

**Analysis of the Provision of Full Owner-Ship Rights to
Land of Zambian House-Holds as a Government Service
Delivery Priority in The New Dispensation:
A case Study of Simonga and Chaba in Living-Stone
District.
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ABSTRACT

This study seeks to evaluate the democratic government's intervention and the efficacy of the urban and rural tenure reform programme in dealing with unequal and racial ownership of urban land in the old (pre 1964) former Black urban settlements such as Simonga and Chaba, by investigating legislation and policy related to land ownership, and the current tenure and ownership system and status in Livingstone. Research analysis is a form of qualitative research used by the researcher to provide voice and meaning around an assessed researched topic, and findings further reveal the challenges faced in the implementation or execution phase of the urban tenure remedial programme, and the current status and the remedial programme benefits, while recommendations are made in terms of systems and processes in order to accelerate service delivery, and with the emphasis of the importance of capacity building for stakeholders, including the benefiting community.

Land registration and cadastral systems exist in great variety. This paper describes the rich history of Zambian land tenure systems and discusses the present land tenure system. Zambia has a dual land tenure system: customary tenure and formal title registration. In the customary system the chiefs regulate the allocation of the land. They rule with the consent of their people. This system is considered insecure according to western standards but works for the indigenous people. The copper industry made the country wealthy and the formal land registration worked. The copper market collapsed and as a result the formal land tenure system failed due to complex procedures and a lack of competent personnel. The defects need to be fixed in order to benefit from the formal land tenure system.

The history of Zambia's land is a rich one. It has been influenced by chieftains, by British settlers during the colonial period, the creation of a new nation from 1930 until 1964 and the independence of Zambia in 1964. Over the years changes in governments, political, or cultural systems led to changes or modifications in land administration

(Mulolwa, 1998). In the context of the legal system consists of British law, inherited from the colonial period but developed independently after 1964, and customary law. Local courts are the lowest judicial bodies in Zambia's legal hierarchy. Their jurisdiction pertains to civil disputes under customary law, including such issues as marital and property claims. Appeals lie with subordinate courts, from which they may be advanced to the high court, and then the Supreme Court. Local courts are supervised by a presiding justice, who in some courts sits with a number of court justices (Tranberg Hansen, 1996, p123).

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CHAPTER ONE INTRODUCTION

Zambia's history is characterized by colonialism, racial domination and land dispossession. The local black population attempted to resist these impositions, but eventually succumbed and lost their land to the mighty military conquest, legal intricacies and trickery of the European colonisers.

Zambia recognizes two types of land tenure: customary and leasehold tenure. While historically the majority of land in Zambia has been held under customary tenure, leases (also called leasehold titles) are the only legal means of holding land rights.

In 1995, a new Land Act was passed, which makes it easier for investors to acquire leasehold titles to customary land. When an investor obtains a leasehold title to customary land, the customary land reverts to the state once the lease expires and is thereafter governed by statute. 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 (Brown 2005).

This brief analyzes the conversion process and its impact on rural communities, and discusses proposed solutions for securing customary land rights in Zambia.

Customary Land in Zambia

Customary land is crucial to the survival and well-being of rural communities in Zambia. Land is a source of food, shelter, social status and power (Mudenda 2006).

Customary lands provide communities with a commonly shared pool of natural resources. From the pool, villagers acquire drinking water from

rivers and village wells, graze livestock on pastures, cut firewood and building materials from forests, and catch fish in lakes and rivers (Brown). Customary lands also function as a safety net in times of uncertainty. For instance, in southern Zambia, when rainfall is inadequate during dry seasons, communal access to the Zambezi River and its banks allow for villages to obtain water for grazing livestock (Brown 2005).

Under customary tenure arrangements, rural villagers are given rights to customary lands based on their membership within a community. Each community is unique, but, in many communities, membership can be granted or denied by the Village Headman (Loenen 1999). Many communities organize their members into a social hierarchy at the household, village, clan, and chiefdom levels. The Chief is often the highest position on the hierarchy. The Chief has power to grant occupancy and use rights, oversee land transactions between community members, regulate common pools of resources, and adjudicate land disputes (Brown 2005).

The Basis of Tenure Insecurity: The History of Land Tenure in Zambia

Throughout history, Zambia has followed a dual system of land tenure. In 1924, the British Colonial Authority divided land into two categories: Crown Land and Native Reserves (Loenen 1999).

Native Reserves were designated for the exclusive use of Africans. Land rights on Reserves were granted based on customary law. Chiefs controlled the use and allocation of Reserve land. Upon approval by the Chief and central government, non-natives were permitted to hold land in Reserves, but not for more than five years. In 1947, the British Government carved out portions of utilized Crown Land to

establish Native Trusts. On Native Trusts, the Governor, who was designated the leader of Zambia under British rule, could grant rights of occupancy for a 99-year period to non-indigenous people. Despite such grants, Native Trusts remained under customary tenure and could not be converted to Crown Land (Brown 2005).

Following Zambia's independence in 1964, Crown Land was converted to state land and thereafter administered by the Ministry of Lands. All state land was vested in the President, and any land transaction involving state land required the President's approval. Freehold tenure rights to state land were abolished and converted to statutory leaseholds.

Meanwhile, on Native Reserves and Trusts, indigenous populations continued to follow the tenure system which existed under British rule. The Zambian government continued to recognize the Chief's right to regulate the use and allocation of trust and reserve land (Hansungule 2001).

The 1995 Land Act

Following its election to government in 1991, the Movement for Multiparty Democracy (MMD) proposed a wave of new land reforms intended to establish a more efficient system of tenure conversion in Zambia (MMD 1991).

The Conversion Process: How Leasehold Titles to Customary Lands are Acquired

The 1995 Land Act states that all land in Zambia shall vest absolutely in the President (sec.3(1), Land Act, 1995). By law, all land transactions require the President's consent except for grants of use and occupancy rights based on custom (sec. 8(3), Land Act, 1995).

The President may convert customary tenure into leasehold title under a wide range of

circumstances as long as he takes into consideration local customary laws on land tenure and consults with Chiefs, District Councils, and any person whose interests might be affected by the conversion. (sec. 3(3)-(4) Land Act, 1995; sec. 4(D)(ii) Admin. Cir.). By law, the President delegates the day-to-day administration of land matters to the Commissioner of Lands (sec. 2, Admin. Circ., 1985). The Commissioner of Lands is empowered by the President to “make grants or dispositions to any person subject to regulations enacted by the Minister of Lands” (sec. 2, Admin. Circ., 1985).

The conversion of customary land to leasehold title requires approval from three authorities: The Chief, the District Council, and the Commissioner of Lands. First, the written consent of the Chief must be obtained by the District Council (sec. 4(D)(ii)(a), Admin. Circ., 1985). Next, the District Council must submit to the Commissioner of Lands a resolution recommending whether or not to convert the customary tenure into leasehold title. The resolution must include minutes from the Council’s committee meeting at which the decision was reached and an approved layout plan for the tract of land endorsed by the Chief, the Chairman of the Council, and the District Executive Secretary (sec. 4(D)(ii)(a), Admin. Circ., 1985).

District Councils are “advised” not to recommend the alienation of land areas that exceed 250 hectares (sec. 4(D)(v), Admin. Cir., 1985). Once the resolution is submitted to the Commissioner of Lands, the Commissioner of Lands then makes a decision on whether or not the land should be converted. The Commissioner of Land must invariably accept the District Council’s recommendation unless doing so “would cause injustice to others or if [the District Council’s

recommendation] is contrary to national interest or public policy” (sec. 3, (Admin. Cir., 1985)).

Along with granting powers to the President to convert customary land, the 1995 Land Act also allows “any person” who holds land under customary tenure to apply to convert it to a leasehold title (sec. 891, Land Act, 1995). The lease cannot exceed 99 years (sec. 8(1), Land Act, 1995). Their application must be approved by the Chief and District Councils (sec. (8)(2), Land Act, 1995).

Land may thereafter be converted into leasehold tenure “by way of a grant of leasehold by the President [or] any other title that the President may grant” (sec. 8(1)(a), Land Act, 1995). The President may extend the lease agreement to a term exceeding 99 years if he or she “considers it necessary in the national interest” (sec. 3(6)(a), Land Act, 1995).

The Impact of land Conversions on Customary Rights Holders

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. It is also unclear whether the grant of a leasehold title to converted land necessarily extinguishes all customary rights previously attached to the land.

Although 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, (sec. 9, Land Act, 1995), it neither states what effect a land conversion has on customary use rights nor whether converted land remains subject to customary law. Furthermore, the Land Act does not stipulate what becomes of converted land once leases expire. In practice, customary rights

attached to converted land are extinguished once leases are granted.

The conversion process does diminish the Chiefs' authority. Only the Commissioner of Lands is considered the statutory landlord when lease agreements are made with investors. By law, Chiefs are not given any bargaining or oversight power to ensure the terms of the lease are adhered to and the land is managed effectively (Metcalf 2006). Land leases are only subject to statute and regulations passed by the Ministry of Lands. (sec. 7, Admin. Circ., 1985).

Due to the high costs associated with obtaining leasehold titles, the conversion process puts impoverished villagers at a disadvantage (Brown). Although the Land Act provides villagers with an opportunity to use their land as collateral to secure credit, the cost of doing so is prohibitively expensive for many villagers. Villagers must hire a surveyor to map their tract of land and pay a lease charge, a cost which amounts to at least 500,000 kwacha (about \$100) (Brown). For 99-year leases, boundary surveys can sometimes amount to millions of kwacha (hundreds of dollars) in fees (Brown). Villagers must also bear transportation costs if the surveying team has to travel from Lusaka. Furthermore, securing a lease entails incurring the cost of traveling to the Ministry of Land offices in Lusaka and Ndola. The Ministry of Lands also imposes an annual ground rent charge for leasehold title holders (sec. 6(2), Land Act, 1995). The rent charge is currently set by statutory instrument no. 44 of 2006, which, when it was passed, increased the ground rent by between 500-600 percent for all agricultural lands (Statutory Instrument No. 28 of 2010; ZNFU, 2010).

The Act's vague wording also puts customary rights holders at a disadvantage. When deciding

whether to convert customary land, the President is required to "take into consideration" local customary law and consult with any person or body whose interest might be affected by a land conversion (sec. 3(4), Land Act, 1995). However, the Act provides no guidance on what is meant by the phrase "take into consideration," and only requires the President to consider customary laws which are not in conflict with the Act (sec. 3(4)(a), Land Act, 1995). With respect to the provision requiring the President to consult with aggrieved persons, the Act neither establishes how such a consultation should take place nor what remedies an aggrieved person should be afforded in the event of a conversion. Since any person who continues to occupy the converted tract of land is liable to be evicted (sec. 9(2), Land Act, 1995) and the Act does not require the President to grant compensation for converted land, the conversion process may have devastating consequences for customary rights holders.

Case Study: Community Development Trust (CDTs) in the Sekute Chiefdom

To address some of these issues, the African Wildlife Foundation (AWF), an international conservation NGO, has facilitated the establishment of Community Development Trusts (CDT s) in Zambia. CDT s are designed to secure customary land rights by mobilizing rural communities to acquire private leasehold titles to customary land.

Once customary land is converted into a leasehold title held in the form of CDT, the land continues to be administered following customary laws and practices. Under a CDT structure, the trust proposes land sites to be converted for the traditional ruler's consideration (Metcalf 2006). This way, traditional leaders can continue to regulate the allocation of customary land;

however, under a CDT, the traditional leader's authority is statutorily recognized.

Traditional leaders are also responsible for mobilizing community members, overseeing and regulating Board of Trustees elections, ensuring the CDT bylaws and constitutions are upheld, and resolving land disputes (Metcalf 2006).

Zambia's wildlife abundance makes it an appealing tourist destination; however, when tourism investors obtain leasehold titles to customary lands, their revenues are not always shared with the local communities (Metcalf 2006). Tourism investment has not led to improved health, education and infrastructure (Metcalf 2008; Munodawafa 2005). By providing an outlet through which rural communities can directly manage private sector leases, CDTs can help rural communities generate revenue from the tourism industry. CDTs also appeal to private investors who seek a stable and effective business relationship with local communities.

All community members are entitled to CDT membership. To effectively manage communal lands, members of CDTs are organized into committees at the village, area, and chiefdom levels. The CDT works in a participatory manner to seek investor lessees and regulate communal land as both a statutory and customary landlord. AWF has helped develop action plans that identify and prioritize key land and natural resource areas that should be managed by CDTs.

