

AN ANALYSIS OF THE STATUTES GOVERNING ZAMBIA'S LAND TENURE SECURITY: REGULATOR AND LAND INVESTOR CONFLICTS

by

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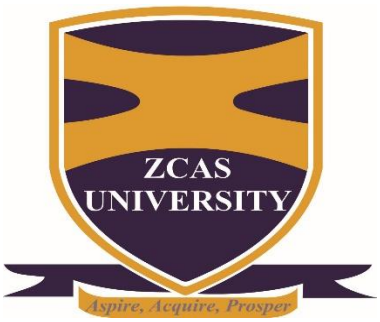
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TURNITIN REPORT



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By

Jessica Chisampala

Entitled:

An Analysis of the Statutes Governing Zambia's Land Tenure Security: Regulator And Land Investor Conflicts

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DEDICATION

This dissertation is dedicated to my miracle son, Mikel Malumbo Kangwa, born 13th May 2025. When I enrolled for this master's program, my prayer was that studies would take away the thought of being barren and sorrow. But God had other plans instead I conceived you during my first semester and in formulating my research topic.

You are a living proof that Gods plans are always higher than ours. You turned long nights of research into nights of wonder, and every chapter I wrote was fueled by the hope of the future you represent.

May you grow to know your land rights and the tenure of your land always. You were prayed for and loved beyond measure even before you were born.

John 1:4, "In him was life, and that life was the light of all mankind." 'Amalumbo kuli Lesa' meaning Glory to God.

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ABSTRACT

The law as it relates to land tenure plays an important role in determining the certainty of rights held in land. It has a pivotal role that promotes investment confidence and economic development. In the Republic of Zambia, there is a dual tenure system of land administration that recognises leasehold and customary tenure. While both forms of tenure are recognised by statutory law, there persists legal and institutional uncertainties that affect the security of rights held in land.

Primarily, security of tenure should be adequately provided for in the statutory law that governs it. Despite the foregoing, land tenure in Zambia gives rise to conflicts between regulators and land investors in Zambia. This research examines the extent to which the recognised forms of land tenure in Zambia are considered secure. It will delve into the existing statutory and institutional frameworks that govern tenure security to provide the reader with a better understanding of the concept.

This research further assesses the concept of security of tenure by identifying key characteristics of secure rights in land including, legal recognition, the certainty of outer most boundaries and the protection from third party interference among others.

Ultimately, this research will analyse statutes and academic writings to assess the efficacy of Zambia's dual land tenure system against the indicators it will identify.

TABLE OF STATUTES

The Chiefs Act, Chapter 287 of the Laws of Zambia.

The Constitution of Zambia (Amendment) Act No. 2 of 2016.

The Lands Act, Chapter 184 of the Laws of Zambia.

The Lands Acquisition Act, Chapter 189 of the Laws of Zambia.

The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.

CHAPTER ONE

1.1 INTRODUCTION

Real property remains a central pillar of Zambia's economic development, underpinning key economic sectors such as agriculture, mining, infrastructure, and real estate, all of which depend heavily on secure and predictable land rights. In this context, the regulatory frameworks governing land administration and investment play a crucial role in shaping the extent to which land tenure security is guaranteed for investors.

The viability of land-based investment depends largely on the investor's ability to acquire and retain enforceable legal interests in land. Among the principal considerations for investors are the certainty of their rights, the predictability of the regulatory environment, and the degree of legal protection afforded to their investments. Therefore, the tenure under which land is held is a crucial factor that could potentially affect investor confidence in rights to land that are legally protected for a significant period to justify committing capital.

This research is particularly relevant, as it examines the principal statutes governing land tenure. Further, it highlights the tension between State control over land and the need to protect lawful interests in land.

1.2 BACKGROUND

For contextual purposes, 'tenure' refers to the conditions on which land is held. Such conditions include but are not limited to the regulation of acquisition, use, and term and the distribution of rights. Rights of tenure may include rights to make permanent improvements, transact, give, mortgage, lease, rent, and bequeath areas of exclusive use.[1]

The evolution of land tenure security and the principal regulatory frameworks that govern land rights in Zambia is deeply rooted in the country's dual land tenure system, which has persisted

[1] Martin Adams, Faustine Kalabamu, & Richard White, '*Land Tenure Policy and Practice in Botswana-Governance Lessons for Southern Africa*' (Austrian Journal of Development Studies, 2003) 57, https://doi.org/10.20446/JEP-2414-3197-19-1-55 accessed 1 June 2026.

from the colonial period to the present day. This is because ownership of land is limited by the common law and the local statutes that regulate land use.

Over the years, Zambia's real property laws have been through several reforms aimed at improving land administration. Since the 1st day of July 1975, all freehold estates were eradicated. At present, the Lands Act of 1995 recognises two categories of tenure, namely, state and customary land, the latter historically referred to as reserves and trust land. As such, there is no absolute ownership of land in Zambia.

This section briefly examines the legal nature of the rights enjoyable under each system and the degree of security afforded to those rights. The discussion includes but is not limited to the implications of each system in relation to land administration, ownership, transferability, and investment viability.

For the purpose of this research, it is important to distinguish between these two forms of tenure within the dual land tenure system of administration. This comparative analysis is particularly important in analysing the extent to which the legal frameworks governing Zambia's dual land tenure system provides adequate security and certainty to investors.

Firstly, this section examines the administration of land under statutory and customary tenure.

On the one hand, State land is administered for and on behalf of the people of Zambia by the President.[2] State land is primarily regulated by statutory law. The Commissioner of Lands exercises the power to make grants and dispositions of land and executes Presidential leases on behalf of the President in whom land is vested.

On the other hand, customary land is primarily held and administered in accordance with customary law, with traditional authorities exercising the administrative functions of supervisory

[2] The Lands Act 1995, s 3.

oversight over land for the benefit of the whole community. Chiefs, headmen, and other traditional authorities administer customary land in line with customs and local practices.[3]

Secondly, this discussion examines what is commonly referred to as 'ownership' under statutory and customary tenure, assessing whether the respective rights enjoyed amount to ownership in the legal sense.

In this regard, state land confers in the landholder an 'estate' in the land, rather than outright ownership of the land itself. In simpler terms, an estate refers to the time span during which a person is entitled to use and enjoy a parcel of land. It is against this premise that leasehold tenure must be understood.

Accordingly, individuals holding land under leasehold tenure do not own the land itself. Rather, they possess an estate in land, conferring rights of occupation, use, and enjoyment for a specified term.[4] In Zambia, the foregoing relates to what is known as land held under leasehold tenure for a fixed term of a certain duration, being 99 years.

Conversely, land held under customary tenure is communally held and allocated by traditional authorities based on '*usufruct*' rights, where individuals have access to land for use but do not possess absolute ownership.[5] Black's Law Dictionary defines a usufructuary right as "the temporary right of using a thing, without having the ultimate property or full dominion of the substance."[6]

The discussion next considers the transferability of both forms of land tenure. Against this premise, State land is freely alienable, subject to compliance with the laid down procedure for land assignments. A person that holds land under leasehold tenure may dispose of his estate in whatever

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[3] Bupe Soneka, '*Understanding Land Tenure in Zambia: What You Need to Know*' (2024) https://www.stratusltd.org/understanding-land-tenure-in-zambia-what-you-need-to-know/ accessed 7 June 2026.
[4] Fredrick Mudenda, *Land Law in Zambia: Cases and Materials* (UNZA Press 2007)
[5] Vernon Chinene, Fabian Maimbo, Diana Banda and Stemon Msune, '*A Comparison of Customary and Leasehold Tenure: Agriculture and Development in Zambia*' (Food and Agriculture Organization of the United Nations) https://www.fao.org/4/x1372t/x1372t07.htm accessed 9 April 2026.
[6] 'usufructuary right', Henry Campbell Black, *Black's Law Dictionary* (2nd edn, West Publishing Co. 1910) 1191.

way thinks fit, either by will or '*inter vivos*'.[7] As defined in Black's Law Dictionary, *inter vivos* refers to a situation where property passes by conveyance used to distinguish it from a case of succession or devise.[8] Accordingly, land held under statutory law can be leased, gifted, bought, and sold on the formal real estate market.[9]

Unlike state land, traditional land cannot be bought, sold or assigned in the same way. Rather, traditional rights are allocated through traditional leaders and can typically only be leased or inherited.

The customary system of land tenure primarily ensures equitable access and security of use, although rights are largely unregistered and dependent on recognition within the community. Further, the process of acquiring customary land involves negotiations with traditional leaders, who must balance the demands of their subjects against the pressure to convert land for commercial purposes.

The final aspect under consideration is the investment viability of the two forms of land tenure. Whilst State land operates under statutory law derived from English real property law, where rights are formalised through leasehold tenure and registration systems, creating a more individualised and market oriented approach to land ownership. The recognition of customary tenure does not bring about the registration of ownership rights, but only the protection of use and occupancy rights.

