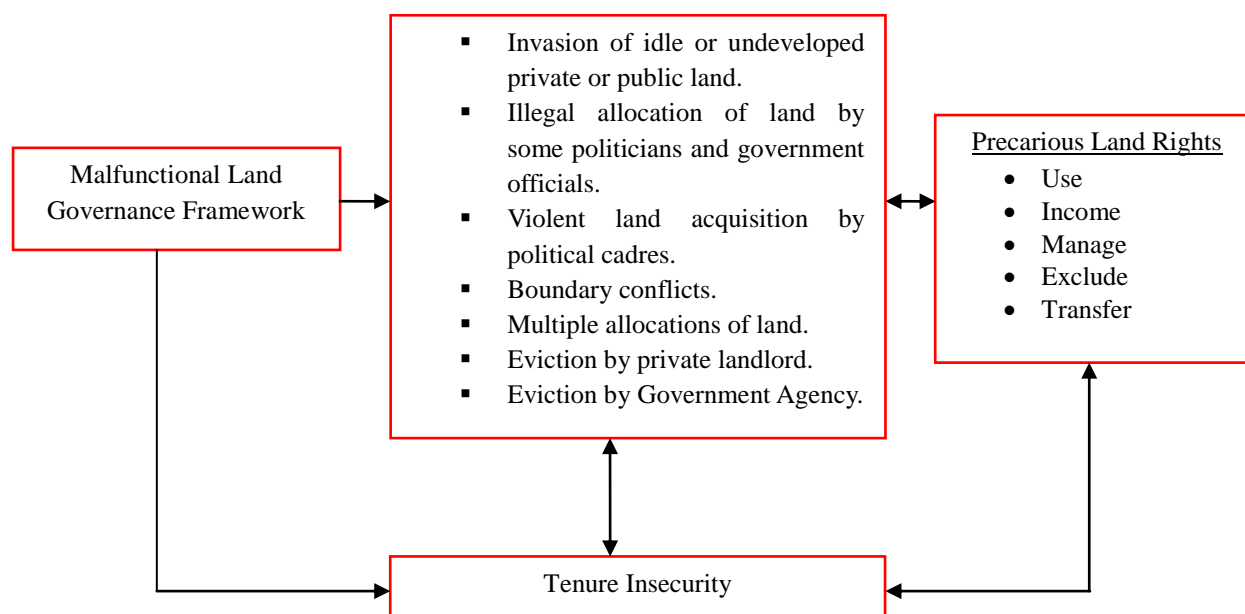
Table 40: Where you able to enjoy Land Rights during the period of the Land Conflict? (n = 133)

Land Rights	Yes (%)	Frequency (f)	No (%)	Frequency (f)	No Response (%)	Frequency (f)
Right to use the land	33.1	44	66.9	89	0	0
Right to manage the land	27.8	37	65.4	87	6.8	9
Right to generate an income from the land	29.3	39	46.6	62	24.1	32
Right to exclude others from the land	20.3	27	70.7	94	9.0	12
Right to transfer land	0	0	78.2	104	21.8	29

Source: Survey Data, 2016

Regarding what has been learnt, lessons learnt are illustrated in figure 33 below. The lessons learnt are that while it is true that malfunctional state land governance framework leads to land conflicts and subsequently tenure insecurity, it is also true that malfunctional state land governance framework leads to poorly defined land rights (tenure insecurity) and subsequently land conflicts. It will be recalled from chapter five that over 80% of state land parcels are not registered in the land registration system. Absence of certificates of title accelerates insecurity of tenure. This situation has been a contributing factor to land conflicts that have engulfed the country (Kwatu, 26 November 2013).

Figure 33: Lessons Learnt



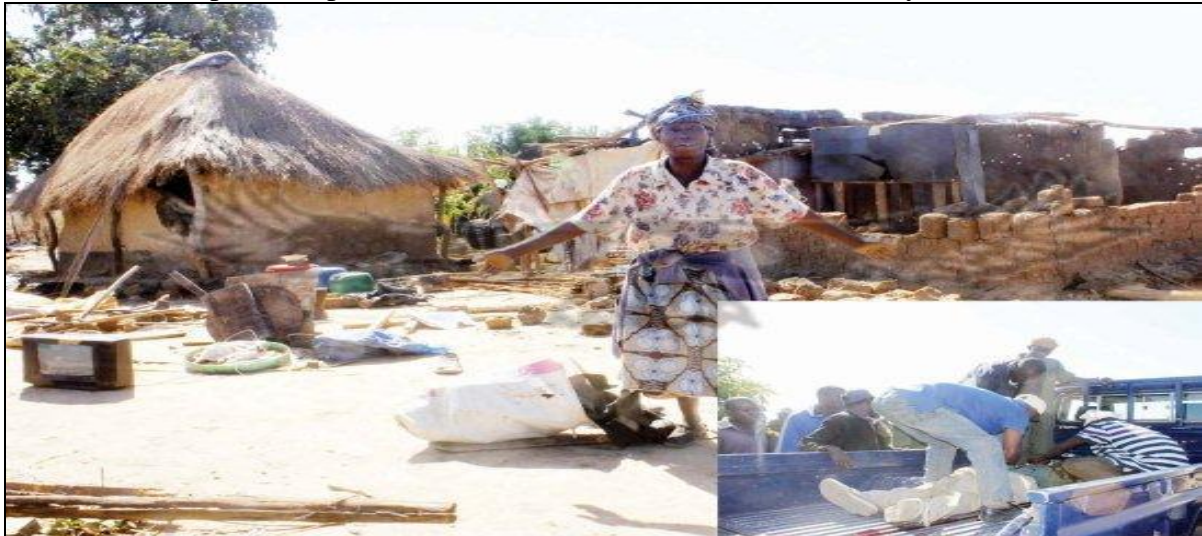
Source: Author

## 6. 5 Implications of Land Conflicts and Tenure Insecurity

State land conflicts and tenure insecurity have grave repercussions. These include:

- (a) Land conflicts have sometimes degenerated into violence which involves loss of properties (houses, infrastructure), loss of human life and rioting by people (see photo 11). Regarding loss of life, many people have been killed over their land (NAZ, 2015).

Photo 11: Example of Implications of Land Conflicts/Tenure Insecurity



Source: Lusaka Times, June 15, 2013| Elina Ngandu one of the residents who's house was demolished by the military (Zambia National Service officers) in Lusaka's Kampasa area. Inset: Police remove the body of a victim who was shot dead by the military when carrying out an eviction in Lusaka's Kampasa area.



Source: Lusaka Times (11 June 2014)



Source: Photo provided by The Post, 2016



Source: Photo provided by The Post, 2016



Source: Photo provided by The Post, 2016

(b) Hinder both local and inward investment. For instance, no development can take place on land with land conflicts and tenure insecurity. Photo 12 show prime land known as Baobab land (see box 8 in chapter 5) located in Lusaka District and has a land size of 1,900,000 square metres. Despite being prime land for residential and commercial use, it has remained undeveloped since 2006 because of a land conflict.

Photo 12: Undeveloped Prime Land due to a Land Conflict



Source: Author

(c) Decline and/or cut off of food production (LRRRI, 2009). During land conflicts such as land invasion and land grabbing by political cadres, many people are escaping their areas of



production due to fear and insecurity. This makes them stop engaging in agricultural production and livestock keeping which leads to the decline of food production (LRRRI, 2009). This has been the case in Lusaka East and West where such conflicts recur frequently.

(d) Wastage of time and money during the period of conflict resolution, since most of the land conflicts takes longer time in resolution (LRRRI, 2009). Therefore, a lot of resources are wasted which could have been used for development activities (ibid). For instance, in the case involving the invasion of property number 33857, Libala South (see table 33 on page 157), the Disadvantaged Children Pathfinder Association Trust (DCPAT) indicated that so far they have spend more than US\$ 5000 in litigation costs. This money could have been used to develop the land. It should be pointed out that since the case is still in court, DCPAT will still incur more costs.

(e) Local and central governments are denied revenues from property taxes (rates) and ground rent. For instance, findings show that out of an estimated 100,000 properties which are rateable in Lusaka only 61,653 properties are captured in the Lusaka City Council (LCC) Valuation Roll of 2013. The 38,347 properties are not captured in the Roll because of inter alia prevailing land conflicts in the city. This implies that the council is losing revenue.

## **6. 6 Chapter Summary**

The discussion in the present chapter reveals that state land conflicts in Zambia in general and Lusaka District in particular are occurring with greater frequency. These conflicts are caused by defective state land governance framework except inheritance conflicts. The forms of land conflicts in hierarchical order include:

- Invasion of idle or undeveloped private or public land, and illegal allocation of land by some politicians and some government officials;
- Violent land acquisition by political cadres, and boundary conflicts;
- Multiple allocations of land, eviction by private landlord, and eviction by government agency, and
- Inheritance Conflicts.

The existing land governance which is characterised by curative measures is dysfunctional and therefore unable to resolve land conflicts effectively. Besides, while it is true that the defective state land governance framework causes land conflicts, it is also true that the

defective state land governance framework causes tenure insecurity. Land conflicts lead to tenure insecurity and vice versa. Land conflicts and tenure insecurity have implications such as loss of life and damage to property, high litigation costs, decrease food production, deny the government to raise revenue, and hinder investment. In light of the foregoing, there is no doubt that the present state land governance framework cannot promote good governance in land sector.

## **Chapter Seven: Major Findings, Recommendations, Conclusion and Future Research**

### **7.1 Introduction**

The study was set out to examine the role of existing land governance framework in improving tenure security as well as establish how land conflicts affect tenure security in Zambia. The study also sought to make recommendations on how existing land governance framework in Zambia can address land conflicts effectively to ensure tenure security. This chapter presents recommendations for improving state land governance in Zambia and the conclusion of the study. Before this, the chapter presents the summary of the findings and confirmation of the research hypothesis. This chapter ends by highlighting the direction for further research.

### **7.2 Summary of the Findings and Confirmation of the Research Hypothesis**

#### **7.2.1 Lack of Land Policy and Defective National Laws for Land Governance**

Research findings show that Zambia currently lacks a clearly codified and defined national land policy. Efforts to establish a codified land policy started in the 1990s but have been unsuccessful (Mbinji, 2012). This implies that Zambia has been trying, albeit without success, to put in place a land policy for over two decades (Machina, 2009; Mbinji, 2006; ZLA, 2008). In a way the absence of land policy has resulted in the increase in land-related problems such as inefficiency and ineffectiveness in land management and administration, and subsequently land conflicts and tenure insecurity (Mbaya, 2000; Mbinji, 2012; ZLA, 2008).

On the other hand, according to findings, although Zambia has the legal framework for guiding state land governance, the laws are characterised by weak implementation or enforcement, inadequacy and obsolescence as well as partial citizen participation in the formulation. Land laws such as the Lands and Deeds Registry Act and Urban and Regional Planning Act have sufficient provisions but implementation or enforcement is very low. The outcome has been grabbing of land on title and improper land development.

Further, the Lands Act lack of provision of how land should be allocated to different social groups (i.e. the upper, medium and lower classes) in the country has made it more difficult for people in the low income group to access land. Besides, the Land Survey Act was enacted

over five decades ago and it is now out of date. There is no doubt that this obsolete Act limits the management and delivery of cadastral services to customers. Additionally, during formulation of laws, government agencies seldom consult the local people. Sometimes local people are invited to make contributions but in most cases their views are not given high priority. This has led to low compliance to most land laws.

### **7.2.2 Defective Institutions**

According to the research findings, the institutions guiding state land governance in Zambia are in a state of disorder. These institutions include the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP), Ministry of Local Government and Housing-MLGH (i.e. Local Authorities and Department of Physical Planning), and Land Conflict Resolution Mechanisms (LCRMs). According to research findings, MLNREP is highly centralised with offices at provincial level but no offices at district level. To provide some services (e.g. land identification, land use planning and land allocation) to clients at district level, MLNREP has appointed Local Authorities (i.e. City, Municipal and District councils) which have offices at district level as its agents. However, coordination between the two institutions is lacking. Further, empirical evidence and existing literature show that the MLNREP and MLGH are experiencing other difficulties. These include corruption, limited information dissemination on land issues to the people, inadequate supply of affordable land, inappropriate land use monitoring, and poor record keeping. Other problems are political interference, inadequate human resources, unqualified employees in some departments, lack of or limited funding from government, and insufficient equipment. The end result is that these institutions are ineffective, inefficient and incompetent.

