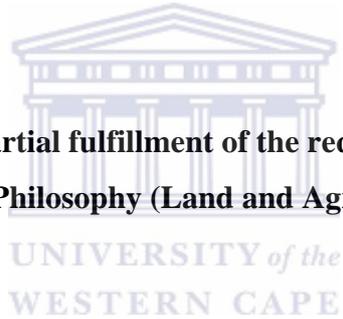


**COMMUNAL LAND REFORM IN ZAMBIA:  
GOVERNANCE, LIVELIHOOD AND CONSERVATION**

**Simon Christopher Metcalfe**

**A thesis submitted in partial fulfillment of the requirements for the degree of  
Master of Philosophy (Land and Agrarian Studies)**

The logo of the University of the Western Cape, featuring a classical building facade with columns and a pediment, positioned above the text 'UNIVERSITY of the WESTERN CAPE'.

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**October 2006**

## DECLARATION

I declare that '*Communal Land Reform in Zambia: Governance, Livelihood and Conservation*' is my own work. All other sources, used or quoted, have been indicated and acknowledged by means of complete references. This thesis has not been submitted for a degree at another university.



**Simon Metcalfe**

**October 2006**

**Signature**

.....

**Supervisor: Dr. Thembela Kepe (University of the Western Cape, South Africa)**

## ACKNOWLEDGEMENTS

This MPhil thesis is presented rather late in my life, and after many years of working with rural communities and living in remote parts of southern Africa. I am especially grateful to communities in the Zambezi River environments, who have provided me with work, adventure and hospitality over the years. I was privileged to work with Campfire Collaborative Group for a decade: The Zimbabwe Trust, The World Wildlife Fund, The Centre for Applied Social Sciences (University of Zimbabwe), The Africa Resources Trust and The Campfire Association. Thanks to Professor Marshall Murphree (CASS) who taught me a lot and provided me with many writing opportunities. I am also indebted to Dr. David Cumming for pointing me in the direction of literature on the social-ecological scale issue, which provides a key theoretical basis for the paper on communal tenure and wildlife connectivity.

Working with the African Wildlife Foundation (AWF) since 1999 enabled me to work with three new transfrontier conservation initiatives in southern Africa, and allowed me to collect data for this research. It also introduced me to Zambia, where the research is based. My AWF colleagues Nesbert Samu, Nyika Munodawafa and Patrica Jere were very helpful with my field work and in general. Thanks also to the Zambian community people, trust representatives and everyone else who gave me their time, especially Chief Mukuni.

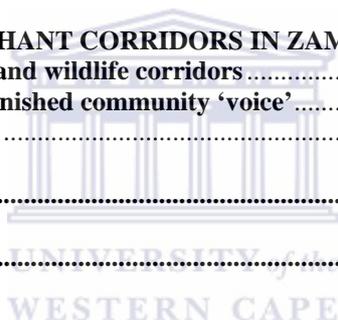
In 2005, I stopped my full-time employment with AWF and enrolled for an M.Phil. degree at the Programme for Land and Agrarian Studies (PLAAS), University of Western Cape. This led directly to the papers presented here. My thanks to the Director, Professor Ben Cousins, all the staff at PLAAS and especially my Supervisor, Dr. Thembela Kepe who provided a good mixture of advice, stimulation and pressure to keep me on target. Thanks to Thelma Fennie and Najma Mohamed at PLAAS for efficient and friendly administrative and logistic support.

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# TABLE OF CONTENTS

DECLARATION .....	ii
ACKNOWLEDGEMENTS .....	iii
TABLE OF CONTENTS .....	iv
PREFACE .....	vi
Rationale.....	vi
Research Design .....	viii
<b>CHIEF, STATE AND COMMUNITY: MANAGING COMMERCIAL ACCESS TO COMMUNAL LAND IN ZAMBIA .....</b>	<b>1</b>
ABSTRACT .....	2
ZAMBIA’S COMMUNAL LAND POLICY CONTEXT .....	6
Governance of communal land in Zambia .....	6
Investment and communal land in Zambia .....	8
Wildlife policy and communal land.....	10
Forest policy and communal land .....	11
Lack of integrated land and natural resources policy, legislation and institutions.....	12
THE MUKUNI AND SEKUTE CHIEFDOMS .....	13
Shared background .....	13
THE SEKUTE CHIEFDOM.....	17
The Simonga area in Sekute Chiefdom.....	18
Sekute socio-economic and natural resource situational analysis .....	20
THE MUKUNI CHIEFDOM .....	23
The Unsong Area of Mukuni Chiefdom .....	24
Mukuni socio-economic and natural resource situational analysis .....	25
DISCUSSION.....	28
Traditional and state authority .....	28
Commercial property rights in communal areas.....	29
Communal land reform and Community-Based Natural Resources Management .....	30
The agency of non-governmental organisations (NGOs) and individuals .....	31
CONCLUSION.....	32
REFERENCES .....	34

<b>ELEPHANT CORRIDORS, COMMUNAL TENURE AND THE PROPOSED KAVANGO-ZAMBEZI TRANSFRONTIER CONSERVATION AREA .....</b>	<b>42</b>
<b>ABSTRACT .....</b>	<b>43</b>
<b>KEY WORDS .....</b>	<b>43</b>
<b>BACKGROUND AND CONTEXT.....</b>	<b>45</b>
Ecological scale and tenure .....	45
Controversy in southern Africa’s transboundary discourse.....	46
Conservation knowledge and institutional memory .....	47
<b>THE KAVANGO-ZAMBEZI TRANSFRONTIER CONSERVATION AREA.....</b>	<b>49</b>
Background to the Kavango-Zambezi (KaZa) TFCA .....	49
Elephant movement in the Kavango-Zambezi (KaZa) TFCA .....	51
The role of Zambian traditional institutions in land and natural resource management .....	53
Communal land tenure and wildlife tenure.....	54
Communal land tenure in relation to forest tenure .....	56
The innovation of chiefdom level community development trusts .....	57
The Inyambo Chiefdom and the Barotse Royal Establishment.....	58
The Sekute, Mukuni and Musokotwane Chiefdoms .....	61
<b>TENURE REFORM AND ELEPHANT CORRIDORS IN ZAMBIA .....</b>	<b>63</b>
Social-ecological scale, tenure and wildlife corridors .....	63
Transboundary scale and diminished community ‘voice’ .....	66
Regional institutional memory .....	67
<b>CONCLUSION.....</b>	<b>69</b>
<b>REFERENCES .....</b>	<b>71</b>



## PREFACE

### **Rationale**

Communal land tenure reform in Zambia is the overarching subject of study in this thesis. It is an important issue across southern Africa, raising questions of governance, livelihood security and conservation. Wildlife is a ‘fugitive’ and ‘mobile’ resource that traverses the spatially fixed tenure of communal lands, national parks and public forest reserves. The management of wildlife therefore requires that spatially defined proprietorial rights accommodate wildlife’s temporal forage use. Land may be bounded in tenure, but if bounded by fences its utility as wildlife habitat is undermined. If land is unfenced, but its landholder cannot use wildlife then it is more a liability than an asset. Africa’s terrestrial wildlife has enormous biodiversity value but its mobility requires management collaboration throughout its range, and the resolution of conflicting ecological and economic management scales. The individualistic goals of exclusive and isolated private property owners must be tempered by reciprocity between landholders.

Zambia supports strong customary land tenure but weak customary rights over wildlife. Consequently, the communal landholder has little incentive to accommodate the not insignificant costs of wildlife conservation. Communal tenure in relation to wildlife has two fundamental dimensions: intra-communal and communal-state equity. There is no consensus on whether or how to reform communal tenure in relation to wildlife. Many conservationists and state authorities support state control and regulation while many economists and social scientists support devolution of authority and management, combined with sustainable use. This dichotomy presents both a synergistic dialectic and a perceptual discourse of countervailing narratives, whose potential outcomes involve the future of biological and cultural diversity, and actual livelihoods today, and in the future.

This research is located in a five country transboundary area in the Upper Zambezi (Angola, Botswana, Namibia, Zambia and Zimbabwe). It focuses particularly on Zambian communal areas which are traditional in terms of social organisation and land tenure, but which are nested within a statutory system that supports a largely centralised wildlife and forest tenure. Having been sheltered from commercial exploitation since the colonial land alienation period, the communal areas featured here now face rapid change linked to commercial tourism and agriculture investment, supported by Zambia’s liberalisation

policy and new land law. The transfrontier conservation initiative promotes conservation connectivity and wildlife corridors in the communal areas. While an ecologically connected landscape sounds fine in principle, when it comes to “living off biodiversity” the question is: “whose land, whose resources, and where?” (Cumming, 1999:219).

The paper does not aim to describe and explain the internal communal system of tenure over land and natural resources but rather how the communal system interacts with the state and the private sector. For communities with weak and contested communal tenure, prospects for working effectively with state, private sector and international conservation agencies are only good under certain conditions. It will be argued here that a policy climate favouring market liberalisation and ecosystem conservation cannot ensure that development and conservation objectives are achieved unless adequate provision is made for good governance based on strong property rights. At stake are fundamental issues of social justice and equity, local culture, identity and livelihood. Whether, and under what conditions, commercial investment can be beneficial for people in communal areas is an important question for millions of poor rural Africans today.

This research was prompted by the author’s regular contact with the research area over the past five years through his employment. Following this preface the thesis is written in the form of two stand-alone papers. Linking the two papers is a singular concern about the trajectory of communal land reform in Zambia today.

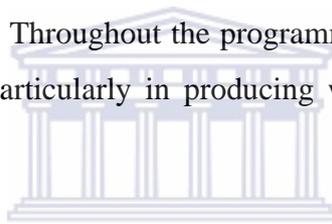
The first paper provides a comparative analysis of two communal areas, socially and tenurially organised as traditional chiefdoms, and both faced with increasing investment interest in their land from the tourism and agricultural sectors.

The second paper broadens out from two to four chiefdoms, especially *Inyambo Yeta*, a Lozi chiefdom that is part of the Barotse Royal Establishment. Here communal land tenure is assessed in the context of proposed wildlife corridors – a key feature of the inter-government transfrontier conservation initiative and supported by several international conservation agencies.

The papers are prepared for submission to refereed journals. These will be determined later, in consultation with my supervisor, and pending comments from examiners.

## **Research Design**

The author has worked in rural development and community conservation for twenty years, mainly for international NGOs. As Research Associate with the Centre for Applied Social Sciences, University of Zimbabwe, he wrote a few occasional papers and several chapters in books on the subject of community-based natural resources management, on Zimbabwe's CAMPFIRE programme specifically and southern Africa generally. Between 1999 and 2005 he was Southern African Technical Director of the African Wildlife Foundation (AWF). During this period, he helped AWF establish a programme focused on three transboundary landscapes, including two on the Zambezi River. In 2005, he reduced his involvement with AWF in order to complete a part-time Masters degree at the Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape, South Africa, while continuing to serve AWF as community governance / tenure advisor. The courses in the study programme provided general background to land reform, especially in southern Africa. Throughout the programme, he focused on communal land reform whenever possible, particularly in producing written assignments as well as in preparing for his dissertation.



The author has been involved with the case study area since 2005 and designed the research at the end of that year. His access to the site was based both on his work with a project on Zambian communal areas in the Zambezi region, and on time dedicated purely to undertaking the research. The author's research is therefore not project work although it does relate to the subject of it. He has detached himself to the point where he has interviewed his own colleagues about their work and perceptions of it. It is based both on access his work has provided and on methods purposefully used to complete the research. These include longitudinal involvement; participant observation; policy, legal and institutional analysis; interviews; and broad literature review as well as a focussed review, including 'grey' literature (documents, minutes and reports) and internet research on the Zambian context. Several meetings and workshops were held involving government officials, traditional leaders, community development trust committee members, and including NGO officials and private sector parties. Over forty community members were engaged in each of the participatory community socio-economic and ecological assessments in the wards in Makuni and Sekute Chiefdoms that form a core part of comparative case studies presented in Paper One.