The significance of the forgoing contrast on the aspect of investment viability is that customary land administration in Zambia is simultaneously recognised by, yet largely detached from the formal legal system.

In the contemporary context, the regulatory landscape governing land tenure security is shaped by efforts to balance State control, investor interests, and community rights. However, the historical

[7] Robert Megarry & William Wade, *The Law of Real Property* (6th edn, Sweet & Maxwell Ltd 2000) 55.
[8] ibid.
[9] Bupe Soneka, '*Understanding Land Tenure in Zambia: What You Need to Know*' (2024) https://www.stratusltd.org/understanding-land-tenure-in-zambia-what-you-need-to-know/ accessed 7 June 2026.

evolution of the land tenure system reveals a pattern of reforms that have not fully reconciled these competing interests.

While these land reforms were initially welcomed for promoting equitable access to customary land, they introduced administrative complexities, restricted land transactions, and reduced incentives for development through foreign investment. The interaction between the principal legal frameworks continues to shape, and at times undermine, land tenure security.

In trying to address the shortcomings of the current land administration, a comprehensive study of the institutional and regulatory framework governing land tenure is necessary. By so doing, it will highlight the conflicts that land investors face in relation to regulators.

1.3 STATEMENT OF THE PROBLEM

Land in Zambia is predominantly held under customary tenure and yet remains primarily undeveloped. Although customary rights in land are legally recognized, they have not been comprehensively regularised by statutory law. As a result, customary interests in land have been rendered uncertain when contrasted with land held under statutory tenure. This is because State land creates enforceable interests in land for a defined period and customary land creates equitable access to land without formal documentation to show ownership. Therefore, uncertainty remains as to whether the nature of the rights held under customary tenure can sufficiently provide security for long term investment ventures.

1.4 RESEARCH OBJECTIVES

The objectives of the research are to:

(1). Provide an understanding of the concept of security of tenure.
(2). Examine the regulatory and institutional frameworks contributing to conflicts over land tenure security.
(3). Establish whether the current governing laws adequately protect all lawful interests in land.
(4). Propose reforms for enhancing land tenure security and increased investor confidence.

1.5 RESEARCH QUESTIONS

The questions of the research are as follows:

(1). What is tenure security?

(2). What are the regulatory and institutional frameworks that govern land tenure security in Zambia?

(3). What extents do the current governing laws protect lawful interests in land?

(4). What are the reforms for enhancing land security in Zambia?

1.6 SIGNIFICANCE OF THE STUDY

This study is significant as it contributes to the understanding of how regulatory frameworks impact land tenure security in Zambia, particularly in the context of legal uncertainty of rights in land. It provides a critical analysis of the legal and institutional gaps that undermine investor confidence and the effective protection of land rights, thereby offering valuable insights for law reform and policy development. This gap necessitates a focused examination of the impact of regulatory frameworks on land tenure security to improve legal certainty and investor confidence in Zambia. An analysis of the impact of the regulatory frameworks on land tenure security is therefore essential to understanding how legal and institutional arrangements contribute to or mitigate these conflicts. The purpose of this analysis is to identify and suggest reforms that can enhance legal certainty, promote sustainable investment, and strengthen Zambia's land governance system.

1.7 LITERATURE REVIEW

This literature review undertakes a detailed and critical examination of the interplay between regulatory and institutional frameworks that govern land tenure in Zambia, with a particular focus on the incoherence of the co-existing forms of tenure. Further, it will expound the legal uncertainty that comes about when customary land is converted to State land.

The dual tenure system is founded on Section 3 of the Lands Act which absolutely vests land in the President to be held by him in perpetuity for and on behalf of the people.[10] As observed by the Mungomba Constitutional Review Commission, such vesting, quite clearly, does not mean that the President is owner, but rather that he/she is trustee and administrator of the land. The President, therefore, does not own beneficial and proprietary interests. Rather, the President has are powers of regulation and administration.[11]

Martin Dixon noted that state land is that which confers a right to use and control land, being tantamount to ownership, but with the important difference that the type of estate that is owned will define the time for which the use and control of the land is to last.[12]

Conversely, Dr. Bastiaan van Loenen, noted the following about land held under customary tenure.

In customary areas in Zambia individual ownership, concurrent interests, and communal interests are recognized. Individual ownership means that the landholder or occupant has more rights and interests in the land than any other person. The individual owns the land for as long as he wishes. Concurrent interests occur where persons, other than the landholder, can go onto someone's land and use it for their own purposes. Communal interests involve the use of certain tracts of land, which are not individually owned.[13]

It follows that each form of land tenure is governed by distinct legal principles and administrative practices. The distinction between the two forms of land tenure gives rise to different legal consequences.

However, the recognition of customary tenure does not bring about the registration of ownership rights, but only the protection of use and occupancy rights.[14]Accordingly, Bupe Soneka noted that

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[10] The Lands Act of 1995, s 3.
[11] The Mungomba Constitutional Review Commission, '*Report of the Constitution Review Commission*' (2005) https://constitutionnet.org/sites/default/files/final_report_of_the_constitution_review_commission.pdf accessed 6 June 2026.
[12] Martin Dixon, *Modern Land Law* (12th edn, Routledge 2021) 7.
[13] Dr. Bastiaan van Loenen, '*Land Tenure in Zambia'* (University of Maine Department of Spatial Information Engineering, 1999) accessed 10 June 2026 https://www.researchgate.net/publication/242672704_Land_tenure_in_Zambia.
[14] ibid.

for many investors and businesses, state land offers a more secure and legally recognized form of ownership.[15]

Therefore, there is a desire by customary land occupants to legally document their rights to land to enjoy similar legal protections as those provided to holder of rights under leasehold tenure. For investors, the need to secure formal title often necessitates the conversion of customary land into leasehold tenure.

Further, the law permits foreign participation in land ownership primarily through investment vehicles such as registered companies or through qualification as investors under relevant legislation. As such, Section 3(3) of the Lands Act expressly prescribes the circumstances in which the President may alienate land to non-Zambians. Irrespective of the tenure under which land is held, the Lands Act permits the alienation of land to both citizens and non-citizens.

While statutory law vests this administrative authority in the President, the alienation of customary land often requires the consent of the traditional authorities. This is significant given the observation by Matt Sommerville and Others in article titled '*Documenting Customary Land Rights in Zambia: A Low-Cost Open Source Approach'*, where they noted that there is little guidance available for chiefs and headpersons on the specific responsibilities and limitations associated with this authority.

Despite being vested with such authority, the scholars that will follow agree that customary authority in the administration of land tenure exists within a legally ambiguous framework. The common ground among all these writings is that despite being an accepted, legitimate, and functioning part of state processes, it continues to operate largely without any documentation, rules, or legal support.[16]

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[15] Bupe Soneka, *Understanding Land Tenure in Zambia: What You Need to Know*, https://www.stratusltd.org/understanding-land-tenure-in-zambia-what-you-need-to-know/ accessed 7 June 2026.

[16] Matt Sommerville, M. Mercedes Stickler, Simon Norfolk, Terence Mothers, and Stephen Brooks, '*Documenting Customary Land Rights in Zambia: A Low-Cost Open Source Approach'* https://www.tenuresecurity.org/wp-content/uploads/2016/09/USAID_Land_Tenure_World_Bank_2016_Zambia_Open_Source.pdf accessed 7th June 2026.

Sommerville et al noted that a major limitation of this dual tenure system is that the two systems have limited ability to communicate with one another. Boundaries between land under leasehold titles and land under customary tenure are often ambiguous, despite legal requirements for the use of beacons and general plans and diagrams.[17]

Further, they noted that the 1995 Land Act has broadened the divide between state and customary land. Although it mainly addresses state land administration, it has a significant impact on customary land administration by its very omission of details on how customary land is to be administered. This legal uncertainty has important implications on Zambia's Investment Climate.

Tamara Tucker, in a Master Thesis titled *Contemporary Challenges of Customary Land Administration in Zambia* noted the four following shortcomings of customary land administration.

Firstly, the hierarchy between state and customary land is intensified because state land is protected by legislation and is accepted as collateral by lending institutions. In contrast, customary land remains unprotected by legislation, subject to ad hoc administration, and undocumented land allocations are unrecognized by lending institutions.

Second, by ushering in a land market in the mid-1990s, the Act led to continual increases in land values and demand for land. Neither is inherently negative, however, only the market value of state land is recognized. Officially, customary land is still not supposed to be sold. Consequently, for land to have market value it must first be converted to state land.

Thirdly, by acknowledging that chiefs hold land in trust, but without a definition of what that means in a practical sense, the Act leaves the role of the chief open to interpretation.

[17] ibid.