In terms of land conflict resolution institutions, research findings show that the formal land conflict resolution mechanisms (e.g. High and Subordinate Courts, and Lands Tribunal) take too long to dispose of most land conflict cases. For the High and Subordinate Courts, the delays are caused by among other things inflexible and intricate procedures, underfunding from government, inadequate staff and insufficient court accommodation. Not dissimilarly, the Lands Tribunal delays in disposing of land conflict cases because it is highly centralised, staff is insufficient and funding from government is inadequate.

On the hand, according to research findings, despite the alternative land conflict resolution mechanisms (i.e. arbitration and mediation) being existence for over a decade, there are

infrequently used by disputants. The reason for this is that people do not have information on how to access them and their merits. The outcome is that people continue using the formal court system which is characterised by delays. There is no doubt that delays deny justice.

### **7.2.3 Inappropriate Technical Issues**

Field findings and evidence from existing literature show that land use planning, cadastral surveying, land allocation, land registration, and land occupation in Zambia are in a state of confusion. Firstly, land use planning is defective. The overall effect is chaotic land development. Secondly, due to various challenges such as shortage of licensed land surveyors and high costs involved, less than 40 percent of the total state land is covered by cadastral surveys. Thirdly, state land allocation procedure involves too many separate stages and decision-makers. This has made the process to be very long. Similarly, state land allocation process is opaque. Fourthly, less than 20 percent of state land parcels are registered with the Ministry of Lands, Natural Resources and Environmental Protection. According to many household respondents, land registration is expensive, and the process is unknown and generally complicated. Finally, due to inequitable state land delivery system, many people especially those in low income group end up invading any vacant private or public land. The consequence has been that the majority of the urban population live in illegal settlements.

### **7.2.4 Land Conflicts and Tenure Insecurity**

Dysfunctional state land governance has led to a high incidence of land conflicts and high degree of tenure insecurity. Land conflicts have left many people dead or at least vowing to kill each other. This scenario can best be described as a ‘time bomb’. It should be pointed out that the country’s current average population density is 17 persons per square kilometre, and CSO (2013) estimates that this may increase to 31 persons per square kilometre by 2030. If currently, land conflicts have left many people dead or at least vowing to kill each other, what will happen in the near future when the population density increases? The answer to this question is that land conflicts and tenure insecurity should be addressed now and not later. Otherwise, there will be a ‘land war’ soon.

### **7.2.5 Confirmation of Research Hypothesis**

Finally the research hypothesis “*tenure insecurity continues to prevail in Zambia because the current land governance framework is unable to address prevention of land conflicts. Though the present land governance framework has given focus on curative measures to address land*

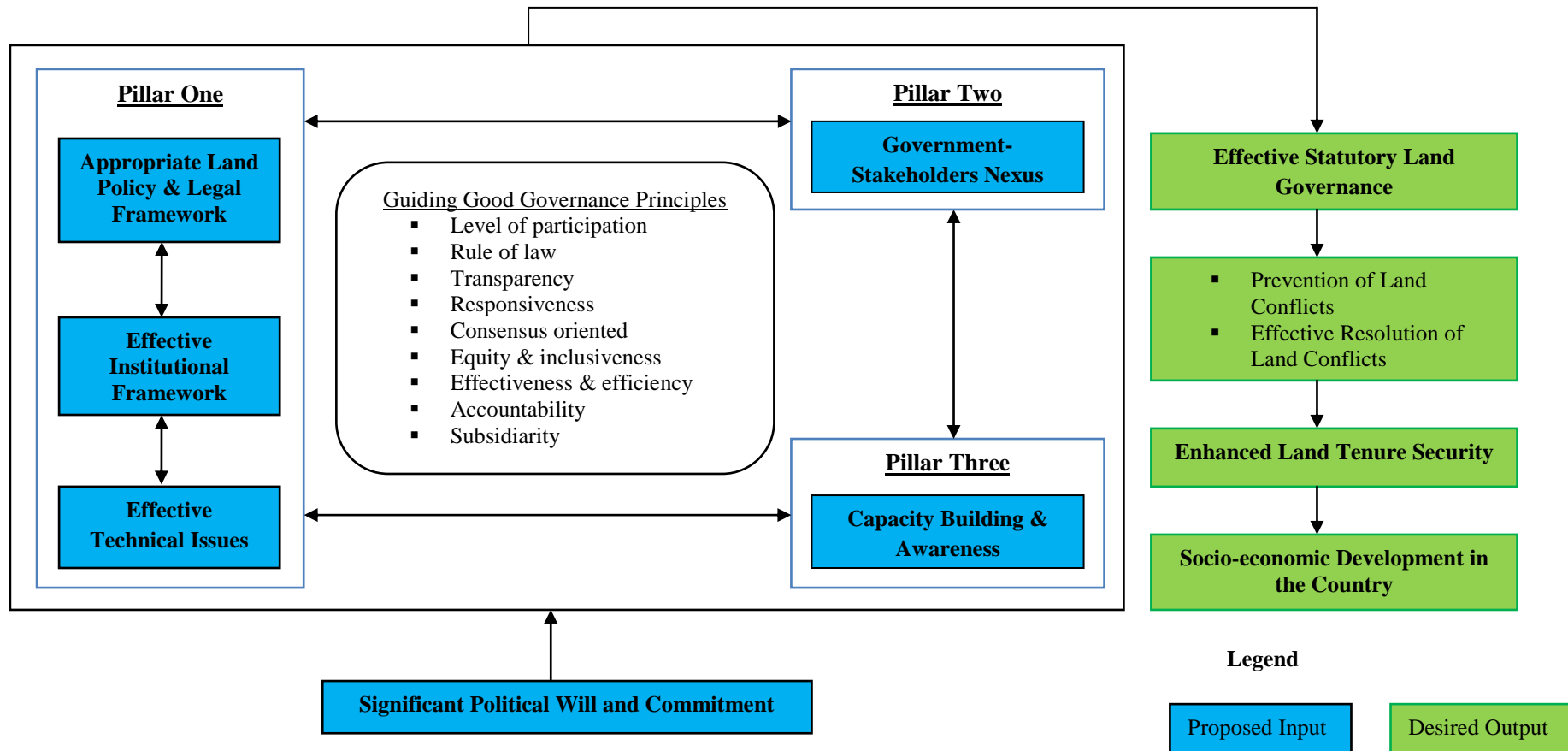
*conflicts, to achieve tenure security fully, there is need for a new strategic land governance framework that will also incorporate prevention of land conflicts”* has been confirmed. The importance of incorporating land conflict preventive and curative measures has been identified in order to improve the present situation. According to research findings, presently curative measures (though dysfunctional) exist but there are no preventive measures at all. The current land governance framework is unable to prevent land conflicts because of lack of codified land policy, dysfunctional legal and institutional frameworks as well as dysfunctional technical and operational issues.

### **7.3 Recommendations for Improving State Land Governance in Zambia**

#### **7.3.1 Towards a new strategic framework: a basis for practical solutions**

Evidence from field findings and literature show that state land governance in Zambia has shortcomings. The shortcomings are in the land policy and legal framework, institutional framework as well as technical and operational issues. The shortcomings in land governance lead to problems of land conflicts and tenure insecurity. All these challenges require a new framework. Based on the system in figure 10 (refer to conceptual model for conflict sensitive land governance strategic framework on page 55), to address the problem of land conflicts and tenure insecurity, this study recommends an integrated conflict sensitive framework (figure 34 on page 183 is illustrative). This framework can be used to govern land under statutory tenure in Zambia. But this framework is of wider application to many African countries grappling with the intertwined problems of land conflicts and tenure insecurity. The framework can be applied in other African countries with slight modifications where necessary. This is because; a) land policies and legal framework guiding land governance varies greatly in all African countries; b) some countries have better institutional framework than others; c) some countries have better technical issues than others; d) some countries have better government and stakeholders nexus than others; and e) some countries have better capacity building and awareness programmes than others. Therefore, to adopt this framework, it is crucial that each African country undertakes a situational analysis and needs assessment to identify gaps that need to be filled in order to streamline land governance at a country level (Mabikke, 2014).

Figure 34: New Framework for Improving Governance of Land under Statutory Tenure



Source: Author

The foregoing proposed new framework for improving governance of land under statutory tenure is based on a number of pillars that influence the land sector in a country. According to the proposed framework, the pillars (or inputs) to achieve good statutory land governance include: a) **Pillar one** which comprises a country's land policy and legal framework, institutional framework and technical issues (i.e. land use planning, cadastral surveying, land allocation, land registration, and land occupation); b) **Pillar two** comprises government and stakeholders nexus; and c) **Pillar three** is capacity building and awareness. All these pillars are interrelated and therefore should work as a whole and not as separated components. For instance, it is almost unfeasible to have an efficient, effective and competent institutional framework without a strong and supportive land policy and legal framework (adapted from OECD, 2008, 2010). Similarly, the extent to which the land policy and legal framework are implemented or enforced depends on the strong institutional framework. In the same way technical issues depend on strong and supportive land policy and legal framework as well as strong institutional framework. In addition, the success of pillar one depends on government and stakeholders nexus, and capacity building and awareness.

The preceding pillars can best interact with each other under good governance principles. For without good governance principles in land sector, it is basically impossible to achieve good land governance (Mabikke, 2014). The pillars and a set of good governance principles require significant political will and commitment from the Zambian government. This is because the government is the paramount owner of all land.

According to the proposed framework, the outcomes of effective statutory land governance can be seen in prevention and effective resolution of land conflicts and subsequently enhanced tenure security. Ultimately, the goal of promoting effective statutory land governance is to achieve better socio-economic development in the country. Consequently, this positively affects quality of life. This shows that improving state land governance is very critical. In this regard, the following subsections discuss the improving of land governance which will enable effective and efficient prevention and resolution of state land conflicts in Zambia.

### **7.3.1.1 Pillar One**

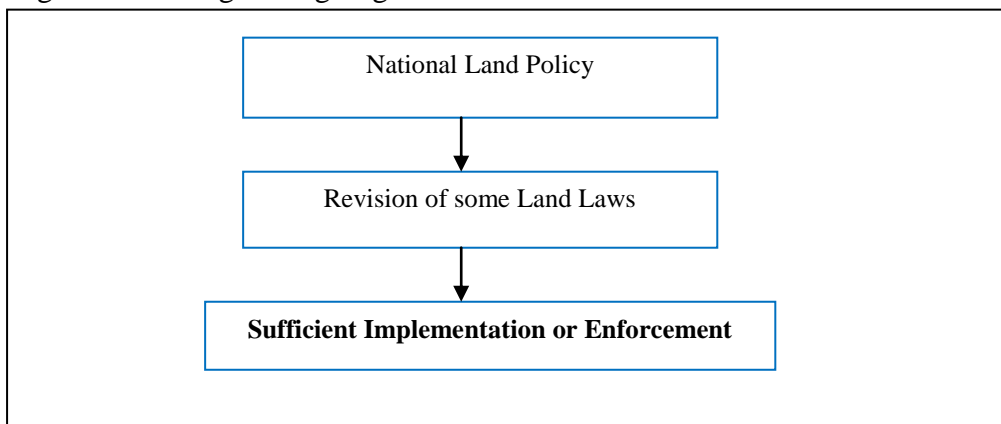
Preventing and effective resolution of state land conflicts requires simultaneously strengthening legal instruments, institutional framework, and technical issues. This is something that is explored in more detail in the next subsections.



### **(1) Strengthening Land Policy and Legal Framework**

To propose reforms to land policy and legal framework, two fundamental questions arise. Are legal instruments in place to regulate the people to land relationship? Is the existing legal framework for guiding state land government adequate? Concerning the first question, the research found that Zambia has no codified land policy but land laws exist. Zambia has never had a codified national land policy since independence. However, in October 2015 a codified draft national land policy was published and to date national wide public consultations are taking place. In terms of existing laws, these include the Lands and Deeds Registry Act 1994, Urban and Regional Planning Act 2015, Lands Act 1995 and Land Survey Act 1960 (refer to chapter 4 and 5 of thesis). On the question of whether these existing land laws are adequate, the Lands and Deeds Registry Act, and Urban and Regional Planning Act are adequate but the major problem is weak implementation or enforcement. The Lands Act and the Land Survey Act are inadequate. The Lands Act is not pro-poor while the Land Survey Act is obsolete. Therefore, based on the current status of legal instruments, reforms should be made as illustrated in figure 35.