**PAPER 1**

**CHIEF, STATE AND COMMUNITY: MANAGING COMMERCIAL  
ACCESS TO COMMUNAL LAND IN ZAMBIA**



## **ABSTRACT**

Customary tenure in Africa has tended to be marginalized in favour of statutory control and privatisation, including public areas protected for wildlife and forest conservation. Zambia has retained a significant proportion of customary land, recognised statutorily through the person of the traditional ruler. Although customary land tenure has lost formal control of wildlife, forestry and mineral wealth, private access to land granted by the chief, has real estate value. There is high demand in the tourist sector for Zambezi River frontage linked to tourism experiences around Livingstone. The paper provides the context for commercial use of Zambian communal land and a comparative case study contrasting two traditional chiefdoms. Both are managing commercial investors but the outcomes are different. The paper outlines and evaluates an experiment in establishing democratic community development trusts, designed to complement patriarchal rule with downward participatory accountability. The communal areas in question have the opportunity to use their land to leverage sustainable development but also risk alienating it in perpetuity. The outcome is uncertain. A reliable positive result depends on a new holistic policy and legislative environment, accompanied by sound extension services. Failing that, the outcome hinges on the situational and subjective responses of individual chiefs, and on whether communities can make their chiefs more accountable.

**KEY WORDS:** Zambia, land reform, Zambezi, chief, state, community, commoditization, governance, wildlife, tourism

## INTRODUCTION

All southern African nations have experienced colonialism and alienation of land held in customary tenure. Customary land was appropriated to the colonial state itself and also allocated to settler farmers for private commercial use. The extent of alienation of communal land depended on the scale of colonial settlement in the country, with more settlers translating into more alienated communal land and vice versa. In both cases the onset of colonialism changed the nature of customary tenure as governments established policies and legislation controlling commercial access to communal land and natural resources, restricting common property rights in the process (Okoth-Ogendo, 2000). Following decolonisation, rules pertaining to communal usufruct access remained, and largely continued supporting customary tenure and law. In regulating commercial access to communal land Zambia chose to collaborate closely with customary authorities, while Zimbabwe designated elected local authorities as land authorities, and Botswana established land boards as separate entities albeit with the participation of local authorities (Rihoy *et al*, 1999). An explicit rationale for state control of commercial access to communal land was to prevent further alienation of communal land through market-driven land reform. However, it also meant that national governments could easily co-opt the support of traditional authorities (Mamdani, 1996).

Customary tenure in Africa has tended to be marginalized in favour of statutory control and privatisation, including public areas protected for wildlife and forest conservation (Yudelman, 1964). From being the dominant mode of property rights and obligation, customary tenure has become the weak partner in a dualistic system – leasehold in state land and customary tenure in communal land (Platteau, 1992; Metcalfe, 1998; Rihoy *et al*, 1999; Adams, 2003). Additionally, the best cropping areas were typically privatised and allocated to settler elites, with many communal areas situated in semi-arid zones and in or near wildlife habitat. In most countries in southern Africa, indigenous people retained very little land after colonialism – for example, only 13 per cent in South Africa and about 45 per cent in Zimbabwe and Namibia at independence (Moyana, 1984; Okoth-Ogendo, 2000; Werner, 2001; Lahiff, 2003; Hall, 2004). In contrast, in Botswana and Zambia communities retained far more land under customary tenure, subject to statutory control (Cassidy, 2000). In Zambia some 64 per cent of the land is held under customary tenure, regulated through traditional rulers (Adams, 2003).

Since the 1990s most southern African countries and their communal areas (with the exception of Zimbabwe) have witnessed a transition from a ‘statist’ (political and bureaucratic control of communities and the private sector) to a more ‘neo-liberal’ (privatisation, markets, investment etc.) and civil governance (popular participation, decentralisation) policy environment. Whilst land reform is high on the agenda of countries which experienced most colonial settlement (a major factor in Zimbabwe), such reform has tended to focus on the privately-owned, commercial areas. The issue of communal land reform is treated separately as central, local and traditional authorities appear largely content with the status quo. Mamdani (1996) suggests that this ‘bifurcation’ of the state in regard to political legitimation and land property rights is based on reciprocity between an elected central government and a customary local one.

The goals of economic growth, poverty reduction and ecological sustainability have optimal and sub-optimal potentialities, and can become “either-or” trade-offs or “both-and” synergies (Uphoff, 1992). Rural communities, especially those situated in active or latent wildlife habitat and land with tourism potential, are increasingly expected to meet their development needs within a sustainable use framework. Whilst policy in southern Africa now generally tends toward decentralization from the national centre to the rural periphery and rural society itself, the process seems slow, hesitant and capable of reversals, especially in the face of privatization forces (Saruchera & Fakir, 2004). While poverty may drive short-term livelihood strategies and non-sustainable resource use, rural and urban elites may still find short-term accumulation a powerful incentive even at the cost of poverty and resource degradation (Magome & Murombedzi, 2003; Murphree, 2004).

Zambia’s Third Republic, under the Movement for Multi-Party Democracy (MMD) has transformed the political, economic and social landscape from the ‘commandist’ economy of a one-party political system into a liberalised market economy under a multi-party democratic political system (Adams, 2003). The transformation is manifest through policy and legislation that favours privatisation and foreign investment, including in the land, wildlife and tourism sectors (ZLA, 2004). Zambia supports the neoliberal paradigm that a formal land market is a fundamental ingredient of the market economy. It assumes that where land has market value, is transferable between individuals through the market and where legally drafted documentation – title deeds – providing ownership is

acceptable to banks as security for loans, the people on that land enjoy enormous advantages that help them become prosperous (de Soto, 2001). However, the Zambian Government is more tentative in providing a supportive policy environment for decentralisation, community participation and devolved natural resource proprietorship and management (Ostrom, 1990; CONASA, 2002a, 2002b; IUCN, 2003).

In Zambia traditional rulers are highly respected local authorities, recognized by both their subjects and the state. Chiefs are statutory land authorities (GRZ, 1995) and, as such, the 'gateway' to investment. The traditional ruler's approval and recommendation on 'external' investment is the first step towards securing access to customary land. The present system of land conversion means that the land alienation process is not subject to technocratic appraisal financially, contractually or environmentally. It thus provides little assurance that private sector investment will relieve poverty or sustain natural resources and ecosystems (Jere *et al*, 2006). Furthermore, commercial access to key natural resources such as wildlife and forestry remains under the control of, and largely benefits the state more than communal area residents. While private sector tourism investment in communal areas along the Zambezi River is increasing, the likelihood of an outcome that optimises economic efficiency, social equity and ecological sustainability may be retreating (Hasungule, 2001; ZLA, 2004). Leveraging real utility value from communal land faces great political, legal and institutional challenges.

This paper investigates generic issues related to conservation and development from the perspective of two Zambian chiefdoms. It explores the impact of private investment in the Makuni Chiefdom, situated just below the Victoria Falls along the Zambezi River gorge, and the Sekute Chiefdom, situated just above the Victoria Falls along the Zambezi River, and assesses how well these communities are able to engage the land market to their own benefit (Quan, 2000; de Soto, 2001). It asks whether public/community sector partnership can be improved through devolution of authority and decentralisation of management responsibility. If not, what are the prospects for a mutually beneficial community/private sector relationship? These questions are common across southern Africa – in Mozambique, for example, land legislation is designed not merely to secure rural livelihoods but also to enable private sector investment in customary land (Durang & Tanner, 2004). They are equally significant to all Zambians living on customary land, where customary tenure faces erosion to private tenure to the disadvantage of many and

the benefit of few. The question for Zambia is: what is the probability of a positive outcome, and under what circumstances?

The paper is based on the author's long-term field experience in the area up to the present, and draws on research carried out since 2005. A range of methods were used to collect the data presented here. Direct participation and observation by the author as part of a land tenure/ governance technical advisory mission in a project implemented by the Africa Wildlife Foundation<sup>1</sup> forms the core basis of the data. Secondary literature on land reform, including policy and legislation in southern Africa, as well as Zambian literature, including unpublished government and NGO documents, consultancy and workshop reports, and minutes of meetings, were reviewed. Government officials, community members, traditional leaders and private sector operators were interviewed over a period of two years. The focus of these interviews was to gain understanding of both documented and undocumented policy issues, views and perspectives relating to land reform, governance and natural resource use in the context of economic development. The two case studies were also subject to participatory socio-economic and ecological assessment undertaken by the author with the African Wildlife Foundation.

The paper first presents a policy, legal and institutional context to communal land, natural resources governance and private sector tourism investment in Zambia. This is followed by a presentation of case studies of the Sekute and Mukuni Chiefdoms. It then provides a comparative analysis of how traditional authority combines with tenure, engages public policy arenas and interacts with a private sector interested in accessing communal land.

## **ZAMBIA'S COMMUNAL LAND POLICY CONTEXT**

### **Governance of communal land in Zambia**

The Zambian constitution recognises the role of traditional law and institutions (GRZ, 1996). Article 127 states: "the institution of chief is established to exist in any part of Zambia subject to culture, customs and traditions, wishes and aspirations of the specified people". It establishes the House of Chiefs to be an advisory body to the Government on

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<sup>1</sup> Funded by the EU, the project *Scaling Up Benefits for Rural Area People* (2005-2009) focuses on governance, livelihood and conservation in 16 communities situated in 4 countries (Botswana, Zambia, Zimbabwe, Mozambique) and 3 transboundary landscapes (Upper Zambezi, Lower Zambezi, Limpopo).

traditional, customary and any other matters referred to it by the President. Of real significance, beyond recognition of traditional institutions, law and courts, is the fact that the Chief, in person, is recognised as the land authority of the Chiefdom (Jere *et al*, 2006). To foster cooperation from traditional rulers in the conversion of customary rights to leasehold rights, the Land Act of 1995 states that the President “shall not alienate any land situated in a district or area where land is held under customary tenure without taking into consideration the local customary law on land tenure... (and) without consulting the Chief and the Local Authority ...” (GRZ, 1995:271).

In 1924 control over all land in present-day Zambia<sup>2</sup> was transferred from the British South Africa Company to the Governor of Northern Rhodesia. Two categories of land were created - Crown Land and Reserves, the former for European farmers and the latter set aside for indigenous people. Crown Land followed the railway line from Livingstone to Lusaka north to the Copperbelt and included good arable land on the central plateau, with the number of white farmers expanding after the Second World War to a peak of nearly 1500 (Adams, 2003). In 1973 Zambia became a one-party state under Dr. Kenneth Kaunda, with a political objective of establishing a classless society in which land would not be a commodity. Only small-scale property was permitted, all freehold land was changed to leasehold and large-scale white farms largely disintegrated (Adams, 2003). Any land transaction without prior consent from the President was prohibited. However, in practice, laws governing the granting of customary land continued to be interpreted in the light of the Orders of the colonial government: traditional authorities were recognized and that authority was exercised in the person of the traditional ruler (Hansungule, 2001).

In 1985 the Ministry of Lands issued Administrative Circular No. 1 of 1985, which set out the procedure by which customary land could be alienated to a private person or body. First was the approval of the Chief, followed by a resolution of the District Council, and finally approval by the Commissioner of Lands for the conversion of tenure from customary to leasehold. The 1995 Land Act codified these procedures in statutory form and they largely hold today. One provision of the 1985 circular was that no more than 250 hectares of land could be converted at any one time, although this is not in the present

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<sup>2</sup> With the exception of Barotseland, which had its own treaty with Britain and became known officially as Western Zambia after independence, but remains a fully recognised Kingdom, with a set of seven Chiefdoms.