Fourthly, by requiring only the signature of the chief, without broader community consultation, to convert customary land to statutory, the Act contributes to an environment that encourages non-transparent land transactions, subject to corruption and alienation without consultation. [18]

The concern is further aggravated by the fact that most of the land in Zambia is held under customary tenure. To buttress this assertion, the 2023 Investment Climate Statements on Zambia noted that the majority of land is held under customary tenure and administered by traditional authorities. Further, the United States Agency for International Development, under their Tenure Assessment Tenure and Global Climate Change Program noted that although the statistics are conflicting, the bulk of Zambia's land is held under customary tenure.[19]

While both tenure systems recognise legally protected interests in land, investors may reasonably perceive land held under traditional tenure as less secure than leasehold tenure because of difficulties relating to enforceability of documentation, the inadequacy of the relevant state law, verification of physical extent and identifying persons lawfully entitled to hold, exercise, or transfer those interests.

Consequently, the dual system of land tenure significantly affects how investors perceive, access and secure legal interests in land in Zambia. The maintenance of two tenure systems, customary and leasehold tenure, present unequal rights to land among citizens, an indigenous form of land holding which is generally communal in character and another land holding that is regulated by statutes.

Nick Tagliarino, in article title Conversions of Customary Lands to Leasehold Titles, noted the following points:

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[18] Tamara Tucker, '*Contemporary Challenges of Customary Land Administration in Zambia*' (MA Thesis, Dalhousie University 2014) https://dalspace.library.dal.ca/bitstreams/12574856-02a6-4018-a418-4df2d84e549f/download accessed 10 June 2026.

[19] The United States Agency for International Development, '*Zambia Customary Land Documentation*' (Tenure Assessment Tenure and Global Climate Change Program, June 2017) https://www.tenuresecurity.org/wp-content/uploads/2018/02/USAID_LAND_TENURE_TGCC_ASSESSMENT_ZAMBIA_CUSTOMARY_LAND_DOCUMENTATION.pdf accessed 7 June 2026.

Firstly, that the 1995 Land Act is silent on whether converted land remains customary land under the authority of traditional leaders. In practice, however, converted land is treated as state land governed by the Land Commissioner. Additionally, he noted that it is unclear whether the grant of a leasehold title to converted land necessarily extinguishes all customary rights previously attached to the land.

Secondly, the Act prohibits the unlawful occupancy of land that is converted to leasehold title, which means that holders of customary occupancy rights must vacate converted land,[20] it neither states what effect a land conversion has on customary use rights nor whether converted land remains subject to customary law.[21]

Further, the Lands Act does not stipulate what becomes of converted land once leases expire. However, Simon Metcalfe noted that land once alienated from customary land to leasehold land cannot return to customary tenurial status so every time a private sector tourism or agricultural venture is established on customary land that land is permanently alienated with no provision for the chief or community to ensure the lease is managed effectively or performs according to the lease conditions.[22]

1.8 RESEARCH METHODOLOGY

This research is conducted using qualitative methods. It utilizes primary data such as statutory law which includes the Lands Act, the Lands Acquisition Act and the Lands and Deeds Registry Act. Additionally, it makes use of secondary sources in the form of books, journal articles, dissertations, text books, published legal and non-legal reports, working papers, theses, dissertations, law reviews, and various electronic sources.

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[20] The Lands Act of 1995, s9.

[21] Nick Tagliarino, '*Conversions of Customary Lands to Leasehold Titles – Zambia*' (Focus on Land in Africa, 2014) https://library.cepa.org.mw/natural-resources/conversions-of-customary-lands-to-leasehold-titles-zambia/#gid=tainacan-item-gallery-block_id-tainacan-item-attachments_id-1603&pid=1 accessed 7 June 2026.

[22] Simon Metcalfe, '*Landscape Conservation and Land Tenure in Zambia: Community Trusts in the Kazungula Heartland*', (African Wildlife Foundation Working Papers, 2005) 8. https://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/Kazungula_Community_Land_Trusts.pdf accessed 7 June 2026.

1.9 OUTLINE OF CHAPTERS

This research is tailored in the manner outlined here:

Chapter two examines the conceptual framework of tenure security. It will identify the characteristics of land that is secure in tenure. It also examines the relation between investment and secure property rights. Chapter three further analyses the regulatory and institutional frameworks governing land tenure. Thereafter, chapter four assesses the sources of conflict in relation to land tenure security. Finally, chapter five concludes the research by highlighting its findings and making recommendations.

1.10 CONCLUSION

This chapter aimed at providing context for the reader to better understand this research. The present chapter began by introducing the research. It then provided a background that outlines the current land tenure regime. Thereafter, it delved into a review of relevant literature and stated the problem that this research intends to address. Finally, it determined the methodology that this research shall use to better assess land tenure security.

This research is significant as it aims to analyse the legal and institutional frameworks that govern land tenure security. Further, this research highlights the legal and institutional gaps that promote the perception of uncertainty in land tenure security with the aim of proposing recommendations for increased protection.

CHAPTER TWO

THE CONCEPT OF LAND TENURE SECURITY AND INVESTMENT

2.0 INTRODUCTION

This chapter provides an understanding of the concept of land tenure security. It begins by examining the meaning of security of tenure in consideration of its theoretical components. Thereafter, it discusses the characteristics of land that is regarded as secure in tenure. Finally, the chapter examines whether security of tenure is a major consideration for investment.

2.1 DEFINING SECURITY OF TENURE

There is no universally accepted definition for security of tenure. Historically, the concept of security of tenure in the past strictly referred to land registration and formal title documentation. Under the traditional conception, secure land meant that the right held were formally recognised by the law and capable of registration.

More recently, a wider view has increasingly been accepted. Security of land tenure refers to the certainty that lawful occupants of land shall not be arbitrarily deprived of their right to use and enjoy that parcel of land. Accordingly, security of tenure has extended beyond land documentation to include the legal and institutional mechanisms that safeguard land rights.

Augustine Mulolwa argues that security of tenure does not arise from title, recording, nor from boundary demarcation but from the perception supported by legitimate and capable institutions.[23] Mulowa introduces the aspect of support by institutions that administer land tenure. Similarly, Security of tenure derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable.[24]

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[23] Augustine Mulolwa, '*Demystifying Customary Tenure in Zambia*' https://www.scribd.com/document/730467507/TENURE accessed 7 June 2026.

[24] Geoffrey Payne and Alain Durand-Lasserve, '*Holding On: Security of Tenure- Types, Policies, Practices and Challenges*' (Research Paper for the Special Rapporteur, 2012) https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/SecurityTenure/Payne-Durand-Lasserve-BackgroundPaper-JAN2013.pdf accessed 15 June 2026.

Therefore, tenure security possesses both objective and subjective positions. On the one hand, objectively, there must exist legal rules and institutions vested with the authority to recognise and protect rights in land. On the other hand, subjectively, the holder of land rights must be under the reasonable expectation that such rights will not be arbitrarily infringed.

For the purposes of this research, security of tenure refers to the degree of certainty at law and the institutional safeguards afforded to lawful interests in land.

2.2 THE CHARACTERISTICS OF LAND THAT IS SECURE IN TENURE

This discussion identifies the attributes that are associated with secure land tenure. The aim of this section is to provide indicators for assessing whether a particular form of tenure safeguards lawful rights in land.

The traditional view of tenure security reduces the concept to a single characteristic, being the possession of documentary evidence such as title deeds. In this regard, the contemporary view more accurately depicts that tenure security is a result of legal and institutional provisions that protect lawful rights held in land.

Accordingly, Paul van Asperen and Augustine Mulolwa observed that tenure security depends on a host of both objective and subjective factors, including the clarity with which rights and obligations are defined, the quality and validity of property rights records and whether or not the state guarantees them, the precision with which boundaries are demarcated, the likelihood that rights will be violated, and the ability to obtain redress by an authoritative institution in such cases, along with the assurance that whatever measures that institution decides are deemed appropriate and can be enforced effectively.[25]

This section observes that for a system of land administration to provide secure land tenure, the laws that govern land must contribute to good governance by equally safeguarding all forms of tenure as comprehended by the Act. Further, the institutions that administer the land must be given

[25] Paul van Asperen and Augustine Mulolwa, *'Improvement of Customary Tenure Security as Pro-poor Tool for Land Development- A Zambian Case Study'* https://www.scribd.com/document/707522555/Customary-Tenture-in-Zambia accessed 7 June 2026.

sufficient authority to make decisions and perform functions that have a legal or binding force to those to whom the exercise of authority is directed.

The first characteristic of tenure security under discussion is the legal recognition of rights in land. The legal uncertainty that comes about when a person holds rights in land that are not expressly conferred by law exposes their rights to use and occupy that land to challenge. Therefore, the real property laws that govern the administration of land must clearly recognise the nature of the rights that can be held, the persons entitled to exercise those rights, and the legal conditions attached to such rights.

