



NATIONAL LANDS POLICY ANALYSIS

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NATIONAL LANDS POLICY ANALYSIS

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ABBREVIATIONS

ICT	Information Communication Technology
NLAP	National Land Audit Programme
NLTP	National Land Titling Programme
NPCC	National Policy on Climate Change
NSDI	National Spatial Data Infrastructure
ZILMIS	Zambia Integrated Management Land System

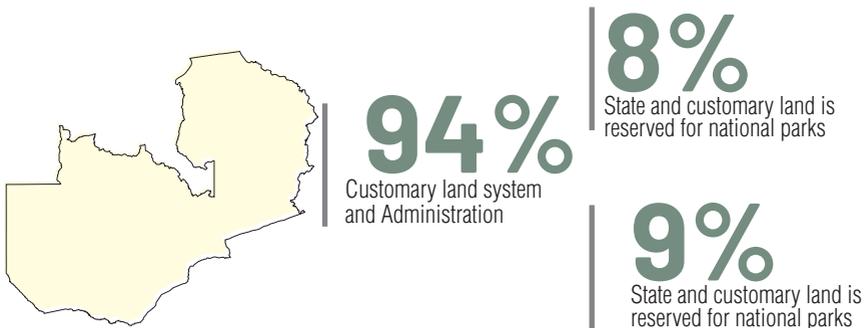


INTRODUCTION

On the 11th of May, 2021, Government launched the National Lands Policy in a bid to **streamline land administration and management services** in the development of the country. **The National Lands Policy has been put forward to improve land administration and management in order to place the country's land development on a sustainable path.** Since independence, land administration in Zambia lacked an adequate Policy framework as the country only had fragmented Policy pronouncements by Government. Due to the complexities surrounding land management and administration, a comprehensive Land Policy framework was only arrived at in 2000 when Government embarked on an initiative to consult various stakeholders in order to come up with a Land Policy for the country. This analysis will focus on some of the challenges faced in the management and administration of land and how the Policy seeks to remedy them.

SITUATIONAL ANALYSIS

Land is an important natural resource both politically and economically. Likewise, it is one of the most **critical components in the means of production; land, capital and labour.** Geographically, land represents spatial space occupied by an entity which translates to socio-political boundaries. Zambia has a surface area of approximately **752,614 square kilometres and a population of about 18 million.** As at independence in 1964, **Zambia was considered to be one of the least densely populated countries in the Sub-Saharan Africa region with about 94% of its land under the customary land system and administration, while 8% of both state and customary land is reserved for national parks and about 9% for forests.** However, it was observed that customary land had drastically decreased as parts of it had been converted to state land¹. Hence, conducting a comprehensive land audit will be necessary to gather sufficient information on the quantities of land currently held under both systems.



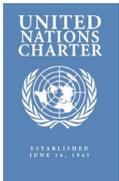
One critical challenge that has continued to affect land management is the **limited capacity to provide integrated land use and planning services in customary areas.** This has resulted in land related conflicts and disputes. Therefore, **chiefdom boundary maps need to be enhanced in order to prevent encroachments on National Protected areas like National Forests, National Parks and other Government and privately owned properties by surrounding villages.**

In view of these challenges, Government developed the **National Land Audit Programme (NLAP) currently being implemented by the National Land Audit Commission which**

1. Sitko, N. J., Chamberlin, J. & Hichaambwa, M. (2015). The Geography of Customary land in Zambia: Is development strategy engaging with the facts? Indaba Agricultural Policy Research Institute.

began in 2014 as a strategy to improve land governance. The Government aims to take stock of all land in the country by 2026 which will run concurrently with the Land Titling Programme. **The aim of the programme was to gather key data on land ownership as well as land use patterns in Zambia which would aid planning, decision making and Policy formulation².** In addition, the enactment of the Urban and Regional Planning Act No. 3 of 2015 was another strategy which sought to address the lack of land use planning on customary land. It is for these various reasons that the **National Lands Policy was developed in order to provide regulation and improve administration while making land more accessible to all citizens, particularly, the youth, women and persons with disabilities.**

Zambia is signatory to the **United Nations Charter of 1945**, which sees human rights and economic and social development as closely interrelated. The Charter acknowledged



the implications of insecure land tenure on people's livelihoods, dignity and survival. **Land rights are therefore human rights**, as a result, any practice which allows women's land rights to depend on the will of their male relatives is discriminatory. The Charter also recognises the need for changes in cultures to ensure that women have uninhibited access to land, secure land rights and the power to make their own decisions

about land use. Such changes are a cardinal requisite for fostering human rights and democracy in Africa³. **As a fulfilment to Government's continued commitment to upholding human rights, the National Lands Policy seeks to address the various challenges related to access and control over land and its resources with special recognition to women whose land rights have often been disregarded due to patriarchy and cultural norms.**

Vision of the National Lands Policy

A transparent land administration and management system for inclusive sustainable development by the year 2035.