In 2000, AWF began developing a CDT in the Sekute Chiefdom, an area of 250,000 hectares on which 17,500 people reside (Metcalf 2006). According to AWF, the Sekute Chiefdom was worth protecting because of its significant wildlife potential, good tourism sites, and 60 kilometres of Zambezi River frontage (Metcalf

2006). After meeting with AWF, the Chiefs and traditional leaders agreed to develop a CDT to manage land leases to private investors. The Sekute CDT drafted a constitution which organized the Chiefdom's 289 villages into fifteen trust areas based on customary headmanship. Each area had its own trust committee, which proceeded to establish village committees within its area.

The Sekute CDT was organized into a hierarchy. At the top of the hierarchy is the Community Development Trust Board, which consists of Trustee representatives from 15 Area Trust Committees. Below the Community Development Trust Board sits the Area Trust Committees, which consist of representatives of villages from 15 area structures. Below the Area Trust Committees are the Village Trust Committees, which consist of 289 village structures (10 households per village). Each of the 2,900 households in Sekute elects a household representative to sit on one of the Village Trust Committees. Overall, the hierarchy is designed to democratize the traditional system of land administration in the Sekute Chiefdom.

In 2003, a Board of Trustees was elected, and eventually the Sekute Trust was registered with the Registrar of Societies in the Ministry of Home Affairs. The Sekute CDT drafted by-laws to help manage natural resources in the area. The Kazungula District Council adopted the by-laws. The by-laws help regulate charcoal trading as well as streamline investments from the private sector.

In 2006, a survey of Sekute's Zambezi River frontage revealed that land conversions to which the Sekute Chief gave consent, without negotiating for ecological plans or community benefits, were threatening vital community access (Metcalf 2008). Community members appealed to the Sekute CDT. To protect remaining

communal land, the CDT decided that it would identify potential investment sites and pressure the Chief to allocate such sites to the CDT. The CDT also appealed to the District Council to cease processing lease applications. Ultimately, the Sekute Chief agreed to allocate several islands, wildlife habitat, and river frontage to the CDT. In 2007, the AWF hosted a workshop with the Sekute CDT, which resulted in a written agreement on a process for issuing communal land. Pursuant to the agreement, traditional leaders and the CDT will work together when negotiating future lease agreements with private investors (Metcalf 2008).

Ways Forward: Proposals to reform the Land tenure System

In 2006, the Zambian government published a Draft Land Administration and Management Policy to address the problems with the land administration system. The Draft Policy proposes that the Government will “introduce group land rights to allow for the registration of village, family and clan land... recognize the rights of customary land users by defining their rights through a formal survey and registration ensure that no chief shall recommend land for alienation without consulting his/her subjects make the system more accessible and affordable to a wide range of eligible applicant and decentralize the functions of the Commissioner of Lands...” (secs. 4.3.3, 4.5, GRZ 2006).

In 2006, a group of civil societies and customary leaders issued a response to the 2006 Draft Policy (ZLA, 2008). It stated that the land policy should “ensure that, before consent for customary land to convert to leasehold is granted, there is consultation and consensus by all those affected by the said conversion. The ultimate authority to allow land to be given over for conversion will rest with the community” (ZLA, 2008). The civil

societies also called for the establishment of “a reverse clause for customary land that is converted to leasehold to revert to customary land status...” (ZLA, 2008). Although the Zambian government has not yet reformed the 1995 Land Act, there seems to be some consensus among civil societies that strengthening the role of traditional communities in the decision-making process and providing for the reversion of customary land could help secure customary land rights in Zambia.

The racial manipulation of rights to land was a fundamental tenet of both the colonial and apartheid political systems, thus the eradication of poverty and promotion of equitable access to land became a priority for the post-apartheid government along with the call for the delivery of growth and development. Consequently, the Land Reform Programme and other related policies were formulated to deal with the effects of colonisation, racial domination and land dispossession. (Rugage, 2004:1). Rugage (2004:1) further argues that both colonialism and apartheid confined the black majority to the reserves and the cities’ peripheries, which were both economically and socially non-viable. Subsequent to the unbanning of political organisations and the release of political prisoners, the need for the current Land Reform Programme arose. As a result, between 1961 and 1963, various legislative measures were instituted to abolish all racially-based laws and policies to promote reconciliation, justice and equality in relation to land issues. Some of the discriminatory laws that were used to deny black people the right to own land are summarised below:

Native Land Act of 1913 – made more land available to the white population and impoverished black people and denied them a right to economic activities such as farming and

agriculture, forcing them to be dependent on employment in white-owned farms and mines.

The Native (Urban Areas) Act of 1923 – prohibited blacks from residing in “white” urban areas, as they were only reserved for the white population. Black people’s residential status was limited to a mere labour-resource to service white companies and industries, and they were required to always carry pass books as verification that they were permitted in urban areas. Failure to produce a passbook when asked would result in immediate arrest and being sent back to the rural areas. This Act also empowered municipal authorities to secure and provide land for the development of townships where African labourers and their families would reside, which was regulated through the municipal permit and influx control system.

The Group Areas Act of 1950 – enabled the apartheid government to carry out forced removals of black people from areas declared as white. This Act was instrumental in the removal of blacks from areas such as Sophiatown, Alexandra and New Clare to the likes of Livingstone. The Act was augmented by the Prevention of Illegal Squatting Act of 1955, which made provision for the eviction of people with no formal right to the land.

The Native Laws Amendment Act of 1952 – narrowed the definition of permanent residents in towns. In terms of Section 10 of the Act, this was limited to only those who had been born in a town and had lived there continuously for not less than 15 years, or who had been employed there continuously for at least 15 years. Consequently, the Zambian black population was forced to carry identity documents known as pass books and were prohibited from staying in urban areas longer than 72 hours without permission. This system was later extended to black women as well, which

resulted in widespread protests such as the Women’s March in 1956 (Apartheid Legislation Timeline 2014:7).

The Zambia African National Congress (ZANC), as a leading liberation movement, vehemently opposed and abhorred the land dispossession policies and all-applicable legislation. In 1955, the Freedom Charter was adopted, which stated, “Zambia belongs to all who live in it, and restrictions on land ownership shall be ended, and land shall be divided among those who work on it, to banish hunger and famine”.

Then, during the transition period, the ZANC as a governing party in waiting developed the Reconstruction and Development Programme (RDP), which proposed a strategy to ameliorate the injustices of deprivation and denial of access to land, which eventually culminated in the Land Reform Programme.

The need for such a programme arose from the racially discriminatory laws and practices that were still in place right up towards the end of the 20th century, especially those related to land ownership. The application of these laws and practices resulted in extreme inequalities in terms of land use and ownership, and with the democratisation of Zambia in 1994, a new Constitution of the Republic of Zambia was developed in order to rectify these injustices. Among others, it provided that the state must take reasonable legislative actions and other measures from its available resources to create an enabling environment for citizens to gain access to land on an equitable basis. With regard to tenure security, the Constitution further provides that, for people whose tenure was insecure because of the past racially discriminatory laws, the state should redress the situation or upgrade their tenure to secure tenure.

The above-mentioned constitutional provision on tenure security is also applicable and relevant to households in black urban settlements such South Western Townships (Livingstone), as black families have occupied council-owned houses for decades merely as tenants without full ownership rights. Cousins (2013:2), in his article, argued that the Native Land Act of 1913 was discriminatory and that it laid a foundation for apartheid and territorial segregation. The Act formalised the limitations on black land ownership, and denied blacks a link with their Ancestral roots. Cousins clearly captures this by saying that the land issue has been a controversial aspect of Zambia's history and has had a negative impact on the socio-economic and political well-being of the country, and that its resolution is critical for the economic and political stability as well as the general development of the country and its citizens. He then goes on to say that land dispossession of the indigenous people by white settlers created tenure inequality, and that apartheid exacerbated the situation with forced removals and denial of economic independence for Africans, which led to the creation of separate racial zones and ethnically defined homelands.

The racial manipulation of rights to land was a fundamental tenet of both the colonial and racial political systems, thus the eradication of poverty and promotion of equitable access to land became a priority for the post-Zambian government along with the call for the delivery of growth and development. Consequently, the Land Reform Programme and other related policies were formulated to deal with the effects of colonisation, racial domination and land dispossession.

In conducting this study, the researcher discovered that few or no studies have been undertaken in Zambia and elsewhere in relation to urban and rural land tenure reform in formal

urban and rural settlements or black townships comprised of state housing rental stock.

1.1 BACKGROUND OF THE STUDY

Zambia has abundant land resources. Most of this land is very fertile and suitable for agriculture. But millions of people in Zambia have no access to land. Access to land is still one of Zambia's major nightmares. However, unlike other countries, this is not due to the shortage of land. There is plenty of land in Zambia to satisfy the needs of everyone. The shortage is due to the inefficient methods of land ownership, its management and utilisation - it is difficult for the majority of people to secure land. Consequently, there are hundreds of thousands of people with no access to that land. Their rights to land are more often insecure. And legal and economic insecurity creates a credibility gap in relation to the rights of the holder. Many people just 'sit' on their land without using it or using it efficiently and productively because they lack everything that is necessary for this. Due to the unfavourable economic environment in the country, even people with access to land are having to go hungry. This is the case in most rural areas. Although they may have access to land, most people lack the means for developing it. It is very difficult for people to access the technical know-how and the resources necessary to ensure rounded development of their land without the support of government. Zambia, with 752,000 square kilometers, has abundant land for her population of roughly eleven million people. However, many Zambians do not have land of their own. The majority of the people in Zambia are merely squatters on the land they hold which hinders them from developing that land fully. One of the main reasons behind this is the country's land tenure system and the system of administration. Land is obtained through a certain

framework called land law and policy. Sometimes, a country's land and policy can facilitate the acquisition of land by individuals. At other times, this is one of the obstacles which hinders access to land and therefore to development. This research attempts to find out why Zambia has not completely modernised its land law and policy and how it is partly governed by customary law and-' partly by modern law. And also find out how this mixture has not always been smooth and why there have been tensions between the two systems, sometimes developing into full-blown controversies. This study reviews and examines the literature on land, the lands Act of 1995 and related legislation to identify the extent to which they protect or abrogate the rights of the poor and marginalised. It also reviews and examines the extent to which, the "duality" of the system negates or promotes the rights to security of tenure of poor people and recommends the necessary reforms that would promote an efficient, effective and desirable land alienation system. This is necessary because "land administration systems are not static; they are responsive to changes in society. They are modified, redefined or restructured in response to many factors such as population growth and density, conflict of interest or changes in the political and economic organisation of society". This may also help to incite debate for a major land reform to look at every aspect of our land tenure system, and with everyone on board, so that a law that can steer the country forward begins to germinate. In this way Zambia can begin to address the problems associated with the land delivery system in the country in order to ensure equitable access to resources and promote national development. Land law reform in Zambia is an urgent necessity.

General overview of the history of land policy in Zambia and critiques selected pieces of land legislation that define the legal framework

governing land rights and land markets in the country. Legal and institutional impediments to the development of a market-oriented land policy are identified along with concrete recommendations for short- and long-term legal and institutional reforms. An institutional profile of ministries and agencies responsible for designing, promulgating, and implementing the various dimensions of land policy is briefly reviewed. Principal land policy issues confronting policymakers in Zambia are identified, setting the stage for more detailed analyses of land administration processes, leasehold demand, land markets, and land valuation in subsequent chapters.

According to Seriti (1987:45-51), the tenure rights for black people in the so-called urban areas of Zambia entailed a convoluted process governed by several pieces of legislation, and the allocation and occupation of the municipal-/council-owned properties by urban black families was limited to occupational rights based on the lease and permit system and in reciprocation to rental payment, with arrears in rental resulting in eviction without a court order and on the mere instruction of the Superintendent of the municipal council.

In the 1980s, urban black townships were in turmoil and ungovernable due to civic and community resistance, using rent boycotts and civic disobedience as tools for achieving their objectives. In an attempt to stabilise the situation, the apartheid government initiated some form of tenure reform whereby blacks were allowed to hold land rights. These however were limited to residential permits and long-term leases, with the land still belonging to the state (Cousins 1997:4).

