

# **Analysis of Zambia's Fifth National Development Plan**

**ZAMBIA LAND ALLIANCE (ZLA)**

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**Lusaka, July 2007**

**Introduction**

Zambia's Fifth National Development Plan (FNDP) is now in public domain. The Plan covers the period 2006-2010 which coincides with incumbent President Levy Mwanawasa's second and constitutionally final term in office. He leaves office in 2011. The 32 chapters plan was completed in January and launched in July 2006. Under the theme 'achieving broad-based wealth and job creation through citizenry participation and technological advancement' the FNDP sets out the country's broad economic development agenda for the next five years.

The plan has identified strategic areas of focus in the country's development agenda on 'agriculture, infrastructure, tourism, mining, manufacturing, education, health, water and sanitation.' Although land does not identify among the strategic areas of focus, it is clear that it cross-cuts most of them. It is not possible without taking into account land to focus strategically on mining, agriculture, infrastructure, water, etc. Just like financing which though one of the chapters is nevertheless not one of the strategic arrears, land is the basis of the plan. James Mulungushi, director of the department of planning and economic management established in the Ministry of Finance and National Planning, claimed that government consulted widely with all stakeholders and that 'the input in the plan represented views from all Zambians'.<sup>1</sup> The department of planning and economic management was immediately established to oversee the implementation of the FNDP.

It is important James Mulungushi made this particular point. Consultation is the key to the integrity and therefore legitimacy of the plan. A document as important as a development plan must only come from one source – the people. In the past, during the one party system, there were consultations but these were mostly limited to consultations within the ruling party. This gave the development plan a very name. People not forming part of the ruling party did not enjoy the same right of participation as members and officials of the party. Unfortunately, though now a formal democracy, these same tendencies as under the one-party system more or less continue. It is therefore possible that the claim that 'the input in the plan represented views from all Zambians' may just as well have been exaggerated.

At the same time, Zambia launched Vision 2030 which articulates the country's development agenda for the next twenty-five years. At its launch, President Mwanawasa said<sup>2</sup> 'The national long-term vision is a document that will guide the country's development for the next twenty-five years'. He added that the Vision 2030 contains peoples' aspirations and analyzes the present conditions for economic development. One of the objectives of the Vision 2030 is make Zambia a prosperous medium income country by 2030 in which all people will be provided with opportunities to improve their well-being.<sup>3</sup> Besides aiming at raising the country's growth rate, the Vision seeks to

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<sup>1</sup> Peoples' Daily on Line – Zambia launches development blueprint; [www.english.people.com.cn](http://www.english.people.com.cn)

<sup>2</sup> Ibid

<sup>3</sup> According to the Vision 2030 report, other targeted socio-economic objectives of the plan include the attainment of and sustenance of annual real growth rate of 6 percent between 2008 and 2010 which will later be increased to 10 percent between 2021 and 2030. Zambia's current economic growth rate has reportedly been standing somewhere between 4 and 5 percent.

provide secure access to safe drinking water and improved sanitation facilities to 100 percent of the population as well as provide equitable access to quality health care. This is against a somber background in which some areas including townships in the capital city Lusaka like Chibolya still use the colonial 'bucket system' for sanitation. Meanwhile, government claims that current figures show that 57% of the country's population has access to safe and clean drinking water while 78 % have access to improved sanitation facilities. Vision 2030 would be operationalized through the FNDP which as indicated will run from 2005 to 2010.

Ever since independence in 1964, Zambia relied heavily on planning as a tool towards fostering development. During this time, the country has regularly made use of the tool of development planning to promote development. This entailed specific State interventions mostly by way of a series of invidious administrative controls to manage the economy; creation of parastatal enterprises to undertake investment and generate economic growth; and through international borrowing to finance limited private sector investments and to support levels of construction that turned out to be unsustainable'.<sup>4</sup>

According to government economists, Zambia was 'one of the wealthiest sub-Saharan African nations'<sup>5</sup> at independence. However, she has since dramatically skidded down the lane from this prestigious position where she 'rubbed shoulders' with some of the wealthiest nations in the world to the demeaning status of a Highly Indebted Poor Country (HIPC). Zambia reached Completion Point under the HIPC initiative in April 2005 resulting in debt forgiveness/cancellation. Further to this, Zambia, on reaching Completion Point became eligible for debt relief under the G8 Initiative which proposed to cancel 100% all debts owed to the IMF, African Development Bank and the World Bank. Following debt relief approved as a result of Enhanced HIPC Initiative, Zambia's foreign debt came down to US \$ 4 billion in 2005 from US\$ 7.1 billion in 2004. The HIPC status opens the doors once again to the World Bank credit and through it to credit from other lending organizations both sovereign and commercial.

Before it was abolished by the government of President Frederick Chiluba, the National Commission for Development Planning (NCDP) identified the failure of public policy as the factor that led to the country's economic decline from a 'wealthy' to one of the poorest in the World with a per capita GNP as of 1992 of only \$ 290. The GDP has now reportedly improved but this has not resulted in corresponding improvement in the quality of life of the poor. By government's own admission, poverty has been getting

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<sup>4</sup> . Ibid

<sup>5</sup> . Priscilla Chitundu, Planning and GRZ'S Policy on Investment Procedures and Priorities, Economist, Macro-economic Policy Department, National Commission for Development Planning, Lusaka (undated). The claim that Zambia began as a wealth nation before plunging to present levels is more politically accurate than real. It is like saying Zambia was wealthy under colonial rule which it was not. The very condition of colonialism negated any claim to the country as wealthy. Zambia could not possibly have been wealthy or one of the wealthiest sub-Saharan African nation as claimed given the stark reality that at independence, there was only about two university degree-holders and no native medical doctors in the country as a whole. The claim that the country was wealthy is probably based only on the country's bank accounts that it did not have a negative balance unlike now which is a narrow way of defining 'wealthy' or development of a country as of people.

worse even as the GDP per capita improved.<sup>6</sup> More than 50% of the people could be classified as chronically poor while over 70% are still below the national poverty line.

As indicated, Zambia, except during the period of former President Frederick Chiluba, Zambia has generally pursued its development options through the device of development plans. Zambia's initial policy plan was the Transitional Development Plan 1965-1966. During this period, government introduced basic guidelines to promote public sector investment emphasizing especially rural development and promoting access of the population to education, health and water facilities. It is during this time that policy was mooted to deliver education and health care free to the citizens across the country. The Transitional Development Plan was succeeded by five-year development plans spanning a period of twenty-six years from 1966 to 1992.

