



CENTRE FOR ENVIRONMENT JUSTICE (CEJ)



Report of the Traditional Leaders' Caucus on Land-Based Investments & Natural Resource Governance in Zambia

Held at the Kenneth Kaunda, New Wing, Mulungushi International Conference Center (MICC), Lusaka, 12TH October 2022

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2 INTRODUCTION

The Center for Environment Justice (CEJ) in support from Southern Africa Trust (SAT) are implementing the ‘Voices for Climate Justice & Natural Resource Governance’ project aimed at promoting better policy decisions on the use of natural resources and amplify citizen voices on climate action. The project focus on amplifying citizen voices and thus CEJ successfully convened a caucus for 15 Tradition Leaders across the country aimed at Strengthening Land-Based Investments and Environmental Governance in Zambia. This was with the objective of achieving good governance and social safeguards by resolving limitations in existing legal and policy frameworks on land-use investments through multi-stakeholder dialogues. CEJ invited the Advancing Land-Based Investment Governance (ALIGN) consortium. The consortium is made up of the [International Institute for Environment and Development \(IIED\)](#), [Namati](#) and the [Columbia Center on Sustainable Investment \(CCSI\)](#). The team has managed to develop a new initiative to support governments, civil society, local communities, and private sector actors in improving the governance and practices of land-based investments. Therefore, the report covers the Caucus for Traditional Leaders proceedings, which took place on the 12th of October 2022 at the Mulungushi International Conference Centre (MICC) and was officiated by the Minister of Local Government and Rural Development, Honorable Garry Nkombo, MP. Apart from various resource persons from CEJ and ALIGN, a total of fifteen (15) traditional leaders took part (see **attached list of Traditional leaders/Delegates**).

3 Meeting Preliminary Proceedings and Participants

The main proceedings of the Caucus Meeting included welcoming remarks by the Moderator Mr Boniface Mumba; remarks by their Royal Highness’ Designated Chairperson of the House of Chiefs, His Royal Highness Chief Nkula, followed by some opening remarks by Ms Maggie Mwape, Executive Director of CEJ. This was followed by A Keynote Address by the Guest of Honor, the Minister of Local Government and Rural Development mentioned above, who shared government policy positions and commitment to Land Use Investment, Governance and Environmental Protection. The guest of honour, traditional leaders, and resource persons thereafter took part in a series of photo sessions which led to sessions on different expert presentations and discussions.

3.1 Meeting Resource Persons and Presenters

Among the resource persons included Mr Bruce Chooma a Land Rights Expert who delivered a presentation on Democratic Governance of land use and understanding Zambia’s Land Rights, highlighting land rights in Zambia for sustainable land use governance. The ALIGN resource team members presented on Advancing Land-Based Investment Governance (ALIGN), focusing on helping Traditional leaders to understand the ALIGN project and outlining strategies for effective community benefit resource sharing and how best to analyze an investment partnership agreement. Mr Makweti Sishekanu, an Environmental Legal Expert led a presentation on Bridging Land Based Investment governance and Environmental safeguards with an emphasis on the role of traditional leaders. Mr Freeman Mubanga oversaw the Strengthening of land-based investments and environmental governance in Zambia.

3.2 Briefing By Moderator-Mr Boniface Mumba

Upon arrival, the Guest of Honor was briefed on the rationale and objective of the Caucus meeting by the Moderator Mr Boniface Mumba. He pointed out that namely to host traditional

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leaders to come up with an action paper to be presented and inform discussions at the 2022 Environmental Protection Dialogue (EPD) in October. This was underlining the initiative’s aim in Zambia to address the environmental and social impacts of land-based investments. Mr Mumba added that among other options this was through enhancing multi-stakeholder participatory gap analysis of existing laws and policies that govern land-based investments in Zambia and the action was further seeking to promote better policy decisions and enabling sustainable land-use investments whilst ensuring environmental sustainability throughout Zambia.

3.3 Remarks By Chief Senior Nkula

Senior Chief Nkula ahead of the Minister’s remarks shared some remarks by highlighting the objective of the meeting, and how it would benefit the people of Zambia and the entire country. The traditional leader pointed out that he looked forward to the Minister’s Speech in order to acquire the gist of the policy direction of government on land-based investments and for them to know how they would proceed as Chiefs. Chief Nkula reiterated that they were there to work for the people and expressed happiness that the government had decentralized the management of resources to the local level as they were part and parcel of the process and would provide the necessary oversight for the benefit of the people.



Figure 1: Snr Chief Nkula giving his remarks.

3.4 Remarks By Align Team Representative-Mr Lorenzo Cotula

Mr Lorenzo Cotula – Principal Researcher and head of law, economies, and justice programme at IIED, explained that ALIGN was being implemented via partner organizations and that they were in the process of developing activities in Zambia, and working with institutions such as the Center for Environment Justice (CEJ) through a consortium. This comprised of the International

Institute for Environment and Development (ILED), the Columbia Center on Sustainable Investments (CCSI) and NAMATI. He emphasized that his organization was aware and appreciative of the role of traditional leaders in land-based investment governance, and they were elated by the commitment of the Zambian government to promote sustainable national development through related initiatives.



Figure 2: Mr Lorenzo Cotula giving his remarks.

3.5 Remarks by the CEJ Executive Director-Ms Maggie Mwape

The CEJ Executive Director Ms Mwape expressed appreciation for the opportunity to speak at the Caucus for Traditional Leaders. She explained that the Caucus was convened by CEJ with support from the Southern Africa Trust (SAT). CEJ engaged ALIGN to support the caucus with expert knowledge and technical skills and make presentations at the caucus to help equip the traditional leaders with advanced knowledge on natural resource governance and land-based investments.

Ms Mwape thanked their Royal Highnesses for their commitment and that CEJ was grateful for their humble gesture of accepting the invitations and for gracing the Caucus. She expressed delight for the Minister Hon. Garry Nkombo's attendance at short notice which she described as an example of servant leadership. She hinted that the Minister's commitment to ensuring that national developmental efforts were at all costs met and attended was remarkable. The Executive Director was optimistic that the Minister would be impressed to learn that their royal highnesses have been a part of the environmental protection dialogue since its inaugural meeting in 2020 and that this year a deliberately convened a side event for their royal highnesses hereto known as the traditional leader's caucus. She informed the Minister of the theme for the Caucus namely

‘Strengthening Land-Based Investments and Environmental Governance in Zambia’ which reflected the overall intended outcomes of the event.



Figure 3: Ms Maggie Mwape - CEJ Executive Director giving her remarks.