Rational of the National Lands Policy

Land is not only an economic and environmental asset, but it is also a **productive resource with a far-reaching role in social, cultural and spiritual development.** Zambia has never had a Policy to guide the administration and management of land which has

2. Tembo, E., Minango, M., & Sommerville, M. (2018). Zambia's National Land Titling Programme- Challenges and Opportunities.

3. Yeboah, E. (2014). Women's land rights and Africa's development conundrum – which way forward? Retrieved from International Institute of Environment and Development: <https://www.iied.org/womens-land-rights-africas-development-conundrum-which-way-forward>

resulted into challenges that retard social progress such as indiscriminate use of land and poor land development practices.

A National Lands Policy is **required to guide and improve the operation of institutions established for the purposes of land administration and management of land rights** so as to place the country's land development on a sustainable path. The Policy is also crucial for **sustainable management of natural resources, environmental protection and climate change mitigation and adaptation.**

It is envisioned that the Policy will open opportunities for every Zambian to access and secure their interests in land regardless of status. Further, it is anticipated that the Policy will strengthen security of tenure and enhance management of land resources.

Guiding Principles of the National Lands Policy

The implementation of this Policy will be guided by the following principles;



Governance

The Policy will **uphold good Governance principles and practices** in land management and administration;



Transparency:

Communication is free flowing; processes, institutions and information are accessible to those concerned; and enough information is provided to understand and monitor them;



Equity

People of all status have **afforded opportunities** to access land; and



Accountability

Public officers involved in **land administration and management must be accountable** to the general public.

National Lands Policy Objectives

The Policy has **8 strategic objectives** with various policy measures aimed at improving land management and administration. These are:

- 1. Strengthen the land allocation** mechanisms in order to improve security of tenure.
- 2. Enhance the land registration system** in order to increase volume of registered properties, accuracy, capacity, affordability as well as convenience of land registration.
- 3. Strengthen the land** dispute management mechanisms in order to reduce caseloads and attendant costs for clients.
- 4. Facilitate ownership of land by Zambian citizens** in order to promote decent livelihoods and socio-economic development.
- 5. Regulate the land ownership of non-Zambians** in order to facilitate reasonable access to land.
- 6. Enhance the functioning of the land market** in order to make the sector more beneficial to the economy.
- 7. Mainstreaming of Climate Change**, Natural Resources and Environmental Protection in land administration and management for sustainable development
- 8. Achieve a gender sensitive and youth friendly land sector** which is inclusive of persons living with disabilities and other **socially marginalized groups**.



Zambia's land tenure and administration like many other African countries operates on **a dual land tenure system; customary and state land. According to the Lands Act No. 29 of 1995**, the custodianship of land is perpetually vested in the **President on behalf of the people of Zambia**. Following prescribed procedure in the Law, the President has the power to allocate land to citizens and non-citizens. This authority has however been delegated to the Commissioner of Lands. Hence, **state land is managed by Government authorities through the Local Municipal Councils and the Ministry of Lands and Natural Resources. Under customary land tenure, traditional authorities are the custodians of customary land;** they have control over land administration, management and use with majority of it preserved for members of a particular village settlement or chiefdom. The former is **titled, transferable and the owner acquires a leasehold deed** from the Government that permits them to make use of the said portion of land for a specified period of time. While the latter is **untitled and rights belong to the Chief** thus change of use would **require express permission from traditional authorities** such as village Headmen and Chiefs and is only transferable with the consent of the village authorities and the community.

Land governance laws underpin the effective planning, use and management of land resources. In a bid to improve land administration and management, Government has embarked on a programme to amend all land related legislation as a way of addressing some of the constraints impacting land development in the country. It was found that the **Land Survey Act** is outdated, thereby restrictive in outlining provisions on the methods of surveying and processing of survey diagrams. Furthermore, the **Lands Act lacks details on land alienation procedures as they are contained in a non-binding administrative Circular. Similarly, the Lands and Deeds Registry Act does not provide for comprehensive electronic processing of documents maintained by the Registry**⁴. Therefore, **amending these critical pieces of legislation** will provide complementary procedures needed to holistically implement the National Lands Policy and enhance land administrative services.