Development plans laid strong emphasis on rural development with the specific aim to 'expand the agricultural sector as well as the nascent industry, reduce regional inequalities, promote the development of tourism as well as developing water resources'.<sup>7</sup> Instead, however, this led to a sharp rise in the country's indebtedness starting from the 1970s. But government attributed this development to the worsening terms of trade due to a fall in the prices of copper which it thought was temporary and did not therefore require the taking of any more than the temporary measures of redress.

This, however, changed in 1983. Government decided to re-examine a wide range of economic policies and institutions starting from 1983 particularly at macro and sector levels. Consequently, it entered into the first ever negotiations with both the World Bank and the International Monetary Fund (IMF) leading to the full blown Structural Economic Adjustment Programme (SEAP) in Zambia. What was the main objective of the Bretton Woods institutions' tailored programme? It was aimed at achieving 'expenditure reduction strategy concentrating on government expenditure'.<sup>8</sup> In 1986-1987, the short marriage between government and the two Washington-based financial institutions broke down irretrievably as government divorced itself from the IMF conditions in order to embark on its own 'interim-development plan' which it called 'Growth from Own Resources'. This was followed by the Fourth National Development Plan (FNDP) for the period 1988 to 1992, well into the third Republic. In 1988, government found it had no choice but to resume the IMF-programme, which technically implied that the FNDP will be put on ice as IMF/World Bank plans are not complimentary to each other. From 1989, government has been implementing a New Economic Recovery Programme, which, *inter alia*, entails formulating a 'Policy Framework Paper' (PFP) as well as the 'Policy Investment Programme' (PIP), which are updated annually.

A number of third world countries pursue their development on the basis of development plans. This is a feature of socialist planned economy propelled by the 20<sup>th</sup> century

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<sup>6</sup> . GRZ: Report on the Implementation of the Programme of Action for Least Developed Countries (2001-2010) Zambia

<sup>7</sup> . Ibid

<sup>8</sup> . Ibid

worker-driven socialist State. Planned economy is the opposite of free economy which is in terms unplanned and in theory depends on market forces.

## **1. What is the legal status of the development Plan?**

Establishing the legal status of the development plan will help identify the various possible options and imperatives which lobbyists like the Zambia Land Alliance (ZLA) can invoke in their bid to secure some space for their clients – the poor. Again, it is important to clarify the legal status of the Fifth National Development Plan and of development plans in general. A development plan is an important lobbying and advocacy tool for the ZLA and its partners. ZLA's lobby and advocacy work will gain enormously if its various options in regard to the Plan were made clear.

A development Plan is not a legal contract that can be enforced in a court of law. It is not a legally-binding covenant even if it is tempting to perceive it as such between the rulers and the ruled. This is why it can use or its drafters can afford to use the loftiest of terms because legalistically speaking, there is no fear they will be legally held accountable to it. There is no intention on the part of the government to open itself to legal suits based on promises in the Plan. Consequently, the development Plan should be viewed in the broadest context rather than in narrow legalistic purview.

However, the Constitution acts as the basis of all state activities, plans, programmes and actions. Anything that is done outside the ambit of the Constitution is contrary to the principles of constitutional state and therefore is *ultra vires* or done without legal backing. It is important that a big concept like 'Development Plan' has its foundations in the Constitution.

The current Constitution<sup>9</sup> encapsulates the notion of development plans. Starting from paragraphs 3 and 4 of the preamble, it is clear that planned economy was anticipated. Paragraph 3 enshrines the principle that the Constitution recognizes the equal worth of both men and women and their rights to participate and freely determine and build a political, economic and social system of their own free choice. Similarly, paragraph 4 represents a pledge by Zambian people to respect the rights and dignity of the human family, uphold the laws of the State in such a manner as to preserve, develop and utilize its resources for this and future generations. Finally, it is stated in the preamble that people have resolved to uphold the values of democracy, transparency, accountability and good governance. The net effect of all these is to sanction activity including social and economic development through use of plans.

It is common knowledge, however, that in common law systems such as in Zambia, preambulatory provisions have no force of law. Therefore, even though the preamble is contained in the Constitution in fact as the opening lines, there is a sharp distinction between it and the main text which follows. Generally, courts do not enforce preambles unless only as aids to interpretation but not directly as enforceable provisions. This means

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<sup>9</sup> . Constitution as amended by Act No. 18 of 1996

that the observations in the preamble as in this case confer no justiciable rights that may be due to beneficiaries.

Part 1X of the Constitution lists several articles under the Directive Principles of State Policy and Duties of the Citizen. This is the closest there can be of any authoritative provision by the Constitution bearing directly on development plans. Article 110 provides for the development and implementation of national policy. There is no doubt this is the legal source of the Fifth National Development Plan. Government is empowered to develop and implement national policy including in this case development plan.

It is important, however, to note that paragraph 2 of the same article has imposed a restriction of the extent to which Directive Principles of State Policy may be observed by the State. It states that the Principles may be observed ‘only so far as State resources are able to sustain their application, or in the general welfare of the public so unavoidably demands, as may be determined by Cabinet’. This is a troublesome clause. Through it, the State has cleverly imposed a barrier in regard to the extent to which the public can demand implementation of the Directive Principles of State Policy even before it has rolled them out in subsequent clauses.

It is even more categorical on this same line in Article 111. Article 111 states that ‘The Directive Principles of State Policy shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative, institution or entity’. In other words, the policies are mere objectives or political aims which going by literal meaning of this clause, courts have been banned from entertaining disputes based on Directive Principles of State Policy by the Constitution itself implicitly opting use of the political option and not judicial sanction. Some people would argue on this basis that there was no need to have them and even though too radical, this would be tenable argument.

Having effectively ousted any role for courts to take part in the administration of the Principles, Article 112 details them in the form of positive State duties imposed on the State. It, *inter alia*, states that:

- a) the State shall endeavour to create an economic environment which shall encourage individual initiative and self-reliance among the people and promote private investment
- b) the State shall endeavour to create conditions under which all citizens shall be able to ensure adequate means of livelihood and opportunity to obtain employment
- c) the State shall endeavour to provide clean and safe drinking water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities
- d) the State shall endeavour to promote persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable

- e) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom and language in so far as these are not inconsistent with the Constitution
- f) the State shall strive to provide a clean and health environment for all
- g) the State shall promote sustainable development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generations, etc.