Figure 35: Strengthening Legal Instruments



Source: Author

#### **(a) National Land Policy**

The publication of the draft national land policy is a step in the right direction. But the Ministry of Lands, Natural Resources and Environmental Protection should ensure that views of all stakeholders are incorporated in the draft policy document. The involvement of stakeholders is imperative as it will give the stakeholders a sense of owning of the policy and hence resulting in the successful adoption of the land policy without rejection from any of them. There is also need to speed up the consultations so that the policy is finalised as soon as possible.

### **(b) Revision of some Land Laws**

The presence of inadequate and obsolete land laws is a major obstacle to effective state land governance in Zambia. The current Lands Act does not provide a procedure for allocating land under statutory tenure. Thus, local authorities use their discretion in land allocation. Unfortunately, this current land delivery system favours those with money and excludes the poor. Concerning the Land Survey Act, the Act is archaic and therefore does not provide for modern cadastral surveying practices.

In view of the above, the proposed framework recommends the need for reviewing the Lands Act and Land Survey Act. The Lands Act should be reviewed so as to incorporate the procedure for land allocation based on the principle of equity as provided in the Constitution. Similarly, the Land Survey Act should be reviewed to strengthen cadastral surveying. This will provide for change in the conduct of cadastral surveys as well as on contents of the survey reports lodged for examination and archival at the Office of the Surveyor General (Chileshe and Shamaoma, 2014). For example, electronic options should be explored for lodgement of records, examination of survey drawings, storage of survey records, dissemination of cadastral survey reference information, and access of cadastral survey information (ibid).

Formulation of legal instruments has been characterised by limited stakeholder participation (refer to chapter 5 of thesis). Therefore, when reviewing these laws stakeholders should be consulted and all their views should be included in the land law bills. The involvement of stakeholders (e.g. civil society, citizens, private sector etc.) is important as it will give the stakeholders a sense of owning of the laws. Generally, all land laws should be translated into local languages and also made available in summary text so that every member of society is able to access them (CFHH, 2015). This in turn will lead to high levels of compliance.

### **(c) Sufficient implementation or enforcement**

Without implementation or enforcement, legal instruments remain mere paper plans whose impact on the defined problem is negligible. Hence, there is need to intensify actions towards ensuring that issues stipulated in legislations are put into practice. AU et al (2010) assert that, to ensure effective implementation or enforcement of legal instruments there is need to:

- Design realistic and achievable implementation or enforcement strategies. Important elements in this design should be the preparation of a comprehensive checklist of

activities to be included in an implementation or enforcement plan and programme;  
and,

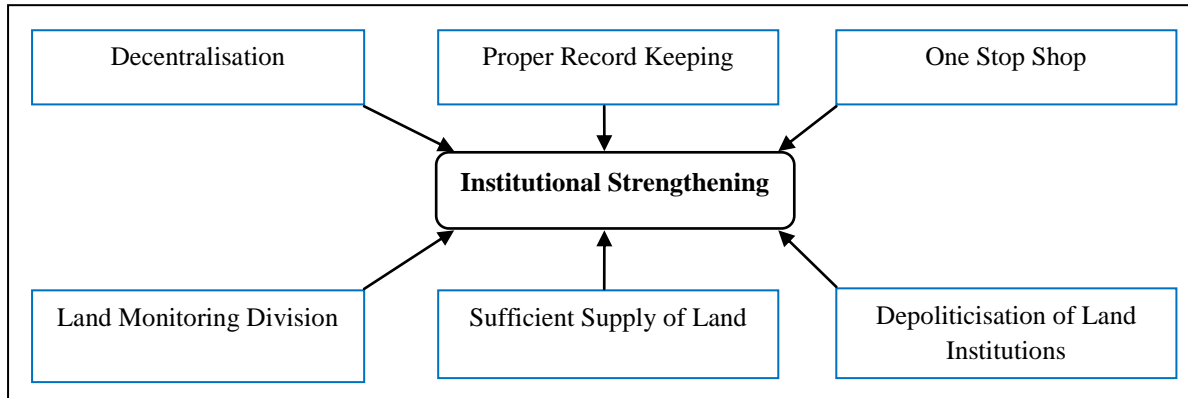
- Prepare an action plan. This must involve realistic programming and sequencing, proper costing, and accurate assessment of financial needs.

Significantly, the key to effective implementation or enforcement of legal instruments is effective institutional framework, capacity building and awareness. These are discussed in subsection 2 below and 7.3.1.3.

## (2) Institutional Strengthening

The existence of an ineffective, inefficient and incompetent institutional framework is a major hindrance to good state land governance in Zambia. To improve land governance, the proposed framework recommends the need for restructuring the institutional framework. In this regard, there is need to decentralise land institutions, ensure proper land record keeping, establish a one stop shop for land services, establish a land monitoring division, ensure sufficient supply of state land, and depoliticise land institutions. Figure 36 is illustrative.

Figure 36: Strengthening Institutional Framework



Source: Author

The ingredients for strengthening institutional framework are discussed in the following subsections.

### (a) Decentralisation

Effective governance of state land is virtually impossible if land institutions and land conflict resolution mechanisms are highly centralised. On the one hand, due to centralised power of the Ministry of Lands Natural Resources and Environmental Protection, certificates of title can only be prepared in two districts (i.e. Ndola and Lusaka). This means that since there are

106 districts in Zambia, clients from the other 104 districts have to travel to either Ndola or Lusaka to process their certificates of title. The outcome has been delays in processing of titles and high costs. This has in one way encouraged corrupt practices. Here, clients who would want their titles to be processed fast end up paying bribes to officials. To speed up the land acquisition process and subsequently reduce corruption, there is need to set up offices at district level, where people could easily access land services as such information on land availability, application for land, cadastral surveying, getting title and making all necessary payments.

On the other hand, presently state land conflicts are mainly resolved through the High Court and Lands Tribunal. Although, both courts are characterised by delays in resolving conflicts, the High Court experiences more delays than the Tribunal. This is because the High Court handles both criminal and civil cases. To speed up the resolution of land conflicts and improve access to justice by everyone, there is need to promote the use of the Lands Tribunal (i.e. specialised land court) though setting up offices at district level. Currently, the Lands Tribunal has offices in Lusaka District only. So all disputants from the other 105 districts have to travel to Lusaka to have their land conflicts resolved. Generally, decentralisation is one of the ways which can make land governance effective and can provide opportunity for local people to have easy access to land services.

#### **(b) Proper Record Keeping**

Presently poor land record keeping adversely affects state land governance. But the installation of the Zambia Integrated Land Management Information System (ZILMIS) by the Ministry of Lands, Natural Resources and Environmental Protection is a good step towards improving record keeping. In this regard, to improve state land governance, there is need to speed up the process of scanning manual files so that all documents can be computerised.

#### **(c) Establishing One Stop Shop**

The research found that currently the Ministry of Lands Natural Resources and Environmental Protection has no offices at district level and therefore has delegated Local Authorities which are located in all districts to be providing some of its services such as land identification, land use planning, processing of applications and selecting suitable applicants. Unfortunately, there is lack of coordination between the two institutions and this adversely affects the provision of land services. The research argues that there is need to transfer all governance functions to one institution, being the Ministry of Lands Natural Resources and

Environmental Protection. This will enable one institution to deal with functions of land identification, land use planning, cadastral surveying, land allocation and land registration. Consequently, the system of land delivery will be more coherent and efficient. Besides, this will streamline and simplify the process of land acquisition as it will reduce the number of institutions involved in land governance. In other words, multiple land services will be offered in just ‘one stop’.

#### **(d) Establishing a Land Monitoring Division**

From the research it is recognised that land grabbing, invasion of vacant private or public land and illegal land allocations are rampant. The Ministry of Lands, Natural Resources and Environment Protection (MLNREP) and Local Authorities (like Lusaka City Council) poor monitoring capacity is one of the reasons for this predicament. Therefore, there is need to establish a separate division responsible for monitoring land use through site inspections coupled with the use of google earth. This land monitoring division should comprise staff from the MLNREP and respective Local Authorities. Additionally, the division can make collaboration with private sector in site inspections for a better output. The division should also take necessary actions against improper land acquisition and those who acquire land and leave it idle for speculation. Sanctions for improper land acquisition and obtaining land for speculation purposes should be disseminated through the media such as radio, television and newspapers so that people can be aware and take the right decision about these.

#### **(e) Sufficient Supply of Land**

The current insufficient supply of affordable state land by land institutions has created artificial shortage of state land. Reversing this situation requires adequate and consistent disbursement of the land development fund by the government (Ministry of Finance). The Ministry of Lands, Natural Resources and Environment Protection should ensure that this money is used for its intended purpose, that is, opening new areas for land development through land use planning, cadastral surveying as well as provision of services such as water, electricity, roads, and sewerage.

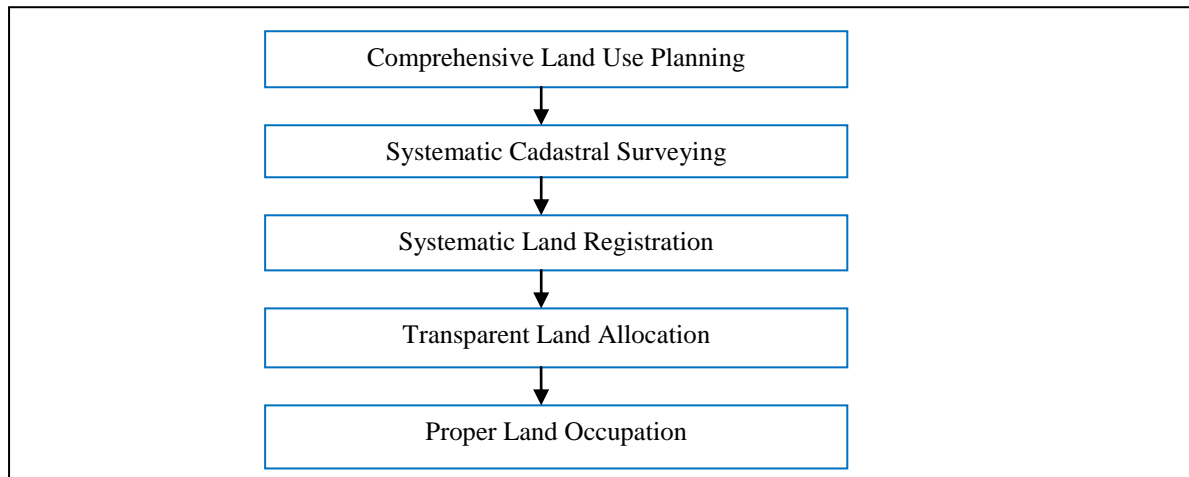
#### **(f) Depoliticisation of Land Institutions**

Presently the performance of land institutions is adversely affected by political interference. Where political interference over the land institutions is high there is low capacity to perform (Bowornwathana, 2010). To improve the performance of land institutions, there is need to guarantee autonomy through depoliticisation.

### (3) Strengthening Technical Issues

Fundamental preconditions to avoiding and resolving land conflicts are comprehensive land use planning, systematic cadastral surveying, systematic land registration (GIM International, 2006; Lengoiboni and Molendijk, 2015; Wehrmann, 2008), transparent land allocation, and proper land occupation. Figure 37 is illustrative.

Figure 37: Strengthening Technical Issues



Source: Author

The ingredients for strengthening technical issues are explored in more detail in the next subsections.

#### (a) Comprehensive Land Use Planning

Ineffective land use planning has been a contributing factor to the high occurrence of state land conflicts and high degree of tenure insecurity in the country. Reversing this negative situation requires effective land use planning. Effective land use planning is the key instrument in reconciling competing interests in land among individuals, and between individuals and state authorities or private companies etc (GIZ, 2012). A participatory comprehensive land use planning which anticipates and guides future land use while respecting existing uses is an effective tool for preventing and resolving land conflicts (ibid). Land conflicts can be prevented if all relevant stakeholders are involved in land use planning (ibid). A plan developed through a robust public input process enjoys strong community support (Extension, 2015). In the case of existing conflicts, discussions about current and future land uses and the joint definition of land use rules can help to reduce or even stop land use conflicts (GIZ, 2012). This can be done through the preparation of land use maps and plans as well as by local agreements, both consisting of or being accompanied by land use

regulations (ibid). To avoid the allocation of land on existing services, the land use plans should clearly indicate where the services are located.