Land Law and both chiefs and government have recently approved more (Hansungule, 2001). Initial approval often occurs without the input of surveys, lawyers or technical environmental or social impact assessments. Agreements between chiefs and commercial investors are arbitrary, non-transparent, lack clarity on relevant details (e.g. extent of land approved). The traditional ruler's formal involvement ends at the approval stage. Once the Chief has approved the matter his recommendation must be followed by the District Council's collective resolution to issuance and is then submitted to the Commissioner of Lands, as Lessor (on behalf of the President), and to the Lessee. Both the District Council and the Commissioner of Lands could provide effective oversight but tend to rubber-stamp the process once the Chief, as land authority, has approved (ZLA, 2004). The Lands Act of 1995 recognizes and protects customary tenure but does not equate it with statutory title. Consequently, customary land law and social expectations run parallel to and sometimes conflict with the provisions of many environmental, land and natural resources related statutes. The alienation process does not provide for the involvement of the local community, even when it will result in their displacement (Jere *et al*, 2006).

### **Investment and communal land in Zambia**

In 1991 the ruling United National Independence Party (UNIP) was challenged by the Movement for Multi-Party Democracy (MMD), whose democratic pluralism and neo-liberalism was apparent in its manifesto: "the MMD shall institutionalise a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private property and ownership of land ...". It further stated its intention to prepare legislation that would restore the confidence of investors in land and would "attach economic value to undeveloped land, encourage private real estate agency business, promote the regular issuance of title deeds to productive land owners in both rural and urban areas..." (MMD, 1991:7).

The Land Policy Conference of 1993 proposed there should be two classes of land - state and customary - and that the role of chiefs in policy formation and allocation of land in customary areas should be recognised. On state land it was recommended that market forces would determine land prices, while the land market in customary areas should be left to evolve according to local conditions. The Lands Act No. 27 of 1995 was passed after heated debate that included a very vigorous defence of customary tenure and the

position of the chiefs (Adams, 2003). The Act recognises customary tenure, but allows it to be converted with the Chief's approval to a lease not exceeding 99 years. Land is commodity that can be bought, sold and used as collateral by Zambians and non-Zambians alike.

Zambia has prioritized tourism as one of the top three development sectors, along with mining and agriculture. Both agriculture and tourism are set to make an impact on communal areas as the former seeks fertile land and the latter the 'beautiful places', especially riverine with wildlife potential. The mission for the tourism sector is to contribute sustainably to the economic well being and enhanced quality of life for Zambians through Government-led, private sector driven and quality product development consistent with the protection of the natural and cultural heritage (GRZ, 1999a). In addition, investment in tourism should be supported by proper tourism development planning to minimize undesirable effects on tourist attractions and the environment.

The Government undertakes to integrate tourism into land use plans and to adopt practices that enhance the sustainable use of the environment, such as integrated environmental management, social and environmental audits through environmental impact assessments (EIAs) (GRZ, 1999a). Government policy states that tourism development will take place within the context of the National Environmental Action Plan and management plans and that it will not deprive local communities of access to resources along banks of rivers and lakes needed for their livelihood (GRZ, 1999). The Tourism Policy has no legal basis yet recognizes local communities as "custodians of natural and cultural heritage of land and their specific role is, among others, to promote sustainable tourism that enhances the local environment and culture of the area and to enter into joint agreements with the private sector for supply of agricultural and forest products" (GRZ, 1999a:14).

The legislative inclination of the Investment Act (GRZ, 1993) is to protect investors from over-regulation and exempt them from costs arising from statutory requirements. The implications are that vast tracts of desired land in customary areas can be alienated to investors under the Lands Act for purposes of investment under leasehold title of 99 years, even when a much shorter tenure would suffice. Leasehold security is promoted by

the Tourism Policy, which requires proof of land ownership by an investor, thereby reinforcing the notion that land held under customary tenure is insecure and poses a risk for investment. Safeguards of communal interest are lacking as the Chief's approval is taken to be in the community interest. The Chief may legally be consulted without the participation of the general community (Jere *et al*, 2006).

### **Wildlife policy and communal land**

Some eight per cent of Zambia is designated as national parks and a further eight per cent as forest reserves (Min. of Lands, 2005). From the remaining 84 per cent, two per cent is urban and 12 per cent unspecified areas (i.e. state farms, property, military, research stations etc.). Communal land is a nominal 60 per cent of the land area: 40 per cent 'Open Area'<sup>3</sup> and 20 per cent Game Management Area (GMA) (Machina, 2005). Although Zambian maps present GMAs as protected areas, they are settled customary lands. GMAs act as extensive buffer zones around National Parks with the Zambian Wildlife Authority (ZAWA) statutory control mainly to set trophy quotas (wildlife populations' permitting), marketing the hunts, collecting the revenue and then sharing it with the communities through Community Resource Boards (CRBs) established by its community conservation programme (GRZ, 1998). The funds raised from GMAs provide a substantial part of ZAWA's revenue base at present.

Zambia's GMAs are designated as protected areas in line with IUCN's category VI classification, being protected areas mainly for the sustainable use of natural resources. However, as the land is under recognised and functioning communal customary management IUCN presently recommending that this arrangement is more suited to a governance type of a community conserved area rather than a co-managed area (Dudley & Borrini- Feyerabend, 2005). The protected area status of the GMAs was asserted by the wildlife authority's control of wildlife and used to trump customary land tenure and assert an asymmetric co-management authority, in its own favour (Jones & Murphree, 2004). ZAWA controls hunting revenue but because the land is customary some traditional rulers have negotiated land access to non-consumptive wildlife tourism. The

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<sup>3</sup> The term 'Open Area' is a specifically Zambian designation that differentiates customary (communal land) from other customary tenure land encumbered by statutory natural resource classifications such as Game Management Areas (GMAs) and Local Forest Reserves. The term 'Open' should not in any way be confused with the term 'open access'. Potential for 'open access' or 'common property' occur equally in Zambian 'Open Areas', GMAs and Forest Reserves.

Chiawa GMA, west of the Lower Zambezi National Park provides an example of land use contestation between ZAWA, which controls hunting concessions, and Chieftainess Chiawa who controls land and has conceded several land leases to safari tourism operators along the Zambezi River. ZAWA has not been able to establish a management plan in the Chiawa GMA that reconciles consumptive and non-consumptive wildlife use and communal subsistence land use in general. The tenorial structure in the GMAs is sub-optimal because the unit of management and the unit of control are overlapping and contested (Murphree, 1991; Ostrom, 1990).

Close to 90 per cent of the Zambezi region is designated 'Open' communal area. 'Open Areas' are contiguous, from the Chiawa GMA for over 600 kilometres to the 38,070 square kilometres West Zambezi GMA, which buffers the Sioma Ngwezi and Liuwa National Parks on the Angolan border. Zambia's Wildlife Act and Policy (1998) provides for Community Resource Boards (CRBs) to be the conduit for sharing benefits from commercially hunted wildlife amongst the local communities, but programmatically it has only been applied in GMAs. CRBs cannot be regarded as a national community-based natural resource management (CBNRM) approach as it only applies to wildlife used consumptively, largely in the GMAs, and does not incorporate land (therefore tourism) or other natural resources. As a model of communal land reform it is very limited in scope and content and – in the context of a Zambezi region facing considerable private sector tourism investment – inadequate.

### **Forest policy and communal land**

The Forestry Policy of 1998 makes provision for joint forestry management. In line with this Policy, the Ministry of Tourism, Environment and Natural Resources proposed a new Forests Act to reflect the policy objective of involving other stakeholders in forestry management. This culminated in the enactment of the Forests Act, No. 7 of 1999. However, this Act is not effective as it still awaits the enactment of a commencement order and the repeal of the 1974 Act (Jere *et al*, 2006). Delay is mainly due to the transition of the Forestry Department into a para-statal Commission; progress also depends on government commitment including funding. The new Forestry Policy encourages and promotes the participation of local communities in the protection, management and utilisation of forest resources through the Joint Forestry Management (JFM) policy, which involves and recognises traditional institutions and law as an integral

part of local community participation (GRZ, 1999). Chiefs would be members of the JFM Committees and be involved in decision making processes relating to implementation of participatory forest management approaches. The policy accords high priority to the preparation and implementation of community-based forest management plans, costs and benefit sharing, and investment and incentive mechanisms for conservation for local community, traditional authority and other stakeholders. No area would be declared a JFM area without the consultation of the local community. The policy provides for EIAs prior to exploration in a forest area and provides for public and community participation (Min. of Tourism, 2005).

A major gap in the policy from a community perspective is that there is no provision for direct community-private sector partnerships. Like the wildlife policy, the forestry policy expects communities to form JFM committees in partnership with the Forestry Department (FD) according to set guidelines for a constitution, membership and rules; the JFM Committee is then supposed to receive a quota, and an approved partner. The FD would collect the revenue and share it. As with the wildlife CRBs, participation of communities in JFM is as a junior partner in a co-management arrangement. This will be an improvement from the past which, until today, has seen local and national forests situated in communal areas directly managed and controlled by the department. Although communities can negotiate and do assert some usufruct access for grazing, bee-hives and natural resource gathering, they are largely alienated from the forests. In areas where the FD has piloted the JFM policy, communities were concerned about the insecurity arising from the practice by some traditional authorities of allocating access to the JFM area to other users/tenants, thereby frustrating the efforts of the local forest guards (GRZ, 2004).

### **Lack of integrated land and natural resources policy, legislation and institutions**

The protected local and national forests are surrounded by communal land and provide valuable wildlife habitat, but no policy integrates land, forest and wildlife tenure or management. Communities depend on their traditional authorities for communal land management issues and on the forest and wildlife authorities for an unequal co-management relationship. Three separate legal, policy and institutional environments pertain and the common property design flaws in this arrangement mean high transaction costs, overlapping jurisdictions, and assure a ‘tragedy of the commons’ on the ground (Hardin, 1968). While traditional, wildlife and forest authorities assert their rights, the

community is driven toward ‘free-rider’ behaviour (Ciriacy-Wantrup & Bishop, 1975; Berkes, 1989; Bromley & Cernea, 1989). Biodiversity conservation and socio-economic development are competitive forces in this fractured tenurial environment (Ostrom, 1990; Murphree, 1997). An institutional arrangement is needed that allows for synergy between sectoral natural resource and communal land tenure (Lynch & Alcorn, 1994; Cousins, 2000). While natural resource agencies provide single sector models, relatively powerless communities need policies that foster collaboration and enable poor and vulnerable households to manage their resource base more efficiently (Peters, 2002).

The next section discusses case studies of two communities, and provides examples of the dynamic processes related to communal land reform in the context of commercialization, privatisation and alienation from customary tenure.