These principles constitute the foundations of the Development Plan. They are also a summary of the country's political imperatives. It is in order to try and give substance to this chapter of the Constitution that government came up with the FNDP. The Plan is an effort to give effect to the above principles but in order to do so, it had to get rid of the legal consequences of any of its pronouncements in the Plan, hence the expulsion of the law and its consequences from the chapter.

Of special significance to the land tenure system is of course paragraphs (e) and (g). Paragraph (e) in referring to culture, customs and tradition is an endorsement of the African customary land tenure system as a duty of the State to promote, save those aspects of custom that tend to contradict the Constitution. Customary land tenure is entitled to State protection and promotion just as property as articulated in Article 16 and as understood in the modern sense. But discriminations based on sex, for instance, does not form part of the obligation of the State to promote and protect. Discrimination grievously infringes on equality and discrimination clauses in articles 11 and 23 of the Constitution. But even more explicitly, paragraph (g) imposes a duty on the State to promote sustainable development of land. This brings into sharp focus a whole new concept of 'sustainable development' to be enshrined in all aspects of land administration, control and management, including the planning and use of land. If practiced, this would infuse to the present concept of land administration in Zambia an entirely new meaning and direction.

Still more, there are key issues with important policy implications that naturally call for comment. Article 11 also known as the general equality clause forbids discrimination in its generality i.e. including discrimination based on sex and marital status. The implication being that excluding women from land allocation systems on the grounds that they are women or that because they are or are not married infringes against Article 11. Policy, customs and traditions which still entertain such notions should have long been deleted from pages of the providing statutes and policies or memory. Relatedly, Article 11 prohibits deprivation of property without compensation which is an important protection to holders of property rights in conventional sense. It being an equalizing clause, Article 11 should be read in relation to each and every subsequent clause. All the standards subsequent to Article 11 reside on and are related to the equality clause. For example, in deciding whether or not to refuse an application for land, the presiding Council has a duty to weigh its decision against the terms of Article 11 as to whether the decision may impinge negatively on equality. In other words, the Council, while it can turn down an application, the decision should not be based on any of the factors of discrimination.

It has been stated that the Constitution provides no clause on land. This is technically true. There is no explicit clause anywhere in the Constitution on land or stating that citizens have a right to land. But there are several references to issues dealing with land such as the prohibition against deprivation just discussed which can be understood to mean deprivation of land. Besides, Article 16 guarantees the right to property wherein it is generally understood to also refer to land though not exclusively. Therefore, the 'land's clause' to use this term can be said to be Article 16 property clause. In relation to land particularly, there are two important references. Article 16 forbids the taking possession of land compulsorily and in the same vein acquiring land compulsorily without basing this on the authority of law. This is the basis of the Lands (Compulsory Acquisition) Act invoking the doctrine of *eminent domain* which the President uses to acquire alienated land for public interest. Remarkably, customary law does not have equivalent power. In Lozi law and culture, the Litunga, powerful as he is, has no power to compulsorily acquire land he has given through his Royal Council to a subject. He must ask for it from the subject in question.<sup>10</sup> In this respect, customary tenure enjoys superiority relative to leasehold in protecting the rights of the subject.

The President enjoys enormous powers over land few will have realized. Article 16 is codification of the doctrine of *eminent domain*. Under Article 16 (2) (ii), the President enjoys unrestrained power to take or acquire land from its owner or occupier for the purposes of using it for agricultural development or improvement if on being asked to surrender it, the owner or occupier refuses to do so without reasonable or lawful excuse. You must not refuse to carry out the President's 'request' to get your land as long as the President justifies it for the purposes of agricultural development or improvement, themselves being vague terms. It is possible under this clause that the President can use it to expropriate chieftaincy land as much as leasehold.

But the next paragraph is even more categorical in emphasizing the overarching powers of the President on behalf of the State. In his bid to pursue the ends of a comprehensive land policy, the President can dispossess any occupier or owner of land, including the Chief, who enjoys rights in that land 'and person claiming through and under them' of the rights in that piece of land. It is remarkable these extensive provisions have not been used before by successive Presidents in customary areas. Nevertheless, the policy theme behind the clause is that in the interests of the public, the State should have higher hierarchy than the individual or even group of people as in customary areas. In its ordinary sense, Article 16 (2) means the President cannot be hindered in his quest to obtain customary land by force of law if he needs it for any of the stated purposes. Development of an agricultural resettlement scheme under the Office of the Vice President would be one such end. Previously, government has had to negotiate land from Chiefs and some of the Chiefs refused to cooperate. However, the President though endowed with the power to acquire the land compulsorily has nevertheless not chosen to do so which does not mean he will never do so in future based on this clause.

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<sup>10</sup> . Max Gluckman, *Essays on Lozi Land & Royal Property*, 1968, Rhodes-Livingstone Papers, Number Ten., 2-23

Finally, a regularly criticized clause is Article 23 in particular its paragraph 4. As alluded to above, Article 23 guarantees the principle of non-discrimination which means it is a continuation of Article 11, the pedestal on which all guaranteed rights lie. By the terms of this article, discrimination whether in law or fact is totally forbidden. But the colonial draftsperson and later under 'free' Zambia subjected this important principle to an uncalled for limitation. Sub-article 4 paragraph (c) to start with excludes from the ambit of protection factors and developments relating to family situation i.e. adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law. Discrimination wrought by the means of personal as opposed to public law is off the hook and cannot be regulated by the non-discrimination clause. Yet this is the most disturbing aspect of the phenomenon of discrimination that quite frequently, it takes place in personal law. Even more disturbing, paragraph (d) of this same sub-clause excludes customary law in this case customary land law from measuring it against the non-discrimination clause.

It must be pointed out in conclusion that the Constitution's approach to the question of economic, social and cultural rights is contradicted with its own position and that of the international community in international domain on these same rights. International covenants articulating economic, social and cultural rights including the Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights imply equal treatment of these as of the civil and political rights. This is particularly noted of the African Charter which includes the same means of protection for these rights as for the civil and political rights. There is no doubt this aspect of the Constitution, namely, the temptation to discriminate against them in the choice of implementation mechanisms definitely calls for revision.