She added that CEJ and its partners realized that natural resource governance and land-based investments were key to Zambia’s long-term development planning strategy – Vision 2030, which identified agriculture, energy, mining and forestry as key components to harnessing sustainable development. Ms Mwape noted that due to several concerns raised in the way governance on land-based investments had been undertaken in the last few years, there were concerns as to whether these investments were effectively upholding socioeconomic rights, including land and livelihood protection, and protecting the environment. That was particularly with growing pressures on Zambia due to the negative effects of climate change.

The Executive Director observed that the situation on the ground seemed to prove otherwise and there seemed to exist uncoordinated legal frameworks that govern land-based investments and weak enforcement of environmental and social safeguards. She noted in her conclusions that this coupled with land tenure, unfair compensations and displacements, environmental degradation, and poor public awareness of the land rights and legal frameworks and institutions governing land-based investments, left much to be desired if land-based investments in Zambia were to be strengthened. Ms Mwape expressed hope that the issues raised by the Chiefs would inform the immediate steps to be taken in advancing land-based governance investments in Zambia, and thereafter a summary action paper capturing the key issues raised by their royal highnesses shall be developed and presented to the main plenary of the environmental protection dialogue.

3.6 Official Opening Remarks by The Guest of Honourable Garry Nkombo

The Guest of Honor of the Traditional Leader’s Caucus, Mr Garry Nkombo, who is also Minister of Local Government and Rural Development began his official opening remarks by expressing humility in the commitment towards effective dialogue on natural resource governance and land management among traditional leaders. He reiterated that the theme of the caucus ***Strengthening Land Based Investments Governance in Zambia***, and the commitment by all to place value on that was timely. Hon. Nkombo reiterated that unlike in the past, economic development was now challenged by climate change, and population growth, hence rendering fit the theme of the event.

The Minister pointed out that Zambia’s economy depended on natural resources and land use, which was recognized in the National Development Plan. Hon. Nkombo further observed that the Eighth National Development however recognized the significance of environmental protection and the need for the sustainable use of natural resources. He added that there was a need to remain alive and that positive development was not automatic hence the need to strengthen land and natural resources management to attain those goals. The Minister informed the Traditional Leaders Caucus that the Republican President was aware of the many inequities, breaches of property rights, environmental degradation, and labour abuses which would require multisector approaches to address.



Figure 4: Minister of Local Government & Rural Development - Hon. Garry Nkombo giving his official opening speech.

The Guest of Honor expressed delight that Zambia was on the right trajectory towards realizing the desired goals as the New Dawn Government was aware of challenges, among customary land tenure, such as the need for consultations with land users. He bemoaned the seemingly low enforcement of established laws observing that the legal framework needed to be strengthened to

ensure safeguards. The Honorable Minister appealed, for the use of a platform such as the Traditional Leaders' Caucus for finding long-lasting solutions to land-based investment concerns. He indicated that the presence of traditional leaders in the Caucus would enhance the government's search and quests for national development.

The Minister thanked their royal highnesses for their unwavering commitments to safeguarding natural resources and further informed the Caucus that the government was committed to providing support and tools, such as agriculture, energy, mining, and other land uses that were competing. He reiterated that government would like to work under the watch of the traditional leaders, as frequently as possible, through interactions, and interfaces linked to the management of natural resources on behalf of Zambians for whom the resources were managed. The Honorable Minister, thereafter, declared the Traditional Leaders' Caucus Officially opened.

4 PRESENTATION ON DEMOCRATIC GOVERNANCE OF LAND USE AND UNDERSTANDING ZAMBIA'S LAND RIGHTS-MR BRUCE CHOOMA

Mr Bruce Chooma from Disability Rights Watch delivered the presentation on democratic governance of land use and understanding Zambia's land rights context. Mr Chooma focused on Land rights in the context of customary law, with a focus on customary land and rights of landholders, challenges and opportunities for Large Scale Land Based Investments, and Traditional leadership and best practices.

He brought out several issues recognizing the intrinsic value of land and emphasized that Zambians have not appreciated the extent of the value of land, and the extent of developments that were taking away the rights of communities whereby it could be conceived that land had been sold away as a commodity.



Figure 5: Land Rights Expert - Mr Bruce Chooma presenting on land rights.

4.1 The Intrinsic Value of Land

Mr Chooma pointed out that land was critical for enhancing access to food, water, security, livelihoods, and sustainable development. He emphasized that it was important to appreciate land not as a mere commodity, but as an essential element for the realization of many human rights, including the recognition of women. These rights were possibly attainable through among others the rights to own and use land, to occupy/live on land and inherit the land by communities. The more reason presenter emphasized that land is a cross-cutting issue that directly impacted the enjoyment of several human rights, was central to economic developmental rights and was often linked to people's identities, and cultural rights. He observed that the 1964 struggle for independence was due to the fight for land and in terms of economic rights, cultural practices, and understanding the relationship between the heritage of people, and land implied that land was more than space, but the connection of cultural rights and hence the need for customary land to be fairly distributed and developed.

The presenter considered the meaning of Customary Land on the premise that customary land was legal within the formal legal system of Zambia in line with the Lands Act (Cap 184, s7 (2)). As such, customary tenure was legally recognized in the formal land tenure system of Zambia, and it meant land that was held under traditional leaders for and on behalf of their subjects.

4.2 Challenges In Customary Land Ownership

The traditional leaders were also given an opportunity to appreciate some of the challenges encountered in customary land, by Mr Chooma. Among others, he noted that there was a poor legal framework for the registration of land rights. Further, customary land documentation in Zambia seems elusive with a general understanding that it is usually not written and documented. According to the presentation, it was also challenging that there seemed to be a one-directional conversion of land, coupled with a low appetite for investment on customary land as a result of issues of security of tenure and linkages to statutory bodies and markets. The Caucus of Traditional leaders was informed that customary land in Zambia covered some 707,857.69 SqKm and statutory/state land stretching 44756.30682 SqKm. This represents 94% and 6% of land distribution respectively.

In relation to the situation, the presenter emphasized that among other principles, the land must be fairly, equitably distributed and utilized to promote sustainable economic development considering that over the years many quarters of society have expressed concerns over land administration, forestry, and environmental management in the country. It was also observed that the system was fragmented associated with inadequate collaboration and cooperation among stakeholders and resulting in instances of land speculation, land racketeering, mushrooming of squatter settlements and poor urban development, and environmental deterioration. Compared to the past customary land presently covered 608,125.15 SqKm, whilst state land was covering 145,364.04 SqKm, representing 81% and 19% respectively.