According to Lahiff (2007:93), as a panacea to the land tenure challenges, the current government seeks to redress the racial imbalance and secure

tenure rights of historically disadvantaged communities through the Land Reform Programme. This in turn is guided by the Constitution as it sets out the legal basis for land reform, particularly the Bill of Rights which places a responsibility on the state to carry out land and related reforms.

During Zambia's transition phase in 1991, all racially-based and discriminatory laws were repealed in order to readjust matters in a non-racial manner. The government hence developed and introduced various remedial legislations and policies, including the Discount Benefit Scheme which sought to facilitate and stimulate the transfer of ownership from the state to occupants of the pre-1963 state-owned stock. Beneficiaries could thereby receive a discount on the selling price of the property, and without paying for the transfer cost as that was incurred by the state. Furthermore, to mediate and adjudicate on housing disputes, quasi-judicial forums were established in each municipal office and were presided by legally qualified professionals (Enhanced Extended Discount Benefit Scheme: 2005).

Black Zambians could not enjoy property ownership rights due to the unjust laws of the past, after the first democratic elections in 1964 they developed expectations that the democratically elected government would finally give them full ownership rights in the form of title deeds to eradicate economic and social inequality, and thereby create a more equitable and integrated society. This expectation was based on the belief that through the land title programmes, beneficiaries would be enabled to invest in land and housing and would also have access to credit from financial institutions using their properties as collateral, as lack of title deeds was an

impediment in taking advantage of the socio-economic and investment opportunities associated with land titling.

In 1947 a new term of land was implemented in the law: Trust Land. This land was carved out of the Crown land and meant for the occupation of indigenous people. The difference between Trust Land and Native Reserves is that the duration of a non-native interest was 99 years in Trust Land. In Trust Land non-natives could be granted land if this was seen to be in the interest of both races. Alienation of land in Reserves and Trust Land required the consent of the native authority (Mvunga, 1980). The colonial government ensured that the most valuable land (both farming and minerals) was made available to settler farmers, and although a large proportion of these settlers left when Zambia gained its independence in 1964, most of the best farm land remained in the hands of the whites (Bingham, 1993). Until 1970 the western province of Barotseland (see figure 1) had a special status. It was the exclusive domain of the Lozi king and his people. The BSA Co. overestimated the power of the king in the beginning of the colonial period. They thought that the grant of land concession from the Lozi king was a sufficient source of title. The 1926 Native Reserves Commission decided that this was a case of *Nemo dat quod non habet* (no one can give away what one does not have). In 1970, however, the Amendment to the constitution of Zambia allowed uniformity in the land tenure system. The Lozi area was put formally on par with Reserves and Trust land elsewhere in the country (Mvunga, 1980, p38). The 1972 socialist government changed in 1975 the land policy radically in the Land (Conversion of Titles) Act. The Act vested, among other provisions, (1) all land in Zambia in the President, (2) converted freehold into statutory leasehold for a term of years not exceeding 100 years, (3) nationalized vacant land and undeveloped plots, and (4)

forbade the subdivision and sublease of land without the President's consent. Private ownership of land ceased to exist and all land was declared to have no value. Since all land had no value, it ceased to be a saleable and mortgageable commodity. Real estate agents were therefore ordered to close down (Bingham, 1993). Resentment of land ownership was further expressed by the Land (Conversion of Titles) Amendment Act 1985, which prohibited non-Zambians from acquiring land without the written permission of the President. It is not surprising that Zambia was unable to attract foreign investors in agriculture (Bingham, 1993). The in 1991 established market-oriented government saw the need for land tenure reform to increase private sector development, and generate private and foreign investment. This led to the passage of the Lands Act 1995. The Lands Act 1995 repealed the Land (Conversion of Titles) Act of 1975, the Zambia (State lands and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964 and other previous land laws. The Act is the base of the current land tenure system. Land Tenure in 1999 The establishment of the Lands Act, 1995 did not change the land tenure system significantly. All land of Zambia is still vested in the President (Lands Act, 1995 Part II section 3.1) and land in a customary area, held under customary tenure before the commencement of the Lands Act 1995, continues to be so held and recognized (Lands Act, 1995, Part II section 7). The Lands Act, 1995 established a Land Development Fund and introduced the Lands Tribunal. The Tribunal is on the same level as the High court and intended to settle all land-related cases. All cases, including conflicts in customary areas, involving land are supposed to be handled by the Lands Tribunal. The fund is meant to encourage land development through provision of funds for services in newly opened up areas (Mulolwa, 2010). Though all land is vested in the

President, the actual power of control is delegated to the Commissioner of Lands (Mulolwa, 2010).

Based upon the above reasons, the researcher will focus the research study on the tenure system of the former black urban and rural settlements of Livingstone, which are residential areas in Simonga and Chaba characterized by the matchbox council-owned houses built and occupied by households between 1948 and 1961 respectively.

1.1 Land Rights Registration

One of the greatest arguments for land registration and recording is provided by De Soto (2000) who argues that documenting property rights allows for the properties to be turned into capital thereby contributing to the wealth of the nation. The Bathurst Declaration by FIG (1999) defines land registration as the process of recording rights in land either in the form of registration of deeds or the registration of title to land. It is a given that land rights recognition in countries such as Zambia is a determinant to households' improvement in their welfare. Studies also indicate that when rights are recognized there is a more likelihood for households to make long-term investments on their properties thus improving the economies in communities.

1.2 Land administration in the context of National Development Planning

Development outcome number 4 of the Seventh National Development Plan (7NDP) seeks to improve service delivery and particular attention is given to land reforms. The 7NDP is to be implemented between 2017 and 2021. Under the land reform programme, the government has committed to carry out the following:

a) **Land Policy review and enhancement;** It is expected that a new Land Policy will be

promulgated by mid-2018. Article 253(1) of the 2016 amended constitution spells out the principles that must be in a Land Policy among which include the equitable access to land and other resources, security of tenure for lawful landholders, recognition of indigenous cultural rites, sustainable use of land, transparent, effective and efficient administration of land and effective and efficient settlement of land disputes.

b) **Lands and Deeds Act Review;** In order to streamline land administration and management and make it more robust, transparent and also ensure that land allocation becomes efficient the government will establish the Lands Commission in line with the 2016 amended Constitution. Articles 233(1) and (2) of the constitution establish the Lands Commission whose responsibility will be to administer, manage and alienate land on behalf of the president.

c) **Land Audit;** Establish the status of land especially with regard to whether it is still customary or statutory given the conversions from customary to statutory that have taken place. In the long run establish who owns what land where in the country so that effectively the country may know how much land it has for what purpose.

d) **Land Management Information System enhancement;** The current Land Management Information System called the Zambia Integrated Land Information Management System (ZILMIS) will require enhancement in readiness for the National Land Titling Programme as well as possible decentralization through the establishment of the Lands Commission. Currently the system is serving around 200 users' country-wide mostly at provincial headquarters.

e) **Land e-governance development;** government's desire to have a Smart Zambia

includes the possible development of land e-governance platforms to allow for quicker citizen interaction.

f) **Country-wide land titling implementation:** The commitment to carry out systematic land registration of all land in the country. As can be observed from the above ambitious commitments, government is eager to carry out land reforms that will enhance land service delivery. To achieve these objectives government will rely not only on its resources but also on cooperating partners to achieve the set goals.

2 Land Administration in Zambia

Land is administered through the Lands Act of 1995 with the Commissioner of Lands who administered the land on behalf of the president. According to the Act Land is vested in the President. MLNR is the principal ministry responsible for land administration and formulation and coordination of all legislation that is related to land management in the country. As with most Sub-Saharan countries Zambia has a dual tenure system. Officially as can be seen on the Figure 1 below 6% State land and 94% customary land. However, since 1995 with the emergence of the Lands Act (cap 184) that allows for conversion of land out of customary tenure, a significant, but unknown, portion of customary land has been converted to statutory tenure both by individuals and the state. Honig & Mulenga (2015) for instance argue that the percentage of customary land is now approximately 60% of land implying that state land is now around 40%. A lot of land has over the years been converted from customary land so that Title can be obtained.

3 National Land Titling Programme

The National land Titling Programme (NLTP) can be considered a major land reform project in Zambia as it seeks to title all land in the country.

Currently, MLNR has about 600,000 properties in the property register at various stages of titling. Of these 179,000 are on title, 156,000 are on offer while 52000 are at lease stage and the rest are at application stage. This total number of records is estimated to be between 6%-8% of the entire occupied properties in Zambia. To achieve a complete country wide titling will require a huge amount of resources. The form and nature of titling the whole country is one that requires a lot of thought, planning and resources. There is need to set up a legal and institutional framework that will allow for systematic land registration for the country. According to Deininger, Selod and Burns (2012) countries need a legal and institutional framework that clearly defines the rules for allocation of property rights and, by allowing cost-effective enforcement, encourages and facilitates land-related.

Land Rights recognition in Customary Land

The law in Zambia allows individuals to hold land under customary tenure with their rights protected within the limits of custom and tradition. While customary authorities have been granted the right to administer such land in their chiefdoms, including allowing for conversion to leasehold, there is no legal instrument that limits the chiefs' discretionary powers in the administration of land. The immediate challenge is how customary land would be treated in the titling process especially in giving legal effect to the document that registers land rights in customary areas. Currently only the Ministry of Lands is legally mandated to document and register rights on land. Local communities (traditional authorities) and Civil Society Organisations may document such rights but such rights do not have full legal recognition although the Lands Act recognizes customary rights. Traditional authorities may know who owns what land where in their areas but normally do not document the land in an

official register. This lends itself to the possible displacement of villagers and has been a source of serious consternation especially in the face of large-scale land investments. A number of organisations have been carrying out land rights documentation in customary areas. These include land right documentation by TGCC in Eastern Province in which they developed a toolkit for land documentation of customary areas as part of the USAID's Mobile Applications to Secure Tenure (MAST), MEDEEMs parcelCert and the Social Tenure Domain Model. These tools have found a measure of acceptance by some traditional authorities but do not go far enough to legally protect the owners of the documented land. This is because there is no legal framework to register such land in the national land registers. Though the Land Act recognises customary tenure it does not however recognize customary land rights and one requires to convert such rights to statutory rights for them to be registered. On the other hand, land documentation which is acceptable by the traditional authority and is issued by the traditional authority is not admitted in the official land registers and has no basis in law (All transactions on land must be registered in the Lands and Deeds Registry according to the Lands and Deeds Registry Act).

ZILMIS

Zambia Integrated Land Management Information System is a three-tier land information system that was developed from 2013 with centralized system administration functionality and real time remote transaction processing. The overall objective of the system is to store all land records and transaction. In concept the system was meant to include an integrated Geographical Information system (GIS) component to enable direct access and connectivity between the registration and the

cadastral information Figure 3 shows the 3 tier ZILMIS system.

The system is currently struggling to contain the records and is perceived to be sluggish. There is need for enhancements to improve its performance especially in the light of the proposed increased volume of records that will be introduced during the full-scale implementation of the NLTP. The storage servers are now at their limit and are not able to contain even the existing records. The Share Point servers are due for upgrade and generally slow down the work of staff. Data in the system has been found to have duplicates and a lot of data cleaning is required. Enhancements proposed for the system include the linking to banks and mobile money applications for purpose of billing as well as payments. Further integrations are proposed to link ZILMIS to the National Registration System and the Revenue Authority.

1.2 STATEMENT OF THE PROBLEM

The core problem of this research study revolves around the racial inequality in terms of ownership or tenure rights in the former black townships under the apartheid regime, as they were severely underdeveloped and cut off from the mainstream economy. However, in the new democratic Zambia, they are now being prioritised and revitalised, and the security of tenure is considered a constitutional right.

Since 1964, the government has enacted legislation and policies that gave effect to the housing and tenure rights as enshrined in the Constitution, and Section 26 of the Constitution guarantees everyone the right to have access to adequate housing and requires the state to take reasonable legislative and other measures toward

realizing this right (Department of National Housing 2013:8).

In Zambia land is being dished out to foreigners and investors without considering the long-term consequences such action will have on the Zambian people. Zambia has entered a phase where land grabbing is escalating at an alarming rate. In Chief Sekute in Simonga's area, for instance, Livingstone district council has already given out 4,800 hectares of land to a South African investor to grow bananas, this will bring development to the district which is probably the richest in terms of forest resources; is said to be attracting many foreign investors. Traditionally, people manage agriculture based on land rotation. However, things have been changing over the last few years. People from outside the province are coming to stake claims to land in the name of development and local people cannot fight Lusaka businessmen or South African investors,

The core problem of this research study revolves around the racial inequality in terms of ownership or tenure rights in the former black townships under the colonial regime, as they were severely underdeveloped and cut off from the mainstream of the economy.