### **(b) Systematic Cadastral Surveying**

The high incidence of state land conflicts and high scale of tenure insecurity in Zambia means that sporadic cadastral surveying has failed. Thus, there is need to adopt systematic cadastral surveying. Since state land comprises formal (i.e. high value land and properties) and informal settlements, surveying can be divided into two parts: high accuracy and costly conventional field surveying techniques for formal settlements and Fit-For-Purpose approach for informal settlements. On the one hand, all parcels of land under formal settlements (including parcels with non-visible or contested boundaries – see Enemark et al., 2015) should be surveyed with high accuracy. Hence, each land holding would be defined unambiguously on the ground as well as on the map. Further, there is need to ensure that most information in the cadastre should always be up to date. Moreover, the government should ensure that there is significant investment in capital to undertake systematic cadastral surveying so that it is sustainable but still accessible by the poor. In particular, people in the low income group should be exempted from certain fees (Masum, 2009). On the other hand, the Fit-For-Purpose approach can be used for informal settlements because it is fast, affordable and highly participatory. This approach is based on four key principles namely general boundaries rather than fixed boundaries, aerial imageries rather than field surveys, accuracy relates to the purpose rather than technical standards, and opportunities for updating, upgrading and improvement (see Enemark et al., 2014, 2015). Additionally, to improve the running of the cadastral survey services, there is need to:

- Ensure that the process of licensing land surveyors is streamlined to enable speedy licensing of land surveyors;
- Consider migrating to digital system archiving and management of cadastral survey information which could be accessible to the public either via email on request, or through a website (Chileshe and Shamaoma, 2014);
- Set up an independent cadastral quality assurance board. According to Chileshe and Shamaoma (2014), there are two options towards cadastral survey quality assurance: i) establishing an independent survey examination board to be responsible for scrutinising cadastral survey work carried out by private or government surveyors, and ii) the Office of the Surveyor General to delegate the provision of cadastral

survey services to private surveyors and concentrate on quality assurance and the provision of geodetic survey and mapping services;

- Immediately establish standards and regulations for guiding surveys conducted using Global Navigation Satellite System (GNSS); and
- Ensure that the delivery period provided in the service standards is adhered to.

### **(c) Systematic Land Registration**

The current system of land registration in Zambia has been sporadic and demand-driven. This approach has made it very difficult to have a complete record of parcels of land under statutory tenure. Presently there are less than 20% registered parcels of land under statutory tenure. Besides, more than 50% of the ownership information in the register is not up-to date and does not reflect ground reality. The foregoing has been a contributing factor to the high frequency of state land conflicts and high extent of tenure insecurity in the country. According to Wehrmann (2008), in areas with high incidence of land conflicts and high degree of tenure insecurity, systematic land registration should be considered. In this regard, since there is no state land in Zambia without an owner, there is need to place every parcel of land under statutory tenure on a land register and register a proprietor that is, the government, individuals, companies, non-governmental organisations, churches and embassies. There is also need to ensure that most ownership information in the register should always be up to date. Here, the government should also ensure that there is significant investment in capital to undertake systematic land registration so that it is sustainable but still accessible by the poor. Like in cadastral surveying, the poor should be exempted from certain fees.

### **(d) Transparent Land Allocation**

Lack of transparency in land allocation coupled with cumbersome land allocation procedure has been a contributing factor to the high incidence of state land conflicts and high level of tenure insecurity in the country. Reversing this negative scenario requires transparency in the allocation of state land. Additionally, adopting comprehensive land use planning, systematic cadastral surveying and systematic land registration can definitely simplify the land allocation procedure.

### **(e) Proper Land Occupation**

Presently the incomplete land records (i.e. records do not clearly show who owns what and where) at the Ministry of Lands, Natural Resources and Environmental Protection has led to



inequitable land delivery system. The system is characterised by allocation of many parcels of land to one person. In particular, land is only allocated to people in the high income group and therefore people in the low income group have no access to land. The outcome has been invasion of any vacant private or public land by people in the low income group. This in turn leads to land conflicts between the land invaders and land owners. In this regard, the adoption of comprehensive land use planning, systematic cadastral surveying and systematic land registration is inevitable. This will lead to having proper land records. Proper land records coupled with transparency in land allocation will enable the ability to check which individuals have already been allocated land. Thus, land will be evenly distributed and this will lead to proper land occupation.

### **7.3.1.2 Pillar Two**

Pillar two entails improving the government-stakeholders nexus. It is argued that a key driver of effective land governance is involvement of all stakeholders' - government and other stakeholders' (Acharya et al., 2004; Kirubananthan, 2013; Koroso, 2011; UN-Habitat et al., 2013; White, 2004). A participatory approach is the only means for achieving long-lasting consensus and common agreement (Simonovic and Akter, 2006). Put another way, decision-making needs to take into consideration wide range of stakeholders' and shades of opinions if decision outcomes are to maintain a high quality (ibid). Here, a government-stakeholders nexus implies government's relation with stakeholders such as the media, academia, private sector, civil society, land users, professional bodies and international organisations to advance effective land governance. Government-stakeholders nexuses have increasingly become a prerequisite for achieving sustainable development. The purpose of this nexus is to increase the quality of decision making and reduce uncertainty in the process so as to develop the stakeholders' confidence and trust in the programme (adapted from Koroso, 2011), such as improving land governance. It is the vital precondition for planning and implementation of any national programmes especially that which affects the people directly (Lane 2005 cited in Kirubananthan, 2013). In this regard, improving land governance as a national programme is not exceptional from the need of a strong government-stakeholders' nexus. Government-stakeholders' nexus is critical because:

- It fosters transparency and accountability thereby reducing corruption in land sector (UN-Habitat et al., 2013);

- International organisations (e.g. GIZ, GLTN, FIG, USAID) engagement in land governance can contribute to capacity building (i.e. human, institutional, technological and financial capabilities);
- It enhances citizens' trust and confidence in government's land governance restructuring programmes;
- People tend to support programmes better if they fully participated in them (Makasa, 2010);
- Knowledge transferred to individuals through academic programmes (e.g. land administration and land management) at university level allows young professionals to have a clear view of the complexities of their fields of expertise (Magel et al., 2009, p.5);
- Civil society and media engagement in land governance can contribute to dissemination of information on contents of legal instruments, land rights, land allocation procedure and other land issues; and,
- Private sector may be engaged to undertake comprehensive land use planning and systematic cadastral surveying.

The framework recommends improving the government-stakeholders' nexus in order to achieve effective land governance. Nonetheless, a government-stakeholders' nexus requires to be guided by a clear regulatory framework. The framework should address priority issues where various stakeholders can contribute towards (Mabikke, 2014). Absence of a regulatory framework may result into uncoordinated activities of stakeholders (ibid).

### **7.3.1.3 Pillar Three**

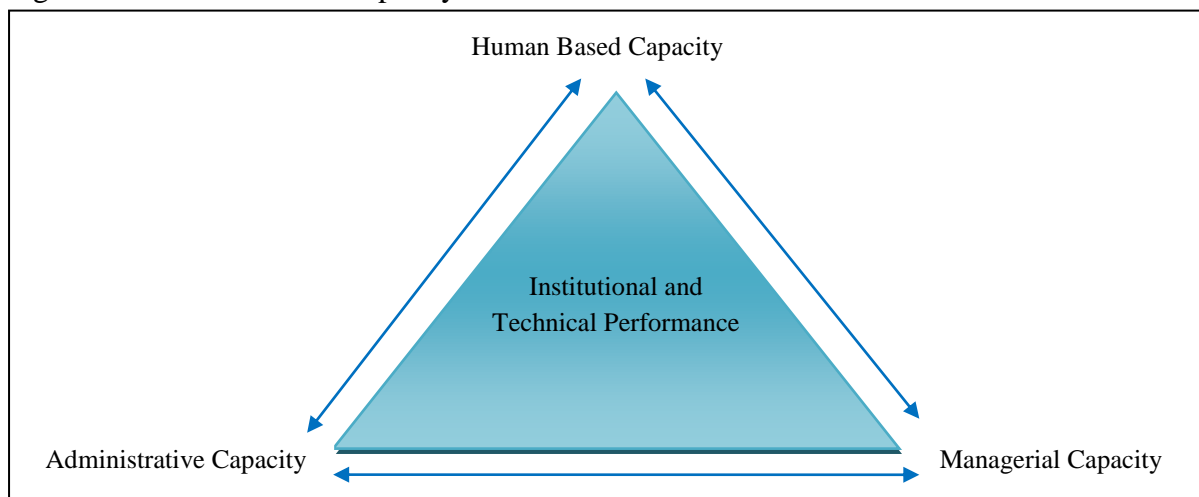
Pillar three comprises capacity building and awareness. The former (capacity building) is integral to achieving effective land governance. Capacity building strengthens the ability of individuals and organisations or organisational units to perform functions effectively, efficiently and sustainably (UNDP, 1998). In this regard, prevention and effective resolution of land conflict require building institutional (e.g. Ministry of Lands, Natural Resources and Environmental Protection, Lands Tribunal, Arbitration and Mediation) and technical (i.e. proper land use planning, cadastral surveying, land registration and land allocation) capacity. The key to building institutional and technical capacity is individual capacity. Enhancing individual capacity requires strengthening and upgrading the skills of all key stakeholders involved in formulation and implementation of legal instruments (FAO, 2009b). Further,

skills and attitudes in individuals are relevant in the day-to-day running of land institutions as well as the design, development and maintenance of operational infrastructures (adapted from Groot and van der Molen, 2000 cited in Magel et al., 2009). For capacity building interventions to be effective, an understanding of the different dimensions of capacity, preferably arrived at through a needs-driven participatory assessment, is necessary (Mabikke, 2014, p.160). In this respect, Masum (2011) argues that building institutional capacity has three different dimensions and these are:

- Resource based capacity entails human resource, funding, technology and infrastructure. This means; i) having adequate, well trained (training should be on-going), and well paid staff, ii) sufficient funding to land institutions, and iii) adequate equipment like GPSs, vehicles, scanners, and computer software and hardware;
- Administrative capacity implies ability to apply land policies and legislations in an efficient and effective way, as well as to support the competent decision-making process; and,
- Managerial capacity means ability to perform the functions with effective managerial process and proper coordination with other institutions/organisations.

It is worth mentioning that the foregoing dimensions also influence the performance of technical issues. Strengthening institutional capacity can enable land institutions to provide adequate land services. Similarly, enhancing technical capacity can enable effective land use planning, cadastral surveying, land registration, and land allocation. The three dimensions of capacity that influence institutional and technical capacity are illustrated in figure 38.

Figure 38: Dimensions of Capacity for Institutional and Technical Performance



Source: Masum (2011), Modified

The other part of pillar three is awareness. Low level or lack of awareness has adversely affected land governance in Zambia. In this respect, improving land governance requires raising awareness. Awareness raising, sensitisation and dissemination of information should target all land users. Examples of awareness-raising messages include information about: i) equal access to land under the law, ii) legal instruments, land rights, and other land issues, and iii) the existence of alternative land conflicts resolution mechanisms such as arbitration and mediation and their merits. In addition, awareness is one of the most important activities for any national programme (Kirubananthan, 2013), like improving land governance. Proper and quality awareness enables stakeholders to understand the benefits for their active participation (UNDP, 1997).

#### **7.3.1.4 Significant Political Will and Commitment**

The real conundrum in many African countries in general and Zambia in particular is not lack of land, but rather lack of good governance (adapted from Kadah, 2012), in land sector. Some African countries have undertaken land sector restructuring programmes but low levels of implementation has generally continued to hinder land governance (AU et al., 2010; Van Der Zwan, 2010). The main reason for this dilemma is lack of or low political will and commitment by African governments (ibid). According to research findings, we find this dilemma also in Zambia. In this regard, the success or failure of the proposed framework highly depends on the government. It is hoped that there will be significant political will and commitment in the adoption and implementation of the framework by the government. Government should be convinced by international partners and by academia and national and international experts to do more in this field. In addition, the research argues that although financial resources could be an impediment to the implementation of the framework, significant political will and commitment by the government will enable mobilisation of financial resources.