4. Ministry of Lands and Natural Resources. (2021). National Lands Policy. https://www.mlnr.gov.zm/?wpfb_dl=127

The use of **Information Communication Technology (ICT) is cardinal in enhancing the administration of land in the country.** The Government responded to this need by developing a system that would accurately store and retrieve land data. The Zambia Integrated Management Land Information System (ZILMIS) was set up in 2013 by the Ministry of Lands and Natural Resources. **This was aimed at providing secure, transparent and traceable land transactions.** The system will also support the digitization of the Lands Registry to **ease the storage, retrieval and sharing of records.** In line with easing information sharing, the National Spatial Data Infrastructure (NSDI) was developed in 2014. The system maps out coordinates in order to locate a particular piece of land using geospatial data. This is also a direct response to address the inadequacies of the Land Survey Act to provide low cost and rapid generation of accurate property boundary information. The NSDI has played a major role in delivering surveying services throughout the mass Land Titling Programme being rolled out country wide which is anticipated to be complete by 2026.

Land Management and Climate Change



Land just like any other natural resource ought to be used and managed responsibly, more so, to mitigate shocks resulting from climate change. **Environmental and land degradation are significant threats to the management of climate change risks.** These negative impacts are as a result of the indiscriminate cutting of trees to pave way for development. Also, the demand for wood fuel which is a major contributor of climate change and has increased environmental vulnerability across the country. **This challenge has been exacerbated further due to unsustainable land use practices and human encroachment on protected areas such as forest reserves and national parks**

leading to the destruction of habitat and eco-systems⁵.

As a way of negating these practices, there is need to strengthen the implementation of policies that restrict the cutting of trees for fuel and promote sustainable land use practices⁶. Similarly, there is need for **robust Policy implementation to safeguard the environment and eco-systems. Policies such as the National Policy on Climate Change (NPCC) promote the sustainable use of land and environmental protection.** In addition, the promotion of climate smart agricultural practices could help preserve land from degrading further. Although the National Lands Policy seeks to address some of these issues, there will be need for a strengthened multisectoral approach to enhance land management and environmental protection strategies.

Access to Land



Zambia's land market was underdeveloped between the years 1975 to 1995 due to laws that prohibited the buying and selling of land⁷. However, **the liberalisation of the economy and the development of the Land Act of 1995 helped ease these restrictions to make land more accessible to citizens.** The opening up of the land market also leads to challenges in land administration and management such as **the emergence of unplanned settlements, land hoarding for speculative purposes, unequitable land distribution, encroachment, displacement and land related disputes among others.** This has also resulted in individuals owning large tracks of land that are undeveloped

5. Intergovernmental Panel on Climate Change. (2019). IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse gas fluxes in Terrestrial Ecosystems. https://www.ipcc.ch/site/assets/uploads/2019/08/4.-SPM_Approved_Microsite_FINAL.pdf

6. Creutzig, F., Fernandez, B., Haberl, H., Khosla, R., Mulugetta, Y., & Seto, C. K. (2016). Beyond Technology: Demand-Side Solutions for Climate Change Mitigation. <https://www.annualreviews.org/doi/pdf/10.1146/annurev-environ-110615-08542>

7. Ministry of Lands and Natural Resources. (2021). National Lands Policy. https://www.mlnr.gov.zm/?wpfb_dl=127

and under-utilized. Nonetheless, the Lands Policy seeks to make **land more accessible in a systematic manner in order to improve** land development and administration taking into account an individuals' utilisation capacity.

Land can be obtained through various means. For instance, **state land can be acquired through application to the Ministry of Lands and Natural Resources** or respective **Town Councils** while **customary land can be accessed through Chiefs in their respective Chiefdoms**. In addition, Government runs a **Resettlement Scheme Programme under the Office of the Vice President** to which citizens can apply for land while **Farm Blocks have been made available through the Ministry of Agriculture**. With regards to land acquisition by non-Zambian's, the Lands Act outlines the conditions of land ownership and use by foreign investors who can either obtain land in the open market or can be alienated by the President provided they meet the criteria outlined in the Act. However, **challenges still exist regarding access to adequate information on land acquisition and registration procedure to legitimatise land ownership through Certificates of Title**. Thus, there is need to improve the dissemination of information on the importance of land registration and the right procedure to follow in order to obtain the required documentation.