Various efforts have been made by the democratic government to redress this anomaly of ownership rights, yet certain institutions and individuals still argue that tenure rights for Zambian blacks remain the same as they were during colonial rule. It is unclear though whether their negativity is based on pure ignorance or the deliberate attempt to trivialize state intervention in the Zambian tenure reform programme.

An eloquent testimony to criticism of the government's efforts and commitment to urban tenure reform and in promoting home ownership in the former black townships is the following disparaging statement made by Louw (2015:1)

“Wouldn’t it be wonderful if black Zambians had equal rights, if they enjoyed the same home ownership rights as whites, if they were emancipated, empowered and trusted? If they were equals of whites and no longer patronized? Won’t we rejoice if racism ended not just racism by whites against blacks, and blacks against whites, but racism by blacks against blacks? Imagine a world in which whites stop treating blacks as if they are inferior and think they should no longer live under patronising laws which deny them the right to own and deal freely with their land.”

1.3 PURPOSE OF THE STUDY

Land is a physical asset that incorporates the surface of the earth and all things attached to it, both above and below, including human structures and natural resources. The fact that land allocation and ownership are largely political and contentious issues, it means that their resolutions involves a number of statutory and non-statutory stakeholders, and since this has always been a complicated process, questions arise as to how it is influenced by politicians and politics?

This research study will investigate the Provision of Full Ownership Rights to Land of Zambian Households as a Government Service Delivery Priority in the New Dispensation.

1.3.1 THE SPECIFIC OBJECTIVES OF THE STUDY

1. To provide an overview of the history of tenure rights in Zambia
2. To investigate the legislative and policy frameworks that have and have had an influence on the Zambian land tenure system
3. To investigate the government’s intervention in this regard and to determine the efficacy and efficiency of this intervention and other

government remedial programmes on urban and rural tenure reform

4. To identify the relevant stakeholders and their roles in the urban and rural tenure reform programme.

1.4 RESEARCH QUESTIONS

1. What is the history of land tenure rights in Zambia?
2. Which Zambian legislative frameworks were associated with tenure rights?
3. What led to the tenure reform initiative for Zambian black urban households?
4. What is the current status of the tenure system in Simonga and Chaba?

1.5 SIGNIFICANCE OF THE STUDY

As already stated, the contemporary research on land tenure in Zambia predominantly on tenure problems associated with rural agricultural land ownership and use, but to the exclusion of urban land issues. The democratic governments primary concerns were thus to address skewed patterns of land ownership and denial of land ownership rights in the post-colonial Zambia, not taking into account that urban areas have an increasing demand for land for residential purposes and for its use as a working space.

The motivation to undertake this research study is to fill the existing gap in terms of the complete evolution of land tenure rights in the former black urban settlements, as studies already undertaken on the tenure system are mainly focused on three aspects: -

The Zambian Land Reform Policy, which dealt with three strands, namely: land restitution, land redistribution and land tenure reform, and which related to rural communities, agricultural land, labour tenants and upgrading informal land tenure rights.

1.7 DEFINITION OF TERMS

2.3.1 Land tenure rights

Land Tenure Rights can be defined as the relationship between individuals or groups with respect to land, be it legal or customary.

2.3.2 Urbanisation

Urbanisation can be defined as a process whereby a population shifts from rural to urban areas in search and pursuit of socio-economic opportunities such as employment, health and social facilities. However, urbanisation can also bring stress upon the land, for example more demand for water, housing, transport and employment (Wikipedia 2015:1).

2.3.3 Migration

Migration can be defined as a process whereby people move from one place to another, whether voluntary as in pursuit of socio-economic opportunities, or involuntary through displacement due to war, poverty, slavery and human trafficking (Wikipedia 2015:1).

1.8 THEORETICAL FRAMEWORK

The Zambian Constitution of 1964 is the supreme law of the country and regulates the state and government functions. As a result, a new policy and legislative framework was developed which abolished the racially-based laws, and provided for restitution of land dispossessed under colonialism?

In developing the theoretical framework for this study, it is critical to cover Public Administration as it provides constitutional guidance on how state departments and government officials must operate, and the chapter also covers different

theories about urban land tenure reform and associated rights.

2.2.1 Public administration

According to Jipson & Paul (2015: 2), Public Administration is primarily concerned with the organisation of government policies and programmes as well as the behaviour of civil servants responsible for the execution of said policies and programmes. In addition, Du Toit and van Der Walt (1999:41) relate that Public Administration pertains to the provision of services to the public by state departments and government officials in order to improve their general welfare and, in pursuit of this goal the officials are supposed to display ethical conduct and the departments concerned must follow due systems and processes accordingly.

The Constitution of the Republic of Zambia

The Zambian Constitution of 1964 is the supreme law of the country and regulates the state and government functions. Zambia is a unitary state with some federal characteristics, meaning that power remains concentrated at the level of central government, while certain prescribed powers are devolved to provincial and local authorities.

The courts are not the only institutions that ensure enforcement of socio-economic rights, as the Constitution created a similar enforcement mechanism by requiring the Public Service Commission to monitor progress in the implementation of these rights.

Values of the Society

The values related to the principles that political office bearers and officials must comply with in carrying out their duties, and which members of the public must also comply with in their dealings

with government officials (Du Toit & van Der Walt, 1999:103-109).

Some of these values are relevant and applicable to the urban tenure reform programme, and are discussed below:

□ Reasonableness and Fairness

In the project implementation, the intended beneficiaries are non-homogenous and thus the state department and officials must be fair and reasonable in the provision of secure tenure rights, irrespective of race, gender, origin and religion.

Importance of Public Administration

According to Jipson and Paul (2015:10-11), Public Administration is an important mechanism for preserving and promoting the welfare of the community, as the state provides critical services such as housing with secure tenure, health, safety and security. They further argue that in a country with a history of discrimination and inequality, Public Administration may be viewed under two headings, namely: the people and democracy.

Public Administration and the People

Public Administration is important in the lives of people as government has branches and departments that provide a particular service free of charge and upon which they depend, such as the Department of Human Settlements which provides housing and secure tenure.

CHAPTER TWO LITERATURE REVIEW

2.0 INTRODUCTION

According to the study guide (2015:1), a literature review is an assessment of a body of research that addresses a research question. The researcher will review data held in books, journal articles, government reports, policy documents and other research papers in order to identify what is already known about the area of study, but also to identify any questions the existing research does not answer and thereby present a case why further study on the research question is required.

As stated previously, the data for this study is based on document analysis in relation to relevant policy and legislative frameworks, and to a certain extent on the theoretical framework of de Soto, who argues that land title programmes create an enabling environment for beneficiaries to use their properties as collateral for economic and investment opportunities. While many studies have been undertaken to date on land reform for both urban and rural scenarios, these have failed to focus on full ownership or secure tenure rights of households in formal pre-1964 black urban settlements.

1. OVERVIEW OF THE HISTORY OF TENURE RIGHTS IN ZAMBIA

Zambia recognizes two types of land tenure: customary and leasehold tenure. While historically the majority of land in Zambia has been held under customary tenure, leases (also called leasehold titles) are the only legal means of holding land rights.

In 1995, a new Land Act was passed, which makes it easier for investors to acquire leasehold titles to customary land. When an investor obtains a leasehold title to customary land, the customary land reverts to the state once the lease expires and

is thereafter governed by statute. 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 (Brown 2005).

This brief analyzes the conversion process and its impact on rural communities, and discusses proposed solutions for securing customary land rights in Zambia.

Customary Land in Zambia

Customary land is crucial to the survival and well-being of rural communities in Zambia. Land is a source of food, shelter, social status and power (Mudenda 2006).

Customary lands provide communities with a commonly shared pool of natural resources. From the pool, villagers acquire drinking water from rivers and village wells, graze livestock on pastures, cut firewood and building materials from forests, and catch fish in lakes and rivers (Brown). Customary lands also function as a safety net in times of uncertainty. For instance, in southern Zambia, when rainfall is inadequate during dry seasons, communal access to the Zambezi River and its banks allow for villages to obtain water for grazing livestock (Brown 2005).

Under customary tenure arrangements, rural villagers are given rights to customary lands based on their membership within a community. Each community is unique, but, in many communities, membership can be granted or denied by the Village Headman (Loenen 1999). Many communities organize their members into a social hierarchy at the household, village, clan, and chiefdom levels. The Chief is often the highest position on the hierarchy. The Chief has

power to grant occupancy and use rights, oversee land transactions between community members, regulate common pools of resources, and adjudicate land disputes (Brown 2005).

The Basis of Tenure Insecurity: The History of Land Tenure in Zambia

Throughout history, Zambia has followed a dual system of land tenure. In 1924, the British Colonial Authority divided land into two categories: Crown Land and Native Reserves (Loenen 1999). Native Reserves were designated for the exclusive use of Africans. Land rights on Reserves were granted based on customary law. Chiefs controlled the use and allocation of Reserve land. Upon approval by the Chief and central government, non-natives were permitted to hold land in Reserves, but not for more than five years. In 1947, the British Government carved out portions of utilized Crown Land to establish Native Trusts. On Native Trusts, the Governor, who was designated the leader of Zambia under British rule, could grant rights of occupancy for a 99-year period to non-indigenous people. Despite such grants, Native Trusts remained under customary tenure and could not be converted to Crown Land (Brown 2005).

Following Zambia's independence in 1964, Crown Land was converted to state land and thereafter administered by the Ministry of Lands. All state land was vested in the President, and any land transaction involving state land required the President's approval. Freehold tenure rights to state land were abolished and converted to statutory leaseholds.

Meanwhile, on Native Reserves and Trusts, indigenous populations continued to follow the tenure system which existed under British rule. The Zambian government continued to recognize

the Chief's right to regulate the use and allocation of trust and reserve land (Hansungule 2001).

The 1995 Land Act

Following its election to government in 1991, the Movement for Multiparty Democracy (MMD) proposed a wave of new land reforms intended to establish a more efficient system of tenure conversion in Zambia (MMD 1991).

The MMD sought to institute a system which would attach economic value to undeveloped land and reward the productive use of property by making private titles to customary lands easily accessible for investors (MMD 1991).

The Zambian Government justified such reforms by stating that customary land tenure is "insecure" and subject to "severe limitations" (GRZ 2000). Not only would a more secure tenure system benefit investors, but, by leasing land rights to investors, villagers would be able to use their land as collateral to secure credit to invest in farms and businesses (Brown 2005). To address these concerns, the 1995 Land Act was passed, which codified a procedure for investors to acquire leasehold titles to customary land, and thereby obtain statutorily recognized land rights.

The Conversion Process: How Leasehold Titles to Customary Lands are Acquired

The 1995 Land Act states that all land in Zambia shall vest absolutely in the President (sec.3(1), Land Act, 1995). By law, all land transactions require the President's consent except for grants of use and occupancy rights based on custom (sec. 8(3), Land Act, 1995).

The President may convert customary tenure into leasehold title under a wide range of circumstances as long as he takes into consideration local customary laws on land tenure

and consults with Chiefs, District Councils, and any person whose interests might be affected by the conversion. (sec. 3(3)-(4) Land Act, 1995; sec. 4(D)(ii) Admin. Cir.). By law, the President delegates the day-to-day administration of land matters to the Commissioner of Lands (sec. 2, Admin. Circ., 1985). The Commissioner of Lands is empowered by the President to "make grants or dispositions to any person subject to regulations enacted by the Minister of Lands" (sec. 2, Admin. Circ., 1985).

The conversion of customary land to leasehold title requires approval from three authorities: The Chief, the District Council, and the Commissioner of Lands. First, the written consent of the Chief must be obtained by the District Council (sec. 4(D) (ii)(a), Admin. Circ., 1985). Next, the District Council must submit to the Commissioner of Lands a resolution recommending whether or not to convert the customary tenure into leasehold title. The resolution must include minutes from the Council's committee meeting at which the decision was reached and an approved layout plan for the tract of land endorsed by the Chief, the Chairman of the Council, and the District Executive Secretary (sec. 4(D) (ii)(a), Admin. Circ., 1985).