Secondly, the certainty of the subject matter. This relates to the physical extent to which the outermost boundaries of a parcel of land can be made certain. This characteristic is primarily responsible for reducing competing claims regarding boundaries. Accordingly, a tenure system that can not accurately determine the physical extent of a person's land rights is not secure.

Thirdly, this analysis subsequently explores the characteristic of being inviolate against third party deprivation and interference. As a premise, the rule of law is central to understanding this characteristic. The rule of law involves the exercise of public authority for a legitimate public purpose done in accordance with the stipulated procedure.

Payen and Durand-Lasserve, noted that a person can be said to have secure tenure in land when they are protected from involuntary removal from their land or residence by the State, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Therefore, enforceability is a characteristic central to tenure security. [26]

[26] Geoffrey Payne and Alain Durand-Lasserve, '*Holding On: Security of Tenure- Types, Policies, Practices and Challenges*' (Research Paper for the Special Rapporteur, 2012) https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/SecurityTenure/Payne-Durand-Lasserve-BackgroundPaper-JAN2013.pdf accessed 15 June 2026.

Further, Payen and Durand-Lasserve described insecure tenure to cover a wide range of situations, from illegal occupation to various forms of tolerated occupation, as well as occupation legitimized by customary practices but not considered as legal by government or local authorities.[27]

2.2 THE FRAMEWORK FOR ASSESSMENT

In the succeeding chapter, this research will assess the Zambian administration of land tenure against the following indicators identified from the above analysis. For the purpose of this research, a land tenure system is secure if it possesses the following attributes.

Primarily, it must be duly recognised by the governing land laws. In addition, its boundaries must be accurately recorded and therefore certain. Finally, it must be legally protected from third party interference with remedies for redress readily available for aggrieved parties. Fourthly, the land must be freely disposable by its lawful occupant. This means that the land can be freely traded in the land market and can be used as security to obtain credit facilities against third party interests.

2.3 RELATIONSHIP BETWEEN SECURITY OF TENURE AND INVESTMENT

In determining whether the security of tenure in land is an important factor that promotes increased investment, this analyse proceeds to consider arguments for and against the assertion that security of tenure leads to investment.

On one side of the coin, it is argued that clearly defined and legally enforceable rights in land promotes investment. In this regard, Mweemba Mudenda contended that secure individual tenure, and a free land market, has been promoted in the belief that they will lead to higher levels of agriculture investment and productivity and thus provide a firm basis for national growth and development.[28] Similarly, the World Bank has noted that uncertainty of land rights may frustrate

[27] ibid.
[28] Mweembe Muleya Mudenda, '*The Challenges of Customary Land Tenure in Zambia*' https://www.fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ts50/ts50_03_mudenda_0740.pdf accessed 8 June 2026.

land markets.[29] This is because the prospective purchasers of land are not willing to commit capital to obtain rights in land that are uncertain at law.

On the other side of the coin, some authors like Philippe Delville counter argue that tenure security is a result of investment. In this regard, he argued that certain customary rights of usage are strengthened by long term occupation and improvements to the land. He further noted that Permanent investments such as tree planting and terracing leads to stronger, more individualised, rights.[30] In this regard, tenure security arises because of investment.

2.4 CONCLUSION

This chapter explored the conceptual framework governing land tenure security. It aimed at extending the traditional definition of tenure security beyond land documentation to include the legal and institutional safeguards that protect rights in land. Further, this chapter identified characteristics of tenure security that will enable the assessment of the Zambian land administration. The next chapter delves into the statutory and institutional framework governing land tenure.

[29] World Bank, '*Can Africa Claim the 21st Century?*' (The International Bank for Reconstruction and Development, 2002) https://documents1.worldbank.org/curated/en/673891468189261055/pdf/20469-v2-PUB-PUBLIC-Box393236B.pdf accessed 8 June 2026.

[30] Philippe Lavigne Delville, '*Registering and Administering Customary Land Rights Current Innovations and Questions in French-Speaking West Africa*' (Expert Group Meeting on Secure Land Tenure: New Legal Frameworks and Tools, 2004) https://www.fig.net/resources/proceedings/2004/nairobi_2004_comm7/papers/ts_04_1_delville.pdf accessed 8 June 2026.

CHAPTER THREE

THE REGULATORY AND INSTITUTIONAL FRAMEWORK THAT GOVERNS LAND TENURE IN ZAMBIA

3.0 INTRODUCTION

The chapter examines the statutory law governing land administration in Zambia. This chapter aims at providing the reader with a comprehensive understanding of the legal regime at present. It begins by discussing the relevant authorities. Thereafter, it delves into the aspect of conversion of customary land into leasehold tenure.

3.1 THE REGULATORY FRAMEWORK GOVERNING LAND TENURE IN ZAMBIA

Land administration in Zambia is principally governed the Lands Act, the Lands and Deeds Registry Act, the Lands Acquisition Act and the various statutes that regulate traditional governance, planning and local government. These statutes provide a collective basis upon which land rights are acquired, administered, assigned and protected.

Firstly, the Lands Act vests all land in Zambia in the President to be held by him in perpetuity for and on behalf of the people.[31] This is understood as the legal basis for the President's authority to oversee land transactions except for those that grant rights to use and occupy land governed by custom.[32]

Notably, The Lands Act of 1995 provides for the statutory recognition and continuation of leasehold and customary tenure. Consequently, the regime of land administration attempts to accommodate customary systems while simultaneously creating a formal system for managing leasehold tenure. In the strict legal sense, a person can only hold land in either form of land tenure. Where a person unlawfully occupies vacant land, the Act provides that such a person in liable to eviction.[33]

[31] The Lands Act of 1995, s 3(1).
[32] ibid, s 8(3).
[33] ibid, s 9(2).

Section 8 of the Act provides for the conversion of rights from customary to leasehold tenure. The Act stipulates that as a prerequisite for such conversions to take effect, the approval of the Chief and the local authorities in whose area the land to be converted is situated must be obtained.[34]

Accordingly, the President's authority to convert land held under customary tenure to leasehold tenure must be exercised in consideration of the local customary law on land tenure, the Chief and local authority in the area, and all interests that may reasonably be affected but such grant.[35]

It follows that the conversion requires approval from three distinct authorities. Namely, the traditional authority, the district council and the President. In depth, the chief must give written consent in the form of a letter confirming that the applicant has complied with the procedure for obtaining traditional consent. Thereafter, the district council discusses the applications for conversions with the aim of determining whether to recommend the applications to the Commissioner of Lands.

Subsequently, the Lands and Deeds Registry Act, Chapter 185 of the laws of Zambia is examined in this chapter. This Act constitutes the framework through which interests in land are registered. Primarily, this Act supports the administration of leasehold tenure. It promotes security of tenure by providing a Registry through which interests in leasehold land are made certain.

Thereafter, the Lands Acquistion Act, Chapter 189 of the laws of Zambia shall be analysed in accordance with customary tenure. This Act provides the legal basis for compulsory acquisition. In this regard, it stipulates that the President, where necessary for the public interest, can acquire land lawfully occupied by a person.

The Chiefs Act, Chapter 287 of the laws of Zambia, provides complementary support to the constitutional recognition of traditional authority over customary land tenure. However, the Act does not provide a comprehensive framework to govern the authority and responsibly vested in Chiefs in the administration of customary land tenure. The Act's main concern is to provide for

[34] ibid, s 8(2).
[35] ibid, s 3(4).

the recognition and appointment of Chiefs and their subordinates such as Deputy Chiefs and Indunas.

Further, Section 10 (a) of the Chiefs Act, in prescribing the functions of Chiefs and Deputy Chiefs, states that "a Chief shall discharge the traditional functions of his office under African customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality."[36] Such a broad provision gives rises to uncertainties in relation to the scope and limits of traditional authority in relation to the allocation and administration of customary land.

Lastly, the Urban and Regional Planning Act No. 3 of 2015 regulates land use in relation to development by subjecting it to planning requirements. The Act provides the authority for planning authorities that are responsible for the preparation and implementation of integrated development plans.

3.2 THE INSTITUTIONAL FRAMEWORK GOVERNING LAND TENURE

The administration of land in Zambia extends beyond statutory regulation and involves a complex network of institutions operating at both national and local levels. Accordingly, an examination of the institutional framework provides insight into the way land rights are created, administered, transferred and enforced within Zambia.

By law, the President occupies a central role in the administration of land. As absolute vesting provision in the Lands Act places the role of a custodian of land within the Republic. The President facilitates the administration of leasehold land through delegated authority of the Commissioner of Lands. The Commissioner's office performs functions on behalf of the President relating to the allocation of land, issuance of leasehold titles and processing applications for conversion of tenure of relevant recommendation have been made. The Commissioner's administrative role extends to the responsibility for implementing land policies and regulating access to formally recognised rights in land.