ZLA has a duty to lobby for a more robust clause protecting women and other vulnerable groups from being discriminated against both by informal and formal society. Together with partners, ZLA should develop a programme aimed at pressuring government to ensure that the reviewed Constitution under the Constitutional review process currently going on aims at protecting both individuals and groups from discrimination without yielding to customs, traditions and personal law. Similarly, ZLA and partners should advocate for adoption of the Constitution in a broadly representative forum so that issues like the status of economic, social and cultural rights in other words the development paradigm are subjected to broad public discussion. Further, it should be possible to organize workshops in tandem with government at which to review and report back to communities on how far the FNDP and Vision 2030 are being implemented and share experiences on challenges. This could be a long-term plan. Finally, ZLA should develop a programme aimed at ensnaring judges on the whole issue of economic, social and cultural rights and the right to development and strategies including legal on their implementation and enforcement. This can be short to medium term.

## **2. Anecdotal introduction of the Development Plan.**

Zambia's development plan is a summary of the economist's modernization theory. The principal objective is simply to raise money which it proposes to do by putting in place policies which stimulate increase in gross levels of savings and investment particularly through external but also internal sources. Instead of emphasising the State, however, the private sector is particularly seen as the main means from which to generate the sought after growth.

Therefore, the emphasis is the external. This is part of the liberal philosophy of economic development which is another way to say instead of relying on own resources, development will depend on other peoples' resources. At the same time, there is no reference to indigenous values in the plan to the values that people have always been using to develop themselves and their communities even long before the modern State. This, however, is expected given the liberal emphasis in the document as a whole. If the expected resources from external sources do not filter through, much of the plan will not be implemented.

There are nine different parts constituting the plan, as follows:

- Part 1: Review of Economic and Social Developments;
- Part 2: FNDP Goals and Strategies;
- Part 3: FNDP Sectoral Plans: Economic Sectors;
- Part 4: FNDP Sectoral Plans: Social Sectors;
- Part 5: Government Administration;
- Part 6: Public Safety;
- Part 7: Cross-Cutting Issues;
- Part 8: Regional Development;
- Part 9: Financing, Implementation, Monitoring and Evaluation Framework

As indicated, these parts are divided into 32 chapters. These parts focus on different subjects involved in development. Though separately provided for, however, the different parts are nevertheless closely related and in fact an indivisible whole. This is in spite of the fact that Part 7 deals solely with 'cross-cutting' issues.

In terms of substance, 3 to 9 are the parts which really deal with the plan. As can be seen, the plan is all about economic and social. Other than part 7, parts 5 to 9 deals with the role of government in stimulating development which raises capacity issues. It is interesting that the plan specifically raises 'public safety' because this is a major aspect of development. Development cannot happen if citizens are not safe. Yet, classical development has tended not to include public safety as part of development. Also, the issue of regional development is important. Lopsided and imbalanced development is in fact underdevelopment of a people caught up in such circumstances. It is particularly important that the plan encapsulated regional development because one of the development problems in third world countries is simply how to ensure 'balanced development' between rural and urban areas where the whole attention is often concentrated and between regions. Ultimately, the whole ethos of the plan will depend on will depend part 9 – the financing chapter. We have already expressed serious misgivings

on the fact that the entire plan is based on money being available and that most of this money is to be externally sourced. Past experience in Zambia and Africa's history on the other hand would approach this model with a pinch of salt.

Nevertheless, the most notable part in as far as land is concerned is in Part 3 which deals with the first set of sectoral plans in this particular case on economic sectors. Four pages have been devoted towards elaboration of the chapter on land. But local government and decentralisation under Part 5 as well as regional development have similar implications on land.

#### **4. Land provisions in the Plan**

According to the plan, 'Land is the most fundamental resource in any society because it is the basis of human survival. It continues 'in order to ensure that this important resource is properly administered and managed, the Government has been working on the land reforms aimed at improving the land delivery process'. This is a reference to the efforts by the Ministry of Lands to develop a national land policy. What, however, does not come through is that the land policy and in this context other policies may take longer than necessary which means part of the plan is not yet quite ready.

It even has suggested a vision of the system of land administration it would want to see as a result of the plan stating:

The Vision of the Land Sector is: *A Zambia in which there is secure, fair and equitable access and control of land for sustainable socio economic development of the people by 2030.*

The Land Sector Goal is stated as: *To have an efficient and effective land administration system that promotes security of tenure, equitable access and control of land for the sustainable socio-economic development of the people of Zambia.*

While it is important to have a robust vision as above, it is regrettable, however, that it does not sound sensitive particularly to the interests of the poor. This is predictable since by its own words, its preoccupation is simply to improve access to land. It is clear that the plan's main objective is 'improving the land delivery process'. This means that basically, the plan is not very much concerned with the interests of the poor people in customary or rural areas most of whom may already have access to land which they hold under customary tenure and which they are not about to convert to leasehold tenure. Access being the main preoccupation, those already with access are not provided for. That there may be fundamental issues in the tenure system itself besides that of access and its administration has been ignored.

#### **Colonialism**

It is predictable that the section would open with the colonial history of the country's land tenure system. Part of this reads:

‘At independence Zambia inherited a customary, freehold and leasehold system in which administration of customary tenure was subordinate to written law, which applied to Crown land. The system of land administration was not integrated with the land tenure structure of the country. Rights and interests exercisable under the Reserves, Trust Land and State Land remained unchanged. The method of land alienation under Reserves and Trust Lands continued to be managed by traditional customs. In 1965, the Government appointed a Commission of Inquiry to review the land policy and to recommend a land administration system suitable to the needs of the new Republic. The Commission recommended unification and integration of the land administration; simplification of the law governing statutory tenure; introduction of individual land title registration of customary tenure; acquisition and control of vacant land and all land in Barotse Province by the Government as well as to make all laws relating to conservation of natural resources to be of general application and the law relating to compulsory acquisition to apply irrespective of whether land was held under customary or statutory tenure.