## **THE MUKUNI AND SEKUTE CHIEFDOMS**

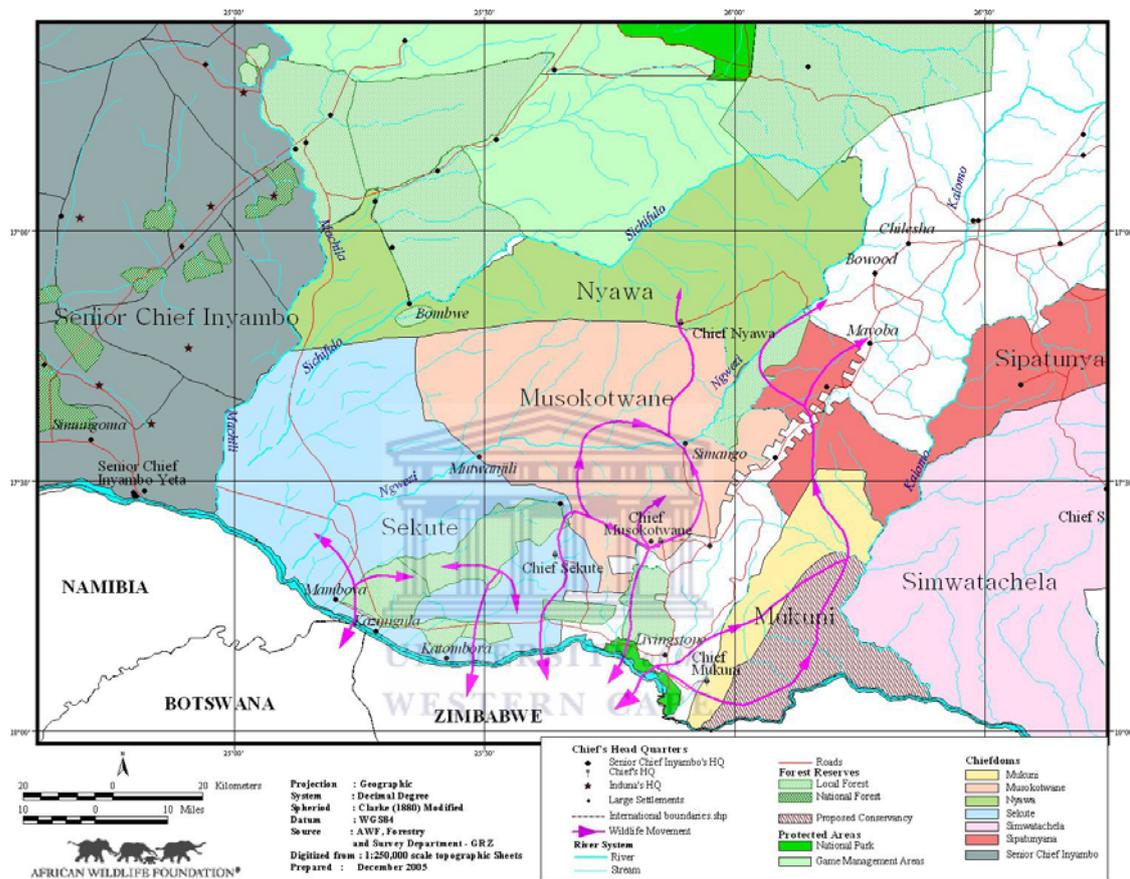
### **Shared background**

Community lands in Zambia are a dominant part of the landscape around Livingstone, although there is a significant amount of forest reserve. The area’s communal lands and forests together provide connecting habitat between the wildlife populations in Botswana and Zimbabwe and the Kafue National Park. The Victoria Falls is a tourism hub and there is growing investment interest in the Zambezi river frontage on Zambian communal land. International conservation agencies are designing programmes based on securing wildlife corridors. These mainly concern community areas in Namibia (Caprivi) and Zambia. Namibia’s national CBNRM programme has existed for over a decade and is advanced compared to the situation in Zambia, where ‘Open Areas’ are not GMAs and fall outside Zambia’s CBNRM programme (Metcalf, 2003; Jones & Murphree, 2004). In 2001, the African Wildlife Foundation (AWF) started a transboundary landscape initiative, and began working with Zambian communities to abate the threat of habitat fragmentation and disturbance.

Figure 1 below shows the Sekute and Mukuni Chiefdoms in relation to the Zambezi River and Zimbabwe, Botswana and Namibia. It also shows the forest reserves (light green) in Chief Sekute’s area. The Mukuni Chiefdom is shown in two colour tones to highlight the chief’s long term vision of zoning settlement in the beige area and setting aside an area

(purple/hatched), west of Chief Simwatachela’s, for a wilderness tourism land use. The white area between Mukuni and Sekute is under Livingstone City Council, state land and private commercial farm land originally alienated from customary tenure during colonialism. The purple lines give a general idea of how ecologists are interpreting elephant movement at present.

**Figure 1: Chieftaincies around the Livingstone area of Zambia (AWF)**



In 2001, a set of private sector operators were attempting to negotiate with Chief Sekute to secure an exclusive partnership which would give them control over future private sector investments in the area (Sekute proposal, 2002). The proposal contained a conservation component to develop a conservancy and secure wildlife corridors between the Zambezi River and the Kafue National Park in the north. A partnership trust was proposed which would represent the Chief and the consortium (Sekute proposal, 2002). The ‘for-profit’ business component of the proposal was conflated with the conservation and infrastructure components. The consortium thought that the community needed their assistance, and that AWF should facilitate the relationship and help secure grant aid for it. As an integral part of its overall mission, AWF employs a landscape level approach that

includes protected and community areas in a connected habitat. This approach recognizes that “conservation goals should be pursued by strategies that emphasize the role of local residents in decision making about natural resources” (Adams & Hulme, 2001:13). It was felt that AWF was well suited to the task at hand.

Several meetings were held but failed to resolve potential conflicts of interest, including that of Chief Sekute who was widely perceived as manipulated by private sector operators. In consultation with the communities involved, AWF decided that the latter would better be served by their own participatory trust. Traditional units of social organization (villages and wards) could form a representative trust at chiefdom level (AWF, 2003), with the land in the chiefdom forming the trust’s primary assets. The trust would be a legal entity, founded on a constitution providing for equal participation, accountability and transparency. Whereas CBNRM programmes elsewhere in southern Africa were empowered by wildlife legislation, the community trust in this case could be based on communal desire to manage private investment in land and leverage revenue from tourism.

Between 2003 and 2005 AWF<sup>4</sup> facilitated the communities in five contiguous chiefdoms to debate, discuss, form and register, through the National Register of Societies, five trusts able to make legal contracts, sue and be sued. The five chiefdoms have a combined land area of over two million hectares and a population of some 130,000. AWF assisted the five Zambian Chiefs and their constituent levels of authority and households (communities or subjects) to form trusts to secure land and livelihoods by engaging the public sector policy environment and the private sector in order to harness their land and natural resources more effectively.

The trusts possess a juridical personality and all members of the community are entitled to membership. Representation is through village and area committees to chiefdom level boards. The boards are able to enter negotiations, make agreements, acquire permits and sign contracts. A key strategy of the trusts is to apply to the chief for land and then seek investment partners as lessors. Instead of becoming alienated, customary land would retain its status but the private sector would have a partner recognized in statutory law,

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<sup>4</sup> AWF’s core team included a community development and enterprise development officers and a lawyer.

which would manage investors through a 'head' and sub-lease arrangement. In governance terms, a key element concerns the downward accountability of the board to the members. Village assemblies are the democratic base as they elect village committees, which in turn elect area and then board representatives. The Board is accountable through an Annual General Meeting and through a General Assembly every three years (Sekute Community Trust, 2003).

Under customary and land law, land cannot be granted to areas or villages as it is not divisible from the chief. The role of traditional leaders in the trusts is envisaged as community mobilisation, oversight and regulation of elections, ensuring the trust constitutions are upheld and provision of arbitration services to resolve conflicts. The trusts would propose land sites to be converted for the traditional ruler to consider. Should chiefs wish to ignore the advice or request, which they are entitled to do, they risk undermining the community confidence in the trust. The flaw in the design of the trusts and threat to their objectives concerns the actual decision-making of the Chief. As the two case studies highlight, this allows for great variation. At a multi-sectoral meeting hosted by the Provincial Minister in 2005 to promote the trusts, publicise their existence and secure cooperation, the conception and intention of the trusts was lauded. The decision to form trusts based on the traditional social unit was not questioned by households or officials.

The endeavour by these Zambian chiefdoms to harness external investment and improve their livelihoods within a conservation approach is relevant to all rural communities living in semi-arid areas of Africa with its unique savannah fauna and flora. In a local transboundary context, Zambian communities lag behind the CBNRM progress made over the last decade by neighbouring communities in Botswana (wildlife trusts), Namibia (conservancies) and Zimbabwe (Campfire). Land and resource tenure in Zambia manifests an unequal power relationship between government, traditional leaders and rural households. National politicians, bureaucrats and traditional leaders collaborate closely but often lack the motivation to devolve authority to local communities as such empowerment may reconfigure the balance of political power (Mamdani, 1996). Traditional authorities, although land authorities, also resent their relatively weak property rights in relation to wildlife and forests.

## **THE SEKUTE CHIEFDOM**

The Sekute Chiefdom covers an area of about 250,000 hectares and is home to some 20,000 people settled in 289 customary villages, 15 headmanship areas and 2,900 households. Its land includes several forest reserves that could be important corridor 'stepping stones' for the movement of wildlife between the Zambezi and Kafue National Park. Sekute has high tourism potential with its 60 kilometres of Zambezi River frontage, including several islands. Despite its valuable resources, 73 per cent of the total population is considered poor and 56 per cent extremely poor (ECZ, 2001). An interim committee was elected at a general meeting with representatives from all areas and a draft constitution developed. Village assemblies established structures that provided representatives to 15 trust area committees. A general meeting of area representatives elected office bearers to the Board of Trustees. The Trust was registered with the Registrar of Societies in March 2003. It has since developed some by-laws for natural resource management, which have been adopted by the Kazungula District Council. The Trust has been co-opted into the Kazungula District Development Committee, as a partner to government agencies.

Table 1 below shows the three tier representative structure of the Sekute Community Development Trust – village, area, chiefdom. The three tiers complement the traditional structures and areas related to chiefdom, headmanship and village headmanship (Gluckman 1941; 1943). It is the same for the Mukuni case study which follows. It represents a prodigious amount of institutional development and capacity building effort by the community and the African Wildlife Foundation. As with all institutions of this nature they risk becoming dysfunctional in regard to downward accountability, capture by elected representatives who take on executive functions, and manipulation by chiefs (Ribot & Larson, 2005). Based on its past experience in CBNRM, AWF is aware of these risks but it seemed an appropriate alternative to the dominant patriarchal management model. AWF is also aware that building the Trusts is only a means to an end, and that without rapid action-orientated purpose, interest will soon wane and the Trusts wither.

**Table 1: The Sekute Community Development Trust Structure**

COMMUNITY DEVELOPMENT TRUST BOARD (Chiefdom level)								
Trustee Representatives from the 15 Area Committees Customary Chief Patron of the Board								
AREA COMMITTEE			AREA COMMITTEE (headman level)			AREA COMMITTEE		
15 Area structures (19 villages per ward area approx.) Representatives of Villages on Area Committees Customary Sub-Chiefs (Headmen) Patrons of Area Boards								
VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees	VILLAGE Committees
289 village structures Households elect representatives Customary Village Heads Patrons of Village Committees								
Households	HH	HH	HH	Households	HH	HH	HH	Households
2,890 Households at approximately 10 HH per village at x 6 people per HH (approx.) = 17,340 people								

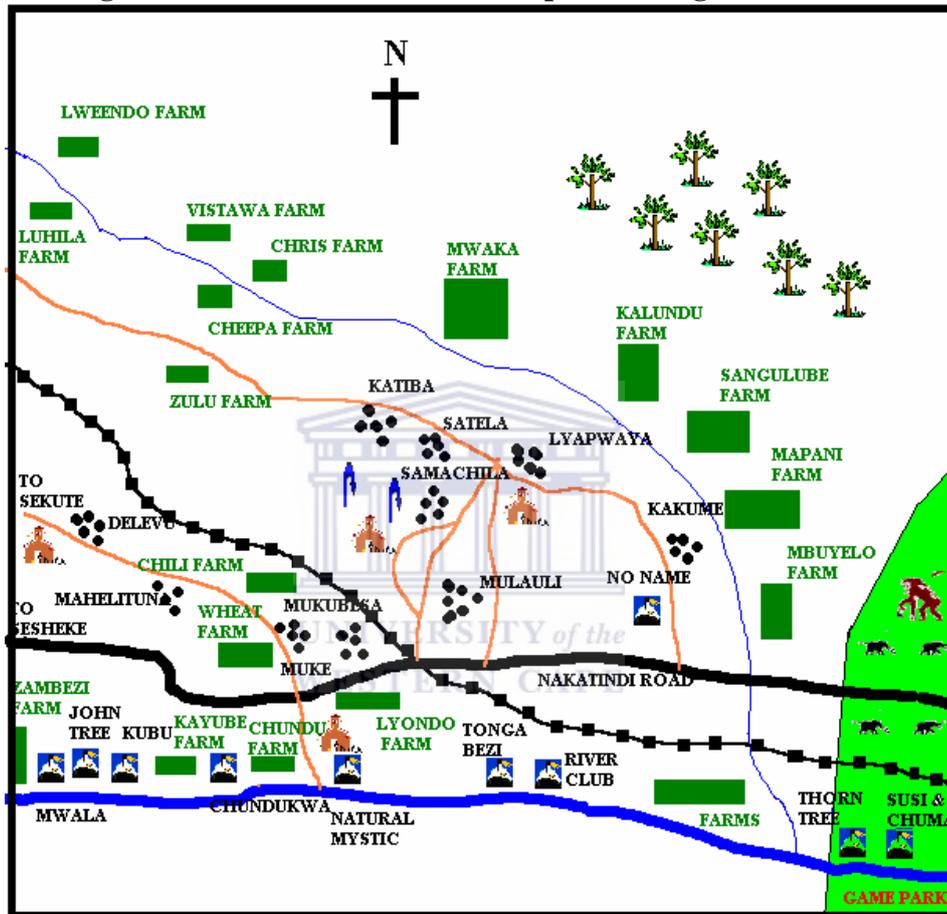
The Sekute Trust committee made a list of priority actions that included a grievance over a private sector investor claiming exclusive use of an island in the Zambezi River. A successful legal challenge was mounted, providing an early motivational result for the Trust, which has since repossessed a very marketable resource. The challenge at the outset was to conduct a participatory socio-economic and natural resource assessment on an area basis; establish a system for managing commercial investment that would allow for local control of natural assets and stop further land alienation; and address the existing commercial investments and attempt to secure them within a legal and financial framework that benefits communities.