[36] The Chiefs Act, s 10(a).

Furthermore, this chapter reviews the roles of the traditional and local authorities in the administration of land. Traditional authorities are generally responsible for allocating customary land, resolving local land disputes and safeguarding communal interests in land. Their authority is derived from customary law and long established customary practices that are consistent with natural justice and the laws of Zambia. Though the law is unclear regarding the extent of the authority of the traditional leaders, chiefs are particularly significant because their consent is ordinarily required before customary land may be converted into leasehold tenure.

The local authorities primarily regulate land administration through their planning and advisory functions. Local authorities are responsible for providing recommendations regarding applications affecting land use and ensure that proposed developments comply with approved planning regulations.

Notably, the Lands and Deeds Registry is the principal institution responsible for the registration of interests in land. The Registry maintains official records relating to ownership and other registrable interests in land. Registration serves an important evidentiary function by providing documentary proof of rights and facilitating transactions involving land.

Lastly, the judiciary performs a critical role in the protection and enforcement of land rights. Courts are responsible for interpreting legislation, resolving disputes relating to land ownership and determining competing claims arising under both statutory and customary tenure systems. Through judicial interpretation, courts contribute significantly to the development of land law and the clarification of legal principles governing tenure.

3.3 THE INTERACTION BETWEEN INTITUTIONS

The administration of land in Zambia depends upon the interaction of the institutions discussed above rather than the operation of any single institution in isolation.

The President and Commissioner of Lands provide formal administrative authority. The local authorities provide oversight in relation to planning. Traditional leaders administer customary land. The Ministry of Land and Natural Resources formulates policy. The Lands and Deeds Registry records interests in land. Finally, the judiciary resolves dispute and enforces legal rights.

Collectively, these institutions form an integrated framework through which land rights are recognised, administered and protected. Their interaction reflects the unique nature of Zambia's dual tenure system, which requires cooperation between customary and statutory systems of governance.

3.4 THE STATUTORY LAW IN RELATION TO THE CONVERSION OF CUSTOMARY LAND INTO LEASEHOLD TENURE

The Lands Act provides a procedure through which a lawful occupant of customary land can convert tenure and acquire a leasehold title to customary land. However, the process of converting customary land into leasehold tenure remains complex, involving cumbersome procedures, limited surveying capacity, and preconditions that hindered accessibility to secure title.

While the Lands Act provides for the conversion of land from customary tenure to statutory tenure, it leaves a gap on whether the rights acquired under customary tenure are simply extinguished as soon as the parcel of land is converted, or continue to exist.[37]

The erosion of customary rights that results from conversion is particularly burdensome on rural communities that depend on customary lands for drinking water, firewood, livestock, and other resources.[38]

Customary tenure, while providing social security and ease of access, is often viewed as insufficiently secure for large-scale or long-term investments due to the absence of formal registration and enforceable documentation. Conversely, leasehold tenure offers greater formal security and facilitates investment, but is constrained by the extensive powers of the State to

[37] '*Zambia's Dual Tenure System: The Relationship between Statutory and Customary Tenure*' https://www.ebrary.net/196174/environment/ambia_s_dual_tenure_system_relationship_statutory_customary_tenure accessed 8 June 2026.
[38] Nick Tagliarino, '*Conversions of Customary Lands to Leasehold Titles – Zambia*' (Focus on Land in Africa, 2014) https://library.cepa.org.mw/natural-resources/conversions-of-customary-lands-to-leasehold-titles-zambia/#gid=tainacan-item-gallery-block_id-tainacan-item-attachments_id-1603&pid=1 accessed 7 June 2026.

impose conditions on land use and to repossess land in the public interest, thereby limiting the security traditionally associated with private property rights.[39]

3.5 CONCLUSION

This chapter examined the regulatory and institutional framework governing land tenure in Zambia. It demonstrated that land administration is regulated through a combination of statutory instruments, including the Lands Act, the Lands and Deeds Registry Act, the Lands Acquisition Act, the Chiefs Act and the Urban and Regional Planning Act. Collectively, these statutes establish the legal basis upon which rights in land are recognised, allocated, transferred and protected.

The chapter further examined the institutions responsible for implementing the land tenure regime. It was observed that the administration of land is shared amongst various actors, including the President, the Commissioner of Lands, traditional authorities, local authorities, the Lands and Deeds Registry and the judiciary. The interaction between these institutions reflects the dual nature of Zambia's land tenure system and the coexistence of statutory and customary forms of tenure.

Attention was given to the conversion of customary land into leasehold tenure, which represents the principal point of interaction between customary and statutory land administration. While the law provides a framework for such conversion, the discussion has shown that important questions concerning the status of customary rights following conversion, the extent of the authority of traditional leaders, the identification of customary boundaries and the documentation of customary interests remain insufficiently addressed by legislation.

[39] Freeman C Mubanga, Jennifer Mwanangombe and Maggie M Mwape, '*Strengthening Land-Based Investment Governance in Zambia: "Exploring the Role of Traditional Land Tenure System"*' (Centre for Environment Justice, 2023) https://cejzambia.org/wp-content/uploads/2024/11/FreemanMubanga_Strengthening-Land-Based-Investment-Governance-in-Zambia.CEJ2023.pdf accessed 8 June 2026.

CHAPTER FOUR

AN ASSESSMENT OF THE EXTENT TO WHICH SYSTEM OF LAND ADMINISTRATION IN ZAMBIA IS LEGALLY CERTAIN

4.0 INTRODUCTION

This chapter critically evaluates the extent to which the current legal framework is uncertain in relation to customary land administration and tenure security. The analysis proceeds on the basis that legal certainty is a fundamental component of tenure security because land rights can only be effectively exercised, transferred and protected where their nature, extent and enforceability are reasonably ascertainable. Conversely, where legislation is ambiguous, incomplete or silent on critical issues, uncertainty emerges and creates opportunities for competing interpretations of rights and responsibilities.

4.1 UNCERTAINTY REGARDING THE NATURE AND EXTENT OF CUSTOMARY RIGHTS

One of the most significant sources of legal uncertainty within Zambia's land tenure framework concerns the legal nature of rights held under customary tenure. Albeit being recognised at law by both the Constitution and the Lands Act, neither Act provides a comprehensive definition of the rights that customary landholders possess. Consequently, uncertainty arises regarding the precise legal nature and status of customary interests and the extent to which they enjoy protection comparable to rights held under leasehold tenure.

The Lands Act recognises customary tenure and permits its conversion into leasehold tenure. However, the Act does not expressly define the components of customary rights nor does it clarify whether such rights should be regarded as proprietary interests, usufructuary rights or merely rights of occupation. This omission is particularly significant because the legal characterisation of a right influences its transferability, enforceability and vulnerability to interference.

Unlike leasehold tenure, which is generally evidenced by a certificate of title and supported by a clearly defined statutory framework, customary tenure derives its legitimacy from customary law and community recognition. As a result, the content of customary rights frequently varies between

chiefdoms and communities. A right recognised within one customary jurisdiction may not necessarily enjoy identical recognition within another. While customary flexibility may facilitate local administration, it simultaneously creates difficulties for external actors seeking to determine the nature and extent of rights affecting parcels of land.

One of the central challenges confronting land administration in Zambia is the coexistence of formal legal principles with customary systems that often operate according to unwritten norms and practices.[40] The absence of statutory codification means that customary rights are frequently determined through reference to local customs, historical occupation and community recognition rather than uniform legal standards. Consequently, investors and regulators may encounter significant difficulties when attempting to verify the existence of competing interests in customary land.

The uncertainty surrounding the nature of customary rights becomes particularly problematic during transactions involving land acquisition and conversion. An investor seeking to acquire customary land must first determine whether existing occupants possess legally enforceable interests and, if so, the extent of those interests. In many instances, however, the absence of documentary evidence and the variability of customary norms make such determinations difficult. The result is an environment in which competing claims may arise despite apparent compliance with statutory procedures.

The importance of legal recognition as an element of tenure security was discussed in Chapter Two. A secure tenure system requires that rights be clearly identifiable and legally enforceable. Where uncertainty exists regarding the nature of those rights, tenure security is inevitably weakened because right holders and third parties alike are unable to ascertain the precise legal consequences of land transactions.

Accordingly, while Zambia's legal framework formally recognises customary tenure, its failure to clearly define the content of customary rights constitutes a significant source of legal uncertainty.

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[40] Augustine Mulolwa, *Integrated Land Delivery: Towards Improving Land Administration in Zambia* (PhD Thesis, Royal Institute of Technology 2002) https://archive.org/details/integratedlandde0000mulo/page/n9/mode/2up accessed 15 June 2026.

This uncertainty forms the foundation for many of the disputes that arise between investors, communities and regulators within the administration of customary land.