## **7.4 Conclusion**

The findings of this research show that achieving land tenure security requires effective and efficient prevention and resolution of land conflicts. The precondition for effective and efficient prevention and resolution of land conflicts is having an effective land governance framework (i.e. strong legal and institutional frameworks, appropriate technical issues and sufficient operational issues). However, in Zambia, the present state land governance framework is characterised by lack of state land conflict preventive measures and

dysfunctional state land conflict curative measures. On the one hand, the present land governance framework is unable to prevent state land conflicts due to dysfunctional legal and institutional frameworks as well as improper technical and insufficient operational issues. Therefore, state land conflicts are occurring with greater frequency in the country in general and in Lusaka District in particular. The high incidence of state land conflicts lead to high degree of tenure insecurity. On the other hand, state land conflict resolution mechanisms (e.g. High Court and Lands Tribunal) are characterised by unreasonable delays (i.e. beyond several months or even years) in resolving state land conflicts. This is due to inter alia insufficient well-trained staff and poor funding from government. Further, alternative dispute resolution mechanisms such as arbitration and mediation are rarely used because many disputants do not have knowledge about their existence and advantages.

In light of the absence of preventive measures and malfunctioning curative measures in the current state land governance framework, the research suggests an integrated conflict sensitive framework for governing land under statutory tenure in Zambia. This framework would enable effective and efficient prevention and resolution of state land conflicts. The framework is based on key components namely strengthening land policy and legal framework, strengthening land institutions, and strengthening technical issues; improving the government-stakeholders nexus; and improving capacity building and awareness. The foregoing components would best interrelate with each other under good governance principles. Significantly, the prerequisite for the adoption and implementation of the suggested framework is strong political will and commitment by the government. It should be mentioned that the suggested framework is of wider application to many African countries grappling with the problems of deficient statutory land governance, land conflicts and tenure insecurity.

It should be pointed out that development cooperation (e.g. international partnership between African governments, universities, non-governmental organisations and international organisations like BMZ/GIZ, UN-Habitat/GLTN etc.) would play a relevant role in the implementation of the new framework. Since one of the major impediments to strengthening governance of land sector in Africa in general and Zambia in particular is lack of qualified human resources with practical experiences and international knowledge, development cooperation would enable strengthening knowledge of practitioners. Similarly, development cooperation enables partner organisations or network members to share their own

experiences, knowledge and capital [financial, social or technical] (adapted from Magel et al., 2009). Besides, more personnel should be sent to universities to undertake relevant Degree, Masters or PhD programmes, thus fostering career development (adapted from BMZ, 2016; Espinoza et al., 2016). This would enable sustainable capacity development (ibid). Simultaneously, institutional development should be prioritised because highly educated experts cannot bring any favourable results without functioning land institutions (adapted from Magel et al., 2009).

The adoption and implementation of the suggested framework in Zambia would prevent state land conflicts such as invasion of idle or undeveloped private or public land, illegal allocation of land by some politicians and government officials, violent land acquisition by political cadres, boundary conflicts, multiple allocations of land, eviction by private landlords, and eviction by some government agencies. This in turn would decongest the existing land conflict resolution mechanisms because they would only be handling fewer land conflicts cases such as inheritance conflicts. The prevention and effective resolution of land conflicts would enhance land tenure security. It should be borne in mind that if land governance is not improved, the intertwined problems of land conflicts and tenure insecurity will remain unresolved or become worse.

## **7.5 Future Research**

The main aim of this study was to propose a conflict sensitive land governance strategic framework for preventing land conflicts in Zambia. This was meant to cover land under both statutory and customary tenures. As explained earlier, there are two types of land tenure systems in Zambia namely statutory and customary tenures. Land under statutory tenure is known as state land while land under customary tenure is known as customary land. Thus, state land conflicts occur on state land while customary land conflicts occur on customary land. This also implies that tenure security and land governance are twofold: state and customary land tenure security as well as state and customary land governance. The focus of this research was on state land conflicts, state land tenure security and state land governance. It should be pointed out that the research would have benefited from conducting research on customary land conflicts, customary land tenure security and customary land governance. Findings on both state and customary land conflicts, state and customary land tenure security and state and customary land governance would give a better understanding of land conflicts, tenure security and land governance in Zambia. However, this was not possible due to limited

financial capacity and time frame. Therefore, one of the directions for future research would be to carry out an assessment on the role of customary land governance in improving tenure security through preventing customary land conflicts. The findings from such a study would provide better solutions for the entire country (Zambia).

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## Appendix A: Research Instruments

### Household interview guide for state land users

#### Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts

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Table below to be completed by interviewer

Name of township	
Name of respondent (optional)	
Name of interviewer (mandatory)	
Interview date (DD/MM/YYYY)	

#### **INSTRUCTIONS TO THE INTERVIEWER**

1. Mark the response with **X**
2. In questions where the respondent does not know the answer, enter response code 88
3. In questions where the respondent refuses to answer, enter “No Response” code 77

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#### Request for Participation

Dear Respondent,

The sole purpose of this interview is to obtain data on the role of land governance in improving tenure security in Zambia with specific focus on the need for a strategic framework for preventing land conflicts. The answers provided in this interview will be purely for academic purposes and will be kept **CONFIDENTIAL**. Your kind assistance will be highly appreciated.

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#### **SECTION A: DEMOGRAPHIC DATA OF RESPONDENTS**

Respondent's Gender

1 = Male

2 = Female

Age (Years) .....

Household Size.....

Highest level of education for the respondent.....

Present occupation.....

Monthly income.....

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**SECTION B: LAND ACQUISITION AND TENURE SECURITY**

2.1 What is the size of your land?.....

2.2 How did you acquire your land?

- 1 = Purchased
- 2 = Leased
- 3 = Inherited land
- 4 = Received land as a gift
- 5 = Other (state.....)
- 77 = No response

2.3 From whom did you acquire the land?

- 1 = Relative/friend/colleague (state.....)
- 2 = Private person (not relative or friend or colleague)
- 3 = Lusaka City Council/Ministry of Lands
- 4 = Other (please specify.....)

2.4 If you acquired land through Lusaka City Council/Ministry of Lands, do you think land delivery by Lusaka City Council/Ministry of Lands is based on the principle of equity? Justify your answer.....

2.5 If purchased, how much did you pay for the land?.....

2.6 What influenced your decision to acquire this particular land instead of other (s) considered?

- 1 = Price level (explain briefly.....)
- 2 = Documents of ownership available
- 3 = Social amenities
- 4 = Other (please specify.....)

2.7 When did you acquire the land?

- 1 = Less than six months ago
- 2 = 6 months to 1 year ago
- 3 = 1 year to 3 years ago
- 4 = 3 years to 5 years ago
- 5 = over 5 years ago

2.8 Which of the following expenses did you incur in addition to the price of the land?

- 1 = Demarcation/surveying fees
- 2 = Legal fees
- 3 = Estate agent fees
- 4 = Government taxes
- 5 = Service charges
- 6 = None of the above
- 7 = Other fees (specify.....)

2.9 At the time of acquiring land, what challenges did you face? Please explain.....

2.10 How long did it take for you to acquire the land?

- 1 = Less than six months
- 2 = 6 months to 1 year
- 3 = 1 year to 3 years
- 4 = 3 years to 5 years
- 5 = over 5 years

2.11 What rights do you have over your land?

- 1 = The right to use the land.....
- 2 = The right to manage the land.....
- 3 = The right to generate an income from the land.....
- 4 = The right to exclude others from the land.....
- 5 = The right to transfer it.....
- 6 = The right to compensation for it.....

2.12 Do you believe your land rights are recognised by others (e.g. neighbours or other people and government) and can be protected in case of specific challenges (e.g. encroachment or take over by another person)? Justify your answer.....

2.13 Did you experience any of the following?

- 1 = Encroachment by a neighbour.....
- 2 = Eviction by Lusaka City Council.....
- 3 = Take over by another person: who.....
- 4 = Other : specify.....
- 5 = Nothing has happened .....

2.14 How do you ensure that your land is protected from third parties?

- 1 = Making sure that it is occupied all the time.....
- 2 = Making sure that I have the right documents.....
- 3 = Relying on neighbours to support me.....
- 4 = Other: specify.....

5 = I do not have to do anything to protect my land.....

2.15 How can Government Land Institutions improve tenure security?.....

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**SECTION C: LAND CONFLICTS**

3.1.a| Have you experienced any form of land conflict?

- 1 = Yes
- 2 = No

3.1.b| If you have experienced any form of land conflict, what type of land conflict did you experience? (Mark the answer[s] with **X**)

- 1 = Boundary conflict.....
- 2 = Multiple sales/allocation of land: specify.....
- 3 = Eviction by Government Agency.....
- 4 = Violent land acquisition by political cadres.....
- 5 = Other: specify.....

3.1.c| What caused the land conflict? Please explain.....

3.2.a| Has the conflict been resolved? 1 = Yes  | 2 = No

If yes please answer questions 3.2b, 3.2c, and 3.2d. Otherwise, please go to question 3.4e.

3.2.b| How was the conflict resolved?

- 1 = Lands Tribunal.....
- 2 = High Court.....
- 3 = High Court Mediation Annexure.....
- 4 = Arbitration.....
- 5 = Subordinate Court.....
- 6 = Out of court negotiations.....

3.2.c| If the conflict was resolved through Lands Tribunal or High Court or High Court or Subordinate Court or Mediation Annexure or Arbitration, how long did it take for the conflict to be resolved?

- 1 = Less than 1 month
- 2 = Between 1 month and 3 months (specify.....)
- 3 = Between 3 months and 6 months (specify.....)
- 4 = Between 6 months and 1 year (specify.....)
- 5 = Between 1 year and 2 years (specify.....)
- 6 = Over 2 years (specify.....)

3.2.d| Where you able to enjoy the following land rights during the period of the land conflict?

- 1 = The right to use the land
- 2 = The right to manage the land
- 3 = The right to generate an income from the land
- 4 = The right to exclude others from the land
- 5 = The right to transfer it

3.2.e| If the conflict is not yet resolved, why?.....

---

**SECTION D: LEGAL FRAMEWORK FOR LAND**

4.1 Which among the following existing land laws in Zambia, are you familiar with?

- 1 = Constitution (Amendment) 2015.....
- 2 = Lands Act 1995.....
- 3 = Land Survey Act 1960.....
- 4 = Lands and Deeds Registry Act 1994.....
- 5 = Urban and Regional Planning Act 2015.....
- 6 = None of the above.....

4.2 Were you involved or consulted in the formulation of any of the laws mentioned in question 4.1? If you were involved or consulted, how? Please explain.....

4.3 How is the Government dissemination of information to the public on draft land policy, existing land laws, and land rights?

- 1 = Very effective
- 2 = Somewhat effective
- 3 = Very ineffective
- 88 = Do not know
- 77 = No response

**SECTION E: INSTITUTIONAL FRAMEWORK FOR LAND**

5.1.a| Do you know of any institution(s) or organisation(s) designed to protect your land rights?

- 1 = Yes
- 2 = No

5.1.b| If your answer to question 5.1.a is **Yes**, which one(s)?

- 1 = Ministry of Lands.....
- 2 = Lusaka City Council.....
- 3 = NGOs/CBOs: specify.....
- 4 = Police.....
- 5 = Other: specify.....
- 88 = Do not know.....

5.2.a| Do you believe the institution(s) or organisation(s) mentioned in question 5.1b function fairly and independently? Justify your answer.....

5.2.b| Do you have access to this/these institution(s) or organisation(s)?

- 1 = Yes
- 2 = No

5.3 Is the Ministry of Lands and Lusaka City Council doing an adequate job in providing land services? Please justify your answer.....

**SECTION F: TECHNICAL ISSUES**

6.1.a| What is the present land use?.....

6.1.b| Is this present land use permitted in land use planning? Please explain.....

6.2 Do you have cadastre (showing the boundaries of the land parcel, references to boundary corner marks, and the parcel identifier) for your land? Please explain.....

6.3.a| Is your land registered (having a land title) with the Ministry of Lands? Please explain.....

6.3.b| If your land is registered, how many days/weeks/years did it take for you to register the land (obtain land title)?.....

6.3.c| If your land is not registered, what problems have hindered you from registering your land?

- 1 = It is too expensive for me
- 2 = I do not know the registration procedure
- 3 = Complicated registration process
- 4 = Other (specify.....)