**The Simonga area in Sekute Chiefdom**

The Simonga area forms the eastern boundary of Sekute Chiefdom about 20 kilometres from Livingstone along the Kazungula road. Figure 2 below was drawn by Simonga residents in a participatory natural resource mapping exercise. The map shows the Zambezi River in the south and along it a number of private commercial farms and tourism lodges as well as several farms north of the road and railway line. It also shows

the start of a forest reserve north of the farms and the Mosi-o-Tunya National Park in the west. Many of the commercial farms are leased by Zimbabwe farmers displaced by their country's radical land reform programme. A critical landscape connectivity and wildlife corridor threat relates to the fragmented land use between the river and north of the commercial farms.

**Figure 2: Social and Resource Map of Simonga (WF 2006)<sup>5</sup>**



The Simonga area has 10 community villages from which 18 commercial farms and eight tourism lodges have been alienated to the private sector with permission of the traditional leadership. Overlapping jurisdiction between village, ward and chiefdom levels of the traditional authority is a cause for confusion, dispute, conflict and recrimination. The rewards received by each level are not transparent but are presumed to be very sub-economic, once-off or patronage royalty type payments. The area is a prime investment attraction within Sekute Chiefdom as a whole. The community is becoming compacted between the farms, lodges and the national park. They also experience increased human-

<sup>5</sup> The field work for this assessment was done by Nyika Munodawafa of AWF. The author of the paper was the technical advisor to the process and editor of the report.

wildlife conflict with elephant. Commercial investment is creating new employment opportunities for locals who have the required skills, but typically they obtain the more menial jobs. Private investment is not reflected in improved infrastructure and services. A further complication arises from the fact that the Livingstone City Council claims this area falls under its jurisdiction and not under Chief Sekute, whilst the Simonga community recognises the Chief as their ruler and maintain that their land is under him.

### **Sekute socio-economic and natural resource situational analysis**

The Sekute Chiefdom socio-economic and ecological participatory inventory involved 506 men and women from 13 areas. The agreed objectives were to produce social and natural resource maps (Figure 2), characterize the natural resource base, and identify livelihood strategies and new business opportunities. Each area produced a participatory assessment and map of their area, and at a chiefdom level an opportunity was afforded to scale up the area insights. The assessment shed light on the relationship between households, their environment and land, wildlife, forest, non-forest timber products, and fishery resources.

Clustered in aggregate villages, the Sekute households are mainly settled around transport links (roads) and key natural resource zones (e.g. rivers and around forests areas). Most populated are the Zambezi river frontage, fertile river valleys and the Livingstone to Sesheke road. The settlement patterns show little formal land use planning or conservation zonation. Although generally sparsely populated, the Sekute area risks landscape fragmentation because the core settlement areas are in direct competition with key wildlife habitat niches. Conflict over rich resource areas, favoured by humans and wildlife, is worsened by recent alienation of Zambezi river frontage, with approval of the traditional leadership, to the private sector. This has occurred without apparent consideration being given to either conservation or livelihood impact (Munodawafa, 2005a).

The inventory showed that households depend on natural resources as much as, or more than on-farm activities. This was a consensus view though not proven quantitatively and did not take account of off-farm support from migration, wages, remittances and relief aid. Households thought that strategies to improve livelihoods should include improving natural resources management productivity and sustainability. Communities had little

experience of entrepreneurship and many could not differentiate business enterprise from ordinary livelihood activities. This implies that scaling up community-based tourism enterprise benefits will pose a perceptual challenge and require awareness-raising. Although improved tourism product design, development and marketing are possibilities, households are easily exploited by middle persons as they are not always aware of their contribution to an entire value chain. This can be as basic as the value of thatching grass and is very much the case with land. Fishing communities who deal daily with traders have a much better knowledge of market prices. Communities were aware of the need for conservation of natural resources but differentiated between those they directly depend on and the wider scale. They were dissatisfied with government control of forests, wildlife and fisheries. The need for an improved community-public partnership was expressed and, given Sekute's substantial local and state forests, most keenly felt in relation to forestry. The communities living adjacent to the forests had no knowledge of the how timber concessions work or any relationship with the concessionaires. Although they could be sanctioned for illegal resource use in the forest, the level of "barrier" maintained by the Forestry Department was low, enabling a usufruct use and small-scale commercial extraction, especially for charcoal trade.

Threats to natural resources arose both from within and outside the communities. Within the community, activities such as subsistence hunting and charcoal burning were felt necessary if not sustainable. Alienation of communal land to the private sector for little gain was blamed on poor leadership. Public policy or its implementation was also blamed for the confusion over rights and the weak state of management. Conflict between the constituent villages in Simonga and the ward level simmered with blame being shifted between village and area heads and up to the Chief. The traditional leaders claimed at times they were hurried by the private sector and got confused. Community members started asking uncomfortable questions about 'deals' the traditional leadership had made. There was a danger that traditional leaders from village through headmen to Chief might withdraw their support from the trust and AWF altogether. However, the customary system offers some degree of accountability at village and ward levels where proximity reinforces transparency. Generally, the facilitation role played by AWF served to avoid destructive recrimination while ensuring improvements for the future.

The tourism inventory revealed that the Zambezi River frontage in the Sekute area was in danger of seriously reducing community access (AWF, 2006). A total of twelve lodges were currently operational while a total of 22 sites had recently been approved by Chief Sekute and were being processed by the Kazungula District Council. These 'deals' had no beneficiation through rent, employment, training, rights of access, review of contract, or performance related benefits. A large portion of the Zambezi River front has been alienated without any ecological plan, environmental impact assessment, development plan or proper administrative and legal documentation. All the villages visited along the Zambezi river frontage were found to have some form of arrangement / agreement (written and unwritten) with potential investors promising some sort of welfare benefit (such as infrastructure, bore hole, grinding mill, clothing, health or educational support to the villagers). These arrangements have next to no sustainable livelihood impact and are akin to the state selling off valuable para-statal assets at bargain basement prices. The community remains poor and faces increased poverty as land has been lost in perpetuity, with future reward captured by the private investor. It would appear that several 'investors' are speculators holding land rights without any intention to develop, but with intent to 'sell on' when a profitable opportunity arises. This is particularly the case with local elites and bureaucrats waiting for foreign investors. The fact that river front land is selling at \$1,000 U.S. dollars per metre near Livingstone provides a highly speculative climate. Many new investors have no firm obligation to assist the community and once land is titled the community has no formal say as to how the investor utilizes the property.

Aware that their own traditional leadership had alienated their prime real estate asset, the new Sekute Community Trust Board was left with few opportunities to build its financial assets using the river frontage as leverage. One option would be to try and secure some remaining 'beautiful places', including islands, demarcate them and approach the Chief to allocate them to the Trust as he had done with the private sector. The Trust could then apply for leasehold land itself and seek partners in their role as landlord. Another option would be to request the traditional leadership to impose a moratorium on any new land lease approvals and to work on re-negotiating new understandings with the existing commercial land holders. The Trust might appeal to the District Council to stop processing lease applications but some council workers, politicians, local and foreign private sector interests might lobby against such an approach. A third option could be to approach the existing private investors with a view to re-negotiating the deals already

made. Whether the latter would agree to re-negotiate what they had ‘legitimately’ gained, at additional cost to them, remains an open question.

In March 2006 information on commercial investment on the Zambezi River front was presented to Chief Sekute by the Sekute Community Trust Board. The Chief agreed in principle to designate several islands and selected river and wildlife habitat areas to the trust. By June 2006 this had not been done and a crisis was brewing between Trust, Chieftaincy and AWF. If land is allocated to the Trust it will have to act smartly and prove the strategy workable. The personality and role of the Chief is important. Chief Sekute went through a period of ill-health that affected his memory adversely. At the time, the community held discussions with their *Indunas* (Councilors), and the Royal Family who then presented the Deputy Chief to local and central government. This culminated in the Zambian President gazetting the Deputy Chief to carry out the functions of the chief as provided for under the Chiefs Act (GRZ, 1965). This period of indecisive leadership was exploited by the private sector and lower echelons of the traditional authority, and a significant amount of land was alienated.

### **THE MUKUNI CHIEFDOM**

The Mukuni Chieftdom is organized in 12 sub-chieftdom zones. Each zone produced a participatory socio-economic and natural resource status assessment and map of their area and at chieftdom level an opportunity was afforded to scale-up the area insights (Mukuni, 2006). The Chieftdom comprises 2,000 square kilometers with an extensive boundary along the Zambezi River gorge below the Victoria Falls. Mukuni is situated in close proximity to Livingstone, east of the Mosi-o-Tunya National Park and households are mainly settled around transport links (roads) and key natural resource zones that provide access to water, cropping soil and rangeland resources, providing forage for livestock. Much of the area along the Zambezi River gorge and eastward toward the Kolomo River boundary is rugged and broken landscape with unreliable rainfall and generally unsuitable for settlement and agriculture. The settlement patterns show little formal land use management planning providing a future challenge to conservation zonation. Despite being sparsely populated, there is a risk of landscape fragmentation as households bordering the national park report increasing human-elephant conflict. This tension was manifest in several of the zone level meetings where uniformly negative perceptions

towards elephant and the national wildlife authority were expressed. As wildlife is a central feature of Livingstone's tourism development plans, it presents a problem when a community living just outside of the tourism hub finds living with wildlife unacceptable and the wildlife authority ineffective. The independent press is well represented nearby, and during national elections these Zambian voters do count.