4.2 UNCERTAINTY REGARDING THE POWERS OF TRADITIONAL AUTHORITIES

The role of traditional authorities within Zambia's land tenure framework represents one of the most significant sources of legal uncertainty affecting customary land administration. Although chiefs occupy a central position in the allocation and management of customary land, the precise scope of their authority remains inadequately defined by legislation. Consequently, disputes frequently arise concerning the validity of land allocations, the extent of consultation required before land is alienated, and the legal consequences of decisions made by traditional leaders.

The Constitution recognises the institution of chieftaincy and affirms its continued existence within Zambia's governance framework. Similarly, the Chiefs Act provides statutory recognition of chiefs and regulates certain aspects of their office. However, neither the Constitution nor the Chiefs Act comprehensively defines the powers exercised by chiefs in relation to customary land. Instead, many aspects of customary land administration continue to be governed by customary norms and practices that vary between chiefdoms.

The Lands Act further reinforces the role of chiefs by requiring their consent before customary land may be converted into leasehold tenure. This requirement reflects legislative recognition that chiefs remain the primary custodians of customary land. Nevertheless, while the Act requires the involvement of chiefs in the conversion process, it provides little guidance regarding the legal basis upon which consent should be granted or withheld. Nor does it establish clear standards governing consultation with affected communities before such consent is given.

A recurring question within the literature concerns whether chiefs hold customary land in trust for their subjects or whether they possess broader discretionary powers over land allocation. The trust concept has frequently been invoked to explain the position of traditional leaders within customary tenure systems. Under this approach, chiefs are not regarded as owners of customary land but as custodians exercising authority on behalf of their communities. However, the legal implications of this custodial role remain uncertain.

If chiefs merely act as trustees, it follows that their powers should be exercised in the interests of the communities they represent. Decisions affecting customary land would therefore require meaningful consideration of community interests and could potentially be challenged where they conflict with those interests. Conversely, if chiefs possess broad discretionary authority over land allocation, their decisions may enjoy greater autonomy and be less susceptible to challenge. The current legislative framework provides no definitive answer to this question.

This uncertainty becomes particularly significant where customary land is allocated to investors. In practice, investors often regard the consent of a chief as evidence that all necessary customary requirements have been satisfied. However, disputes frequently arise where community members subsequently contend that they were not consulted or that the chief exceeded his authority. In such circumstances, both parties may rely upon competing interpretations of customary law and statutory requirements.

Brown observes that tensions between traditional authority and community participation have become increasingly visible as customary land acquires greater commercial value.[41] As demand for land increases, decisions that were once primarily administrative assume significant economic consequences. The allocation of land to commercial agriculture, mining ventures, tourism projects and real estate developments may affect the livelihoods of entire communities. Consequently, questions concerning who has authority to make such decisions become increasingly important.

The uncertainty surrounding community consultation further complicates the position. Although principles of good governance suggest that affected communities should participate in decisions concerning land occupied or utilised by them, Zambian land legislation does not establish comprehensive consultation procedures for transactions involving customary land. The absence of statutory standards creates uncertainty regarding what constitutes adequate consultation and whether failure to consult affects the validity of land transactions.

The problem is compounded by the fact that customary governance structures vary significantly across chiefdoms. Some traditional authorities maintain extensive consultative processes involving

[41] Taylor Brown, '*Contestation, confusion and corruption: Market-based land reform in Zambia'* (2005) https://mokoro.co.uk/wp-content/uploads/market_based_land_reform_and_local_politics_zambia.pdf accessed 9 June 2026.

village committees, headpersons and community meetings, while others rely primarily upon the authority of the chief. Consequently, the level of participation afforded to community members may differ substantially from one jurisdiction to another.

Deriving from the perspective of tenure security, uncertainty regarding the powers of traditional authorities affects both landholders and prospective investors. Existing occupants may be uncertain about the extent to which their interests can be protected against decisions made by traditional leaders, while investors may be uncertain whether consent obtained from a chief will ultimately withstand legal or community challenges. The resulting unpredictability undermines confidence in land transactions and increases the likelihood of disputes.

Furthermore, uncertainty regarding traditional authority complicates the role of state regulators. Institutions such as local authorities and the Commissioner of Lands frequently rely upon confirmations and recommendations provided by chiefs during the conversion process. Where questions subsequently arise regarding the legitimacy of those decisions, regulators may find themselves required to reconcile competing claims without clear legislative guidance.

Accordingly, while traditional authorities remain indispensable actors within Zambia's customary land administration system, the absence of clear statutory provisions defining the nature and limits of their powers constitutes a significant source of legal uncertainty. This uncertainty contributes directly to conflicts between communities, investors and regulatory authorities and ultimately affects the security and predictability of customary land rights.

4.3 UNCERTAINTY REGARDING BOUNDARY IDENTIFICATION

A further source of legal uncertainty within Zambia's land tenure framework concerns the identification and demarcation of customary land boundaries. While the determination of boundaries under statutory tenure is generally facilitated through surveys, cadastral mapping and registration procedures, customary tenure frequently relies upon traditional methods of boundary identification. Although such methods have historically functioned within local communities, they often present challenges when customary land becomes the subject of formal transactions, investment projects or conversion into leasehold tenure.

The significance of boundary certainty was discussed in Chapter Two as one of the essential components of tenure security. A landholder can only meaningfully exercise and protect rights in land where the physical extent of those rights is reasonably ascertainable. Similarly, investors require certainty regarding the precise location and dimensions of land before committing substantial resources to development projects. Consequently, uncertainty concerning boundaries directly affects both tenure security and investment confidence.

Customary boundaries are frequently identified through natural landmarks such as rivers, streams, trees, hills and other geographical features. In some instances, boundaries are also determined through historical occupation, oral traditions and communal understandings passed from one generation to another. While these methods may provide sufficient certainty within communities' familiar with local customs, difficulties arise where external parties seek to verify such boundaries.

One challenge is that natural landmarks may change over time. Rivers may alter their course, trees may disappear and other physical features may become difficult to identify. Where boundary identification depends upon such landmarks, disputes may emerge concerning the precise location of customary land. These disputes become particularly significant where land values increase or where commercial development is proposed.

The reliance upon oral tradition presents additional difficulties. Unlike surveyed boundaries recorded in official cadastral systems, oral descriptions of boundaries may be interpreted differently by different individuals. Consequently, neighbouring communities may possess conflicting understandings regarding the extent of their respective territories. Such disputes are not merely theoretical; they often arise where land is earmarked for commercial agriculture, tourism developments or infrastructure projects.

The problem is further compounded by the absence of comprehensive cadastral records for much of Zambia's customary land. The Lands and Deeds Registry Act establishes mechanisms for the registration of formal interests in land, yet customary land generally falls outside the ordinary registration system unless conversion occurs. As a result, many customary boundaries remain undocumented within official government records.

Another one of the persistent challenges confronting land administration in Zambia is the limited integration of customary land into formal systems of land information management. This situation creates difficulties for regulators, investors and communities alike because there is often no definitive record capable of resolving competing claims regarding the location or extent of customary land.

Boundary uncertainty becomes particularly problematic during the conversion of customary land into leasehold tenure. Before a leasehold title can be issued, the land in question must ordinarily be identified and surveyed. However, where neighbouring communities dispute the extent of customary boundaries, the conversion process may become contentious. Investors may obtain approvals based upon one understanding of the land's location, only to encounter objections from neighbouring landholders who claim that the land falls within their customary jurisdiction.

As a result, such disputes can generate conflicts at multiple levels. They may arise between neighbouring chiefdoms, between traditional authorities and communities, between investors and customary landholders, or between investors and regulatory authorities responsible for approving land transactions. In each case, the underlying issue is often the absence of a clear and authoritative mechanism for determining boundaries.

The uncertainty surrounding customary boundaries also affects due diligence processes undertaken by investors. Under a secure land administration system, investors should be able to verify with reasonable certainty the location and extent of land before acquiring rights over it. However, where boundary information is incomplete, contradictory or unavailable, investors may incur significant costs attempting to establish the legitimacy of claims affecting the land. In some cases, uncertainty may discourage investment altogether.

Pursuant to the perspective of tenure security, unclear boundaries undermine legal certainty because they create uncertainty regarding the subject matter of land rights. Even where the existence of a right is acknowledged, uncertainty concerning the land to which that right relates may render the right difficult to exercise and protect. Consequently, boundary uncertainty affects both existing landholders and prospective investors.

It follows that the absence of comprehensive systems for identifying, recording and verifying customary boundaries constitutes a significant weakness within Zambia's land administration framework. While customary methods of boundary identification continue to play an important role within local communities, their interaction with modern land markets and formal land administration systems frequently generates uncertainty. This uncertainty contributes to disputes concerning ownership, occupation and use of land and ultimately undermines the predictability required for secure tenure and sustainable investment.