4.3 Land Investments Facilitation

On large-scale-based investments, the presenter highlighted several issues in relation to processes for facilitating investments. He noted that Investments facilitation in Zambia was not designed to facilitate equity between customary landholders and those on leasehold and that mechanisms for the establishment of land rights registration mechanisms were all piloted initiatives.

Further, there were possible Land Rights Mechanisms that took place which included the provision of Village titles, certificates or rights of occupancy, group ranches, flexible titles, land-sharing constructions, and customary rights issued by Land Boards. Others involved co-ownership and communal titles, as a range of examples that could be used to secure rights, although it was regretted that these models in Zambia were piloted amidst gaps in the legal framework to support the legal recognition of those documents.

The worst-case scenario included cases of displacements of communities and households, and failure to adhere to free prior informed consent. On the other hand, it was explained that there were chances for resettling those who were displaced through resettlements which principally involved the controlled movement of people from one place to another in most cases voluntarily or involuntarily when they do not consent to move. It was explained that the National Resettlement Policy and Compensation Guidelines of 2013 among other requirements provided for just and fair compensation, and other forms of reparations, where appropriate, to internally displaced persons for loss incurred because of the displacement in accordance with the law.

This took into consideration measures such as providing compensation to persons that are physically and/or economically displaced before the commencement of the development project causing displacement, and effective compensation at market prices whichever is higher for losses of livelihoods, assets, and loss of access to the assets attributable directly to projects involved. The resettlement of involuntarily displaced persons in the case of investment projects was also supposed to be conceived and executed as part of the investment project, whilst costs of resettlement and compensation are included in the presentation of project costs and benefits. The emphasis was that the developer shall provide Housing, and shelter, and compensate those affected before the commencement of the project. Mr Chooma hinted that the State and Traditional leaders have a duty and obligation to ensure that all individuals displaced have their rights protected and their dignity assured throughout the process.

4.4 Best Practices in Land-Based Investments and Ensuring Available Land was Utilized Correctly.

At this stage, Mr Chooma in his presentation highlighted several gaps in land-based investments hinting that the system was fragmented whilst the dual tenure system combining customary and statutory land gave the state certain capacities in planning and disadvantaged communities hence the need for integrated systems that allowed for the enjoyment and security of land among investors and communities. He pointed out that inadequate collaboration among actors involved in land governance, and issues of land speculation in chiefdoms subjected land ownership to situations where land would be sold as a commodity. Among the best practices would entail the strengthened customary law framework, resource-sharing mechanisms between investors and customary landholders, and strengthened land use planning practices on customary land. He gave an example of regions such as Western Province, with a history of best practices that can be borrowed in terms of land treated not as a mere commodity when headmen sold away land at commercial rates, as a commodity. The presenter emphasized that land rights, generally implied that one had the right to use land, the right to occupy and live on that land, and inheritance rights and the recognition of the importance of women in the land.

Mr Chooma appealed to the Caucus of Chiefs to consider addressing the mushrooming of squatter settlements and running down of forests, in the context of tenure and the need to encourage younger generations to appreciate customary land as a heritage. He urged the

traditional leaders to appreciate the fact that customary land was legal in Zambia's legal framework, and it was important how that was approached, observing that there was a need to encourage investments in customary land if people had mechanisms for protecting community land rights.

Mr Chooma added that customary land had remained elusive, especially since customs were not reduced to writing and yet systems that protected the environment, social harmony, and rights of people were supposed to be upheld hence the need to think of how to protect people on customary lands. Among some of the measures he recommended included the conversion of customary land, which was under state law to be harmonized with and that land development was not merely bricks, cement, and roofs but seen in terms of intrinsic value, serenity, and others.

Meanwhile, when it came to investment facilitation which he pointed out earlier, the traditional leaders were reminded that communities on leasehold were better placed to negotiate for benefits, such as mining investments where part of the land was negotiated for compensation, because of its real value. It was reiterated that land ownership situations and dynamics were different. For instance, the behaviour of urban elites mattered and therefore mechanisms needed to be looked at in addressing matters of land-holding certificates, land boards, game management, co-ownership issues, and communal ownership. The presenter continued and expressed concern as to how it would be ensured that communal titles were protected given the foregoing instances and proposed best practices and models that would be safeguarded by way of formulating Acts of Parliament that prevented infringing the rights of communities.

4.5 The Displacement of Communities

The displacement of communities emerged as an issue during this session with concerns that most lands were occupied and that investors, needed to consult to seek prior and informed consent before investments or displacement take place. The presenter noted that among others, traditional leaders had the challenge to think about how issues of displacement could be handled considering that the resettlement policy provided for a controlled movement which required such movements to be voluntary, and people are given a choice to move based on pre-and informed consent where people moved freely.

The Caucus of Traditional leaders was urged to discourage involuntary displacements, promote compensation in line with the Displacement and Resettlement Policy, and guidelines for compensation for various losses incurred in market value terms, taking into consideration what is physically, and economically displaced. In such instances, considerations for other interconnected resources around people that moved were key in transparency and good governance and consensus building and making the processes as transparent as possible.

It was pointed out that the constitution recognized chiefs as part of the land administration system, and hence they were expected to provide guidance when needed to local authorities. Several challenges that were also highlighted included those associated with land use planning practices, the need for systems for protecting burial, churches, farming, and social amenities like schools which were key issues for reflecting on by the chiefs according to the presenter. Mr Chooma advised that there was also a need to raise awareness among the people, to ensure progressive management of customary land.

4.6 Plenary Discussions and Responses

Following the presentation by Mr Bruce Chooma, the Caucus of the Traditional leaders engaged in plenary feedback, which involved various responses.

Chief Ishima observed that there was a Land Policy in place, and all the Chiefs in the past were brought together to consider it. They felt it was not in their favor as they were not consulted and expressed concern as to why it was not availed to them if it was in place.

Others like Snr Chief Luembe added that the government had proceeded to approve the land policy despite it not being agreed upon a situation the traditional leader described as very unfortunate. He pointed out that Chiefs had been vested with the responsibility to oversee land which meant no one had the power to alienate land without their consent. The Chief warned that those people who acquire land without the chiefs being consulted risked losing their investments.

Senior Chief Mnu kwa added that to solve the land problems, there was a need to understand the issues at hand and some of the grey areas. The Chief observed that the government and chiefs wanted to work together, but they were those grey areas which required attention. He reiterated that it was clear on citizens' National Registration Cards (NRCs) where they came from in relation to owning land. Chief Mnu kwa wondered if all the resources reached the chief explaining that currently the administrative system of Zambia involved wards, and constituencies which did not work well for the chiefs as they risked losing their powers of land ownership.