Some of the key information it sheds light on include the Commission's recommendation to government to compulsorily acquire land that was not utilized. Just after independence, a lot of land in the hands of white settlers was not being utilized. They held it as absentee landlords speculating on it. Consequently, government amended the Constitution to provide for compulsory acquisition in line with this recommendation. It also referred to the status of Barotseland. The Commission of Inquiry recommended for the unification of this land which was achieved through the enactment of the Western Province (Land and Miscellaneous Provisions) Act, 1970. The Western Province 1970 Act declared all land previously administered by the Litunga as a Reserve pursuant to the Zambia (State Land and Reserves) Order 1928 to 1964.

It, however, complained that these changes did not adequately ‘deal with the system of land management and did not alter the dual tenure system of land administration established by Colonial authorities’. This is a very important point. Since colonialism, there have at least been two land tenure systems of administration. But the fact that it is only now been raised is a cause for concern. The alteration government is proposing has already come to the public domain. Not long ago, it was disclosed that the World Bank had recommended to government to put all land in the hands of the President which is calling for a fundamental revision of the system of land tenure. If this speculation were to be taken seriously, there will be no more need for Chiefs administering customary land. This is one of the features of the plan which raises doubts as to whether indeed the plan reflects the views of all the Zambian people.

It then goes on to review the evolution of the laws on land during the period between 1970 right up to 1985. The most important point it brings out is that there was increased state control of land during this period. Controls were introduced in the housing sector which sought to regulate relations between landlords and tenants regarding rentals. The 1975 Watershed changes in which freeholds were converted to 99-year leasehold, and a ban was imposed on the sale of vacant land was discussed in the context of negative impact the measures introduced to the smooth administration of land. Other features observed include the involvement of councils in processing land in their areas as well as the introduction of presidential consent for all transactions in land, etc.

It is, however, interesting that the document spends very little space on customary tenure. Customary tenure is just referred to as among the three tenure systems prevailing in the country. Given that the majority of Zambians still hold land under customary tenure, it would be natural to expect the plan to detail what is in store for this tenure in the next ten years. There are challenges holders of this land face which government should have addressed. Nevertheless, the obvious lack of interest in customary tenure is in line with the overall thrust of the plan in land i.e. to promote the liberal land tenure system.

However, it did try to identify but only some of the challenges that face the country's land tenure and administrative system, as follows:

- a) Duality of land tenure;
- b) Over centralized land administration system;
- c) Inadequate empowerment of citizens, especially in customary areas;
- d) Lack of land policy;
- e) Abuse of current system of acquiring land in both customary and state land;
- f) ineffective land use planning;
- g) Ignorance of land alienation procedures;
- h) Inability to allocate land according to its value and lack of clear guidelines on how to attach value to land that is to be allocated;
- i) ineffective land audit;
- j) Inadequate appreciation of the roles played by the traditional rulers and the President in land allocation; and
- k) Ineffective coordination among land administration institutions.

Identification of challenges is probably the most important part of the chapter. If properly identified and then proper strategies are found to address the challenges, the country will have gone a long way towards finding real solutions to issues of poverty and vulnerability. On the other hand, failure to do so means more of the same or worse.

Prima facie, most of the listed challenges sound true. It is true that persistence of duality of land tenure accounts for most of the serious difficulties towards a more effective and efficient system of land holding and consequently efficient administration of land. Bilateralism in land tenure means parts of Zambia are subject to customary jurisdiction and therefore respond to different sets of principles and rules on land holding and transfer than those in leasehold often in the very next plot of land. One person can at the same time hold two portions of land under two tenures i.e. one under customary and the other under leasehold tenures. Generally, the majority of people hold customary land while only a handful hold leaseholds. Though it was reduced to subordinate status following colonialism, customary tenure is the indigenous form of tenure most people identify with. One of the challenges is that the country's Constitution does not accord similar recognition to the two tenures. Leasehold Under the arrangements, is unduly favoured with free access to government and non-government facilities and resources at the expense of holders of customary land. This does not promote development. Even the FNDP has no provision on how to protect customary land holders. Besides promising to empower the local people which is assumed to mean to grant them title deeds and therefore convert their holdings from customary to leasehold, there is no proper framework to promote customary tenure and protect people within that tenure. Similarly, State institutions like courts protect mostly leaseholders from eviction and from other

forms of precariousness holders of customary land are exposed to leaving such people at the mercy of selfish individuals including government all out to dispossess them of their land. The challenge in this case is 'should Zambia continue with the dual tenure system or not and if in the affirmative, should it continue with this system in the present or different form? Zambia has not only had experience in duality of tenure. In 1970, following the 1969 constitutional milestone which preceded a country-wide referendum held over the 1964 Constitution, Zambia unified Barotseland with the rest of Zambia as reserve. Before that, Barotseland enjoyed certain distinct administrative status. Consequently, Zambia has experience in all aspects of land tenure to draw experiences from. However, most people when asked what would be the best option, nevertheless, settle for the continuation of the current system. What would be needed is to undertake thorough studies with the view to come up with the best possible options. On the other hand, over centralization of land policy, inadequate empowerment of citizens as well as lack of land policy refer to issues that serious government could have long dealt with. Similarly, it is government's responsibility to ensure that land is not dogged by an abusive administrative system. Ineffective land use planning methods as well as lack of proper land audit are due to government's lack of capacity and therefore of proper governance practices which goes back to government. The Commissioner of Lands cannot afford to work in a vacuum not guided by a proper land audit. Almost all the challenges listed above can be traced back to government as the main culprit behind them. Take, for instance, ineffective land administration institutions, who else can bear the blame for this?

## **5. Proposed reforms**

The plan has advanced several possible intervention methods and strategies. Most of them have to do with the way government at the Ministry of Lands does things. The central aim is to change the *modus operandi* of land administration as presently conceived in the Ministry and related organs. Consequently, the main intervention strategy proposed is policy and institutional development.

- a) Policy development;
- b) Reviewing of existing Legislation;
- c) Decentralization of the land administration and management process;
- d) Streamline land delivery process;
- e) Empowerment of citizens;
- f) Promote sensitization of chiefs on the importance of releasing land;
- g) Human Resource Development;
- h) Promote security of tenure through registration of private and communal rights;
- i) Allocating of land according to the land value;
- j) Strengthen coordination among land administration institutions; and
- k) Promote land use planning.