District Councils are "advised" not to recommend the alienation of land areas that exceed 250 hectares (sec. 4(D)(v), Admin. Cir., 1985). Once the resolution is submitted to the Commissioner of Lands, the Commissioner of Lands then makes a decision on whether or not the land should be converted. The Commissioner of Land must invariably accept the District Council's recommendation unless doing so "would cause injustice to others or if [the District Council's recommendation] is contrary to national interest or public policy" (sec. 3, (Admin. Cir., 1985)).

Along with granting powers to the President to convert customary land, the 1995 Land Act also allows “any person” who holds land under customary tenure to apply to convert it to a leasehold title (sec. 891, Land Act, 1995). The lease cannot exceed 99 years (sec. 8(1), Land Act, 1995). Their application must be approved by the Chief and District Councils (sec. (8)(2), Land Act, 1995).

Land may thereafter be converted into leasehold tenure “by way of a grant of leasehold by the President [or] any other title that the President may grant” (sec. 8(1)(a), Land Act, 1995). The President may extend the lease agreement to a term exceeding 99 years if he or she “considers it necessary in the national interest” (sec. 3(6)(a), Land Act, 1995).

The Impact of land Conversions on Customary Rights Holders

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. It is also unclear whether the grant of a leasehold title to converted land necessarily extinguishes all customary rights previously attached to the land.

Although 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, (sec. 9, Land Act, 1995), it neither states what effect a land conversion has on customary use rights nor whether converted land remains subject to customary law. Furthermore, the Land Act does not stipulate what becomes of converted land once leases expire. In practice, customary rights attached to converted land are extinguished once leases are granted.

The conversion process does diminish the Chiefs’ authority. Only the Commissioner of Lands is considered the statutory landlord when lease agreements are made with investors. By law, Chiefs are not given any bargaining or oversight power to ensure the terms of the lease are adhered to and the land is managed effectively (Metcalf 2006). Land leases are only subject to statute and regulations passed by the Ministry of Lands. (sec. 7, Admin. Circ., 1985).

Due to the high costs associated with obtaining leasehold titles, the conversion process puts impoverished villagers at a disadvantage (Brown). Although the Land Act provides villagers with an opportunity to use their land as collateral to secure credit, the cost of doing so is prohibitively expensive for many villagers. Villagers must hire a surveyor to map their tract of land and pay a lease charge, a cost which amounts to at least 500,000 kwacha (about \$100) (Brown). For 99-year leases, boundary surveys can sometimes amount to millions of kwacha (hundreds of dollars) in fees (Brown). Villagers must also bear transportation costs if the surveying team has to travel from Lusaka. Furthermore, securing a lease entails incurring the cost of traveling to the Ministry of Land offices in Lusaka and Ndola. The Ministry of Lands also imposes an annual ground rent charge for leasehold title holders (sec. 6(2), Land Act, 1995). The rent charge is currently set by statutory instrument no. 44 of 2006, which, when it was passed, increased the ground rent by between 500-600 percent for all agricultural lands (Statutory Instrument No. 28 of 2010; ZNFU, 2010).

All community members are entitled to CDT membership. To effectively manage communal lands, members of CDTs are organized into committees at the village, area, and chiefdom levels. The CDT works in a participatory manner

to seek investor lessees and regulate communal land as both a statutory and customary landlord. AWF has helped develop action plans that identify and prioritize key land and natural resource areas that should be managed by CDT s.

In 2000, AWF began developing a CDT in the Sekute Chiefdom, an area of 250,000 hectares on which 17,500 people reside (Metcalf 2006). According to AWF, the Sekute Chiefdom was worth protecting because of its significant wildlife potential, good tourism sites, and 60 kilometres of Zambezi River frontage (Metcalf 2006). After meeting with AWF, the Chiefs and traditional leaders agreed to develop a CDT to manage land leases to private investors. The Sekute CDT drafted a constitution which organized the Chiefdom's 289 villages into fifteen trust areas based on customary headmanship. Each area had its own trust committee, which proceeded to establish village committees within its area.

The Sekute CDT was organized into a hierarchy. At the top of the hierarchy is the Community Development Trust Board, which consists of Trustee representatives from 15 Area Trust Committees. Below the Community Development Trust Board sits the Area Trust Committees, which consist of representatives of villages from 15 area structures. Below the Area Trust Committees are the Village Trust Committees, which consist of 289 village structures (10 households per village). Each of the 2,900 households in Sekute elects a household representative to sit on one of the Village Trust Committees. Overall, the hierarchy is designed to democratize the traditional system of land administration in the Sekute Chiefdom.

In 2003, a Board of Trustees was elected, and eventually the Sekute Trust was registered with the Registrar of Societies in the Ministry of Home

Affairs. The Sekute CDT drafted by-laws to help manage natural resources in the area. The Kazungula District Council adopted the by-laws. The by-laws help regulate charcoal trading as well as streamline investments from the private sector.

In 2006, a survey of Sekute's Zambezi River frontage revealed that land conversions to which the Sekute Chief gave consent, without negotiating for ecological plans or community benefits, were threatening vital community access (Metcalf 2008).

Community members appealed to the Sekute CDT. To protect remaining communal land, the CDT decided that it would identify potential investment sites and pressure the Chief to allocate such sites to the CDT. The CDT also appealed to the District Council to cease processing lease applications.

Ultimately, the Sekute Chief agreed to allocate several islands, wildlife habitat, and river frontage to the CDT.

INVESTIGATION OF THE LEGISLATIVE AND POLICY FRAMEWORKS THAT HAVE AND HAVE HAD AN INFLUENCE ON THE ZAMBIAN LAND TENURE SYSTEM

THE LEGAL FRAMEWORK

Zambia's 1991 Constitution (as amended 2010) recognizes property rights and protects individuals against the deprivation of property unless authorized by law. The state can violate individual property rights if it is acting in the course of implementing a comprehensive land policy. The Constitution voids laws that discriminate on the basis of gender but explicitly excludes personal law (e.g. laws relating to

marriage, children, divorce, inheritance) and customary law – both of which can contain discriminatory principles (GOZ 1991; Hansungule et al. 2010).

The 1995 Land Act vests all Zambian land in the President and recognizes two tenure types: customary tenure and leasehold rights to state land. Customary tenure can be converted into private leasehold tenure over state land at the election of the holder of the customary tenure. Once converted, customary rights are extinguished and the land cannot be converted back to customary tenure. The 1995 Land Act recognizes and allows for the continuation of customary tenure. However, under the Land Act, formal law trumps the customary law in the event of conflict (Adams 2003; GOZ 1995a).

The Land Act restricts the state's ability to repossess undeveloped land and liberalizes the terms for foreigners to acquire land rights. Holders of customary land rights can convert the land into a leasehold interest in state land in favor of third parties, including foreigners (Machina 2002; Brown 2005).

No regulations were enacted under the 1995 Land Act, and efforts to pass a land policy in the decade following the Land Act's enactment were unsuccessful. Members of civil society raised concerns about the draft land policies, noting that the policies focused on the privatization of customary land and encouragement of large-scale investment in land without providing protections for the population dependent on rural land and access to natural resources. Policymakers have turned their attention to the land provisions in the new constitution, which is expected to be adopted following the 2015 elections (ZLA 2008; NCC 2009; NCC 2008).

In October 2009, the National Constitutional Conference (NCC) adopted the report of the Land and Environment Committee and reached agreement on the new constitutional provisions addressing land. The draft constitution provides for: (1) equitable access to land and associated resources; (2) equitable access to and ownership of land by women; (3) land tenure security; (4) sustainable and productive management of land resources; (4) transparent

Section 233 of the Constitution of the Republic of Zambia Act 2016 establishes the Lands Commission that “shall have offices in all Provinces and progressively in districts”. Accordingly, the Lands Commission shall administer, manage and alienate land, on behalf of the President to citizens and non-citizens for a prescribed tenure. Section 254, provides for classification of all land in Zambia as state land, customary land and any other classification, as prescribed.

The Lands Act

The Lands Act 1995 provides for administration of leasehold tenure and the continuation of customary tenure. The Act is ineffective in a number of areas, particularly because it has no appropriate regulatory instruments to support it.

For instance, in spite of stipulating the mode of land alienation, the Ministry has maintained the provisions of the 1985 Administrative Circular. Similarly, the recognition of customary land tenure by Section 7 of the Act is not followed by recognition of ownership rights. In short, the Act has a number of limitations. Some of these can be summed up as:

- (i) Lack of clarity in role of chiefs as custodians of customary land;

(ii) Absence of provisions for formal registration of customary tenure;

(iii) No jurisdiction for dispute resolution involving land rights originating from customary tenure;

(iv) Weak restrictions or limitations to foreign ownership of land;

(vi) Weak guidelines on procedures for allocation and sale of land. The rules and procedures governing access to land for investors are similar to those of nationals as well as established inhabitants of customary land. The procedures for registration of leasehold rights on customary land are the same for occupants and new settlers. There is need for different procedures for land acquisition affirmative to indigenous and nationals over residents and foreigners.

There are concerns that the legal recognition of customary land is inadequate. The Land Act of 1995 offers discretion to the chiefs in allocation of customary land, but does not require upkeep of transfer records to ascertain land use rights. There is need for land records to protect community land uses to avoid private enclosures of community land. The Land Act makes the conversion of land from customary to statutory tenure irreversible. The conversion of tenure from customary to leaseholds effectively extinguishes customary rights. This is equal to systematic erosion of customary land rights in the country and is a source of concern among chiefs and customary land rights holders alike.

The Survey Act

The Survey Act (CAP 188) of 1960 specifies the administration of surveys and the licensing of surveyors. The Act also provides for responsibility of Government in the supervision and control of all surveys and charting of land and

the preserve of records pertaining to survey. The Act, which was passed in 1960, is not consistent with emerging survey and mapping technologies, methods and professional practices in use. The Act prescribes survey standards and accuracies that are too stringent and not fit for purpose, thereby depriving the public and people in rural areas of simpler, quicker and affordable survey services. The public perceives that prescribed survey fees and charges are unaffordable. There is concern by the profession over the extent of state versus self-regulation of professional survey practice. The Act has extensive provision for cadastral surveys and to a less extent for non-cadastral and geo-information services.

The Lands and Deeds Registry Act

The Lands and Deeds Registry Act provides for registrations of Titles and other miscellaneous documents. The Act restricts conveyance to legal practitioners by the Act and lack of provisions for certification and registration of conveyors and related agents is restrictive and limits the process of registration to one category of practitioners. Even though the Act provides for appointment of District Registrars, this is limited to only a few major towns. The position of the district registrar has remained vacant, thereby causing costly registration of documents. The Act has a number of challenges, some of which are the absence of provisions for registration of rights of landholders under customary tenure and the non-creation of District Registries, which makes the system centralized and costly to users. Lack of integration of the existing township and municipal registries established under the repealed Housing (Statutory and Improvement Areas) Act Chapter 194 and the Town and Country Planning Act Chapter 283 makes the register incomplete.

Customary Land Law

Customary land law is not codified. African customary law and practice is governed by interpretations of oral traditions and customs defining humankind land relationships. According to legal experts, customary land law is a living law and is not static. The primary legal mechanism to protect the customary land rights of local communities is the Lands (Customary Tenure) (Conversion) Regulations (2006) which call on the chief and local authority to confirm, through signed written consent that the land is not being used for other purposes; the members of the community were consulted; the investor's interest does not conflict with the needs, interests and rights of local land users and recommendation for leasehold title. The requirement for consent of a customary ruler by applicant for certificate of title does not require proof of community consultations.

THE LAND POLICY

The Vision

The vision of the National Land Policy is a Zambia where there is equitable access to secure land ownership by all Zambians, and is administered and managed efficiently and effectively for sustainable development of the country. Land is recognised as a resource to foster development. To this end, it is the vision of this policy to provide for access and use of land by non-Zambians. This is in line with the Article 254 (2) of the Constitution of Zambia (Amendment) No.2 of 2016 which indicates that the President may alienate land to citizens and non-citizens as described. This Policy provides that ownership of land remains the preserve and privilege of Zambians while non-Zambians can only sub-lease land from the government and from Zambians. Land is not only an economic and

environmental asset. It is also a social, cultural and spiritual resource. Land is an important factor in the construction of social identity, organisation of religious life and the reproduction of culture. Land links generations, families, lineages and communities and a policy is needed to address these dimensions in the development a modern society. The absence of a coherent land policy is responsible for disorderly management of land. A national land policy advances discipline in the land market, minimises land encroachments and avoids multiple land sales; unapproved development schemes and haphazard developments. The national land policy has to produce effective and efficient land administration and management systems for both state and customary land, harmonise land investments for agriculture, forestry and fisheries, energy and mining uses and also produce a framework for accessible land dispute management. Gender disparities in the manner rights to land to land are enjoyed or accessed in the country continue to exist due to several reasons. This policy will ensure that they are opportunities for every Zambian to be able to access land and secure their interests in land whether male or female.