In addition, land accessed through the open market has potential risks such as; illegal land deals where land is offered to more than one buyer. Another risk is that the **"willing buyer- willing seller"** principle entails that **land prices cannot be regulated** which makes purchases on the open market much more expensive. Furthermore, there is **no formalised land market for customary land** hence the prices are relatively cheaper than land offered under state tenure. This has resulted in large tracks of customary land being converted to state land after purchase. That being so, **there is need to expedite the NLAP to ascertain the amount of land under customary and state tenure**.

Equitable access to land and its resources is a critical factor in ensuring socio-economic development. However, **social and gender norms** continue to **undermine women's access and ownership over land**. Across much of Africa, land is allocated and inherited through customary practices rooted in kinship. This leaves much of the land under male ownership and is inherited by male descendants. Traditionally, women primarily access and use land through male relatives, usually through a father or husband. Social norms

dictate that when a woman marries, she is expected to leave her village and move to her husband's land, and married couples are not traditionally perceived to hold land jointly. There are concerns that if women were to have a claim over their husbands' land, it could get out of the family or clan in case of divorce or death. **Consequently, women are at higher risk of losing their land in case of divorce or death of a spouse as they have no right to land and are expected to return to their family's village.** Cultural barriers such as these **continue to hinder women's access and rights to land**⁸. Hence there is need to continuously engage traditional authorities to uphold women's land rights as a key developmental concern. Therefore, **the issuance of joint land titles is a deliberate measure by Government to guarantee women's land rights in order to empower women with land.**

Similarly, in the early 2000s, Government passed a policy directing all the Local Authorities to ensure that at least **30% of all land allocations are reserved for women and the remaining 70% to be competed for by both men and women**⁹. However, women continue to be disadvantaged in matters of control and ownership of land especially under the customary land tenure system. **Women's lack of control over land is a barrier for them to assert their potential to be economically independent and perpetuates their dependency on men.** The National Lands Policy has been brought forth to remedy this by **further revising the land allocation quotas to 50% for women.** As a way of securing their claims on land, **the Government has been rolling out a land titling programme that will see more women hold titles to their land.**

8. Yeboah, E. (2014). Women's land rights and Africa's development conundrum – which way forward? Retrieved from International Institute of Environment and Development: <https://www.iied.org/womens-land-rights-africas-development-conundrum-which-way-forward>

9. Ministry of Gender and Child Development. (2014). National Gender Policy. https://www.gender.gov.zm/?wpfb_dl=51

Land Ownership



The ownership of land has been a highly contentious issue owing to the complexity of the dual land administration with concerns on the growing cost of obtaining land in Zambia by some sections of society. A study¹⁰ found that local elites had been amassing large tracks of customary land for speculative purposes while Government policies continued to present Zambia as having abundant land in order to attract foreign investors. This trend poses a challenge to locals especially rural households that heavily rely on land for their livelihood. **Since customary land is undocumented, entire villages and households are at risk of displacement and losing their livelihood to foreign investors and local elites.** This has the potential of marginalising them even further as they are pushed on the peripheries with less fertile and smaller tracks of land which in some cases is far from water points and grazing fields, also limiting them from accessing various amenities and posing a threat to the survival of their livestock.

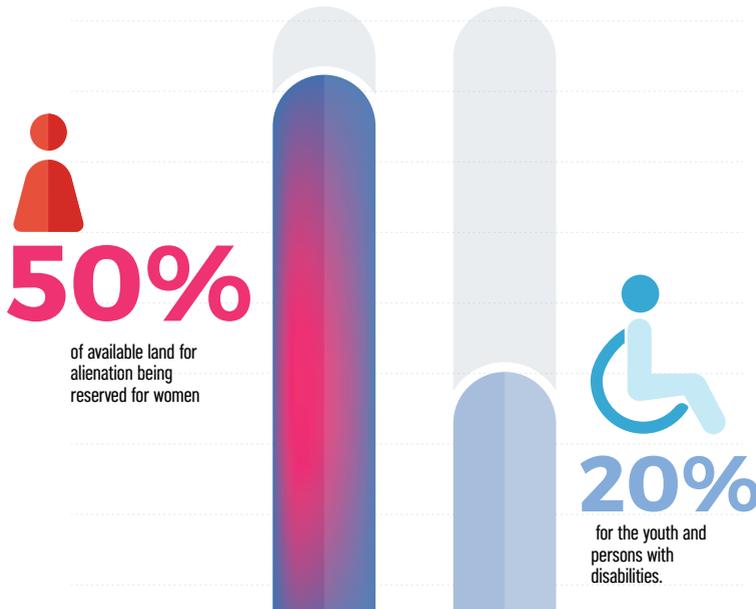
Following the liberalisation of the land market, there has been an increased demand for land. This can be attributed to **factors such as the rapidly expanding population, migration and uncontrolled land administration and management thereby raising concerns on equitable land distribution.** It is argued that the continuous depiction of the abundance of land poses a potential threat for future generations¹¹. Supporting evidence from the 2012 Household Survey reported that Zambia's arable customary land is being depleted. **The survey found that 54% of smallholder farmers claimed that traditional authorities did not have land available to apportion to local households.**