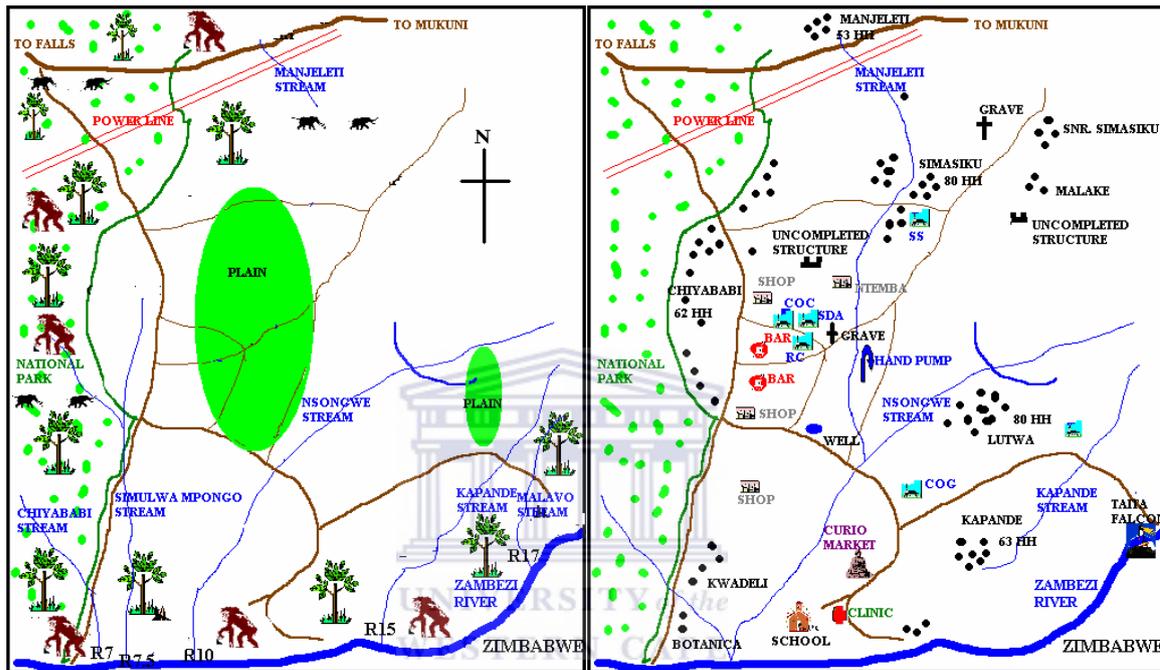
Chief Mukuni had established a Mukuni Trust on his own without prompting from AWF. He has his own vision of setting aside land along the river gorge to establish a wildlife conservancy as well as a cultural tourist museum and craft centre to be situated next to his traditional palace. In negotiations with AWF, he rapidly understood that a community trust would need active community participation, and be constituted and registered as such (Mukuni Trust Constitution, 2003). He legitimated and empowered the process and ensured that adequate time was invested to ensure the due diligence necessary. Cross-border visits to communities in Botswana, Namibia and Zimbabwe were arranged. Awareness meetings and discussions were held on how the trust should be structured and what its governance, enterprise and conservation roles were. Support was solicited from the Ministry of Local Government and the sectors responsible for natural resources. At inter-chiefdom meetings Chief Mukuni would take the lead and encourage the process. As each zone completed its assessment and identified problems and options, Chief Mukuni would seek a briefing by the new representative committee. He would visit the AWF office and use its personnel, especially the lawyer, like his private advisors. He was dynamic. The whole process took over a year.

### **The Unsung Area of Mukuni Chieftdom**

The Unsung area shares a southern border with Zimbabwe on the Zambezi gorge just below Victoria Falls. Figures 3 and 4 below compare and contrast a natural resource and socio-economic map drawn up with the participation of the Unsung Zone of the Mukuni Development Trust. In the south is the Zambezi River Gorge, in the west the Mosi-o-Tunya National Park. Settlement and social infrastructure can be seen in the social map close to the national park, presenting a 'hard edge' to wildlife habitat connectivity and indicating the need to integrate ecological and socio-economic planning in order to provide for wildlife corridors and reduce predictable human-wildlife conflicts. Two grassy plains have been opened up for settlement and agricultural purposes. Major wildlife species noted by households were baboons and elephants, reflecting a perception

of wildlife as a crop-raiding and livelihood hazard. Elephants were seen to have been resident longer than usual in the 2005 cropping season. The perception was that the elephant nuisance was increasing year by year. The problem was aggravated by a sense of injustice as the people felt that the Zambian Wildlife Authority should deal with the problem or pay compensation.

**Figures 3 & 4: Participatory Natural Resource & Social Maps of Unsong Zone**



The area has five villages under a senior headman. A total of 338 households reside in the five villages. The villages with the highest numbers of households have better access to water and fertile soils as well as grazing for their livestock. Despite proximity to the Zambezi River there is no piped water system in the villages of this zone. Domestic and drinking water sources are hand pumps, dug-wells and stream-bed wells. The village has more business outlets than most other areas due to its proximity to the urban centre of Livingstone: two bars, three shops and one curio market (figure 4). There are five rapids in the Zambezi used by white water rafting companies from which the communities do not presently benefit (Munodawafa, 2005b). Employment opportunities exist in Livingstone and tourists provide a market for the sale of craft.

**Mukuni socio-economic and natural resource situational analysis**

Chief Mukuni understands the commercial value of communal land and is able to negotiate effectively with the private sector. He rapidly realized the possibilities presented

if the community were incorporated within a Mukuni Community Development Trust. He also understood that whereas the Trust could act as a participatory authority, complementing his own, it would not necessarily be the ideal vehicle for trading and business. In consultation with the AWF team and its lawyer he decided that the Trust should establish an entrepreneurial unit that could enter into joint ventures with the private sector. The Trust could not risk borrowing and trading capital but the company could. The company could also be a 'holding company' that new community enterprises could link with. To that end the Mukuni Adventures Company was registered in 2006.

The combination of the Trust, as a joint ownership body, and the Company as an umbrella entrepreneurial unit, provides the basis for the community to engage the modern world of partnerships with private sector investors. Although Chief Mukuni had made several 'deals' with the private sector in the past, including a helicopter-pad for viewing the Victoria Falls, lodges and white water rafting companies, and benefited in the process, he was prepared to review these arrangements. In so doing he saw the benefit of transforming an un-written, non-transparent contract with the private sector into a formal contract between the Trust and the private sector, with himself as landlord and patron of the Trust. He understood he could empower the Trust and negotiate as both a traditional and rational-legal authority with the private sector. The benefit would be that, instead of alienating land and maintaining a patron relationship with the private sector, he could retain his land, patronize his community beneficially and manage the private sector through contractual, time-bound, performance related agreements. Revenue would pass through the Trust and be available to support local infrastructure, social services, employment as well as keep himself in the manner to which he is accustomed and feels entitled.

Chief Mukuni, together with his community-based trustees and with the support of AWF, reviewed 14 enterprises operating in the Chiefdom and then engaged them one by one. Whereas the Chief had permitted the private ventures to operate in his chiefdom, he now asked them to review their status with him and the Trust. Although the ventures might have refused, they were loath not to cooperate with the Chief, who in Zambia has considerable influence, authority and power. In addition, there was the 'carrot' of transforming an un-written agreement with a traditional leader into a written agreement with the Chief and the Trust, a legal body corporate. From the perspective of the private

sector, they would prefer greater security for their businesses even at an implied greater cost. The new agreements would be according to statutory law between two legal personalities. They would be time specific, negotiable over time, and subject to monitoring according to contract and performance. Seven of the 14 companies have agreed to formal leases and this has so far raised an additional \$10,000 per annum with the potential for more through performance and re-negotiation over time. Mukuni Trust has used these resources to fund 24 pre-school teachers (two for each of the 12 zones). Support has also been given to the local health centre in Gundu zone and to local schools.

The Trust, backed by the Chief, is presently re-negotiating the existing agreement with the white water rafting companies. The companies had been paying a license fee to the water authority for use of the river and a royalty to the Chief in acknowledgment that they exited through the gorge and over his land. The Trust is now negotiating a per capita fee and without agreement the rafting companies risk the loss of business. As the Chief has agreed, in part, to the principle of local benefits, so the local zone will receive fees for rafters exiting on their land. Mukuni Adventures Pvt. Ltd. is negotiating a joint venture with Eco-Lift Pvt. Ltd. The Eco-Lift company has pioneered a ram-pump driven chair lift out of the Zambezi river gorge giving tired white water rafters the choice between hiking and catching a 'lift'. The owner has been struggling to negotiate rates with the rafting companies and sees a strategic advantage in partnering with the Chief, Trust and its trading company.

Chief Mukuni has granted 10,000 hectares as a land transfer to the Trust as the core of a proposed conservancy area.<sup>6</sup> The land on the Zambezi gorge is wild, rugged and not settled. The Trust can now process it into leasehold land, plan and zone it, then seek investment partners to establish businesses with, or develop it itself. The Trust might

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<sup>6</sup> The contract between The Mukuni Royal Establishment and the Mukuni Development Trust states: "I SENIOR CHIEF MUNOKALYA IV SILOKA III MUKUNI XIX of the Mukuni Chiefdom in the Kazungla District of Southern province in the Republic of Zambia being the owner (*customary law*) and custodian (*statutory law*) of ALL THAT piece or parcel of the customary land called Bwenga Conservancy in my chiefdom FOR NO CONSIDERATION whatsoever do hereby LEASE to the MUKUNI DEVELOPMENT TRUST a community based organization registered under the Societies Act, Cap 119 of the laws of Zambia with registered offices at the Mukuni Village in the said Mukuni Chiefdom aforesaid the piece of land (together with all buildings and improvements thereon) subject to the special conditions endorsed in the Memorandum hereto". (Italics added). The MEMORANDUM OF SPECIAL CONDITIONS AND ENCUMBRANCES are: "(1) the said land or any investments on the land shall be managed by the Trust and used for the benefit of the Mukuni people. (2) The Trust shall not assign, grant or donate the said land to any other person." (Mukuni, 2006b)

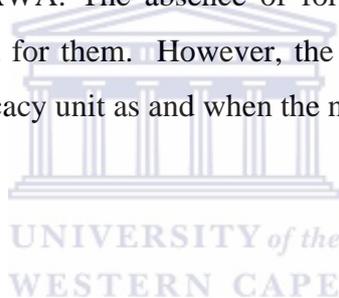
secure donor financing to develop infrastructure and translocation wildlife to raise the capital value of the asset and its equity in a future partnership. Donors could support a trust dedicated to people's livelihoods but not an individual chief. The Trust and its company provide a vehicle for managing a set of sub-contracts and joint ventures. By strategically converting valuable land into communally owned leasehold, Chief Mukuni is effectively shutting the door on future alienation by the state or the private sector.

The right to land, participatory community structures and a private sector vehicle provide the Mukuni area with new potential. National wildlife policy will come more into play once wildlife populations increase, and should the Trust want to game ranch or institute commercial hunting. The Trust is monitoring elephant movements and crop damage and piloting chili pepper production and problem animal control methods. This enables them to manage the human-elephant conflict issues themselves as far as possible, rather than continuing to depend on ZAWA. The absence of forest reserves means that the JFM policy is not very significant for them. However, the Chief and Trust together make a formidable local policy advocacy unit as and when the need arises.

## **DISCUSSION**

### **Traditional and state authority**

Max Weber's (1864-1920) classic analysis of 'pure types' of legitimate authority – 'traditional' and 'rational-legal', the monarch and the nation state – is pertinent to a situation where customary authority is transitioning toward a rule-based system valid equally to all members of society (Rex, 1961; Nisbet, 1966; Collins, 1991). This can be seen in the relationship between customary and statutory law, authority and tenure where the Zambian situation is neither completely one nor the other, but where the President now precedes the Chief, if not in the minutiae of communal land use tenurial practice. Weber's third type of authority 'charismatic' can also be seen in the two case studies. There are times and places when great leaders legitimate affairs who may be neither traditional nor bureaucratic in origin. Although both chiefs are traditional rulers, one is more effective than the other at managing the 'dualism' inherent between customary and statutory systems. From Weber's analysis it may be supposed that the charismatic leader, who is also traditional, is more likely to adapt and change to prevailing circumstances. This supposition only works as long as the charisma is not a threat to the greater authority



of the state. Turning it around, the non-charismatic traditional leader is little threat to the state but a considerable handicap to the community. In this case the threat could come from below, rather than above.

Colonial and post-colonial African legitimacy has been based on an accommodation between nationalists who called for 'one man (person) one vote' and traditionalists who did not (Mamdani, 1996). The reach of the nation state is only not beyond its grasp because of a modern-traditional accommodation. This appears to be the case in Zambia, where politicians and civil servants kneel when greeting a chief. The powerful voice of tradition was clearly heard in Zambia's debate on the 1997 Land Act (Hasungule, 2001; ZLA, 2004; 2005). Present day Zambia may be democratic and also have a reforming neoliberal government but with regard to communal land, especially commercial penetration, it supports aristocratic tenure not a peasant commons (Pausewang, 1999).