The national land policy balances the needs of rural and urban areas through effective land use planning and controls. The policy defines the incentive framework for optimal land utilization; the development and management of urban lands, for rural renewal and supports development of sustainable infrastructures. The policy supports the Urban and Regional Planning Act 2015, which allows the application of land use planning principles throughout the country. It supports a framework that accommodates actions to mitigate climate change impacts, sustain forests, food, and water and health benefits to help local communities and to conserve biodiversity and ecosystem services.

The policy seeks to domesticate key provisions of some international instruments such as the Voluntary Guidelines on the Responsible Governance of Tenure, the Sustainable Development Goals, the African Union (AU) Framework and Guidelines, the AU Guiding Principles on Large Scale Land-based Investments and the Nairobi Action Plan. It also domesticates relevant provisions of the Universal Declaration of Human rights, the Convention on the Elimination of Discrimination against Women [CEDAW (1979)], the 1995 Beijing Declaration and Platform of Action, the 2003 Protocol to the African.

GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS

In its Fifth National Development Plan, the GOZ identified the need to diversify the mining sector to develop minerals in addition to copper and cobalt. In addition, the GOZ committed to promoting small-scale mining, which has the potential to create employment in remote rural areas where jobs are scarce. The government recognizes the need to support development of key institutions such as the Ministry of Mines and Minerals Development, to update the legal framework, and support infrastructure-development in areas with significant mineral deposits (GOZ 2006). The government has been actively courting private investment in the mining sector since the completion of privatization in 2000. In the last decade, China has become the third largest investor in Zambia after South Africa and Great Britain. Copper production by Chinese-owned mines in Zambia is estimated at between 25,000 and 30,000 metric tons per annum, and China has invested in the construction of a copper smelting plant and cement plant in Lusaka. In April 2010, the Zambian government signed a \$600 million agreement with China Nonferrous Metals Limited (CNMC) for the extraction of

copper from the Mufulira Tailing dams (GOZ MMD n.d.; Reuters 2010; Aregheore 2006; Times of Zambia 2010).

2.8 SUMMARY OF THE REVIEW

Land tenure reform programmes have been advocated as instruments of development and as panaceas to the socio-economic plights of the poor and the discriminated against, both internationally and in Africa. This they accomplish by promising greater agricultural and economic productivity as a result of titling, which is anticipated to promote land investment, credit supply and efficient land markets.

Contrary to these promises however, these programme have revealed negative effects of titling including conflicts, corruption and worsening tenure insecurity of the poor and small farmers.

In the Zambian context, land ownership to blacks as a general rule was not available for a long period, hence their abhorrence of colonialism and apartheid which precipitated their socio-economic plight. Through the eras of segregation and colonialism, the African communities were denied land and ownership rights and treated as a mere labour resource for farms, mines and industries. The Nationalist Party government utilized legislative power to maintain control of the land and migration of the labour resource through separate development policies.

After the victory of the UNIP in the first democratic elections in 1964, hope developed among the black people that their socio-economic situation would be remedied, and that the democratic government would build a non-racial, non-sexist, democratic and prosperous society founded upon the principles of equality, freedom and prosperity.

CHAPTER THREE RESEARCH METHODOLOGY

3.0 INTRODUCTEION

Research methodologies can be viewed as the manner in which a researcher approaches a research problem. In support of this statement, Kothari (2004:8) argues that research methodology, “may be understood as the science of studying how research is done scientifically”. These tools help the researcher to collect data for the research study and to examine information collected in order to draw a conclusion.

Land ownership as a tenure system defines the ability of individuals to have full access to land as well as security to use and occupy it. The land issue has been contentious in Zambia for many years, as demonstrated in Chapter two by analysing the African and international approaches of land reform programmes, including the Zambian urban context.

This chapter outlines the research methodology and research methods used to carry out this study, and further provides justification for their selection based on their value for achieving the research objectives, with document analysis being the tool selected to collect data. Also covered are the ethical considerations that were taken into account during the data collection process.

There are two types of research methodologies used to conduct empirical studies, namely qualitative and quantitative, each of which has a unique approach.

According to Paton (2002), quantitative methodology focuses on numerical and scientific experiments, while qualitative methodology has philosophical roots in the naturalistic school of thought. Paton further states that a qualitative approach enables issues to be studied in depth by supplying detailed information about a smaller

number of people or cases, hence increasing the depth of understanding for situations that would otherwise be beyond the researcher’s grasp in terms of time and resources.

The qualitative research approach is a good research method for evaluating programmes by capturing and communicating the participants’ stories, thereby enabling a better understanding of the process and the programme’s outcomes for those who must make decisions about it (Paton, 2002).

The qualitative research approach in this study will enable the researcher to logically document the evolution of tenure rights in Zambia, and its impact on the households in the former black urban settlements, as it is aimed at providing inputs into the current Land Reform Policy and programme.

Furthermore, because the researcher was involved in the implementation of the state’s remedial programme on ownership rights, this approach is seen as appropriate. The researcher becomes part of the natural setting where the research is to be conducted, and a relationship based on trust is created between the researcher and institutions involved.

3.1 RESEARCH DESIGN

According to Patton (2002:3), data or descriptive is a method of analysing text from documents or interviews when conducting a research study. For this particular study, data analysis was undertaken to organise data in a logical and understandable way, and this entailed data preparation, descriptive statistics and inferential statistics.

The research design selected to conduct this research study is descriptive, looking at policy and legislative frameworks, books, articles and government reports which provide a

comprehensive perspective on past events, as in how they influence the present and how they will relate to the future.

The reason for selecting this design is because the research study looks at the evolution of the urban tenure system in Zambia, which involves the historical overview of the urban tenure system for blacks, past discriminatory laws that cemented their dispossession, landlessness, homelessness and tenure inequalities, and the remedial government's intervention to redress tenure inequalities of the past and the socio-economic impact thereof.

The planned approach to conduct this research study takes cognisance of the following elements:

- a) Sample
- b) Purpose of research
- c) How will data be collected or generated?
- d) How will data be analysed?
- e) How will the results be obtained?
- f) Identification and acknowledgement of any issues or hindrances and how they would be dealt with.

3.2 AREA OF THE STUDY

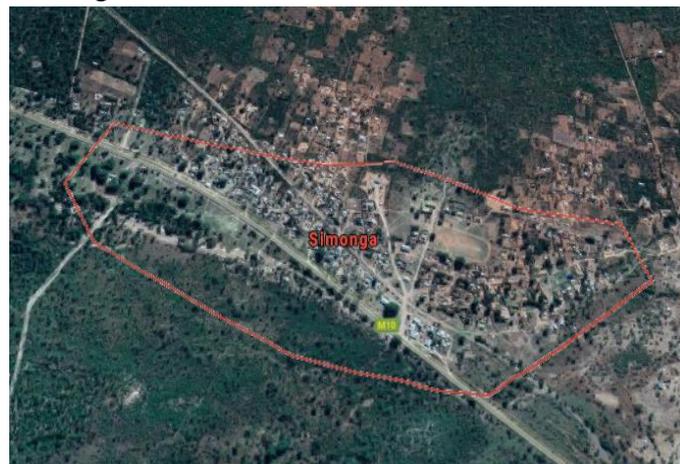
Simonga and Chaba, as a black urban settlement, is characterized by old matchbox-style state-built houses, and was designed to neither serve as a site of economic activity nor to be habitable. Instead, it was intended as a labour reserve for supplying cheap labour for white industries and businesses, and little beside.

As the area of study for this research, the focus is on the evolution of land or tenure rights in Simonga and Chaba, from residential permits and leases to full ownership rights in the form of title deeds.

Simonga and Chaba is one of the biggest peri-urban human settlements in Livingstone Zambia, predominantly inhabited by blacks and has been at the forefront in the struggle for restoration of human dignity in the country.

The research approach will entail fragmenting the research study into two areas in Simonga and Chaba

Simonga



Source:

<https://www.google.com/maps/place/Simonga/@17.8071405,25.7111958,1486m/data=!3m2!1e3!4b1!4m5!3m4!1s0x194ffef94fcfab5f:0x76f6ea2b45b2341e!8m2!3d-17.8069743!4d25.7153571>

Chaba Map



Source:

<https://www.google.com/maps/place/Chaba/@-10.9668602,30.0763957,2576m/data=!3m1!1e3!4m5!3m4!1s0x190c28a74ed487e1:0x4aa25db71649be4!8m2!3d-10.9667781!4d30.0852989>

As mentioned, Simonga and Chaba was designed to house cheap black labour and was thus regarded as a labour reserve centre for “white economic development”.

Simonga and Chaba, as a typical black township is characterised by small matchbox houses of low standard and poor quality, with poor services, infrastructure, amenities and transportation. As a township, it was meant to enable black people to remain only healthy enough to provide manual labour to the white community and white-owned economy and to be easily accessible to police patrols.

Despite the fact that it is not the purpose of this research study to focus on the history of Simonga and Chaba, it is nevertheless logical to give a brief snapshot on the background of this township in order to better comprehend the area of study, and this brief background will be dealt with in terms of phases.

3.4 SAMPLE AND SAMPLING TECHNIQUES

Sampling can be defined as a population of interest that is identified and selected by the researcher to conduct a research study, and which can be selected randomly or non-randomly (Study.com, 2015:2).

The sample frames for this research study are Simonga and Chaba locations, for the following reasons:

They are characterised by old “matchbox” houses, which have been occupied by households for

decades in exchange for rental with no secure tenure rights.

Some community activists who reside in the townships took part in the resistance and efforts of the Simonga and Chaba Civic Association against the notorious black local authorities and insecure tenure rights for urban blacks, which culminated in the urban reform programme.

The other two reasons are that some of the prominent political figures who sacrificed their lives and made enormous contributions in changing the Zambian political landscape are from Simonga and Chaba is where the researcher was born and bred and the area shaped his perspective about life in general.

3.7 METHOD OF DATA COLLECTION

Interviews

Interviews are the common method of collecting data in any qualitative study. This study used semi-structured interviews as the main method of data collection where necessary in-depth interviews was used. Hornby (1989) as quoted in Rwegelera (2017) defines an interview as the meeting in which a researcher asks somebody questions in order to find out his or her views. Also, Bogdan and Birklen (2006) define interview as face-to-face version of the questionnaire. According to Kothari (2015) interview is a method of collecting data which involves presentation of oral Research methodologies can be viewed as the manner in which a researcher approaches a research problem. In support of this statement, Kothari (2015:8) argues that research methodology, “may be understood as the science of studying how research is done scientifically”. These tools help the researcher to collect data for the research study and to examine information collected in order to draw a conclusion. The researcher selected literature review, which is a

qualitative research approach, as a method of collecting data, as it entails an assessment of a body of research that addresses a research question and also identifies what is already known about an area of study. The information is then gleaned from secondary sources such as books, research papers, official statistics, government reports, web data, and policy and legislative documents.

The review of literature had to relate to the broader concept of land tenure programmes, then narrowed down to the concept of urban land tenure system, which is relevant to the research problem. Furthermore, to give a broader perspective on the land reform programme both the African and international approaches were explored. However, it must also be noted that the greatest challenge in conducting the literature review or collecting data for this research study was the location of relevant literature, since contemporary research studies and remedial government reform programmes predominantly focus on land reform programmes for the agricultural or rural communities to the exclusion of urban areas.

3.8 METHOD OF DATA ANALYSIS

The main purpose of data analysis is to attach meaning to the vast amount of collected data.

Data analysis can then be defined as a process of evaluating data using logical and analytical reasoning to examine each component of the data provided. This entails various processes, such as editing and cleaning, detailed analysis, graphical analysis and the use of frequency tables, cross tabulation, filtering and simple regression analysis (Business Dictionary, 2015:1-4).