10. Sitko, N. J. & Jayne, T. S. (2014). Structural Transformation or Elite Land Capture? The Growth of "Emergent" Farmers in Zambia. *Food Policy* 48:194-202.

11. Sitko, N. J., Chamberlin, J. & Hichaambwa, M. (2015). The Geography of Customary land in Zambia: Is development strategy engaging with the facts? Indaba Agricultural Policy Research Institute.

The National Lands Policy was specifically formulated to address these critical areas of concern in order to **make land more accessible to every citizen with special recognition given to women, the youth and persons with disabilities.** This is especially important since securing land rights increases an individual's agency and socioeconomic status and decreases their vulnerability¹². However, the non-existence of a legal framework that governs land administration in customary areas perpetuates the inequitable access of land among various sections of society since the right to land derived from customary tenure is subject to local practices and beliefs, which in some cases have excluded certain sections of society, especially women and young people, from owning land by virtue of their social status and sex.

In addition, the lack of security of land under customary tenure has made it easier for people to be displaced, especially vulnerable groups such as women, differently abled persons and youths. Henceforth, Government has revised land distribution quotas to **50% of available land for alienation being reserved for women and 20% for the youth and persons with disabilities.**



12. Bessa, T. & Malasha, P. (2020). Gender-Based Violence and Land Administration and Documentation in Zambia: Emerging Lessons from Implementation. <https://www.landportal.org/library/resources/gender-based-violence-and-land-documentation-administration-zambia>.

This pronouncement is also in line with **promoting gender equality and socio-economic inclusion of women, the youth and persons with disabilities** as envisaged in the National Gender Policy, National Youth Policy and National Disability Policy. Although the National Lands Policy seeks to address some of these barriers in part, **there is need for the development of laws that govern customary land tenure in order to holistically address and guarantee customary land rights.**

Furthermore, the **Government has also reduced the contractual age for youths to own land from 21 to 18 years.**



This will make **land more accessible to young people and enable them to contribute to the growth of the economy** by venturing in agricultural and entrepreneurial activities. This affirmative step will uplift the lives of women, youths and persons with disabilities through ownership of assets which can be used as collateral to obtain financing from formal financial lending institutions such as banks. **In order to advance this strategy, Chiefs have been encouraged to allocate land to these key groups and other marginalised persons in line with Government's aspirations of promoting gender equality, inclusivity as well as equitable distribution of the country's resources.**

Security of Land Tenure



A woman holding her land certificate in rural Zambia. © Jeremy Green

Land tenure security has been a critical area of concern, particularly for land ownership under customary tenure. **This is due to inadequate documentation for land owners which in some cases has resulted into land disputes.** Another challenge impacting the effective administration of customary land is that traditional authorities are apprehensive of titles issued by Government as this could limit their control over their Chiefdoms since customary land would have to be converted to state land. Similarly, **some land owners under the state land tenure lack adequate documentation i.e. Offer Letter, Letter of Sale, Invitation to Treat, Occupancy License, Land Record or Certificate of Title to prove their claim on their parcel of land.** The Policy seeks to address this by ensuring that all land is legalised and documented in order to increase land security.

The Ministry of Lands and Natural Resources through Medici Land Governance has been rolling out the **National Land Titling Programme (NLTP) aimed at documenting and administering Certificates of Title to all land owners. The programme seeks to provide simplified; low-cost land titling services to targeted areas, regularize unplanned settlements and prevent displacements, as well as reduce inequalities of access to land ownership due to income differences.** It is envisaged that the NLTP will increase the revenue base and investment in the country thereby contributing to socio-economic development. Before the NLTP, the country only had about 142,000 Certificates of Title which is relatively low considering the expansion in the acquisition of property country wide. The programme was piloted in 2014 targeting Chongwe and Kamwala South, and has since been rolled out to other parts of Lusaka province. So far, **300,000 and 53,453 Title Deeds were issued through the sporadic titling process and the systematic land titling programme by end of 2020 respectively.**

A stylized map of Malawi, colored in red and green, positioned to the left of the text.