4.4 UNCERTAINTY ARISING FROM THE CONVERSION OF CUSTOMARY LAND INTO LEASEHOLD TENURE

The conversion of customary land into leasehold tenure represents one of the most significant features of Zambia's contemporary land administration system. Introduced by the Lands Act of 1995,[42] the conversion process was intended to facilitate economic development, improve tenure security and enable customary landholders to participate more effectively in formal land markets. Through conversion, land occupied under customary tenure may be transformed into leasehold tenure and subsequently become subject to registration under the Lands and Deeds Registry Act.[43]

While the policy objectives underlying conversion are relatively clear, the legal consequences of conversion remain considerably less certain. The legislation establishes a procedure through which customary land may be converted into leasehold tenure but provides limited guidance regarding several fundamental questions arising from that process. As a result, conversion has become one of the most significant sources of legal uncertainty within Zambia's dual tenure system.

The most significant uncertainty concerns the status of pre-existing customary rights following conversion. The Lands Act authorises the conversion of customary land into leasehold tenure but does not expressly state whether customary rights previously existing over that land are extinguished, suspended or preserved. This omission creates uncertainty regarding the position of community members who may have occupied, cultivated or utilised the land prior to conversion.

[42] Chapter 184 of the laws of Zambia.
[43] Chapter 185 of the laws of Zambia.

Under leasehold tenure, a title holder ordinarily acquires exclusive rights of occupation and use, subject to statutory limitations. However, customary tenure often involves overlapping rights exercised by different individuals and groups. Family members may cultivate separate portions of land, communities may enjoy grazing rights and villagers may possess access rights to forests, water sources and other resources. The legislation provides limited guidance regarding the fate of such rights after conversion.

Consequently, competing interpretations frequently emerge. Investors often assume that the grant of leasehold title extinguishes all prior customary interests and confers exclusive rights over the land. By contrast, affected communities may regard conversion as merely changing the administrative status of the land while preserving customary rights previously enjoyed by community members.

The absence of legislative clarification increases the likelihood of disputes because both positions can be advanced with some degree of plausibility. In practice, conflicts frequently arise when investors seek to exercise rights associated with leasehold tenure only to encounter resistance from community members who continue to assert customary claims over the land.

The uncertainty is particularly problematic because it concerns the very existence of legal rights. Where legislation fails to clarify whether customary interests survive conversion, neither investors nor communities can confidently determine the legal consequences of land transactions.

Closely related to the foregoing issue is the question of whether converted land ceases to be customary land altogether. The Lands Act provides a mechanism through which customary land may be converted into leasehold tenure. However, it does not comprehensively address the legal character of converted land after conversion has occurred. The question therefore arises whether such land becomes exclusively subject to statutory tenure or whether residual customary interests continue to exist.

This uncertainty is significant because it affects the regulatory framework applicable to the land. If conversion entirely removes land from the customary tenure system, the authority of traditional leaders may effectively cease upon registration of leasehold title. Conversely, if elements of

customary tenure continue to apply, traditional authorities may retain some role in relation to the land.

The legislation offers little guidance on this matter. Consequently, disagreements frequently arise concerning the continuing involvement of chiefs in relation to converted land and the extent to which customary norms remain relevant after registration.

From an investor's perspective, uncertainty regarding the legal status of converted land undermines predictability. Investors generally seek clarity regarding the regulatory framework governing their rights. Where uncertainty exists concerning the continuing application of customary norms, investment decisions become more complex and potentially riskier.

A further source of uncertainty concerns the position of converted land upon the expiry of leasehold tenure. Leasehold interests granted under Zambian law are ordinarily limited in duration. The question therefore arises as to what happens when such interests expire.

The existing legal framework does not provide comprehensive answers to these questions in relation to land that was originally held under customary tenure. Although such uncertainty may appear remote given the lengthy duration of many leasehold grants, the issue remains important because secure land administration requires certainty regarding the entire life cycle of land rights.

The absence of clear rules governing reversion creates uncertainty not only for current landholders but also for future generations who may eventually be required to determine the status of the land. In this respect, the uncertainty extends beyond immediate land transactions and affects the long-term stability of the tenure system itself.

Further, the conversion process exposes uncertainty regarding the respective roles of institutions involved in land administration. Conversion requires the participation of traditional authorities, local authorities and the Commissioner of Lands. However, the precise relationship between these institutions is not clear. Most pertinently, the extent of discretion possessed by each administrative actor and the legal consequences of procedural irregularities occurring during the conversion process is unclear.

For example, uncertainty may arise where a chief grants consent but community members object, or where a local authority recommends conversion despite unresolved disputes concerning customary occupation. Similarly, questions may emerge regarding whether the Commissioner of Lands may reject applications supported by traditional authorities or whether such support entails a legitimate expectation of approval.

The involvement of several institutions was intended to create safeguards within the conversion process. However, where their respective powers are not clearly defined, overlapping claims may generate even more uncertainty.

4.5 UNCERTAINTY REGARDING THE DOCUMENTATION AND REGISTRATION OF CUSTOMARY RIGHTS

A further source of legal uncertainty within Zambia's land tenure framework concerns the documentation and registration of customary land rights. Although customary tenure is legally recognised under the Lands Act, most customary land rights remain undocumented and unregistered. Consequently, difficulties frequently arise in determining the existence, extent and legitimacy of competing claims affecting customary land.

The importance of documentation within a land administration system cannot be overstated. Land records perform an evidentiary function by providing reliable proof of rights and interests affecting land. They facilitate transactions, reduce disputes and enable third parties to verify ownership and occupation. In formal land administration systems, these objectives are ordinarily achieved through registration, cadastral surveys and official land records. However, customary land administration has historically relied upon social recognition, oral testimony and community knowledge rather than formal documentation.

Within many chiefdoms, records concerning customary land allocations are maintained by chiefs, headpersons or village authorities. These records may take the form of village registers, allocation books or informal written records. In some instances, however, no written records exist at all, and evidence of land rights depends entirely upon local knowledge and oral history. While such arrangements may operate effectively within relatively stable communities,

difficulties emerge where land becomes the subject of commercial transactions, investment projects or competing claims.

One consequence of limited documentation is the difficulty of verifying existing interests in land. Investors seeking to acquire customary land often face challenges in determining whether the land is occupied, whether competing claims exist or whether the persons purporting to allocate the land possess the necessary authority to do so. Similarly, regulators responsible for approving transactions may have limited information available to verify the legitimacy of claims affecting the land.

An effective system of land administration requires reliable systems for recording and managing accurate information relating to land rights. Where such systems are absent, uncertainty inevitably arises regarding ownership, occupation and entitlement. This observation is particularly relevant to customary land administration in Zambia, where significant portions of customary land remain outside formal registration systems.

The absence of documentation also affects dispute resolution. In the event of competing claims, courts and administrative bodies often rely upon documentary evidence to establish the existence and extent of rights. Where no formal records exist, disputes may depend heavily upon oral testimony and conflicting accounts provided by community members. Such disputes may be difficult to resolve and may result in prolonged uncertainty regarding the status of the land.

From the perspective of tenure security, inadequate documentation undermines legal certainty because rights become difficult to prove and enforce. A right that cannot easily be demonstrated through objective evidence may be vulnerable to challenge, particularly where land values increase or competing interests emerge. Consequently, the absence of reliable systems for documenting customary rights weakens both the security of existing rights and the confidence of prospective investors.

The challenge is not necessarily that customary rights lack legitimacy. Rather, the difficulty lies in establishing mechanisms through which those rights can be reliably identified, verified and protected. Until such mechanisms are developed, uncertainty regarding the documentation of

customary rights is likely to remain a significant source of disputes within Zambia's land administration system.

4.6 CONFLICTS BETWEEN REGULATORS AND LAND INVESTORS THAT ARISE FROM LEGAL UNCERTAINITY

The preceding sections have identified several areas in which Zambia's land tenure framework gives rise to legal uncertainty. These include uncertainty regarding the nature of customary rights, the powers of traditional authorities, the identification of customary boundaries, the legal consequences of conversion and the documentation of customary interests. Collectively, these uncertainties create an environment in which competing interpretations of rights and responsibilities frequently emerge. The result is conflict.

Lands conflicts can occur between individuals, individuals and regulating institutions, individuals and state-actors and so on. As a premise, the dual tenure system of land governance has created several legal and institutional uncertainties that give rise to disputes over land. This section aims to highlight the legal uncertainties that give rise to certain disputes.

Firstly, it is the legal status of land following its conversion from customary into leasehold tenure is unclear. While the Lands Act permits the conversion of customary land, it does not expressly state whether the conversion permanently extinguishes all customary interests that were previously attached to the land. In the absence of statutory guidance, traditional authorities are required to resolve matters concerning cultivation and grazing rights over customary land that has been purchased by an investor.