In conducting this research study, the qualitative data from the available and relevant documentation and project reports on the urban

tenure reform were analysed to determine factual information in terms of number of residential properties occupied in the two locations, namely Simonga and Chaba. In edifying the argument or findings, there is use of descriptive statistics in terms of different tenure systems and the number of households that have made applications for title deeds, as well as the graphical depiction of properties in terms of properties claimed, transferred, disputed and outstanding.

3.12 ETHICS AND DATA PROTECTION

According to the Business Dictionary on Ethics and Data Protection (2015:1), ethical guidelines seek to protect the individuals, communities and environments involved in the study against any form of harm, manipulation and malpractice.

One of the reasons for undertaking this study was because of negative comments by certain commentators and political organisations that the democratic government has done nothing to address the inequalities in the urban tenure system. Some of the tenants in these state-owned houses in townships have not received title deeds to date, despite decades of occupation with insecure tenure rights, yet more resources have been allocated and programmes focused on rural and agricultural land.

Through this study, the researcher, therefore, seek to repudiate these statements by demonstrating the government's intervention through the development and implementation of the urban tenure reform programme.

3.13 CONCLUSION

This chapter dealt with the research methodology and research methods used to carry out this study. It further provided justification for the selected methodology and methods, taking into account the value of these tools utilised to achieve the

research objectives. Document analysis was used to collect data in terms of the urban tenure reform programme for the predominantly black urban settlement of Simonga and Chaba, with a specific focus on Simonga and Chaba townships. Also covered were the ethical considerations that were taken into cognisance.

As for the data collection process, this involved various steps such as framing the research question, searching relevant bodies of literature, managing search results, synthesising the research literature and writing the assessment thereof.

Literature was reviewed to assess the body of research that addresses the research question, mainly from secondary data such as books, publications, articles, project status and progress reports and government legislation and policies.

CHAPTER FOUR FINDINGS AND DISCUSSION

4.1 INTRODUCTION TO THE FINDINGS

As stated in previous chapters, the need for a land reform programme arose from the racially discriminatory laws and practices of the past, especially those related to land ownership and use, as these resulted in extreme inequalities that persist to this day.

This chapter presents the findings of the research study, taking into consideration that the critical intention of conducting this research was to contribute to the body of knowledge relating to urban development and tenure reform in black urban settlements such as Simonga and Chaba. This chapter also demonstrates the democratic government's commitment in redressing urban

tenure inequalities as precipitated by discriminatory policies of the past, as there is no study that has ever been undertaken on the evolution of the tenure system in the former black urban human settlements.

What is the historical background of the urban land tenure system in black townships?

What is the delivery and current status of the programme?

What is the impact of the programme on the benefiting households?

Figure1: Simonga and Chaba



Ruth Mwitwa and Gloria Kango were convicted of criminal trespass for being on land they have lived and farmed for decades, and now belongs to a commercial farmer. They were sentenced to three months' imprisonment

Figure1: PARTICIPANTS' AGE

Participants' age			
30 to 45 years			
50 to 65 years			
70 to 80 years			
	30 to 45 years	50 to 65 years	70 to 80 years

Simonga	33	11	6
Chaba	38	7	5
Total	71	18	11

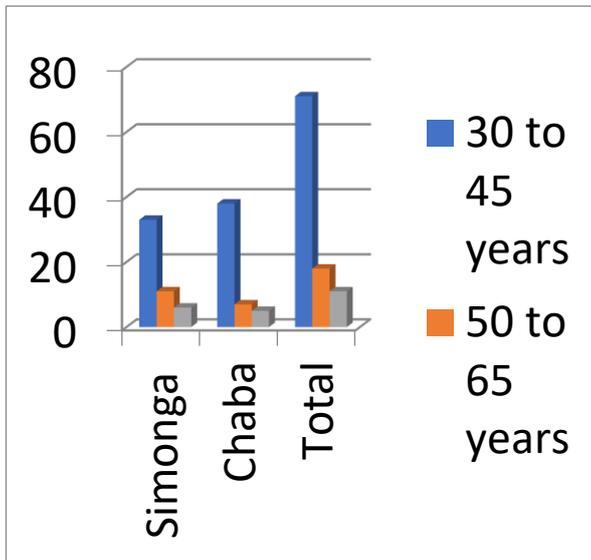


Figure2: LAND REFORMS - NUMBER OF HOUSEHOLDS WITH AND WITHOUT TITLE DEEDS

NUMBER OF HOUSEHOLDS

100 to 10000 WITH TITLE DEEDS

100 to 10000 WITHOUT TITLE DEEDS

	NUMBER OF HOUSEHOLDS WITH TITLE DEEDS	NUMBER OF HOUSEHOLDS WITHOUT TITLE DEEDS
Simonga	450	5300
Chaba	600	5110
Total	1050	10410

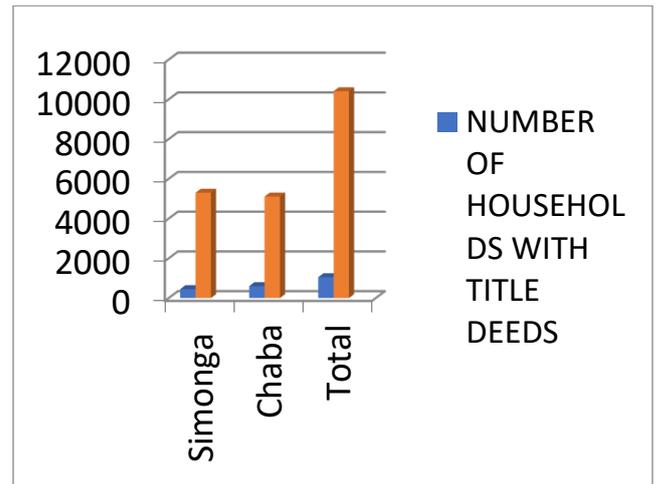


Figure3: NUMBER OF ZAMBIANS AND FOREIGNERS OWNED LAND

NUMBER OF ZAMBIANS AND FOREIGNERS

10 to 15000 ZAMBIANS OWNED LAND

10 to 15000 FOREIGNERS OWNED LAND

	ZAMBIANS	FOREIGNERS
Simonga	10	6300
Chaba	41	3764
Total	51	10064

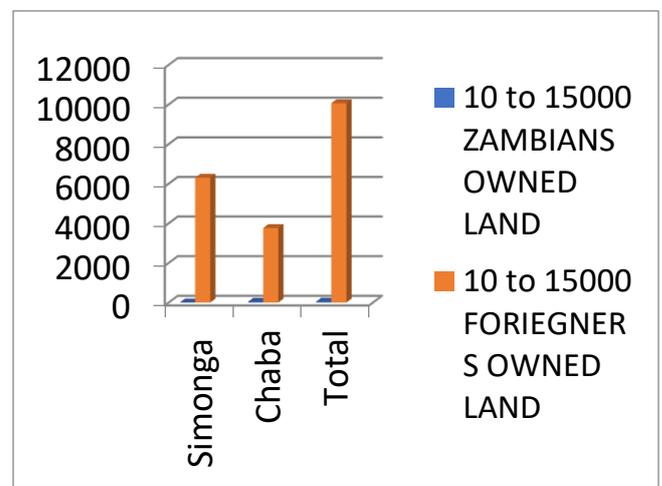


Figure 4: Programme performance per location between 2000 and 2019

RENTED PROPERTIES	PROPERTIES CLAIMED	REGISTERED	OUTSTANDING
SIMONG A	699	686	110
CHABA	459	333	66
CHABA WEST	441	233	11
SIMONG A EXTENSION	774	770	5
TOTAL	2373	2022	192

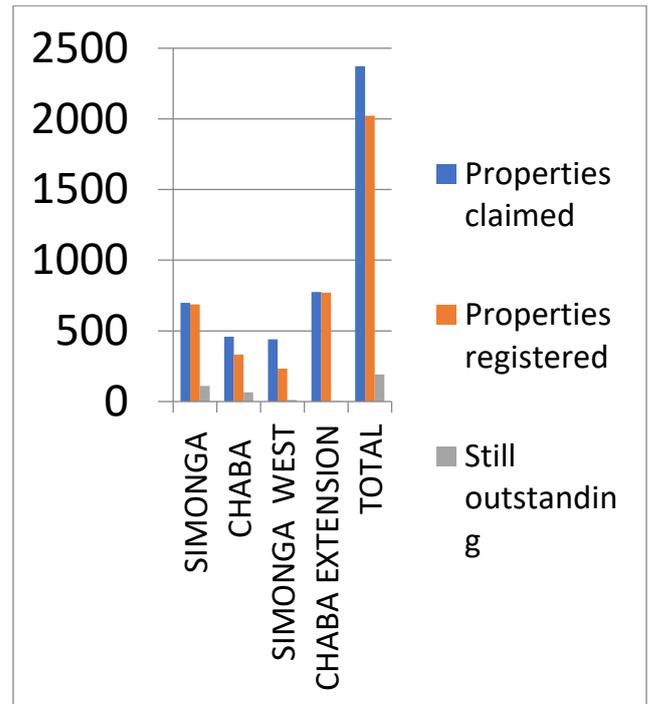


Figure 4 above reflects the project's performance

Figure 4: Graphical depiction of the programme's performance

4.1.7 DISCUSSIONS: Land Reforms

From findings it has been established that the current land tenure system is a manifestation of colonial legacy. Whilst the introduction of tenure system was meant to protect the interest of the whites who were mining minerals, the same laws have continued to apply. Upon attaining independence, Zambia inherited the same land tenure system and just made slight changes such as converting native reserves and trust land to customary land while crown land to state land. According to Malambo (2013), reform was necessary because experience has shown that the previous policies were discriminatory and only favoured the whites who could only acquire state land. The previous land reforms are listed in the table below:

Year Land Reforms 1890 Arrival of the white settlers in Zambia 1911 Order in council to grant BSA company to assign land for their use and for Africans 1924 British Government take over land from BSA company 1928 Introduction of crown

land and native reserves 1947 Introduction of Native trust land 1964 Native reserves and native trust land converted to customary land and crown land to state land 1975 Introduction of Lands Conversion of Title 1985 Introduction of circular No.1 of 1985 1995 Introduction of Lands Act Table 2 Source: formulated by Author

The 1995 Lands Act The 1995 Lands Act is the current legislature used for land administration in Zambia. According to Adams (2003), the Act provides for vesting of all land in the president who appoint the commissioner of land to alienate and administer land on his behalf. Section 7(1) of Lands Act provides for recognition of customary land and further provides for conversion of customary land to statutory lease of 99 years old (GRZ, 2010).

Land registration and cadastral systems exist in great variety. This paper describes the rich history of Zambian land tenure systems and discusses the present land tenure system. Zambia has a dual land tenure system: customary tenure and formal title registration. In the customary system the chiefs regulate the allocation of the land. They rule with the consent of their people. This system is considered insecure according to western standards but works for the indigenous people.

The copper industry made the country wealthy and the formal land registration worked. The copper market collapsed and as a result the formal land tenure system failed due to complex procedures and a lack of competent personnel. The defects need to be fixed in order to benefit from the formal land tenure system

The process of land alienation is completed by land registration. Registration is necessary to have a record of title holders, and the land which has been alienated. Land is registered in the Lands and Deeds Registry. The Lands and Deeds

Registry Act is the statute that governs the registration of title to land. Land which is required to be registered is land under State land. Land under customary tenure is not registrable. However, it becomes registrable when it is converted to leasehold. The advantage of registration is that security of tenure on registered land is assured. This Chapter therefore discusses the administration of land registration in the process of land alienation. Registration of title When land has been allocated to a person, after it is planned, demarcated and surveyed, the interest or right which the person obtains is required to be registered in the Lands Register at the Lands and Deeds Registry.

4.1.7 DISCUSSIONS: DELIVERY AND PERFORMANCE STATUS OF THE PROGRAMME

The upgrading and conversion of land tenure from rental to full home ownership is generally considered an improvement in socio-economic status, as home ownership not only provides shelter, but also has socio-economic benefits such as property value improvement and can also be used for investment purposes.

As indicated in Figure 4, the project is on the verge of completion with a mere 3% yet to be registered, but it must be noted that before these properties can be registered, there are three activities that must be undertaken in order to comply with the registration process. These are as follows: a land survey; renumbering of stands and houses in the Greater Simonga and Chaba area (as it was never anticipated that urban black households would ever enjoy secure tenure rights), and township formalisation and proclamation. These are elaborated upon in greater detail below.