**SECTION G: ASSESSMENT OF GOVERNMENT ACTION IN THE FIGHT AGAINST CORRUPTION**

7.1 Do you think there is corruption in the land delivery system? Please explain.....

7.2 How effective and efficient is the current government's actions in the fight against corruption?

- 1 = Very effective and efficient
- 2 = Somewhat effective and efficient
- 3 = Very ineffective and inefficient
- 88 = Do not know
- 77 = No response

7.3 How transparent do government land institutions allocate land?

- 1 = Very transparent
- 2 = Somewhat transparent
- 3 = Not transparent
- 88 = Do not know
- 77 = No response

**SECTION H: CONFIDENCE IN THE GOVERNMENT'S GOVERNANCE OF STATE LAND**

8.1 Are you confident with the current government's governance of state land?

- 1 = Very confident
- 2 = Somewhat confident
- 3 = Not confident
- 77 = No response

***End of Interview: Thank you very much for your participation!***



**Interview guide for Academics / Questionnaire for NGOs & Private Firms**

**Title: Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts**

Table below to be completed by Respondent

Name of Respondent (Optional)	
Position of Respondent in the Institution	
Contact Details: Email Address, Cell No.	
Date (DD/MM/YYYY)	

Request for Participation

Dear Respondent

The sole purpose of this interview/ questionnaire is to obtain data on the role of land governance in improving tenure security in Zambia with specific focus on the need for a strategic framework for preventing land conflicts. The answers provided in this interview/ questionnaire will be purely for academic purposes and will be kept **CONFIDENTIAL**. Your kind assistance will be highly appreciated.

**SECTION A: GENERAL INFORMATION**

What is the name of your institution/organisation?.....

How long have you worked for this institution/organisation?.....

What is the role of your institution/organisation in land governance?.....

**SECTION B: LAND CONFLICTS AND TENURE SECURITY**

2.1.a| What do you think about the incidence of state land conflicts in the country in general and in your district in particular?

- 1 = Occurring with greater frequency
- 2 = Not occurring with greater frequency

2.1.b| If the answer to question 2.1a is **1** (occurring with greater frequency), what are the types of state land conflicts occurring with greater frequency? (Mark the answer[s] with ranking **A, B, C & D**: **A = the most frequent land conflicts; B = the second most frequent land conflicts; C = the third most frequent land conflicts; and D = the least frequent land conflicts**)

- 1 = Boundary conflicts.....
- 2 = Multiple allocation of land .....
- 3 = Invasion of idle or undeveloped private or public land.....
- 4 = Eviction by private landlord.....
- 5 = Eviction by Government Agency.....
- 6 = Violent land acquisition by political cadres.....
- 7 = Inheritance conflicts.....
- 8 = Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc., and some government officials).....
- 9 = Other: specify.....

2.1.c| What are the causes of state land conflicts? (Mark the answer[s] with **X**)

- 1 = Insufficient information to the public on land allocation procedures and land laws / land rights.....
- 2 = Insufficient monitoring of land use.....
- 3 = Limited access to land, especially by the poor.....
- 4 = Insufficient supply of affordable and legally recognized land.....
- 5 = Missing or inaccurate land surveying: please specify.....
- 6 = Minimal cadastral coverage.....
- 7 = Poor record keeping.....
- 8 = Land records not being updated consistently.....
- 9 = Missing, outdated or only sporadic township layout plans: please specify.....
- 10 = Opaque and cumbersome procedures involved in land allocation.....
- 11 = Other: specify.....

(I would appreciate if you could provide some land conflicts cases, if available)

2.2 Do you think Land Conflict Resolution Mechanisms (High Court, Subordinate Court, Lands Tribunal, Arbitration, and Mediation Annexure) are resolving state land conflicts effectively and efficiently? Please explain.....

2.3 Do you think state land conflicts are leading to land tenure insecurity (situation where land users are in danger of losing their land)? Please explain.....

2.4 Is the present land governance system able to prevent state land conflicts? Please explain.....

2.5 Do you think state land delivery in the country is based on the principle of equity? Justify your answer.....

**SECTION C: INFORMATION ON LEGAL AND INSTITUTIONAL FRAMEWORK**

3.1.a| Could you provide information on relevant land law(s) guiding state land governance.  
.....

3.1.b| What challenges are the public land institutions finding in implementing these/this land law(s)?.....

3.2 Are/is the land law(s) guiding state land governance adequate? Please explain.....

**SECTION D: ASSESSMENT OF GOVERNMENT ACTION IN THE FIGHT AGAINST CORRUPTION**

4.1 Do you think there is corruption in state land delivery system? Please explain.....

4.2 How Effective and Efficient is the current government’s actions in the fight against corruption? Please justify your answer.....

- 1 = Very Effective and Efficient
- 2 = Somewhat Effective and Efficient
- 3 = Very Ineffective and Inefficient
- 88 = Don’t Know
- 77 = No Response

4.2 How transparent do government land institutions allocate state land? Please justify your answer.....

- 1 = Very Transparent
- 2 = Somewhat Transparent
- 3 = Not Transparent
- 88 = Don’t Know
- 77 = No Response

**SECTION E: WAY FORWARD**

5.1 What recommendations would you make to enable the efficient and effective prevention and resolution of land conflicts in Zambia?.....

***End of Questionnaire: Thank you very much for your participation!***

**Questionnaire for Government Institutions involved in Land Governance**

**Title: Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts**

Table below to be completed by Respondent

Name of Respondent (Optional)	
Position of Respondent in the Institution	
Contact Details: Email Address, Cell No.	
Date (DD/MM/YYYY)	

**Request for Participation**

Dear Respondent

The sole purpose of this questionnaire is to obtain data on the role of land governance in improving tenure security in Zambia with specific focus on the need for a strategic framework for preventing land conflicts. The answers provided in this questionnaire will be purely for academic purposes and will be kept **CONFIDENTIAL**. Your kind assistance will be highly appreciated.

**SECTION A: GENERAL INFORMATION**

What is the name of your institution and/or department?.....

How long have you worked for this institution?.....

What is the role of your institution in land governance?.....

**SECTION B: LAND CONFLICTS AND TENURE SECURITY**

2.1.a| What do you think about the incidence of state land conflicts in the country in general and in your district in particular?

- 1 = Occurring with greater frequency
- 2 = Not occurring with greater frequency

2.1.b| If the answer to question 2.1a is **1** (occurring with greater frequency), what are the types of state land conflicts occurring with greater frequency? (Mark the answer[s] with ranking **A, B, C & D**: **A = the most frequent land conflicts; B = the second most frequent land conflicts; C = the third most frequent land conflicts; and D = the least frequent land conflicts**)

1 = Boundary conflicts.....

- 2 = Multiple allocation of land .....
- 3 = Invasion of idle or undeveloped private or public land.....
- 4 = Eviction by private landlord.....
- 5 = Eviction by Government Agency.....
- 6 = Violent land acquisition by political cadres.....
- 7 = Inheritance conflicts.....
- 8 = Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc., and some government officials).....
- 9 = Other: specify.....

2.1.c) What are the causes of state land conflicts? (Mark the answer[s] with **X**)

- 1 = Insufficient information to the public on land allocation procedures and land laws / land rights.....
- 2 = Insufficient monitoring of land use.....
- 3 = Limited access to land, especially by the poor.....
- 4 = Insufficient supply of affordable and legally recognized land.....
- 5 = Missing or inaccurate land surveying: please specify.....
- 6 = Minimal cadastral coverage.....
- 7 = Poor record keeping.....
- 8 = Land records not being updated consistently.....
- 9 = Missing, outdated or only sporadic township layout plans: please specify.....
- 10 = Opaque and cumbersome procedures involved in land allocation.....
- 11 = Other: specify.....

(I would appreciate if you could provide some land conflicts cases, if available)

2.2 Do you think Land Conflict Resolution Mechanisms (High Court, Subordinate Court, Lands Tribunal, Arbitration, and Mediation Annexure) are resolving state land conflicts effectively and efficiently? Please explain.....

2.3 Do you think state land conflicts are leading to land tenure insecurity (situation where land users are in danger of losing their land)? Please explain.....

2.4 Is the present land governance system able to prevent state land conflicts? Please explain  
.....

2.5 Do you think state land delivery in the country is based on the principle of equity? Justify your answer.....

**SECTION C: INFORMATION ON LEGAL FRAMEWORK**

3.1.a| Could you provide information on relevant land law(s) guiding state land governance.  
.....

3.1.b| What challenges is your institution finding in implementing these/this land law(s)?  
.....

3.2 Are/is the land law(s) guiding state land governance adequate? Please explain.....

**SECTION D: INSTITUTIONAL AND OPERATIONAL ASSESSMENT**

4.1 Which among the following problems is your institution facing (Mark the answer[s] with X)?

- 1 = Weak co-ordination among public land institutions: please specify.....
- 2 = Low qualifications of public employees.....
- 3 = Low wages.....
- 4 = Insufficient staff: please specify .....
- 5 = Insufficient technical equipment and transport: please specify.....
- 6 = Inadequate funding from government: please specify.....
- 7 = Political interference: please specify.....
- 8 = Other: please specify.....
- 9 = None of the above.....

**SECTION E: ASSESSMENT OF TECHNICAL ISSUES**

The Ministry of Lands, Natural Resources and Environmental Protection installed the Zambia’s Integrated Land Management and Information System (ZILMIS).

5.1 When was the system installed.....

5.2 How has been its performance so far in terms of enhancing security of tenure for state land? Please explain.....

5.3.a| Has ZILMIS been connected to all the Ministry Provincial offices? Please explain.....

5.3.b| Has ZILMIS been connected to other public land institutions, that is, Ministry of Local Government and Housing, Land Resettlement Department etc.? Please explain.....

**SECTION F: WAY FORWARD**

6.1 What recommendations would you make to enable the efficient and effective prevention and resolution of land conflicts in Zambia?.....

***End of Questionnaire: Thank you very much for your participation!***

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**Questionnaire for Politicians (Councillors)**

**Title: Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts**

Table below to be completed by Respondent

Name of Respondent (Optional)	
Contact Details: Email Address, Cell No.	
Date (DD/MM/YYYY)	

Request for Participation

Dear Respondent  
 The sole purpose of this questionnaire is to obtain data on the role of land governance in improving tenure security in Zambia with specific focus on the need for a strategic framework for preventing land conflicts. The answers provided in this questionnaire will be purely for academic purposes and will be kept **CONFIDENTIAL**. Your kind assistance will be highly appreciated.

**SECTION A: GENERAL INFORMATION**

What is the name of your ward?.....

How long have you been councillor in this ward?.....

**SECTION B: LAND CONFLICTS AND TENURE SECURITY**

2.1.a| What do you think about the incidence of state land conflicts in the country in general and in your district in particular?

- 1 = Occurring with greater frequency
- 2 = Not occurring with greater frequency

2.1.b| If the answer to question 2.1a is **1** (occurring with greater frequency), what are the types of state land conflicts occurring with greater frequency? (Mark the answer[s] with ranking **A, B, C & D: A = the most frequent land conflicts; B = the second most frequent land conflicts; C = the third most frequent land conflicts; and D = the least frequent land conflicts**)

- 1 = Boundary conflicts.....
- 2 = Multiple allocation of land .....
- 3 = Invasion of idle or undeveloped private or public land.....
- 4 = Eviction by private landlord.....
- 5 = Eviction by Government Agency.....
- 6 = Violent land acquisition by political cadres.....



- 7 = Inheritance conflicts.....
- 8 = Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc., and some government officials).....
- 9 = Other: specify.....

2.1.c| What are the causes of state land conflicts? (Mark the answer[s] with **X**)

- 1 = Insufficient information to the public on land allocation procedures and land laws / land rights.....
- 2 = Insufficient monitoring of land use.....
- 3 = Limited access to land, especially by the poor.....
- 4 = Insufficient supply of affordable and legally recognized land.....
- 5 = Missing or inaccurate land surveying: please specify.....
- 6 = Minimal cadastral coverage.....
- 7 = Poor record keeping.....
- 8 = Land records not being updated consistently.....
- 9 = Missing, outdated or only sporadic township layout plans: please specify.....
- 10 = Opaque and cumbersome procedures involved in land allocation.....
- 11 = Other: specify.....