### **Commercial property rights in communal areas**

A civil law hierarchy of strong freehold and leasehold rights on top with weaker customary user rights below exists. The present market-based approach to tenure reform disadvantages communal tenure property rights and perpetuates the advantage of an urban private sector power structure, established by colonialism, into the future. Property rights are socio-political constructs that served the colonial agenda of domination, and the structural bias in favour of the domination of individual ownership recognised in civil law persists and continues to favour the wealthy (van der Walt, 1999). The approach to establish a Trust that can hold land and negotiate as equal legal persons is a construct to move communal tenure up a hierarchy of property rights (van der Walt, 1999). In the cases presented here, the possibilities rest on opportunistic and strategic decisions of traditional leaders. It is not prescribed by any policy but a mixture of civil law and property law makes it possible.

The governance of communal land and natural resources concerns the relationship between communities, their leadership and central government, represented by sectors responsible for local government, land, wildlife, forestry and fisheries. Whilst few unadulterated common property regimes above micro-level exist, there are many hybrid state and community co-management regimes whose dynamics depend on legal, policy, and institutional factors, and on individual and situational factors (Songorwa *et al*, 2001;

Murombedzi, 2001; Hara, (2003). The case studies highlight attempts by two chiefdom-based communities to ‘dress’ their customary land tenure in the modern clothes of a legal trust in order to manage private sector investment effectively, secure customary land and community benefits, and also address conservation costs. The tenure and governance lessons learned through these cases could inform the communal land reform process in Zambia and the co-management policies of the wildlife and forestry agencies.

Tension persists between the neoliberal promotion of strong individual property rights and the promotion of strong common property rights founded on customary units of organisation and tenure (Conway *et al*, 2002; Quan, 2003). The reconciliation of ‘growth with equity’ remains a key issue in the policy arena and if the livelihoods, diversity and identity of rural Africans are taken as important then strong common property rights may be critical. The loss of natural capital by rural Africans living on communal land is, in part, a result of their weak natural resource entitlements and customary land tenure that is vulnerable to erosion and alienation. It is also the result of the erosion of social capital in the face of statutory agencies that regulate natural resource access today and the changes brought about by resource commoditisation. Rural households depend on their local and national leaders but lack a strong ‘voice’ in the policy arena. What motivation does a power elite have to empower weak communal farmers and what ‘voice’ do the disempowered majority have to be heard? Structurally, traditional rulers must, like ‘Janus’, face both the state and the people. How they accommodate the former and serve the latter, provides many situational and subjective possibilities.

### **Communal land reform and Community-Based Natural Resources Management**

Conservation in Africa during most of the twentieth century focussed on a ‘fortress’ conservation approach centred on protected areas that alienated local communities from access rights and benefits (West & Brechin, 1991; Adams & McShane, 1992; Anderson & Grove, 1987). The late twentieth century in southern Africa witnessed a surge of donor funded CBNRM programmes and projects promoting community wildlife proprietorship and benefit (Bonner, 1993; Western & Wright, 1994; Metcalfe, 1994; 1997). On the one hand these have been critiqued for not delivering conservation or improved livelihoods (Barret & Arcase, 1995), while on the other hand their failures have been blamed on inadequate devolution (Hulme & Murphree, 2001; Jones & Murphree, 2004). Despite the enthusiasm of the donor-funded and NGO-driven CBNRM ‘movement’ in southern

Africa, the dominant conservation mode has remained preservationist (Adams, 2003a; Murombedzi, 2003).

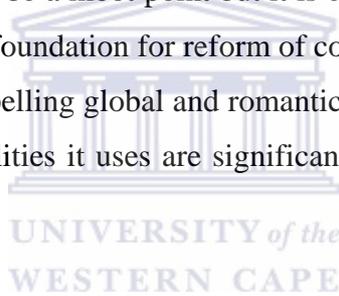
Child (2003a; 2003b), has presented a consistent price, proprietorship, subsidiarity hypothesis over the past decade, which he interprets as “if a wild resource is profitable, and these profits are controlled by landholders, the resource will be conserved, with subsidiarity introducing the managerial and moral principle that rights should never be arrogated upwards where they can be exercised efficiently by smaller and lower bodies” (Child, 2003b:235). However, it is not clear if this hypothesis relates to just wild resources or to the land itself which has never been a wild resource. The conservation of wild resources without relationship to the land on which they depend is surely a lacuna in the argument. No CBNRM programme in southern Africa has seriously approached the issue of communal land reform, rather than natural resource management (NRM) reform; neither does the CBNRM literature reflect an adequate debate on the ‘dualistic’ nature of participatory CBNRM institutions being developed on land controlled by traditional patriarchal structures, as in Zambia. The participatory nature of the Community Resource Boards in the Zambian Game Management Areas has to be scaled up to coincide with the customary tenurial disposition.

The above perspective resonates with ‘new institutionalist’ common property theory, exemplified by Ostrom (1990). This has been critiqued by Peters (2002) for reducing governance to a set of rules or property rights that see contestation as deviance rather than normal. Politics and the contest between wealth and power over resource control are normal and not contained by ‘clearly defined rules’, co-management institutions, or ‘community-based’ management. From this perspective, a rural household relies on communal land and resources to secure a livelihood within the bounds of dependency on customary and statutory patronage, and a predatory commercial sector (Peters, 2002). However, rural communities can draw on their own social capital to claim their rights and work together to conserve and protect their resources.

### **The agency of non-governmental organisations (NGOs) and individuals**

The well-known CBNRM programmes in southern Africa, from CAMPFIRE in Zimbabwe to the Conservancies in Namibia, would not have happened in the way they have without enabling wildlife legislation, supportive wildlife authorities, donors and

NGOs. The agency of NGOs, including the social scientists of the Centre for Applied Social Science (CASS) at the University of Zimbabwe was instrumental. The same is true of the African Wildlife Foundation in the case studies presented in this paper. CBNRM is not originally a social movement and neither is the trust formation in Mukuni and Sekute Chiefdoms but over time the investment supports self determination. In both cases the donor was concerned to reduce poverty by strengthening local control and benefit from communal land and natural resources. The NGOs may have a conservation or development mission but in either case have to address issues related to land and natural resource tenure, governance, enterprise development and conservation. Research informs the design of policy and implementation, its evaluation and adaptation. The main difference between the CBNRM programmes and the case studies presented is that in the former the driving force was wildlife/tourism values managed through wildlife policy and legislation whereas in the latter the same values are managed through communal land policy and legislation. It may be a moot point but it is contended here that customary and statutory land law is a better foundation for reform of communal areas than a single sector like wildlife, despite its compelling global and romantic narrative. Either way, the agency of the NGO and the personalities it uses are significant agents of change (Mosse, 2005; WWF, 2000; 2004).



## **CONCLUSION**

Globalisation may be a threat to biodiversity but it is probably an even bigger threat to cultural diversity. The local level is critical to meaning and social identity, and solutions to governance, land and natural resource management and livelihood security must be based there. The complexity of institutional layering, policy arenas and rights systems and the pervasiveness of multi-use resources systems, subsistence and commercial, and the competing modes of administration and authority, make for a wide range of outcomes – litigation, contestation, “winners” and “losers” (Cousins, 2000; Peters, 2002). The people of Sekute and Mukuni Chiefdoms believe they own the land, if not as individuals then as clans (CCJP, 2003). The concerns of communities in the case studies do not revolve around customary tenure in itself but rather how it interacts with the new 1997 Land Act and specifically in relation to commercial investments that alienate land, especially rich riverine resources (CCJP, 2003).

If the usufruct customary system still works for the community, why is it so challenged in managing commercial investment as witnessed both in the regional CBNRM programmes and in the case studies presented here? Since colonialism, customary tenure has been protected from commercial interests through statutory instruments related to land, wildlife and forest resources. In a neoliberal environment communal land is being opened up and wildlife and forest resources decentralised through co-management policies. There are imbalances between powerful state actors, the private sector and households living customary modes of social organisation and tenure today. In the Zambian cases presented here the institution of the Chieftaincy is critical. Both the wildlife Community Resource Boards and the Joint Forest Management arrangements are flawed because they do not scale up to and complement the customary land unit, which is recognised as the appropriate authority for land tenure in communal areas. This could be rectified and the trust structure that both Sekute and Mukuni have adopted could usefully connect traditional and statutory systems.

However, the charismatic nature of the individual Chief or Chieftainess means variable outcomes are possible. It is a simple matter to state that there should be a system of checks and balances and downward accountability, but what policy can ensure enlightened leadership (Ribot & Larsen, 2005)? The top-down approach to land reform has generally failed and when communities show good problem-solving potential, as in the Mukuni case, trying to impose formal rules and procedures is counter-productive and could be a waste of resources (Platteau, 2000). Given both cases, especially that of Sekute, one would recommend a professional, technocratic administration providing the services presently provided by the African Wildlife Foundation. Oversight by local government and the Commissioner of Lands to facilitate commercial land access on the basis of financial efficiency, socio-economic equity and ecological sustainability, is necessary given that there always seems to be room for 'rent collection' and interference by powerful and wealthy elites.

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**PAPER 2**

**ELEPHANT CORRIDORS, COMMUNAL TENURE AND THE  
PROPOSED KAVANGO-ZAMBEZI TRANSFRONTIER  
CONSERVATION AREA**



## **ABSTRACT**

The mobility of wildlife needs management across its national (state, communal and private) and transboundary range. Landscape connectivity requires positive linkages between a tenorial mosaic of managerial units, based on reconciliation of social, economic and ecological objectives. Communal landholders in Zambia presently lack sufficient incentives to accommodate the costs of wildlife, especially elephant. The Kavango-Zambezi Transfrontier Conservation Area features the Zambezi River, the Victoria Falls and a spectacular display of mega fauna, which combined are proving powerful economic and ecological drivers of change. However, the substantial Zambian communal lands mean that ecologically connectivity requires reconciling wildlife movement with equitable distribution of costs and benefits. The paper analyses the need for communal land and natural resource reform in the context of proposed wildlife corridors, communal-state governance and communal-private sector partnerships. It also assesses an experimental reform process aimed at addressing governance, livelihood and social-ecological scale. It recommends a holistic approach to policies and legislation related to land and natural resource governance, as opposed to the prevailing situation where communities are disempowered relative to the state, traditional leaders and the private sector.

**KEY WORDS:** transboundary conservation, Kavango-Zambezi area, Zambia, elephant corridors, community, land reform

## INTRODUCTION

The proposed Kavango-Zambezi (KaZa) Transfrontier Conservation Area (TFCA), involving Angola, Botswana, Namibia, Zambia and Zimbabwe, aims to strengthen the regional economy and rural livelihoods, sustain biodiversity and promote a culture of peace (PPF, 2006a). As the KaZa TFCA is broadly 40 per cent state protected area and 60 per cent communal land, conservation and socio-economic objectives must serve a common and politically agreed goal (Griffen *et al*, 1999; Cumming, 1999; Metcalfe, 1999). Whilst the survival of wildlife requires space, human society is challenged to manage it through proprietorial units, and to encourage sufficient collaboration to ensure compatible land use across bounded tenure units (Cumming, 1999). Economic management at an ecological scale would best be achieved through socio-political organisation, expressed through national policies that provide secure tenure and positive incentives sufficient to ensure that land managers invest in wildlife and its habitat (Barnes, 1999; Bond, 2001; Child, 2004).

Matching ecologies and economies of scale means that individual tenure rights need to be tempered by ecological spatial and temporal considerations. Given its 'umbrella' species status, the management of the KaZa TFCA's >150,000 unevenly distributed elephant population will be a defining issue. Although several passive (e.g. manipulating water supplies, fencing and the use of repellents) and active (e.g. contraception, translocation and culling/cropping) management options exist (Cumming & Jones, 2005), the passive intervention of enlarging the range available to elephant is the preferred option by several international conservation agencies (AWF, 2004; CI, 2006; PPF, 2006b). Elephant are mainly based in Botswana and Zimbabwe. Potential habitat is either on communal land or elephant would need to range over it to reach protected areas in Angola and Zambia, where wildlife population densities are much lower. Rural communities are unlikely to welcome increased elephant numbers on their land unless accompanied by positive incentives (Cumming & Jones, 2005).