He bemoaned the fact that in government some quarters had felt that chiefs were an inconvenience to their desires over land and that at times the government was appearing to be jittery. He added that regarding land tenure, support from the NGOs such as CEJ and ALIGN was welcome. This, however, was to be premised on the assumption that villages were well planned to emphasize the role of planning before engaging villages for them to receive proper services, ahead of certificates, and other material support.

4.7 Responses from the Presenter – Mr. Bruce Chooma

The presenter Mr Chooma made several responses to the feedback from the traditional leaders. For instance, he echoed the concerns of the Chiefs that the land policy was adopted in 2021 but that consensus was not achieved prior to adoption by Cabinet after the meeting held at the Common Market East and Southern Africa (COMESA) where Chiefs raised contentious issues.

The presenter was of the view that the policy focused more on titling/certificates other than other services which reduced the power of Chiefs on land control. Mr Chooma advised the traditional leaders to consider the House of Chiefs to re-engage Government taking into consideration the fact that changes in the Ministries of Lands, Green Economy and Environment, and Local Government should be used as an opportunity to review the policy.

On political-administrative structures, it was reiterated that most of them had colonial backgrounds and most Chiefdoms were not yet remapped after independence.

Chief Chipepo wondered the reason why the land policy was hurriedly approved in 2021 when it was rejected. He noted that the Chiefs had the right to sue or take the government to court especially since there was a Constitutional court in place. The Chief observed that the people who were behind manipulating land management were the subjects of the Chiefs and needed to ask if the New Dawn Government was following the laws or not considering that land matters were very key. Chief Chipepo reiterated that the current land policy was rejected and seemingly

copied and pasted from the version of Kenya and observed that the House of Chiefs Chairperson, which was a constitutional office, was equally not invited to the meeting for approving the policy at Cabinet.

The Chief urged others to speak out since it was within their natural powers to state what was not making them happy.

Chieftainess Muwezwa wanted to find out about Advancing Land Investments Governance (ALIGN) and inquired how the other chiefs who were absent apart from the 16 would be engaged by the organization and CEJ. She was concerned that on certification, most subjects did not understand the importance of despite being taken as partners in development hence there was a need to sensitize communities on land rights, and certification as they did not understand, including some of the Chiefs.

Regarding how ALIGN was going to help, and the Chiefs themselves regarding understanding the content and provision of the new policy document, and the rights of traditional leaders, the presenter added that there was a problem where the Constitution read that the President was the Custodian of land, and all land was vested in the President. This could have implied that Chiefs were merely agents between the State and Customary land and that the situation required rationalization. Mr Makweti Sishekanu added that the President as Custodian of all land in Zambia, literally meant that he was merely playing a stewardship role, and not necessarily owning the land. The moderator, Mr Boniface Mumba appealed to the Chiefs to explain where exactly they were missing in the process, and where they were. He explained that if Chiefs were missing in the policy process, it would be worse for NGOs.

Senior Chief Nkula, responded on behalf of the other Chiefs to that question posed by the moderator. He explained that the Chiefs expected the draft to come back to the house of chiefs, which did not happen and that the issue of the land policy could also be tabled before the house of Chiefs for them to concentrate on issues of the environment. Chieftainess Muwezwa added that after being rejected, submissions from Chiefs were not worked on, and included in the final policy. Mr Bruce Chooma was of the view that the process could be handled at higher levels and there was a need to reengage new governments on with the issues, proactively.

The need for sensitization was echoed for people to know their rights, and the implications of certification processes, and ensure land ownership rights were registered in the right manner. On reaching out to other Chiefs, it was explained that CEJ and ALIGN had just begun the initial phases of their engagements with land-based investment governance issues, and other activities could be rolled out depending on the needs of the country.

5 PRESENTATION OF THE ADVANCING LAND INVESTMENTS GOVERNANCE (ALIGN) PROJECT

The presentation was facilitated by Ms Ester Akwii and Ms Rose Mosi from ALIGN. They were begun by giving a background to the Advancing Land-Based Investment Governance (ALIGN) project, and its overall goals.

5.1 Align Work Approaches

The Traditional Leaders' Caucus was informed that the project worked based on evidence, technical support, and international lesson sharing with a focus on 'Land-based' investments with significant land footprints such as agriculture, mining, and infrastructure.

The Chiefs were informed that in terms of coverage, ALIGN was working in 16 countries across Sub-Saharan Africa and Asia. Among its considerations was concern that sharing of benefits often was a recurring challenge in land-based investments - alongside issues of consultations, and land rights protection.

The presentation unfolded and looked at the context of what community benefit sharing implied, which was explained to include arrangements governing how local communities participated in benefits generated through land-based investments. It was explained that the benefits could take the form of financial percentages of profit, of revenue, or royalties, local business development, infrastructure and social services development, job creation, and capacity building and training of people.



Figure 6: Ms Esther Akwii highlight ALIGN work approaches.

5.2 Possible Models for Benefit Sharing and Community-Investor Agreements.

At this level, the traditional leaders were taken through some of the possible models of benefit-sharing arrangements. Agreements such as community-investor agreements, Community Development Plans, and Community and Development Funds, were some of the possible models when it came to benefit sharing arrangements in Land Based Investments Governance. Others included Community Development Agreements (CDAs), and other arrangements which could be adapted to the local context, considering that no single model arrangement or process would be appropriate in every situation.

For agreements between communities and investors, different types or options of these agreements were discussed, the presenter elaborated. These could involve contracts between the company and community including the government, or agreements that would seek to secure transfers of benefits to the community or environmental and social protection benefits. Other agreements could be those built into laws and investor-state contracts. Community Investor agreements could also take the form where they were a requirement in principle or sometimes voluntarily pursued by investing companies.

5.3 Ahafo Local Employment Agreement

The presenter emphasized that the case example of the Ahafo Employment Agreement was focusing on general principles that could apply to the employment of persons by the investing company or job creation. Some of these principles considered aspects where skilled labour or unskilled labour was to be employed. For skilled labour, companies were expected to employ people who possessed the requisite experience and qualifications that were necessary, and the employment process was expected to be advertised or communicated to the community through existing or popular channels.



Figure 7: Ms Rose Mosi presenting case studies of land-based investments in other countries.

On the other hand, the traditional leaders learnt that in cases of employing unskilled labour, companies were supposed to make their best efforts to employ only validated citizens from within the community. These should however meet or satisfy the investing company's internal assessment criteria established for the employment of unskilled labour.

5.3.1 Argyle Diamond Mine Participation Agreement: Management Plan Agreement

Under the Argyles Agreement, the presenter explained that the parties, that is traditional landowners and Argyle promise to live and work together with respect, with the latter's right to run a business respected or recognized. In essence, it was emphasized that Argyle and Traditional Owners would be honest and open with each other and work together to keep the mining business running for a long time, including giving more work to traditional owners from the mining business.