(I would appreciate if you could provide some land conflicts cases, if available)

2.2 Is the present land governance system able to prevent state land conflicts? Please explain  
.....

2.3 Do you think state land conflicts are leading to land tenure insecurity (situation where land users are in danger of losing their land)? Please explain.....

2.4 Do you think state land delivery in the country is based on the principle of fairness and equity? Justify your answer.....

**SECTION C: INFORMATION ON LEGAL FRAMEWORK**

3.1.a| Could you provide information on relevant land law(s) guiding state land governance.  
.....

3.1.b| What challenges are the public land institutions finding in implementing these/this land law(s)?.....

3.2 Are/is the land law(s) guiding state land governance adequate? Please explain.....

**SECTION D: ASSESSMENT OF GOVERNMENT ACTION IN THE FIGHT AGAINST CORRUPTION**

4.1 Do you think there is corruption in state land delivery system? Please explain.....

4.2 How Effective and Efficient is the current government's actions in the fight against corruption? Please explain.....

- 1 = Very Effective and Efficient
- 2 = Somewhat Effective and Efficient
- 3 = Very Ineffective and Inefficient
- 88 = Don't Know
- 77 = No Response

4.2 How transparent do government land institutions allocate state land? Please explain.....

- 1 = Very Transparent
- 2 = Somewhat Transparent
- 3 = Not Transparent
- 88 = Don't Know
- 77 = No Response

**SECTION E: WAY FORWARD**

5.1 What recommendations would you make to enable the efficient and effective prevention and resolution of land conflicts in Zambia?.....

***End of Questionnaire: Thank you very much for your participation!***

**Questionnaire for Land Conflict Resolution Mechanisms**

**Role of Land Governance in Improving Tenure Security in Zambia: Towards a Strategic Framework for Preventing Land Conflicts**

Table below to be completed by Respondent

Name of Respondent (Optional)	
Position of Respondent in the Institution	
Contact Details: Email Address, Cell No.	
Date (DD/MM/YYYY)	

**Request for Participation**

Dear Respondent

The sole purpose of this questionnaire is to obtain data on the role of land governance in improving tenure security in Zambia with specific focus on the need for a strategy for preventing land conflicts. The answers provided in this questionnaire will be purely for academic purposes and will be kept **CONFIDENTIAL**. Your kind assistance will be highly appreciated.

What is the name of your institution/organisation?.....

How long have you worked for this institution/organisation?.....

What is the role of your institution/organisation in land governance?.....

**SECTION B: LAND CONFLICTS AND TENURE SECURITY**

2.1.a| What do you think about the incidence of state land conflicts in the country in general and in your district in particular?

- 1 = Occurring with greater frequency
- 2 = Not occurring with greater frequency

2.1.b| If the answer to question 2.1a is **1** (occurring with greater frequency), what are the types of state land conflicts occurring with greater frequency? (Mark the answer[s] with ranking **A, B, C & D: A = the most frequent land conflicts; B = the second most frequent land conflicts; C = the third most frequent land conflicts; and D = the least frequent land conflicts**)

- 1 = Boundary conflicts.....
- 2 = Multiple allocation of land .....
- 3 = Invasion of idle or undeveloped private or public land.....
- 4 = Eviction by private landlord.....
- 5 = Eviction by Government Agency.....

- 6 = Violent land acquisition by political cadres.....
- 7 = Inheritance conflicts.....
- 8 = Illegal allocation of land (e.g. by some politicians such as councillors, ruling political party officials etc., and some government officials).....
- 9 = Other: specify.....

2.1.c| What are the causes of state land conflicts? (Mark the answer[s] with **X**)

- 1 = Insufficient information to the public on land allocation procedures and land laws / land rights.....
- 2 = Insufficient monitoring of land use.....
- 3 = Limited access to land, especially by the poor.....
- 4 = Insufficient supply of affordable and legally recognized land.....
- 5 = Missing or inaccurate land surveying: please specify.....
- 6 = Minimal cadastral coverage.....
- 7 = Poor record keeping.....
- 8 = Land records not being updated consistently.....
- 9 = Missing, outdated or only sporadic township layout plans: please specify.....
- 10 = Opaque and cumbersome procedures involved in land allocation.....
- 11 = Other: specify.....

(I would appreciate if you could provide some land conflicts cases, if available)

2.2 Do you think state land conflicts are leading to land tenure insecurity (situation where land users are in danger of losing their land)? Please explain:.....

2.3 Is the present land governance system able to prevent state land conflicts? Please explain..

2.4 Do you think state land delivery in the country is based on the principle of fairness and equity? Justify your answer.....

**SECTION C: INFORMATION ON LEGAL FRAMEWORK**

3.1.a| Could you provide information on land law(s) guiding state land conflict resolution.  
.....

3.1.b| What challenges is your institution finding in implementing this/these land law(s)?...

3.2. Are/is the land law(s) guiding state land conflict resolution adequate? Please explain.....

**SECTION D: INSTITUTIONAL AND OPERATIONAL ASSESSMENT**

4.1 Which among the following problems is your institution facing (Mark the answer[s] with **X**)?

- 1 = Low qualifications of employees.....
- 2 = Low wages.....
- 3 = Insufficient staff.....
- 4 = Inadequate funding from government.....
- 6 = Political interference.....
- 7 = Inadequate Transport.....
- 8 = Other: please specify:.....
- 10 = None of the above.....

4.2 Do you have a public awareness programme? Please explain:.....

4.3 Is there a training programme for staff to undertake refresher training in various land dispute resolution mechanisms? Please explain:.....

**SECTION E: STRUCTURE OF THE INSTITUTION**

5.1 Do you think your institutional structure (or mode of operation) is too centralised? Please explain:.....

**SECTION F: PERFORMANCE OF THE INSTITUTION**

6.1 Do you think the land cases lying with your institution were taking too long before being heard? Please explain:.....

6.2 On average how long does it take to resolve a land conflict?

- 1 = Less than 1 month.....
- 2 = Between 1 month and 3 months: specify.....
- 3 = Between 3 months and 6 months: specify.....
- 4 = Between 6 months and 1 year (specify.....
- 5 = Between 1 year and 2 years (specify.....
- 6 = Over 2 years (specify.....

**SECTION G: WAY FORWARD**

7.1 What recommendations would you make to enable the efficient and effective prevention and resolution of land conflicts in Zambia?.....

***End of Questionnaire: Thank you very much for your participation!***

## **Appendix B: Selected Land Conflict Cases Reported in the Media**

1. Residents living near Star Cottage Office of the President in Lusaka West are living in fear following continuous harassment from some government officials. This follows controversy over land demarcation between the Office of the President land and the community along Mumbwa Road. The people claim officers are in the habit of firing live ammunition to scare the people who have lived on the land since the 1950s. The residents claim some Office of the President staff are threatening settlers way beyond their territory. Retrieved November 14, 2016, from <http://www.muvitv.com/2016/09/25/live-ammunition-allegedly-being-fired-to-scare-away-lusaka-west-residents-over-land/>.
2. PF cadres have continued with impunity their plans to demarcate and allocate plots on a piece of land outside Lusaka's Matero Gym. But Matero Member of Parliament, Lloyd Kaziya has warned the cadres to desist of face the law. Mr. Kaziya says it is an acceptable for the cadres to share the land meant for the construction of a civic centre in Matero. Retrieved November 14, 2016, from <http://www.muvitv.com/2016/10/01/pf-cadres-demarcate-matero-gym-land/>.
3. Illegal land dealings have continued in Lusaka with a graveyard in Fumbelo Settlement of Lusaka's Kabanana area being demarcated into plots. The situation has angered several residents in the area who have since stormed the graveyard to demolish and burn some structures that some people have been erecting. And sub-headman Sando Nyekele has vowed not to tolerate the illegality and has since told the village security Fackson Phiri who is at the helm of the vice to immediately refund the money. Retrieved November 14, 2016, from <http://www.muvitv.com/2016/09/27/illegal-land-allocation-continues-as-grave-yard-is-demarcated-into-plots/>.
4. Over one thousand settlers of Chembe west in Kalulushi District (Copperbelt Province) have been ordered to vacant the farms to pave way for the establishment of a game park. But the settlers have vowed to disregard the order saying they have lived on the land since 1973. Retrieved November 14, 2016, from <http://www.muvitv.com/2016/07/18/kalulushis-chembe-settlers-face-eviction/>.

5. Confusion reigned as Patriotic Front (PF) Deputy Secretary Mumbi Phiri attempted to alert her own cadres of the pending demolition of structures illegally constructed in Lusaka's Lilayi area. Ms Mumbi had gone to the area to notify the PF cadres that the Lusaka City Council (LCC) intends to demolish the structures. However, the cadres found on site exchanged bitter words with Ms Mumbi saying the said piece of land was given to them by President Edgar Lungu. The irate cadres have since threatened that they are ready to kill over the same land. Retrieved November 14, 2016, from

<http://www.muvity.com/2016/08/02/confusion-reigns-as-pf-deputy-sg-mumbi-phiri-pf-cadres-exchange-words-over-land/>.

6. A wrangle concerning the ownership of a sub-divided land on Miller Farm in Lusaka's Lilayi area has continued. Families squatting on the land are now calling upon the Ministry of Local Government and Housing to offer them title deeds. But suspected political party cadres have allegedly grabbed the land claiming to have been instructed by the Minister of Local Government and Housing. Retrieved November 14, 2016, from

<http://www.muvity.com/2016/07/23/miller-farm-land-in-lusakas-lilayi-area-in-ownership-controversy/>.

7. A Land wrangle has erupted between one family and one hundred fifty squatters in Lusaka West area. The squatters are claiming the family is threatening to demolish their houses after purportedly acquiring a letter of offer from Ministry of Lands for the land they have occupied for decades. But the family has accused the squatters, majority of them reported to be political cadres of selling out their land illegally. Retrieved November 14, 2016, from

<http://www.muvity.com/2016/06/27/150-families-face- eviction-in-land-dispute/>.

8. Scores of Kitwe's Mindolo North residents whose houses were demolished in 2014 for being built on a disputed land have resurfaced with claims that government has authorised them to settle on the piece of land. The residents led by Vice chairperson Elizabeth Musonda stormed Muvi TV office in Kitwe demanding that President Edgar Lungu intervenes in their case. She says it is unfair that a huge chunk of land belonging to Phoenix materials has remained undeveloped for many years when they are desperate to build houses. But Kitwe city council has expressed sadness that the residents have remained adamant on settling on privately owned land with impunity. Retrieved November 14, 2016, from

<http://www.muvity.com/2016/06/23/displaced-kitwe-residents-return-to-disputed-land/>.

9. The Chipata Municipal Council has again been entangled in another land dispute for allocating commercial plots in front of the Zambia Revenue Authority (ZRA) entrance in Chipata. The local authority has since given out offer letters to traders allowing them to build shops on the site. The Chipata Municipal Council has refused to comment on the matter. Early this year, the local authority gave out land on a gazzetted road. Retrieved November 15, 2016, from <http://www.muivitv.com/2016/06/23/chipata-council-in-another-land-scam/>.

10. Over Five hundred residents of Humphrey Mulemba area in Solwezi (North Western Province) who are allegedly squatting on the Zambia Air Force (ZAF) land meant for an airstrip have been given a week's ultimatum to vacate the area. Area ward councilor, Nathan Kamwandi has warned the residents to move out in a week's time or face demolitions. Mr. Kamwandi who is also Solwezi deputy Mayor says it is unreasonable for the residents to demand for amenities like clinic, roads, schools and water supply in an illegal area. The development has however saddened the residents who claim Vice President Inonge Wina in July this year directed that the residents be given offer letters. Retrieved November 15, 2016, from <http://www.muivitv.com/2016/11/12/over-five-hundred-solwezi-residents-face- eviction/>.

11. Unknown people have threatened investigators and Muvi TV Journalist Njenje for unearthing the land scam in Kasama (Northern Province). Meanwhile sources from the Ministry of Lands in Kasama have revealed that over one hundred plots have been shared by senior government officials. Retrieved November 15, 2016, from <http://www.muivitv.com/2016/10/06/investigators-muvi-tv-journalist-threatened-over-kasama-land-story/>.