Unlike ordinary land transactions occurring entirely within either customary or statutory systems, conversion requires interaction between both systems simultaneously. Traditional authorities, communities, investors and state regulators each possess interests in the process and may interpret legal requirements differently.

As a result, conversion frequently generates disputes concerning authority, consent, boundaries, compensation and the status of existing rights. In many instances, the conflict is not caused by deliberate wrongdoing but by uncertainty regarding the legal consequences of conversion itself.

Accordingly, while conversion was introduced as a mechanism for enhancing tenure security and facilitating investment, the absence of legislative clarity regarding several critical issues has produced significant uncertainty. Rather than eliminating disputes, the conversion process has in some cases created new areas of contestation within Zambia's dual tenure system.

Secondly, the authority vested in traditional authorities in the administration of customary land is insufficiently defined. This aspect particularly involves issues relating to validity of acquisitions and consent for conversions of land tenure.

Thirdly, the extent of customary and is relatively uncertain. The boundaries of customary land are identified by natural landmarks and a communal understanding of physical extents.

Finally, the limited documentation of customary rights gives rise to conflicts. Unlike land held under leasehold tenure where a search of the Lands Register can show competing interests in land, customary land is not adequately recorded. It primarily relies on the Headman’s Register which cannot verily be relied on.

4.7 CONCLUSION

This chapter critically examined the extent to which Zambia's land tenure framework provides legal certainty in relation to the administration of land tenure. It exposed the uncertainty of rights held under customary tenure in relation to land documentation and the authority of traditional authorities. By so doing, this chapter has analysed the administration of land tenure in Zambia, Further, it highlighted potential areas for conflict between regulators and land investors.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This research examined the dual tenure system of land administration in Zambia. It discovered that the Lands Act that primarily governs state land, insufficiently protects the security of tenure for land held under customary tenure. This research highlights that the present administration may disadvantage land under customary tenure from enjoying benefits such as development, job creation and knowledge transfer that comes from foreign direct investment. This chapter concludes this research by providing a summary of each chapter. Finally, it will then provide recommendations and prospects for further research.

5.1 SUMMARY OF RESEARCH FINDINGS

The study found that Zambia possesses an extensive legal and institutional framework governing land tenure. The Lands Act, the Lands and Deeds Registry Act, the Lands Acquisition Act, the Chiefs Act and the Urban and Regional Planning Act collectively provide the legal basis for the administration of land rights in Zambia. Further, the study found that the legal framework formally recognises both statutory and customary tenure, thereby reflecting the dual nature of Zambia's land tenure system.

However, despite such recognition, the research established that there exists legal uncertainty within the administration of customary land. The first finding of the study is that the law fails to provide a comprehensive definition of the nature and extent of customary land rights. Although customary tenure is duly recognised by legislation such as the Lands Act, the precise legal nature of customary rights remains largely dependent upon customary practices that vary across chiefdoms and are largely unwritten. Consequently, legal uncertainty exists regarding the status and enforceability of such rights.

Secondly, the research found that the powers and responsibilities of traditional authorities in relation to customary land are insufficiently defined by legislation. While traditional authorities play a central role in customary land administration and participate in the conversion of customary

land into leasehold tenure, the legal framework provides limited guidance in relation to the scope of their authority, the extent of community consultation required and the mechanisms through which their decisions may be challenged or reviewed.

Thirdly, the study established that uncertainty exists regarding the identification and demarcation of customary boundaries. Unlike leasehold land, which is ordinarily surveyed and recorded within formal land administration systems, customary land boundaries are frequently determined through natural landmarks, oral traditions and local understandings. This creates difficulties in verifying the extent of land rights and increases the likelihood of overlapping claims and boundary disputes.

Fourthly, the research identified the conversion of customary land into leasehold tenure as one of the most significant sources of legal uncertainty within Zambia's land tenure framework. Although the Lands Act provides a mechanism for conversion, it does not adequately address critical questions relating to the status of customary rights following conversion, the legal character of converted land, the continued role of traditional authorities and the position of such land upon expiry of leasehold rights. These omissions create uncertainty regarding the legal consequences of conversion and frequently generate competing interpretations of rights and obligations.

Fifthly, the study found that the absence of comprehensive systems for documenting and registering customary land rights contributes significantly to legal uncertainty. In many instances, customary rights are evidenced through community recognition and informal records rather than formal registration. As a result, difficulties arise in verifying ownership, resolving disputes and conducting due diligence in relation to customary land transactions.

The research further established that these uncertainties frequently manifest themselves in the form of disputes involving investors, traditional authorities, local communities and regulatory institutions. Such disputes often arise not because rights are entirely absent, but because the law fails to clearly define, document or regulate those rights. Consequently, parties may rely upon differing interpretations of the same legal framework, thereby increasing the likelihood of conflict.

Finally, the study found that legal uncertainty undermines several of the key indicators of tenure security identified in Chapter Two. Uncertainty weakens legal recognition of rights, reduces certainty regarding boundaries, complicates enforcement of interests and adversely affects the

transferability and economic utility of land. These consequences ultimately affect investment confidence and may discourage the effective utilisation of customary land for economic development.

5.3 RECOMMENDATIONS

Parliament should amend the existing legislation governing land tenure to provide a clearer statutory definition of customary land rights. Such land reform should specifically address the legal status, scope and enforceability of customary interests while preserving the flexibility necessary for the continued operation of customary tenure systems. Greater legislative clarity would enhance legal certainty and reduce disputes concerning the nature of customary rights.

The law should provide clearer guidance regarding the authority of chiefs in relation to land administration. Legislation must effectively define the extent of the powers conferred in traditional authorities in the land allocation and conversion processes. The legislation should also establish the minimum standards for community consultation before significant decisions affecting customary land tenure are made. Such reforms would improve accountability and increase certainty regarding the validity of decisions affecting customary land.

The Lands Act should be amended to expressly address the legal consequences of converting customary land into leasehold tenure. The legislation should clarify whether customary rights are extinguished, preserved or modified following conversion, define the legal status of converted land and establish clear rules governing the treatment of such land upon expiry of leasehold rights. Legislative certainty in these areas would significantly reduce disputes arising from conversion processes.

Government should consider developing a system for recording and documenting customary land rights. Such a system need not replicate the formal registration regime applicable to leasehold land but should provide a reliable mechanism for identifying landholders, recording allocations and preserving evidence of customary interests. Improved documentation would facilitate dispute resolution and enhance investor confidence.

Additionally, efforts should be made to progressively map and document customary land boundaries in collaboration with traditional authorities and local communities. Improved boundary identification would reduce overlapping claims, improve land administration and facilitate investment planning.

The study recommends enhanced coordination between traditional authorities, local authorities, the Commissioner of Lands and other regulatory institutions involved in land administration. Clearer institutional responsibilities and improved communication would reduce duplication, minimise conflicting decisions and improve the overall effectiveness of land governance.

5.4 PROSPECTS FOR FURTHER RESEARCH

This study has focused primarily on legal uncertainty arising from the administration and conversion of customary land and its implications for tenure security and investor-regulator conflicts. However, several related issues remain worthy of further investigation.

Future research may examine the practical implementation of land conversion procedures within specific chiefdoms and assess the extent to which local practices influence outcomes. Comparative studies involving other African jurisdictions operating dual tenure systems may also provide useful insights into alternative approaches to balancing customary and statutory land administration.

Further research may additionally explore the potential role of digital land administration technologies in improving the documentation and management of customary land rights. Such studies may contribute to ongoing discussions concerning land governance reform and the modernisation of customary land administration systems.

Finally, empirical research involving investors, traditional leaders, regulators and local communities may provide valuable insight into the practical effects of legal uncertainty and the effectiveness of proposed reforms.

5.5 CONCLUSION

This study has demonstrated that Zambia's land tenure framework formally recognises customary tenure and provides mechanisms through which customary land may be administered and

converted into leasehold tenure. Nevertheless, significant legal uncertainty persists in relation to the nature of customary rights, the powers of traditional authorities, the identification of customary boundaries, the consequences of conversion and the documentation of customary interests.

The research has shown that these uncertainties create conditions under which conflicts between investors, regulators, traditional authorities and local communities frequently arise. Such conflicts undermine the certainty, predictability and stability that are essential components of tenure security. Consequently, the challenge confronting Zambia's land tenure system is not the absence of legal recognition of customary tenure but rather the absence of sufficient legal clarity regarding its administration and interaction with statutory tenure.

Accordingly, strengthening tenure security in Zambia requires more than formal recognition of customary rights. It requires a legal framework that clearly defines rights, clarifies institutional responsibilities, improves documentation and provides certainty regarding the consequences of land transactions. Through legislative reform and improved land administration practices, it is possible to reduce legal uncertainty, minimise conflict and promote a more secure and investment-friendly land tenure system.

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