It was noted that in essence, the parties under the agreement at hand, agree that their relationship or transactions would be based upon several principles. Such as mutual respect and recognition, including respect for Argyle’s responsibilities in running its operations as a commercial business as well as respect for the traditional rights. Good faith in all interactions, mutual collaboration towards long-term operations of the company, and enhanced participation of TOs in the operations of Argyle mine would also be upheld.

5.3.2 Lessons Of Benefit Sharing in Uganda

The presenters shared several practical lessons on benefit sharing with the traditional leaders drawing from the case of Uganda. This was one of the examples of countries where ALIGN was supporting an initiative to scale good practices for benefit sharing to a national level. It was found out that Uganda’s Mining Bill, of 2021 – which included Community Development Agreements and the project, supported a local CSO review and advocacy for provisions on CDA in the Mining Bill. Further, the development of provisions for CDA Regulations for supporting provisions in the Mining Bill.

5.4 Key Moments for Consideration in Land-Based Investments

The traditional leaders were at this stage reminded of several key moments that could be considered before investors arrived, when they visit the community for the first time, and when an investor begins operations.

5.4.1 Before The Investor Arrived

The presenter noted that before investors arrived, communities ought to make efforts to secure and protect resources by among others identifying, surveying, mapping, and recording the resource, governing by strong local land management rules and structures, and understanding why the project was happening and its potential impacts. Furthermore, it was noted that there was a need to allow all groups in the community to participate to strengthen unity, the need to vision the desired future and understand the value of lands and resources to the community, as well as the applicable legal rights.

5.4.2 When Investors Arrived

Apart from that, the traditional leaders were urged to ensure that plans for when investors arrived, and decision-making/protocols, including managing disagreement were in place. This also involved the review of information about the company and proposed investment, deciding how to proceed, and preparing for negotiations. On the other hand, around the time that a potential investor first visited a community, it was noted that key moments to consider included those stages when the investor may be acquiring permission to operate such as environmental clearance or assessments and business permits.

Other aspects would involve state approval processes which may create opportunities for the community to influence the conditions that the government puts on the investment, and the challenge mainly was the fact that communities often were aware when these processes occurred and what they could do about them. The presenter urged the traditional leaders to push for inclusion and opportunities for community consultation and participation in decision making at that moment.

5.4.3 When Investors Begin Operations

The other key moments to realize are activities when an investor has been given the right to use the community’s lands and has begun project operations. The traditional leaders were informed

that that was the stage when they could monitor the investment and its impacts on the community and whether the investor was obeying the terms of the contract and national laws. The presenter emphasized that when problems arose, community members could bring their concerns either directly to the investor and/or through government complaints processes and grievance mechanisms at this stage of the investment.

6 BRIDGING LAND BASED INVESTMENTS WITH GOOD GOVERNANCE, ENVIRONMENTAL, AND SOCIAL SAFEGUARDS SYSTEM-DELIVERED BY MR MAKWETI SISHEKANU

Mr Makweti Sishekanu who delivered this session, begun by introducing his presentation, covering different subject matters in terms of Perspective of Issues, challenges, and Trends in Land-based Investments on the margins of the USAID, CIFOR and CCSI frameworks. He, thereafter, looked at risk analysis of the Issues, challenges and Trends, as well as Sustainable Land-Based Investments from different perspectives of Social License to Operate, Environmental and Social Safeguards, and Challenges of Land-based investments in Zambia.



Figure 8: Legal Expert - Counsel Makweti Sishekanu highlighting on social and environmental safeguards

6.1 What An Investment Meant

By way of introduction, the presenter Mr Sishekanu, proceeded by describing what an investment meant, as construing among others, a commitment of money, time, energy, and other resources into a business for the sole purpose of making profit or appreciation over time. In relation to Land Based Investments, as described below, he pointed out that wherever there was property, there must be property Rights.

- **What is a land-based investment?**

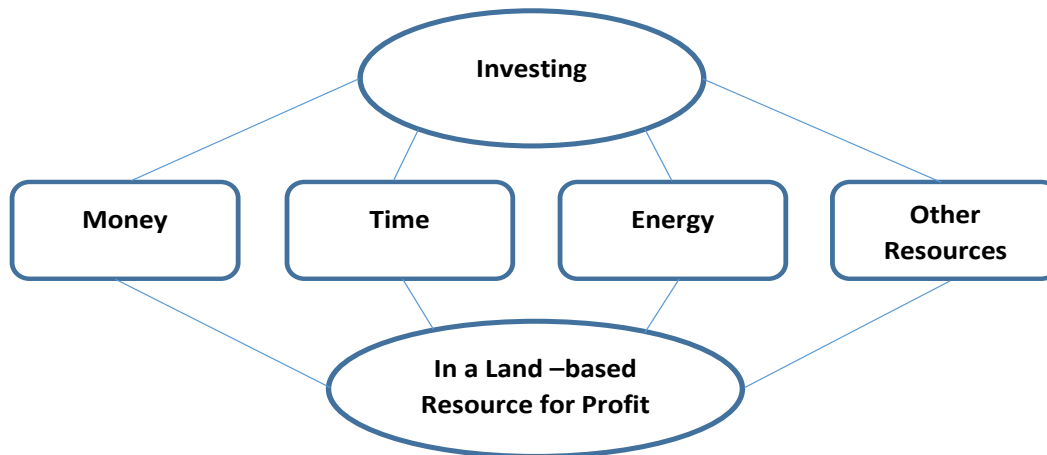


Figure 9: Diagrammatic Narration of Meaning of Investments from the Land Based Investment Point of View.

He noted that on the foregoing basis, Land Based investments overlapped two property regimes whereby investment was a property that came with property rights, and land being a property which had property rights. In this context the property rights of the investor, and the property rights of landowners which implied that all issues, challenges, and opportunities of land-based investments revolved arounds questions of property rights, Mr Sishekanu explained to the traditional leaders. How these two properties are rights regimes protected? Which one of them enjoys stronger protection than the other? and how do we reconcile the protection of these two property regimes equally? were the questions that presenter also asked the traditional leaders to take into consideration.

6.2 The USAID Case Study of Trends in Land-Based Investments

During the session on trends in Land-Based Investments, Mr Sishekanu referred to the United States of America (USAID) responsible Land-based Investment Case Study series which generally highlighted issues associated with the increase in Land-based investments. He pointed out that land tenure risks had increased in the last 5 years and observed that resource rights were often overlooked in land-based investments and that more than 70% of land in Africa was unregistered and held under customary tenure. The case study further showed that 93% of land-based investment concessions granted by governments in Africa were already occupied customary lands, and international investors knew that insecure land rights systems posed a business risk.