Best Practice for Policy Implementation

Malawi

Malawi has a dual land tenure system similar to that of Zambia. The Malawi National Land Policy was launched in 2002 as they lacked an adequate legal framework to effectively govern land administration. In 2016, all laws governing the resource were amended and aligned with the Policy such as the Customary Land Act of 2016. The Act allows the creation of Customary Estates which are privately owned parcels of customary land, so that smallholder farmers and land owners in Traditional Land Management Areas (TLMAs) can get legal title to their land and thus be protected from encroachment and other interests, including those of traditional authorities. A Certificate of Customary Land Title is issued in the name of the traditional authority having jurisdiction over the area. This is essential as the land still remains under the control of the traditional authorities and not relinquished to the state through land conversion. **As Zambia seeks to reform some of the laws governing land, lessons can be drawn from Malawi by developing a Customary Land Act in order to formalise as well as harmonise customary land acquisition and associated activities, guarantee security of tenure under customary land and prevent displacements.** Since some traditional authorities may be sceptical about obtaining Certificates of Title on land under their tenure as it is perceived that they would be surrendering control of their chiefdoms to the state, an Act such as this could take care of some of these challenges. Furthermore, Certificates of Title obtained on customary land would enable more rural households develop their land and invest in various agricultural activities since the title would act as collateral needed to access credit from formal financial service providers.

A stylized map of Tanzania, colored in green, yellow, black, and blue, positioned to the left of the text.

Tanzania

Tanzania has been implementing its Land Policy since 1995 with the aim of resolving land use problems among other challenges. Like many African countries, land is administered under the dual land tenure system. Under Customary tenure, Government can issue the Customary Right of Occupancy Certificate to the landowner; an individual, a family or a clan head. In contrast, Government issues a Certificate of the Granted Right of Occupancy to the landowner under state tenure. Just like Malawi, **Tanzania has formalised procedure for guaranteeing security of tenure to customary land owners which is critical for land administration in Zambia since majority of land falls under this category.** This procedure could address displacements and land disputes taking

into consideration that there is no formalised market for customary land, particularly, as the demand for land rises it has been noted that ‘urban-dwellers’ have been moving into areas considered to be under customary tenure. Furthermore, the ‘Willing Buyer-Willing Seller’ principle is likely to marginalise some sections of society including those that were previously considered to have been indigenous community members of villages and chiefdoms. Thus, securing the land rights of persons owning land held under customary tenure is key to ensuring equitable access to the resource. Moreover, upholding customary land rights is of outmost importance as these are often held by peasants and rural households whose livelihoods is largely dependent on the land and its resources.

Recommendations

1. PMRC urges the Government to expedite the National Land Audit Programme in order to ascertain the amount of land under customary and state tenure. This could help improve the planning, administration and management of the resource.
2. Considering the dual nature of land tenure, there is need to strengthen land management and administration systems of both state and customary land.
3. As Government rolls out the National Land Titling Programme for state land, there is need to consider issuing special documentation for land held under customary tenure in order to uphold customary land rights for land owners.
4. There is need for a strengthened multisectoral approach to enhance land management and environmental protection strategies in view of heightened risks to climate change effects and environmental degradation.
5. There is need to update chiefdom boundary maps and reserve land such as forests and national parks in order to minimise land disputes and encroachments.
6. PMRC urges the Government to expeditiously reform laws governing land such as the Land Surveying Act, Lands and Deeds Registry Act and the Lands Act for effective implementation of the Policy in order to ease land management and administration.

Conclusion

The National Lands Policy is a positive measure by Government to address the various challenges that have inhabited the land sector for a long time, thus impacting development and effective land use, planning and distribution. It seeks to make land more accessible to all members of society as well as guarantee security of tenure for land holders. However, there is need to strengthen the legal framework governing land in order to ensure effective implementation of the Policy in providing efficient and transparent land administration and management services. The Ministry of Lands and Natural Resources has been implementing various programmes such as the **National Land Audit which is an important exercise aimed at improving land development and land use planning for both customary and state land.** Further, the National Land Titling Programme seeks to increase security of tenure and guarantee the **rights of women, youths and persons with disabilities to own land by placing quotas for land alienation.** In addition, lessons learnt from best practice indicate that there is need for law reforms governing customary land in order to develop and regularise land transactions in the sector.

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Unlocking Zambia's Potential

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