12. Settlers of Zombe Village in Lusaka West say they will not vacate the land despite government issuing them with an official written ultimatum. The settlers who were initially issued with the a verbal 15-day ultimatum which ended on Friday last week, have now been written to by the Ministry of Lands, telling them to vacate the land by November 15, 2016 failure to which they will be forced out. In September this year, Government through State Police demolished over 20 houses for the settlers on the land belonging to Star Cottage College of Lusaka West. Meanwhile, a senior citizen living in Zombe village of Star cottage college area Loyce Mumba has further appealed for help from government and other well-wishers to assist her with some tents to make up a shelter following the demolition of her house a month ago. Like others, Ms Mumba who has settled on the land since 1955 has been



spending nights in the cold and now fears the rains might find her outside as she has nowhere to go. Retrieved November 15, 2016, from

<http://www.muvitv.com/2016/11/07/zombe-village-settlers-vow-to-ignore-fresh-ultimatum/>.

13. Residents of Zombe Village of Lusaka West have rioted following the demolition of their houses. Over 100 houses were demolished. The residents have damaged vehicles in the process resulting in police arresting some people. The demolition follows the expiry of the 15-day ultimatum issued by Lands Minister Jean Kapata for them to vacate the land. A MUVI TV NEWS CREW which rushed to the area found vehicles belonging to AVIC International damaged. Some victims spoken to have complained of what they have called unfair treatment by government. On Tuesday night the residents approached the night with anxiety fearing for the worst. The residents who have been occupying the land since 1950s are now being told to vacate as the place has been sold to the Office of the President. Some of the affected settlers have still maintained that they will not vacate the land. Retrieved November 17, 2016 from <http://www.muvitv.com/2016/11/16/zombe-village-residents-riot-as-their-houses-are-demolished/>.

14. Displaced Zombe residents in Lusaka West, whose houses were demolished on 15th November, 2016 have expressed anger over President, Lungu's silence on their plight. Issac Mphanga one of the affected residents says it is surprising that the head of state on Thursday choose to inspect the drainage projects in Lusaka when they are sleeping outside after their houses were demolished at star cottage. He says the President should realise that he was elected to serve all citizens. A check by MUVI TV news found the homeless Zombe residents sleeping outside urging government to find them land. Retrieved November 26, 2016 from <http://www.muvitv.com/2016/11/26/displaced-zombe-residents-still-hopeful-of-president-lungus-intervention/>.

15. Over two hundred houses in Lusaka's Makeni Simson area are on the verge of demolition. This is because the houses were built on private land belonging to Evans Zulu. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/11/02/over-200-houses-earmarked-for-demolition-in-lusakas-makeni-area/>.

16. Confusion reigned at the Dola Hill plots in Ndola (Copperbelt Province), after bailiffs forced workers of a land developer, Ronald Kombe out of the premises. The bailiffs were using a writ of possession to pave way for a Chinese national, to take the premises. The bailiffs, who are representing the Chinese national, forced the workers out of Mr. Kombe's premises before ordering a stop to the construction. Mr. Kombe labored to explain that the bailiffs wrongly served him the writ of possession. Mr. Kombe bought the land in 2012. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/11/03/confusion-reigns-at-ndolas-dola-hill-plots-after-bailiffs-visit/>.

17. An individual has allegedly encroached on land meant for Lusaka Water and Sewerage Company boreholes in Leopards Hill area. The boreholes supply water to Nyumba Yanga, Ibex Hill and parts of Woodlands. The said individual has since put up a structure on the land near the boreholes. Lusaka Water and Sewerage company Manager Marketing and Public Relations Topsy Sikalinda says this puts residents of the mentioned areas at future risk of having no water supply. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/10/29/lusaka-boreholes-encroached/>.

18. Hundreds of alleged illegal squatters are facing a looming eviction from a piece of land owned by a former civil servant in Livingstone (Southern Province). This follows a battle between David Gwanda and a man named John Phiri who claims that he equally acquired the land from the local authority. Livingstone City Council has however clarified that the rightful owner of the land is Mr. Gwanda. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/10/20/hundreds-of-squatters-face- eviction-in-livingstone/>.

19. Land wrangles in the country may turn bloody if nothing is done to address the disputes which have reached crisis levels. Owner of a piece of land in Lusaka West Dolomite area is living in fear following threats on his life. This comes after demolition of houses which were at various levels of construction by squatters who had invaded his land. Jack Kalala says he is now living in fear of his life. Meanwhile, six people have appeared in Lusaka Magistrate Court for criminal trespass at a private property in Lusaka West. The six are among the 295 people who were arrested on 12th October 2016 for land encroachment at Dolomite Land. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/10/20/lusaka-land-owner-threatened-over-demolished-houses/>.

20. Residents of Lusaka's SOS area are annoyed with the Councillor's suggestion that the houses constructed on the alleged illegally acquired land be demolished. Over 50 houses are earmarked for demolition for being constructed on land meant for the construction of social amenities. But residents have vowed to effect the citizens' arrest on the area councillor, Kelvin Kaunda if he attempts to have the houses demolished. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/10/10/over-50-houses-earmarked-for-demolition-in-lusakas-sos-area/>.

21. More than 200 families in Namalombwe Ward of Lusaka West are threatened with displacement. The said families are occupying land belonging to some private individual who is demanding K18, 000.00 (US\$ 1780.00) for each plot. The settlers have since been given up to October to pay or be evicted. Their pleas to have the charges reduced have, however, fallen on deaf ears. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/07/05/over-200-lusaka-west-families-face-eviction/>.

22. Several structures have been demolished in Lusaka's Chipata compound. Among the demolished structures include a state of the art shop and unfinished houses. Lusaka City Council deputy Mayor Chilango Chitangala says the structures were illegally constructed. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/11/08/several-lusakas-chipata-compound-illegal-structures-demolished/>.

23. Lusaka District Commissioner Captain Davison Mulenga has reiterated his threats to demolish buildings that are under construction on ZAFFICO forest land. Captain Mulenga has warned the residents of Lusaka's Matero Constituency to stop the construction, saying the land in question belongs to a private individual of Indian origin. About four months ago, residents of forest compound began the construction of shops on ZAFFICO land claiming they were given by late President Micheal Sata. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/11/04/lusaka-dc-reiterates-vows-to-demolish-zafico-forest-land-illegal-structures/>.

24. The illegal construction of shops on ZAFFICO forest land in Lusaka's Matero Constituency has continued despite several threats by local authorities to demolish the structures. Those constructing the shops have vowed not to stop claiming that government has failed to disclose the legal owner of the land. Group leader Mwape Nkaka says Forest

residents suspect corruption on the land in question. In September this year, Lusaka District Commissioner Captain Davison Mulenga, Matero MP Lloyd Kaziya and Mwembeshi ward councilor Kelvin Kaunda warned the residents to halt construction. Retrieved December 16, 2016 from <http://www.muvitv.com/2016/12/illegal-construction-of-shops-on-lusakas-zafico-land-continues/>.

25. The ministry of lands has admitted that there was an error in the way the issue of property number 2027 of Shifwankula village was handled. Lands Public relations officer Diniwe Zulu says Meta blocks company management claiming ownership of the property also sold it to a named individual who did not know the land was already occupied. This came to light when the ministry called for a meeting with land taskforce and the shifwankula village residents. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/04/02/lands-ministry-admits-error-in-allocation-of-shifwankula-land/>.

26. Residents of Lusaka's Chalala Township have appealed to the Lusaka City Council (LCC) to urgently respond to the court order to demolish a wall fence built on a piece of land meant for public facilities. Community leader Isaac Mwape explains that the local authority won the court case after it was sued by private developers for revoking the land offer. Mr. Mwape says the council has been delaying to execute the court order making it difficult for residents to access the health facility. Retrieved November 15, 2016, from <http://www.muvitv.com/2016/11/15/lcc-urged-to-demolish-wall-fence-built-on-land-meant-for-public-facilities/>.

27. Over 200 Makeni villa residents whose houses are earmarked for demolition have reported the owner of the land to the anti-corruption commission (ACC). Affected Residents' Chairperson, Cosmo Mumba says they have decided to report the matter to ACC allegedly because Ben Chundu illegally acquired the land in question. This is despite the high court passing a ruling in Mr. Chuundu's favor that he was the rightful owner of the land. Retrieved November 17, 2016 from <http://www.muvitv.com/2016/11/16/lusakas-makeni-villa-land-wrangle-persists/>.

28. Anxiety and fear continues to haunt more than 400 Lusaka's Makeni Villa families over the impending demolitions of their houses. The families illegally built their houses on

someone's piece of land whose ownership has been upheld by the Lusaka High Court. One of the squatters, Ired Banda admits that she and her colleagues acquired the land dubiously from political party cadres. She has since appealed to President Edgar Lungu to intervene before the families are thrown in the cold. Retrieved November 17, 2016 from

<http://www.muvitv.com/2016/10/15/pending-houses-demolition-fear-grips-makeni-residents/>.

29. Residents of Lusaka's Matero North have called on government to quickly demolish houses built on land reserved for the construction of a modern market. The residents say government should quickly act on the matter so that the construction of the market can commence immediately. Retrieved November 26, 2016 from

<http://www.muvitv.com/2016/10/13/lusakas-matero-north-residents-call-for-demolition-of-illegal-houses/>.

30. Several families from Kabwe's Aerodrome area (in Central Province) have been left homeless after Court bailiffs demolished their houses. The affected families were shocked after the uncompromising bailiffs ordered them to vacate their houses. The situation forced the affected residents to riot and in the process setting ablaze two ZESCO poles which supply power to ZALCO, the company behind the demolition of the houses. Police had to fire teargas canisters to disperse the irate residents. Retrieved November 26, 2016 from

<http://www.muvitv.com/2016/11/18/several-kabwes-aerodrome-families-left-in-the-cold-after-demolition-of-their-houses/>.

31. Kabwe Central Member of Parliament Tutwa Ngulube has called for the suspension of plans to develop the reserved piece of land between Zambezi and Chilubi island streets in Kabwe's Highridge suburb. The land in question is believed to be developed by private developer called Her Space Bar Beauty Parlor and Gym. Representing the Beauty Parlor, Godrich Machuta, disclosed that his firm acquired the portion of land in dispute from Zambia Railways on a three year lease agreement. Machuta who is also Luasanse Patriotic Front ward councilor further indicated that the formalities to start construction works at the play park were met. He adds that his firm submitted necessary documentations to the local authority, Kabwe Municipal Council to facilitate the commencement of the construction work. Retrieved December 05, 2016, from

<http://www.muvitv.com/2016/12/04/kabwe-law-maker-calls-for-suspension-of-construction-works-on-reserved-land/> .

32. Stakeholders in Kabwe have expressed concern at the delay by law enforcement agencies to bring to book people behind the illegal sale of Mpima graveyard in which developers exhumed human remains with impunity. New Covenant Churches Christian life Centre Bishop Davis Malulu says it is morally wrong for people to start tampering with the final resting place for the departed souls. And Prominent Kabwe Lawyer Mulilo Kabesha has continued to demand that the law enforcement agencies should bring to book the culprits involved in the vice. And, Kabwe Central Member of Parliament, Tutwa Ngulube has challenged security and law enforcement agencies to fish out the involved culprits. Retrieved December 06, 2016, from <http://www.muvitv.com/2016/11/29/delayed-action-on-mpima-graveyard-encroachers-angers-kabwe-stakeholders/>.

33. Secret operations have engulfed the corrupt story in which some senior Government employees have illegally shared the land in Kasama (Northern Province). Earlier, Northern Province Minister Brian Mundubile sounded in support of the Ministry of Lands who are alleged to have corruptly selected a list of senior civil servants as beneficiaries for the Forest 47. The Anti-Corruption Commission (ACC) has been ordered to carry out investigations over the matter. Retrieved December 06, 2016, from <http://www.muvitv.com/2016/12/06/secret-operations-allegedly-engulf-kasama-land-issue/>.

34. The escalating illegalities and corruption in land administration has reached alarming levels in Lusaka. Retrieved December 23, 2016, from <http://www.muvitv.com/2016/12/lusaka-land-illegalities-reach-alarming-levels/>.

35. While some illegal built houses have been demolished in some parts of the country, in Livingstone (Southern Province) people are building on illegally acquired land with impunity. The residents are constructing on a piece of land that recently led to the firing of some to officials at Livingstone council. Muvi TV News has been following the issue which seems unchecked by relevant authorities despite the case raising public concern. Retrieved December 23, 2016, from <http://www.muvitv.com/2016/12/illegal-construction-of-houses-rampant-in-livingstone/>.