6.3 CIFOR 2011 Trends in Land-Based Investments

Meanwhile, according to the CIFOR 2011, Mr Sishekanu told the Caucus that the growing commercial interest in communal lands was causing a serious challenge in safeguarding the rights and livelihoods of local the people. He noted that while national governments recognized customary rights, customary rights claims were never given the same legal protection as formal property rights claims, hence customary land rights remained susceptible to expropriation. The presenter added that CIFOR 2011 at the same time revealed that customary land was the single most important asset of rural people and that customary tenure systems were insecure and undermined because customary rights were ambiguous, too flexible, and easily negotiated. In

Zambia, customary land could be converted to statutory leasehold tenure, but it was impossible to revert it back to customary tenure Mr Sishekanu explained to the traditional leaders.

This implied that land conversion from customary to statutory leasehold was therefore a permanent and irreversible conversion at the expense of community interests. He continued and added that other lessons from CIFOR 2011 included the existence of a dominant political and economic ideology that customary land was under-utilized and therefore, large-scale commercial investments in customary land meant putting this land into more productive for economic development, although there was no explanation of what ‘productive use’ of land meant, and who benefited from this productive use. Additionally, the presenter observed that the trends have also shown that there was a huge divide between Chiefs and their people seen from very little consultation between the Chiefs and their people.

6.4 The Columbia Centre on Sustainable Investments

The Columbia Center on Sustainable Investments by March 2021 had also found out among other lessons that the challenges experienced by communities and their allies in land investments included the fact that communities struggled to access information and faced barriers in using information and participating in open decision-making, Mr Sishekanu observed. He also noted that the CCSI found out that communities bore the largest cost of poorly designed investment projects through human rights violations, negative livelihood impacts and displacements.

6.5 Environmental And Social Risks Analysis

At this point, Mr Sishekanu drew the attention of the traditional leaders’ Caucus to some of the Environmental and Social Risks analyzed in association with land-based investments. He, first, explained the scenario by way of ranking some of the social risks that arose from issues associated with land-based investments, whereby displacements and involuntary resettlements ranked among the less common, followed by disrupted traditional livelihood patterns. Loss of cultural property and cultural rights, land grabs and expropriation followed suit in terms of widespread social risks due to Land-based investments. However, land–use conflicts, failure to benefit from investments, conversion of customary land, intra-communal conflicts, human rights violations, and corruption were the highest risks.

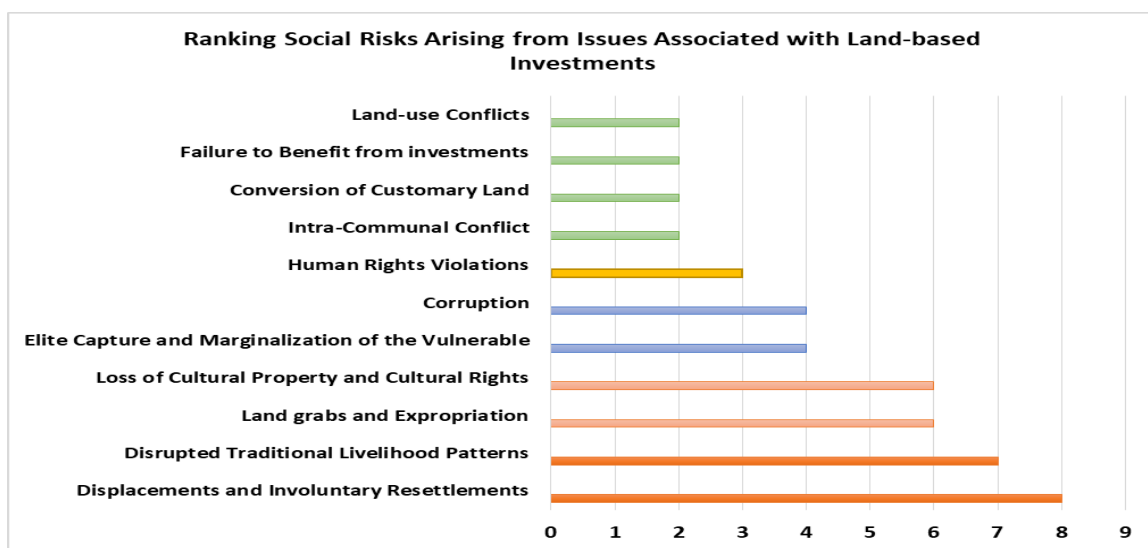


Figure 10: Range of common and different risks associated with Land Based Investments by ranking.

6.6 Sustainable Land Based Investment

Sustainable Land Based Investments, according to Mr Sishekanu entailed a model that addresses (on paper) and respects (in practice) investment property rights of the investor on the one hand and land property rights of the landowners on the other hand without taking land away from the landowners. He made emphasis that sustainable land-based investment essentially was a form of investment model that did not change land property rights and ownership claims, and it could only be better achieved through a Social Licence to operate.

In this case, the Caucus learnt that whereas investment property rights were fully protected by both international and national law, this was not the case with land property rights. Communal Land Property Rights would be recognized by national law, but not as protected as statutory land rights. At the same time, when it comes to Investment Property Rights, International and national law did not protect land rights, under the Social License to operate principles the presenter reiterated, but even though Customary law may protect communal interests, it was not codified into justiciable law, the traditional leaders were reminded. Mr Sishekanu added that the ceding of customary land to an investor similarly did not come with legal obligations to respect community rights such that once an investor acquired customary land, they were not subjected to customary law in the area.

He continued and explained to the Caucus that social license to operate, was supposed to be an environmental and socially legally binding contract or agreement between the investor and the communal landowners. The objective should be named to *reconcile the investor's property rights claims and interests with the property rights claims and interests of communal landowners*.

It also implied utmost, where investors reserve the surface of the land or declare the investment in full, landowners on the other hand preserve land ownership rights, and declare their customary rights as enshrined in the applicable customary law of the land. Therefore, social licenses to operate principally must recognize, address and respect customary land rights, community claims and interest to the land, and one the one hand addresses and respect the investment property rights of the investors the traditional leaders found out from the presenter. Apart from that, it was emphasized that they must safeguard the integrity of the local environment, respect social and cultural safeguards of the community, as well as safeguard the investment interests of the investor (See appendix no.2).