### **5.1 Analysis**

A sober assessment of both the challenges and strategies reveals scant knowledge of real issues that affect effective land development. Real challenges would include the

involvement of the President, Minister and Commissioner of lands as posing the most serious constraints. Use of discretion particularly by the President and his agent the Commissioner of Lands is a great source of insecurity. There is no indication in this of how foreign and local investors affect stability in land holding yet there enough evidence to confirm this. Land delivery does not just need streamlining but complete overhaul. It is complete decay.

With regards to decentralization, successive ministers of Lands have failed to implement the policy. Instead, Circular Number 1 of 1985 brought a highly centralized procedure which applies even where a holder desires to convert his own land from customary to leasehold. By government's own policy, everything to do with land must be routed to Lusaka to the Commissioner of Lands. Recently, councils were deprived of their land administration powers by the jealousy central government. All they can do is to recommend to the Commissioner alienation of land within their localities. Lusaka City Council has exchanged 'punches' with the Ministry of Lands over Baobab College land which the Council in possession of a title deed to it saw it fit to alienate to the public. Because the decision did not fit with government's plans, the Council decision was set aside and the offers issued to the public cancelled. It is difficulty to believe government in the plan when it says it is committed to decentralization of land administration – which decentralization?

Review of existing legislation is long overdue. Some of the legislation particularly the Land Survey Act, Planning, Agriculture as well as the Lands and Deeds Registry Act are antiquated. Their objectives and institutions long ceased to reflect current needs. But who is going to seriously pick this as a priority needing adequate funding? The Law Development Commission responsible for legislative review has never been adequately funded. It is very difficult to believe it will happen as proposed simply because it is now part of the plan. The political will necessary for this to happen is not yet with us.

The strategy to sensitize Chiefs on the importance of releasing land does not recognize the fact that Chiefs have already released too much land from customary to leasehold. In fact, if only there was a proper auditing of land at the Ministry of Lands, there is no more land remaining with customary areas. It is important government has admitted that its land record system is in shambles. Had their been proper statistics in their possession, authorities would have been aware that customary land that was is in fact already in their books in councils and leaseholds having been alienated long time ago. Some of it has been made government land through schools, government ministries and departments, health care centres, roads, forestry and game management areas, etc. Some of these projects are not recorded at the Ministry of Lands.

Finally, the strategy to allocate land according to value is definitely designed to discriminate against the poor. Up until now, poor people have managed to cling to some of the land they are holding due to customary nature of land tenure systems which does not promote monetarism. During our field work in another research, it was so obvious that the introduction of value to land in customary areas in respect of transactions involving local people would drive them poorer. Besides, land sales do not fit the theory of customary tenure. However, value for customary land can be introduced purely for those with capacity to buy it. Foreign and local investors, of course, should not get land whether this or leasehold free as at the moment because this in fact impoverishes the people more.

## 7. Programmes, Objectives and Strategies

The matrix below is part of the FNDP programmes and their respective objectives and strategies for the Lands sector. It will be recalled that programmes and strategies form the last part of the FNDP document. The Financing chapter is very important aspect of the whole plan more especially on land system. Therefore, this diagram should be read together with the rest of the chapter to have thorough understanding of the government's proposals.

<b>Sector: Lands</b>			
	<b>Programmes</b>	<b>Objectives</b>	<b>Strategies</b>
<b>1</b>	<b>Land administration and management</b>	To promote efficiency and effectiveness in land alienation, administration and management	(a) Policy development and implementation; (b) Streamline land administration and management system; (c) Land-related legislative reforms; (d) Harmonisation of the institutions dealing with land.
<b>2</b>	<b>Empowerment of citizens in both customary and state land</b>	To promote effective citizenry access to, and control of, land	(a) Sensitize traditional rulers on the importance of releasing land for development; (b) Promote the creation of land banks for all potential investors; (c) Raise awareness on land allocation procedures; (d) Change legislation to restrict land allocation by the state to Zambians only; (e) Facilitate affirmative action to empower less privileged Zambians such as persons with disabilities, women, and the rural community to own land; (f) Promote co-ordinated and efficient land use planning and management in customary areas.
<b>3</b>	<b>Strengthening of institutional framework</b>	To decentralize land administration and management.	(a) Strengthen Provincial land offices and decentralise land registration to the provincial level; (b) Facilitate linkages in land use administration and management with Agriculture, Tourism, Environment and Local Government.
<b>4</b>	<b>Demarcation of the International and Local Chiefdom Boundaries</b>	a) To maintain international boundaries to prevent potential conflicts with neighbouring countries. b) To provide detailed information on boundaries of chiefdoms.	a) Develop a systematic periodic inspection and management programme of common international boundaries; b) Facilitate timely up-date and maintenance of maps showing the extent and boundaries of all local chiefdom boundaries; c) Facilitate joint inspection of chiefdom boundaries in the presence of chiefs and Local Government officials.
<b>5</b>	<b>Human Resource Development.</b>	To develop and retain qualified and motivated personnel.	a) Improve the conditions of service in order to motivate staff; b) Introduce performance-based annual awards systems.
<b>6</b>	<b>Land Development Fund</b>	a) To promote the opening up of new areas for development. b) To increase the collection of revenue and contribute to the Treasury and the Land Development Fund.	a) Develop a co-ordinated working programme with local authorities on the identification of land for development; b) Establish provincial Land Development Fund; c) Develop an efficient audit accounting system of Land Development Funds; d) Promote cost effective means of collecting ground rent and other fees payable. e)

<b>Sector: Lands</b>			
	<b>Programmes</b>	<b>Objectives</b>	<b>Strategies</b>
<b>7</b>	<b>National Mapping and surveying</b>	To provide spatial geographic information for national infrastructure development	a) Develop, maintain and publicise national mapping standards; b) Development of national topographic map databases; c) Development, maintenance and publication of national place names Gazetteers; d) Surveying of land for development; e) Development of local maps for all areas of Zambia.
<b>8</b>	<b>Registration of Properties</b>	To improve and promote decentralised registration of properties in order to guarantee security of ownership	a) Develop microfilming, scanning and computerised data storage system; b) Introduce electronic issuance of titles; c) Sensitise the public on procedures governing property transactions and registration.
<b>9</b>	<b>Coordination of Land Use and physical Planning</b>	To promote efficient, coordinated and well regulated land use and physical planning patterns.	a) Harmonise Land use and physical Planning; b) Land audit; c) Upgrade Land Information System on development patterns.