4.1.8 DISCUSSIONS: IMPACT OF THE PROGRAMME ON BENEFITTING HOUSEHOLDS

According to de Soto's views on property rights, the formalisation of rights in housing and other assets is grounded on the assumption that titles constitute an essential component for poverty eradication in developing countries, as property rights have an impact on the economy and development and serve as an incentive for capital investment.

As a financial support, the housing asset could be sold for income or to acquire a mortgage loan for property renovations, with the result that the property value will appreciate.

As a productive or economic asset, a housing asset could be used for economic development as some backyard structures or rooms could be used for rental or to operate a business to generate income.

4.1.1 DISCUSSIONS: HISTORICAL OVERVIEW OF URBAN LAND TENURE SYSTEM IN BLACK TOWNSHIPS

The historical background of the urban land tenure system and rights can be summarised in terms of territorial segregation, forced resettlement and political exclusion, which was precipitated by violent conquest and repressive laws. This can be dealt with in terms of several well-defined eras, namely: pre-colonial era, colonial era, segregationist era, era and transition era.

4.2.1 Pre-colonial era

Before the arrival of white settlers, all the various African tribes enjoyed different forms of secure tenure rights, including individual, family and communal tenure systems.

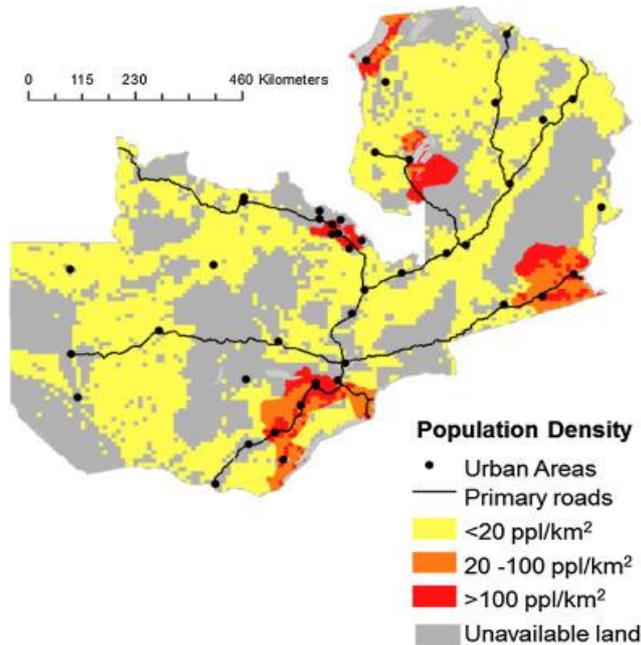
4.2.2 Colonial era

The increased European encroachment ultimately led to the colonisation and occupation of Zambia by white settlers, first by the Dutch in 1652, and subsequently by the Portuguese and English.

Colonisation took place through various methods, such as military conquest, unjust treaties and unequal trade and development, and European settlers perceived Africans as ignorant of land concepts. As a result, colonial governments gave communal lands to white settlers on the basis of freehold tenure, introducing a new dimension to land ownership which was mainly in the form of privatization.

This was meant to provide colonial settlers with supreme rights of access and their own land and natural resources, and as a result, Africans were resettled to non-viable land, where they were unable to rear their cattle and continue their cropping system, while white counterparts were moved to high potential agricultural areas.

4.1.2 DISCUSSIONS: URBAN REGULATORY AND GOVERNANCE FRAMEWORK



Findings on the Urban Regulatory and Governance Framework will cover both the discriminatory and remedial frameworks.

The application of the discriminatory laws, policies and practices resulted in extreme inequalities in relation to land ownership and use.

4.3.1 Discriminatory regulatory framework

The following laws were promulgated to provide a framework for the policy of racially-based territorial segregation.

The fund is meant to encourage land development through provision of funds for services in newly opened up areas (Mulolwa, 2010). The Act was used as a gradual process and artificial means to ensure that Africans became perpetual labourers and were unable to bargain for the remuneration of their labour in agricultural and industrial centres, limited the economic progression and independence of the African people as well as

lessening their chances to compete freely and as equals.

4.1.3 DISCUSSIONS: THE INFLUENCE OF CIVIC RESISTANCE IN THE EVOLUTION OF THE TENURE SYSTEM FOR URBAN BLACK HOUSING

In terms of urban township politics, from 1981 there was an emergence of a radical civic movement which was rooted within communities, as the introduction of Black Local Authorities was strongly opposed and abhorred.

In 1983, the anger of residents towards councillors mounted, as councils increased rents and evicted defaulters, followed by lack of services fueled by allegations of corruption.

By 1989, both the government and the Simonga and Chaba Civic Association eventually came to the realization that neither side would emerge with a clear victory in this conflict. This recognition led to a new era of negotiations, and the Simonga and Chaba Peoples' Delegation was formed by the Simonga and Chaba Civic Association to start negotiations with the authorities with the objective of developing short-term and long-term measures that eventually led to the end of the rent boycott, but also to urban land tenure reform and the future democratic structures in local government.

These negotiations resulted in the signing of the Greater Simonga and Chaba Accord on 24 September 1990 between the Simonga and Chaba Peoples' Delegation and the Councils for Simonga and Chaba.

4.1.4 DISCUSSIONS: TRANSFER OF HOUSING PROJECT AND PROCESS

The Transfer of Housing Project relates to the upgrading of insecure tenure rights into full

ownership rights, the objective being to promote home ownership to the black urban township households. This could be viewed as an impetus for socio-economic benefits such as property value improvement and can also be used for investment purposes.

4.1.5 DISCUSSIONS: IDENTIFICATION AND ROLES OF PROJECT STAKEHOLDERS IN THE TRANSFER OF HOUSING PROJECT

Stakeholder management is a critical component in the successful delivery of any project and stakeholders can be either individuals or groups that are affected thereby. In the Transfer of Housing Project, there were statutory stakeholders such as National, Provincial and Local governments who were bound by the principle of cooperative government, which entails working together and supporting each other to provide Zambian citizens with a package of services.

This project also involved the non-statutory stakeholders in the form of interest groups, civic associations and various local political organisations that operated as local committees by being the eyes and ears of the community.

4.1.6 DISCUSSIONS: CHALLENGES IN THE PROJECT IMPLEMENTATION PHASE

Every project has challenges that may impact on the set timeframe, scope of work and budget, but in this project the challenges encountered were surmountable and manageable.

These challenges were detected during the process of identifying rightful tenants and determination of entitlement, as the occupancy rights of the urban black township households were held under the permit system that granted

subordinate, insecure and limited rights and were subject to “pass laws”. This was followed by the new political dispensation, through urban tenure reform, converting these rights into full ownership rights in the form of title deeds. However, after a painstaking process of determining who had entitlement and identifying beneficiaries, this process was hindered and complicated by the following factors:

- a. Loss of council housing files and records
- b. Death of permit holders and unreported family changes
- c. Family disputes among siblings
- d. Informal sale and transfer of tenancy not reported to the municipal offices
- e. Perceived illegitimacy and administrative incompetence of the former black councils.

Despite the above-mentioned challenges, the project stakeholders managed to submerge their petty political differences and came up with a number of alternatives and solutions. This is because they understood the importance of the transfer of housing or land titling programme, which entails delivering real rights to occupants of land and property and not simply to provide security of tenure, as well as enabling title holders to use their property as collateral for obtaining formal credit to invest in business and home activities, improve land administration, improve the tax base for the municipality, and encourage and promote home improvement and ensure better access to urban services

CHAPTER FIVE SUMMARY AND CONCLUSION

5.1 SUMMARY OF RESULTS

The purpose of this chapter is to provide a conclusion to the research study undertaken, but also to make recommendations based on the findings in order to accelerate and promote an

effective and efficient urban tenure reform programme in the former black urban settlements such as Simonga and Chaba.

Here is a recap on what was covered by the previous chapters:

Chapter one indicated and briefly discussed five topical issues, namely: background of the study, problem statement, purpose statement, significance of the study and research methodology. It provided a general overview and rationale to the study.

Chapter two provided definitions of concepts, such as tenure rights, urbanisation and migration and provided an International and African overview of land tenure reform, covering background, legislative framework, merits and demerits as well as the evolution of tenure rights in Zambia.

Chapter three outlined the research methodology and research methods used to carry out this study, and further justified why such methodology and methods have been undertaken. The chapter also looked at the value that these tools added to the objectives of this study. In terms of research methodology, a qualitative approach was adopted with document analysis being the predominant tool used to collect data.

Chapter four presented findings based on the information collected through the analysis of government reports, policy and legislative frameworks, project performance reports, books and articles in order to contribute to the body of knowledge with regard to urban development and tenure reform in black urban settlements, such as Simonga and Chaba township.

This chapter provides a conclusion to the research study and makes recommendations on measures required to address challenges and/or to

accelerate the tenure reform initiative for Simonga and Chaba households and other black urban townships.

History has left a legacy upon the landscape of Zambian cities; a stark landscape marked by segregation and marginalisation underlined by the old planning system that has left modern cities with severe spatial integration difficulties. The housing landscape in Zambia during the pre-1964 period was characterised by a spatial dichotomy whereby the white dominated areas developed in a more sustainable manner, while the black dominated areas were marked by poverty and underdevelopment.

5.4 RECOMMENDATIONS

It is critical to note that the recommendations made apply to all Zambian pre-1964 black urban settlements or townships, not only to Simonga and Chaba locations. This is because they are largely all homogeneous in terms of typology, design, reasons for their establishment, tenure system and tenancy regulatory framework, thus the national and provincial governments use the Enhanced Extended Discount Benefit Scheme to redress the tenure inequalities in all these settlements

Recommendations from the research study are based on the following areas: Transfer of Housing Project and Process, Project Challenges, Programme Performance and The Impact of the Programme on Benefitting Community.

5.3.1 Recommendations on the transfer of housing project and process:

It is critical for the City of Livingstone Municipality and the Provincial Department of Human Settlements to ensure continual and quality service to communities by constantly providing training for the newly recruited

personnel who deal with the transfer and conveyancing process. This is important as most of those who were trained when the project started are now either retired or have progressed professionally, and there might be a void of institutional memory and expertise in this regard.

5.3.2 Recommendations: Project challenges: transfer process

The Provincial Department of Human Settlements and the Municipality must fast track the process of township establishment and proclamation in order to facilitate the approval of general plans and resolve the issue of underlying land rights, as this delays the granting of full ownership rights to households in occupation of state-owned properties.

5.3.3 Recommendations: Programme performance of the transfer process

As a post-service delivery support service, the title deed holders must be educated on rights and obligations as property owners, such as payment of rates and taxes.

Both the Provincial Department of Human Settlements and the Municipality must maintain the database of properties transferred for possible future litigations, and following registration properties must be updated on the assets registers to determine and discern which properties are now privately owned and those still owned by the municipality and which still require regularisation.

5.3.4 Recommendations: Impact of the programme on benefitting community

At this stage the researcher recommends that further study is required on the effects of land titling programmes on low-income households in

black urban settlements. The intention is to either repudiate or confirm Hernando de Soto's theory – in essence, that insecure and poorly defined property rights stifle economic development – by looking at the Zambian context and being cognisant of its history and dynamics, with reference to black urban human settlements.

5.5 LIMITATION OF THE STUDY

The first limitation in conducting this study was the discovery that few or no studies have been carried out in Zambia in relation to urban land tenure reform on pre-1964 state-owned properties. For this reason the document analysis was focused predominantly on policy and legislative frameworks, though to a certain extent reference is also made to the theoretical framework of de Soto in terms of its relevance to the Zambian context, as he argues that land title programmes create an enabling environment for beneficiaries to use their properties as collateral for economic and investment opportunities.

The second limitation is that many studies undertaken to date on land reform for both urban and rural scenarios are limited to rural communities, agricultural land, waiting lists, upgrading of slums or informal settlements and to the lease and permit system, without focusing on full ownership or secure tenure rights of households in formal, pre-1964 black urban settlements.

The third limitation to that since the research study is focused on Simonga and Chaba, locations built and occupied between 1935 and 1958 respectively, there is a likelihood that the first permit holders and tenants of records could either be deceased or too frail and old to give account of the sequence of events prior to titling of their properties. As a result, the researcher was forced to rely on document analysis

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