6.7 Environmental And Social Safeguards in Land-Based Investments

The presenter, Mr Sishekanu took time to explain to the Caucus some of the environmental and social safeguards that would be significant in Land-Based Investments, describing a **safeguard** as a mechanism applied to keep something safe, or to keep something in a safe condition. Notably, considering that a Social License to operate was a legally binding Contract between the investor and the landowners, in practice, it was a legally enforceable mechanism for implementing Environmental and Social Safeguards, the Chiefs were told.

Thus, the ESS were both normative and practical principles that applied to keep people and the environment safe from environmental and social risks that come with land-based investments, and they were applicable to minimize environmental and social risks and maximize (enhance) environmental and social benefits. The presenter added that safeguarding was alternatively a procedure, or the practical steps are undertaken to prevent and minimize risks and enhance or

maximize the benefits which may include legal action against the party that violates its obligations under the social contract or agreements, as shown in **appendix no.3**.

6.8 Challenges Of Land-Based Investments in Zambia

Before winding his presentation, Mr Sishekanu highlighted several challenges associated with land-based investments in Zambia before the traditional leaders.

He observed that there was no policy or legal model of reconciling investment property rights interests with land rights ownership claims and as such, the single-most sure way of safeguarding investments on land was to expropriate or convert land from customary tenure to leasehold tenure. This also had long-term negative environmental, social, and cultural risks associated with this conversion which may not be fully understood. Additionally, the presenter hinted that most land-based investments were not based on a Social License to Operate as there was no legally binding contract between the investor and the landowners, but instead, the investor took land and permanently alienated communities from their own land.

On that basis, he appealed to the traditional leaders to consider adopting the Social License to Operate (SLO) model which reconciled the two property rights regimes through a legally binding environmental and social contract between investors and landowners. This would also include attaching to that legal contract, a binding environmental and social safeguard framework to safeguard the ecological integrity of the land, and the social and cultural rights of the landowners before, during and after the investment.

7 IDENTIFICATION OF THE TRADITIONAL LEADERS' REPRESENTATIVE AT THE EPD 2022.

Before the closure of the Traditional Leaders' Caucus the Moderator after thanking the last presenter, invited the Chiefs firstly to identify their representative at the EPD 2022. The designated Traditional leader would also present their action paper during the EPD. The Chiefs nominated their House of Chiefs Chairperson Senior Chief Nkula. The Senior Chief, however, conferred the role upon Chief Bundabunda, to represent their action point in the EPD on 13th October 2022.



Figure 11: Chief Bundabunda appointed to represent their Royal Highnesses during the EPD

8 TRADITIONAL LEADERS ACTION PAPER ON LAND BASED INVESTMENT GOVERNANCE

As part of the major outputs of the Caucus for Traditional leaders, the moderator Mr Boniface Mumba, requested their royal highnesses to concretise their resolutions which would inform the action paper on land-based investment governance which was to be presented to the EPD 2022. From their submissions, and further consultations among themselves, the following were principally proposed and noted and thereafter signed by all the traditional leaders in attendance:

I. THE DECENTRALIZED MANAGEMENT OF NATURAL RESOURCES TO LOCAL LEVEL:

- Traditional leaders were part and parcel and key stakeholders providing oversight for the benefit of the people in managing natural resources in Zambia.
- This will require that all the necessary legal and policy safeguards are put in place and implemented for them to exercise that oversight role.

II. BALANCING ENVIRONMENTAL SUSTAINABILITY AND LAND BASED INVESTMENTS:

- We realize investment in our vast land and other natural resources is key to our local and national economic development and is welcome. The minister of local government and rural development pointed to this during his official speech stating that the economy of Zambia depended on natural resources and land use.
- We however realize and call for a balance to be struck between those investments and the security of natural resources, particularly our cultural heritage, ecosystems, and biodiversity.
- We have witnessed many inequities, environmental degradation, continued disputes associated to land tenure disputes, and lack of adequate compensation in many chiefdoms. These have left much to be desired. Hence our concerned to balance between nature and land-based investments.

III. SAFEGUARDING LAND RIGHTS AND VALUE OF OUR CUSTOMARY LAND

- We noted with concern that there is a seemingly failure to appreciate the intrinsic value of our land.
- Our concern is that many of our people must begin to change their perceptions and begging to think that land is a cultural heritage and must not be treated as a commodity for sale in simple commercial transactions.
- Our people and stakeholders must understand that land rights implied that one had the right to use land, the right to occupy and live on that land, and for their children to inheritance.

IV. ENSURE AVAILABLE LAND IS UTILIZED CORRECTLY IN INVESTMENTS.

- The land administration system has seemingly been fragmented. The dual tenure system of customary and statutory land gives the state certain capacities for planning.
- We feel, there is need for integrating systems and mechanisms to allow for the enjoyment and security of both land ownership rights by communities.
- And the enjoyment and security of investments rights of investors and the need to address challenges associated with inadequate collaboration among actors involved in land governance and investments.

V. ARRANGE CUSTOMARY LAND LAW INTO WRITTEN LAWS.

- Their royal highnesses feel that there was need to ensure that communities must have mechanism for protecting rights to own land. We note that the current system seemed to give power to those who had authority and the power to make decisions.
- Because of some of these challenges, customary land rights have remained elusive. Especially that customs related to land were not reduced to writing or codified like statutory law.

VI. HARMONIZE THE CONVERSION OF CUSTOMARY LAND AND STATE LAW

- The volume of customary land has continued to reduce compared to statutory land on the assumption that those with certified land can attract investments and other benefits because it seemed to have real value. This should not be the case.
- We observed that conversion of land, which was under state law, needed to be harmonized. This is to allow for easier regulation and development so that traditional leaders are not relegated to mere witnesses of prearranged investment agreements. Chiefs must understand them including the origins, and intentions of the investor.

VII. IMPLEMENT THE RESETTLEMENT POLICY PROVISIONS

- We have observed that the resettlement policy provided for a controlled movement of people during resettlements or economical displacements. This has not been the case as mentioned earlier in many instances happening in our chiefdoms that host the mines and other businesses.
- Therefore, mechanisms must be in place to ensure that resettlements are voluntary. Communities must be given a choice to move or relocate based on their own informed consent to do that. The law and policies must discourage involuntary displacements of communities.
- And economically displaced, and other interconnected resources around communities that moved.

VIII. REVIEW DISCUSSIONS AND FORMULATION OF LAND POLICY

- Whilst there was a land policy in place, to which all the chiefs' made submissions in the past at a meeting held at COMESA in Lusaka, there was need to consider reviewing its content for their royal highnesses to agree especially that their chairperson was not invited. Their royal highnesses are concerned that it may not be in their favor as they

were not availed of the final draft before it was approved by cabinet in 2021 after submissions.