Of course, proof of pudding is in the eating. The Plan, however accurate in bringing out the challenges and identifying interventions correctly, proof of its validity is simply in whether it will deliver. The sole question is will the Plan deliver the various proposals it has set out to?

This, however, can greatly be eased with an adequate conceptual framework. If the conceptual framework is defective or inadequate, it is unlikely to succeed. For example in this Plan, the preoccupation with land delivery could be counterproductive if holders of customary land decided not to cooperate or to cooperate on the scale expected. It must be recalled that land delivery in another sense is land dispossession. Given that customary land which is the main target of the Plan is subject of several tangible and intangible rights and interests, delivery of this land to the formal sector will inevitably entail cancellation of prior rights and interests. Obviously, holders of that land are likely to oppose the Plan. This is likely particularly given that the Plan's main interests is to accommodate potential investors both local and foreign of which the majority Zambians are not. Instead of only focusing on land delivery, as a sole objective, the Plan should have made room for a model that encapsulates the majority of Zambians. This is how to plan consistent with the Constitution and therefore not discriminate. Planning for only a small section of the rich in society contradicts society's basic norms. If the majority of Zambians not reflected in the Plan as currently framed get to understand their marginalized status in it, they will fight it.

This leads us to the second equally important question, namely, the method by which the Plan was conceptualized. If Chiefs and local people had been adequately consulted during the planning process, would the Plan still have been as outspoken against Chiefs as it is? Who drew the Plan? Certainly, Chiefs would not have drawn it the way it is – an attack on them. It is attacking Chiefs for allegedly refusing to release land for development. Which Chief can authorize such a line? Even ordinary villagers if asked for their views would most certainly not have sanctioned their dispossession which is what wholesale land delivery entails. Conceptualization is a very important aspect of an adequate Plan. Zambia is party to several regional and international human rights

instruments. One of the key human right is the right of citizens to participate in governance of their societies. The Constitution itself anticipates the right to participate among the key human rights. One of Zambia's problems in land has been the failure to consult and to consult adequately. The 1975 reforms were introduced at the behest of one political party which regarded itself as licensed to rule alone. The result is the land law that followed had no legitimacy beyond the letter of the law it was written on. Land dealers violated each and every letter of the 1975 Land Act because they did not regard it as their own instrument. While the law was saying land cannot be sold, people were selling it under the table. The 1995 Land Act is a story too well known to require telling again. After being totally rejected by the whole country who saw in it every sly trick to dispossess them of their land to foreigners government was trying to encourage to come and invest, a small group of leaders went behind the peoples' backs and enacted the law. As a result, the current land law has no legitimacy. It is faced with numerous problems making effective and efficient land administration impossible. What is the difference with what is being suggested on land in the Fifth National Development Plan?

Third, the Plan is already terribly outdated in regard to land issues. The open corruption recently in the Ministry of Lands government would not hide is proof of this. Besides the vague words 'efficient' and 'effective', where does the Plan deal with corruption in land? Corruption shows that the source of problems in land administration is in government itself. Besides simply saying in its vision to deliver land, the Plan should have ideas on what to do with the most outstanding challenges as it timidly attempted to but hugely unsuccessful. Corruption is the main challenge which relegates most of the so-called 'main challenges' the document sets out.

And then where is the value system? A Plan that is tailored to work in Zambia should articulate Zambia's values. The title deed which the Plan advocates through proposes to fast-track land delivery is good but it is still not the main value system to the majority of people in Zambia. Most people still share land and therefore de-emphasis individuality which is why there is relative security in the country. Even as they develop and adopt new ideas and systems, a Plan should plan for people based on their civilization. You can't impose alien ideas on people and expect to succeed. There is serious need to contextualize the Plan so that it can reflect the society it is going to operate. It must not only aim to attract money as the sole motive for the land reform. More than that, to create, recreate and deepened the value system in land as in society generally as the primary objective.

The UN Special Rapporteur on the Rights of Minorities Ms. McDougal observed in her report on Ethiopia only in 2006 that the land titling programme government had instituted should not solely be for revenue purposes. In response to widespread violations of minority rights in Ethiopia including dispossession of their land by neighbours often backed by government, Ethiopia decided to embark upon a systematic land titling programme to enable individuals assert their rights in land versus abusers. The Special Rapporteur advised that to be sustainable, the titling programme should not have revenue collection as its main objective. Zambia in its Draft Policy has the same objective. In the land policy proposals being put forward in the Draft Policy, the main objective is to

generate revenue. Government is disappointed that land holders are not paying their rates to the Ministry of Lands in respect of their properties. The Development Plan is based on the same theory. The objective behind it is to expand the base for revenue which can happen through efficient land delivery. This should not be the main aim. The objective should be empowerment of especially the weakest members of society so that with secured land rights, they can protect their dignity. Nevertheless, the Plan proposes an implementing, monitoring and evaluating framework during its tenure.

## 8. Implementation, Monitoring and Evaluation Framework

During FNDP implementation, the Ministry of Lands will be guided by the Land Policy. The Ministry of Lands, as a principal government institution in land administration, will work closely with other land delivery institutions to improve land administration and management. The other parties that are critical to the improvement of land administration system include the Ministry of Local Government and Housing; Ministry of Tourism, Environment and Natural Resources; Ministry of Commerce, Trade and Industry; Ministry of Agriculture and Co-operatives; The Resettlement Department in the Office of the Vice President; the Zambia Investment Centre; Councils; civil society organisations; traditional rulers; and the public at large.

In order to effectively monitor and evaluate the implementation of the FNDP programmes under the sector, the Ministry of Lands will establish an integrated system of monitoring and evaluation. It will also develop monitoring and evaluating instruments for the implementation of the programmes.