- In such cases, people who acquired land without the involvement of chiefs risked losing their investments. Hence the need for chiefs to be involved at all stages to address identified grey areas.

IX. SENSITIZE AND EDUCATE COMMUNITIES ON PLANNING BEFORE CERTIFICATE

- Regarding land tenure rights promotion and advocacy, support from NGOs was welcome.
- However, this must not be premised on the assumption that villages were well planned. Hence the role of planning must be addressed before engaging communities for them to receive proper services, ahead of certificates of title.

X. NATURAL RESOURCES AND LAND-BASED INVESTMENT BENEFITS SHARING

- Their royal highnesses are deeply concerned that there was lack of deliberate mechanisms and framework for benefits sharing and distribution to communities in natural resource-based investments and profits in the country.
- This made it difficult for communities to show any form of development despite hosting many land-based investments. The approach is therefore for the process of granting investments to commence from the communities than from the central government.

XI. PROHIBITION OF UNSUSTAINABLE USAGE OF NATURAL RESOURCES AND CHARCOAL BURNING

- Their royal highnesses are concerned that the scale of deforestation due to charcoal burning need government to consider banning the activity. The role of the ministry of energy to address issues of energy deficits must be scaled up as well as measures to curtail charcoal trading in urban areas.
- The banning of charcoal burning, and trading must be accompanied by measures of providing alternative livelihoods for those involved in charcoal trading. Alternative innovations of energy must be supported as a replacement for charcoal burning.

9 CLOSING REMARKS AND ANNOUNCEMENTS

Mr Boniface Mumba closed on behalf of the CEJ Board. He thanked their royal highnesses, the Chiefs for finding time to take part in the Caucus for Traditional leaders and for their participation. He recognized the significant role that the Southern Africa Trust are playing in strengthening and empowering Civil Society Organizations in Africa to engage grass root communities and advocate for citizen voices in climate justice and natural resource governance. Mr Mumba paid tribute to the ALIGN team led by Mr Lorenzo Cotula for collaborating with CEJ on providing the needed information on the current legal frameworks and policy guidance. He finally wished everyone well as they prepared for the EPD.

10 APPENDICES NO.1.

2.0 EMPLOYMENT OF PERSONS BY THE COMPANY

2.1 General Principles

- (a) Where skilled labour is to be employed, the Company shall employ people who have the requisite qualification and experience as it determines fit. The Company shall make the employment process well known in the Community through existing communication mechanisms.
- (b) Where unskilled labour is to be employed, the Company shall make its best efforts to employ only Validated Citizens of the community towns who satisfy the Company’s internal assessment criteria established for the employment of unskilled labour. The definition of a citizen of a local community town and citizenship validation process shall be as specified in Schedule 1, Sections 2.4 and 2.5 of this Agreement.

11 APPENDIX NO.2 (SOCIAL LICENSE TO OPERATE/ENVIRONMENT AND SOCIAL AGREEMENT)

SOCIAL LICENSE TO OPERATE

An Environmental and Social Contract/Legally binding agreement between the Investor and the Communal Land Owners

<p>Must recognize, address and respect customary land rights, community claims and interests to the land</p>	<p>Must address and respect the investment property rights of the investor</p>
<p>Must safeguard the integrity of the local environment, respect social and cultural safeguards of the community</p>	<p>Must safeguard the investment interests of the investor</p>
<p>Must develop a rights-based Environmental and Social safeguards System outlining the following elements;</p> <ul style="list-style-type: none"> ▪ Stakeholder Engagement Plan ▪ Benefit-distribution and sharing Mechanism ▪ Independent Grievance Redress Mechanism ▪ Information Disclosure System 	<p>Must participate in the development of a rights-based Environmental and Social Safeguards System in which the community land owners are rights-holders to;</p> <ul style="list-style-type: none"> ▪ The Stakeholder Engagement Plan ▪ Benefit-Distribution and Sharing Mechanism ▪ Independent Grievance Redress Mechanism ▪ Information Disclosure System
<p>Develop an Environmental and Social Risk Management Plan</p>	<p>Participate in the development of an Environmental and Social Risk Management Plan</p>

12 APPENDIX NO.3 ENVIRONMENTAL SOCIAL SAFEGUARD (SOCIAL LICENSE TO OPERATE).



13 LIST OF DELEGATES AND TRADITIONAL LEADERS

S/n	Traditional Leader/Delegates	Province/Organization	Identity/NRC/ Details	Gender
1.	Boniface Mumba	CEJ Board Representative/Moderator	127193/18/1	Male
2.	Bruce Chooma	DRW/Facilitator	880716/11/1	Male
3.	Chief Bundabunda	Lusaka	711280/11/1	Male
4.	Chief Chipepo	Southern	143404/74/1	Male
5.	Chief Mnu kwa	Eastern	282136/52/1	Male
6.	Chief Mwansakombe	Luapula	120046/63/1	Male
7.	Chief Shikabeta	Lusaka-Rufunsa	151259/11/1	Male
8.	Chieftainess Chiyawa	Lusaka	138045/66/1	Female
9.	Chieftainess Lesa	Copperbelt	122510/62/1	Female
10.	Chieftainess Muwezwa I	Southern	119151/72/1	Female
11.	Chieftainess Mwape	Eastern	106375/53/1	Female
12.	Chieftainess Shimukunami	Copperbelt-Lufwanyama	150840/65/1	Female
13.	Esther Akwii	CCSI/ALIGN	6469842101	Female
14.	Freeman C. Mubanga	CEJ	483435/67/1	Male
15.	HRH Chief Ishima Sankeni	Northwestern	166284/21/1	Male
16.	Idah Nyirongo	CEJ	979932/11/1	Female
17.	Kashanga Patrick	CEJ	230626/10/1	Male
18.	Lara Wallis	CCSI/ALIGN	9003160075086	Female
19.	Lorenzo Cotula	ILED	7B2379886	Male
20.	Maggie M Mwape	CEJ Executive Director	113996/91/1	Female
21.	Mary Kachepa	ZNBC Reporter	166600/19/11	Female
22.	Nathania Jacobs	IIED	8312090259087	Female
23.	Nsama M. Chileshe	CEJ	748159/11/1	Male
24.	Paul Nkumbula	CEJ	185201/15/1	Male
25.	Rose Mosi	IIED	24227477	Female
26.	Senior Chief Imwiko	Western	247262/11/1	Male
27.	Senior Chief Nkula	Muchinga	184012/43/1	Male
28.	Sishekanu Makweti	ZIEM	264674/82/1	Male
29.	Snr Chief Luembe	Eastern Province	211827/53/1	Male