### Sector: Lands (K Billion)

	2006			2007			2008			2009			2010			Grand Total
	Cost in K Billions			Cost in K Billions			Cost in K Billions			Cost in K Billions			Cost in K Billions			Cost in K
	GRZ	Donor	Total	GRZ	Donor	Total	GRZ	Donor	Total	GRZ	Donor	Total	GRZ	Donor	Total	GRZ
<b>Programmes</b>																
Administration and management			0	3.1	0.0	3.1	1.2	0.0	1.2	2.7	0.0	2.7	2.3	0.0	2.3	9.3
Empowerment of citizens in both customary land and modern land			0	2.0	0.0	2.0	2.7	0.0	2.7	2.5	0.0	2.5	2.5	0.0	2.5	9.7
Strengthening institutional framework			0	5.0	0.0	5.0	4.0	0.0	4.0	3.0	0.0	3.0	3.0	0.0	3.0	15.0
Demarcation of the International Boundaries			0	1.8	0.0	1.8	2.2	0.0	2.2	2.3	0.0	2.3	3.5	0.0	3.5	9.8
Resource Development			0	0.5	0.0	0.5	0.7	0.0	0.7	0.5	0.0	0.5	0.6	0.0	0.6	2.3
Development Fund			0	4.0	0.0	4.0	5.5	0.0	5.5	5.8	0.0	5.8	5.0	0.0	5.0	20.3
Land Mapping and survey			0	2.2	0.0	2.2	2.6	0.0	2.6	3.2	0.0	3.2	3.3	0.0	3.3	11.3
Registration of Properties			0	0.3	0.0	0.3	0.4	0.0	0.4	0.3	0.0	0.3	0.4	0.0	0.4	1.4
Formulation of Land Use Planning			0	0.2	0.0	0.2	0.5	0.0	0.5	0.4	0.0	0.4	0.4	0.0	0.4	1.5
Total				19.1		19.1	19.8		19.8	20.6		20.6	21.0		21.0	21.0
<b>IDP Programmes</b>																
Revenue Collection and Inspection			0	0.2	0.0	0.2	0.4		0	0.2	0.0	0.2	0.4	0.0	0	1.2
Compulsory Land Acquisition			0	0.3	0.0	0.3	0.1		0	0.1	0.0	0.1	0.0	0.0	0	0.6
Local Emoluments	4.4		4.4	5.0	0.0	5.0	5.5		5	6.0		6.0	6.6	0.0	7	27.4
Total	4.4	0.0	4.4	5.5	0.0	5.5	6.0	0.0	6.0	6.3	0.0	6.3	7.0	0.0	7.0	29.2
Total	4.4	0.0	4.4	24.6	0.0	24.6	25.8	0.0	25.8	26.9	0.0	26.9	28.0	0.0	28.0	50.2

In conclusion, the FNDP may be said to be a welcome tool to shed light on the way forward in national development in the next five years. Zambia is well-off with the plan

than without. It enables the country's governance if properly implemented to raise the standard and quality of life of poor people. This is important in ensuring stability in development work.

In regard to the land sector, it is even more important to plan because unplanned land tenure and land administration can have serious undesired consequences. A classical example of this in Zambia is urban land control and use. Though there is a concept of planning of control and use of urban land, this has been so discredited that simply no one sticks by it. The result is the distortion that is in place in which urban planning consistently results in unplanned settlements.

## **Recommendations for the ZLA**

1. In conjunction with their partners at district levels ZLA should develop a country-wide programme on long-term basis to deliver and disseminate the FNDP to communities. Communities are furnished with relevant information on the plan. In another research this consultant has just conducted for the human rights organisation Women for Change, evidence of the plan was found in schools but only schools. Schools visited both rural and urban had the chapter on education. Similarly, Social Welfare departments at provincial and district level had relevant chapters of the plan. Some ministries and departments of government are more efficient than others and this was evidence of that. The problem even here is that government was disseminating the plan to itself. None of the pupils asked confirmed seeing the chapters in possession of the headmaster. Similarly, beneficiaries of social welfare grants asked had no clue about the plan. This shows that dissemination was purely for administrative purposes. ZLA should capture strategies such as in this case of delivering the chapter on land to communities by entrusting pupils which requires collaborating with the Ministry of Education.

2. ZLA should translate the land chapter in the plan in local tongue. The document that was launched by the President which people whose views are said to be what is expressed in the document do not understand. The need to put the chapter in local languages is urgent as it constitutes an integral part of effective dissemination. It also assists demystify the plan from being viewed as elitist product for the purpose of raising money from Europe and other developed countries. Putting the document in local languages advances the idea that the plan belongs to the people and makes it easy for people in rural areas who constitute the majority poor to use it to claim their part of the bargain.

3. ZLA should draw up a long-term project to promote awareness around the plan. Targeted stakeholders like Chiefs should be mobilised and introduced to the land chapter to test the veracity of the claim that the document reflects the views of all Zambians. If Chiefs can accept the proposals contained in the document including the claim that they are refusing to turn their land over to government, and then to use Chiefs to take part in radio discussions and in other forums including their communities to promote it.

4. ZLA should meet government more especially the Ministry of Finance and Economic Planning to discuss possibility of developing an arrangement in which government will open to regular monitoring of implementation of the plan for ZLA in particular of the land chapter

5. Even though the plan has already been adopted and is now in implementation phase, still there is need to try and make it more authentic, local and people centred which can be achieved even at implementation. The foreign emphasis in the document is not necessary. For example, proposal to develop the tourism sector should not lead to increased insecurity of local customary land holders and should aim at benefiting

especially local people so that they protect the sector and not view it as alien imposition they must fight

6. ZLA should lobby government to infuse local values, institutions and strategies from local experiences so that it has a local brand. The plan should not only be based on money but on values. Therefore, development of the state institutions should include development of local institutions and values

7. ZLA should lobby government to include the promotion of customary land and protection of holders of that land while providing more space for others not catered for to have stake on the basis of equality of all. Women and other vulnerable people should find accommodation in equality with advantaged sections of society

8. ZLA and partners should lobby government to adopt the draft Constitution based on a popular mode so that issues like lack of proper standing in law for economic, social and cultural rights including the right to development can attain the requisite status

9. ZLA should develop a project to ensnare judges and other judicial officers on the need for a proactive approach in protecting economic, social and cultural rights. Courts while affording protection to the civil and political rights under the property clause could be ensnared to extend similar protection to customary land holders, squatters and other vulnerable people on the basis of dignity

10. ZLA should work out a programme to sensitize Chiefs on the FNDP and especially the chapter on land as it relates to the government intention to urge Chiefs to release more of their land to the State

11. ZLA should meet government particularly the Ministry of Lands to discuss entering into a collaborative arrangement to monitor the implementation of challenges and strategies listed in this chapter more especially on capacity development

12. ZLA and partners should sensitize development partners on the FNDP and their role in the implementation of the plan, challenges, strategies and expectations. ZLA should organise a limited workshop on the land chapter.