This paper focuses on the Zambian sector of the proposed KaZa TFCA. It asks whether and under what conditions landscape conservation and development planning approaches might impair or improve Zambian communal livelihoods. Biodiversity is the priority of conservation agencies but alleviation of poverty is a priority of governments, many

donors and communities. The paper analyses communal tenure in the context of wildlife corridor planning and commercial tourism investment in communal land. This is relevant to many Zambian and other communal households living in the proposed KaZa TFCA, and many more living near parks and national boundaries in southern Africa and beyond.

## **BACKGROUND AND CONTEXT**

### **Ecological scale and tenure**

Most of Africa's biggest and best wildlife parks are surrounded by poverty, and consequently neither social nor ecological goals are being well met (Western & Pearl, 1989; Cumming, 1999). Conservation requires societal linkages between management authority at the scale of farm and village, up to the level responsible for wildlife habitat and river basins. Managing ecosystems means managing human interests, as the driving forces of biodiversity loss are related to policy failures that provide weak and un-focussed property rights, as well as perverse economic incentives (Murphree, 1991; Walker, 1999). Economists need to confront the disconnection between the appropriate scale for biodiversity conservation and the institutions responsible for that conservation and land use (Walker, 1999). Given devolved tenure in wildlife and positive market forces, rational economic allocation of resources for communal livelihoods in the Upper Zambezi area would include multi-species land use (Barnes, 1999).

The Cumming *et al* (2006) analysis of mismatch between ecological and social scale clarifies that while ecological scale is defined in spatial and temporal dimensions, sociological scale includes representation and organisation. Transboundary landscapes and societies interact over several spatial and socio-ecological tenurial scales: national, state, communal and private. Recognition of these scales and the influence of representation and power within and between them mean that the rights of local land users and their relationship with powerful state and non-state actors (e.g. conservation agencies and the private sector) are critical factors (Blaikie & Brookfield, 1987; Peet & Watts, 1996; Cumming *et al*, 2006).

### **Controversy in southern Africa's transboundary discourse**

The development of transfrontier initiatives has mushroomed in southern Africa in the twenty-first century. By 2005 three transfrontier treaties were finalized, five Memoranda of Understanding signed, while another six are in conceptual preparation stage (PPF, 2006b). However, the process of implementing the benchmark Great Limpopo Transfrontier Park (GLTP) including Mozambique, South Africa and Zimbabwe led to criticism that transfrontier initiatives threaten to undermine community-based approaches and make rural livelihoods more vulnerable (Wolmer, 2003; Hutton *et al*, 2005). Wolmer (2003) argues that the discourse during the formation of the GLTP manifested an ambivalent relationship between communities and conservation agencies, and occurred against a background of several countervailing contemporary narratives in southern Africa, including the priority of land reform, poverty alleviation and community-based conservation. The transfrontier initiatives seemed driven by a “bigger is better” conservation logic supported by national wildlife authorities, conservation agencies and potential private sector investors (Wolmer, 2003:264). This tendency marginalised local communities and contradicted conservation with development approaches that saw tenure rights and institutions as fundamental for effective landscape conservation and commercial private sector investment.

Hutton *et al* (2005) argue that community approaches are on the retreat because large-scale conservation values biodiversity over the livelihoods of communities, thus forcing a dichotomy between proponents of community-based and protectionist approaches. The ‘big-scale’ preferences of donor-supported international conservation NGOs reinforce state-driven approaches, facilitating private sector investment and marginalising poverty alleviation based on community rights, participation, natural resources management and sustainable use (Hutton *et al*, 2005). In a controversial article Mac Chapin (2004), expressed the view that the programmes of the ‘Big Three’ international conservation agencies (i.e. World Wildlife Fund (WWF), Conservation International (CI), and The Nature Conservancy (TNC)) manifested conflicts of interest and a growing neglect for indigenous people. Major American philanthropic foundations (i.e. Ford, MacArthur, Moriah, Wallace Global, C.S. Mott, and Oak) expressed concern that the conservation agencies had supported attempts to de-bunk recent gains in community-based approaches, promoted bioregional approaches above human livelihood needs, and advocated the importance of strictly protected areas and extending that protection over community lands

through secured biodiversity corridors (see also Brandon *et al*, 1998; Redford & Sanderson, 2000; WWF, 2000, 2004). Given the importance of resolving the social and ecological scale issue, and in the light of this criticism of bioregional approaches in general and transfrontier conservation in southern Africa in particular, it is worth reviewing some lessons learned in the twentieth century. Should lessons learned in one country in a transboundary setting provide a foundation of best practice in agreements between parties?

### **Conservation knowledge and institutional memory**

Up to the 1970's conservation policy in Africa was typified by the proclamation of protected areas and state control inside and outside those areas. Since the 1980's conservation policy has shifted toward 'conservation with the people' based on participation and consultation, and 'conservation by the people' based on tenure entitlements (Murphree, 1996). Whilst the dominant western approach to wildlife conservation in the twentieth century was based on protected areas (Adams & McShane, 1992; Western & Pearl, 1989), community-based natural resource management (CBNRM) approaches were promoted in southern Africa in the 1980s, and in the 1990s were actively supported by donors and facilitated by NGOs. Although CBNRM was community focussed, it complemented the protected area approach (McNeely, 1988 and 1989; Western & Wright, 1994). In some southern Africa countries (e.g. Botswana, Namibia, Zimbabwe) it even became "the favoured stance" of wildlife policies (Jones & Murphree, 2004:63), with the high value of wildlife providing positive management incentives (Martin, 1986; Cumming, 1988). The policy to devolve wildlife authority combined ecological and socio-economic goals (Western & Pearl, 1989; Cumming, 1990).

In 1980, the new Zimbabwe government inherited a policy where the state as the 'responsible authority' for wildlife in protected and communal areas had devolved 'appropriate authority' to commercial, mainly white, farmers. The entitlement to use wildlife as a valuable and tradable commodity enabled ranchers to make rational land use decisions and resulted in improved wildlife habitat and populations that complemented and/or competed with cattle-based management systems (Child B, 1991; Child G, 2004; Jones & Murphree, 2004). Brian Child (2004:248) summarises the position saying that "proprietorship, price and subsidiarity are the vital ingredients of conservation".

Additionally, over the past few decades conservancies as “contractually legitimated co-management entities involving two or more recognised land and resource authorities formed for the use and conservation of natural resources on land under their jurisdiction” (Murphree & Metcalfe, 1997:7) have gained momentum in southern Africa and elsewhere. The policy provisions of ‘proprietorship, price and subsidiarity’ enabled scale-matched institutional solutions by many commercial farmers in South Africa, Namibia and Zimbabwe (Du Toit, 1992; Gov. of Namibia, 1995; Child, 2004; Cumming *et al*, 2006). However, matching scale between private and communal land holdings proved more of a challenge. While the freehold ranch owners in Zimbabwe’s South-East Lowveld could voluntarily take down cattle fences to form the Save Conservancy, they had great difficulty associating with neighbouring communal subsistence farmers with insecure tenurial rights and different land use practices (Murphree & Metcalfe, 1997). Although the conservancy was well grounded ecologically and economically, it has been undermined by socio-economic and political factors. However, single owner cattle ranches in the area have been more vulnerable to appropriation, while some conservancies retain viability.

The contrast between an elite group of commercial farmers benefiting from wildlife, and a huge rural and poor peasantry under communal tenure who did not, was politically untenable as well as ecologically and economically unsound. This prompted the decision to grant Zimbabwe’s communal areas ‘appropriate authority’, through provisions in The Parks and Wildlife Act of 1975 (Murphree & Cumming, 1990). In the communal sector the complex institutional issues of managing a 'fugitive' common property resource were addressed through the Communal Area Management Programme for Indigenous Resources (CAMPFIRE) (Martin, 1986). Significantly, the devolution of wildlife use rights to local authorities was not integrated with devolution of land or other natural resource rights. CAMPFIRE addressed only one resource in a ‘bundle’ of communal tenure rights and could not change the hierarchy of western-orientated property rights, biased in favour of ‘individual’ and ‘private’ rights (Van der Walt, 1999). Communal rights remain weak and insecure, especially in the face commoditisation, private commercial investment, patronage, ‘rent seeking’ and individual accumulation.

Donor-funded CBNRM programmes were launched in the 1990’s across Zimbabwe, Botswana, Namibia and Zambia, with the assistance of NGOs. Rural development,

conservation and economic theory came together in a strong advocacy for community rights of access to wildlife and the right to trade based on sustainable use principles that complemented rural livelihood strategies (Barbier, 1987; Barbier *et al*, 1990; McNeely, 1988; Metcalfe, 1994; 1996; Murphree, 1995). Although southern African communities gained a ‘voice’ in policy forums through these national CBNRM programmes, the extent and focus of devolution as well as investment in communal natural and social capital remained a constant issue (Murphree, 2000; Murombedzi, 2001). The appropriate primary level for communal land and natural resources tenure was addressed by a ‘Zimbabwe Commission of Inquiry into Appropriate Land Tenure Systems’ (Rukuni, 1994). The Commission recommended that the customary village level should have private title, from which sub-titles for arable and household areas could be granted, leaving other areas as common property privately held by the village. Village natural resource management units could then associate within a conservancy framework. However, the fact that the Commission’s advice was not accepted by the government raises doubts about governments’ preparedness to devolve adequate tenurial authority to communal farmers. If not, then this amounts to a serious flaw and a scale mismatch challenge to CBNRM and landscape level management.

In the light of these rich Zimbabwean experiences, which were widely publicised and shared by Namibia, Botswana and to some extent in Zambia, some explanation is needed as to why the transboundary scale has produced criticism that communities are being marginalised. The paper now focuses on the Kavango-Zambezi (KaZa) Transfrontier Conservation Area (TFCA), which is presently following the organizational and programmatic evolutionary process established by the Great Limpopo TFCA initiative. From here on, the discussion is concerned with landscape connectivity in the Zambian sector of the KaZa TFCA, the role of communal tenure and its relationship with statutory tenure and private sector commercial investment in communal land and natural resources.

## **THE KAVANGO-ZAMBEZI TRANSFRONTIER CONSERVATION AREA**

### **Background to the Kavango-Zambezi (KaZa) TFCA**

A tourism study of the Okavango-Upper Zambezi transfrontier area (OUZIT) states that in 1999 the region received some 350,000 tourists a year, and could have an optimal capacity of up to three million (DBSA, 1999). This level of growth provides the Southern

African Development Community (SADC), coordinated through its Regional Tourism Organisation of Southern Africa (RETOSA), with a compelling rationale for promoting regional tourism integration as exemplified in the Limpopo transfrontier initiative and others on the drawing board or already in an implementation phase (DBSA, 1999; RETOSA, 2000). The OUZIT report states that “from a development perspective, the delicately balanced natural resource base of the area provides important tourism revenue for member countries, as well as subsistence for two and a half million people living in the area” and further that “there are few alternative economic development options, and tourism and conservation related activities are imperative for local economic development” (DBSA, 1999:i). The report suggests that private sector investment in the area might provide \$1,972 million to the GDP of SADC countries and 34,993 jobs to local communities, and reduce present land use threats to valuable biodiversity (DBSA, 1999: iii).

In 2001 USAID’s Regional Center for Southern Africa approved a three year grant to the African Wildlife Foundation (AWF) for a project named the ‘Four Corners Transboundary Natural Resources Management Initiative’, with the strategic objective to increase cooperation in the management of shared natural resources. Improved cooperation in shared NRM was intended to lead to improved livelihoods (reduced poverty), reflecting USAID’s history of support to CBNRM (USAID, 2001; AWF, 2004). The conservation logic of AWF’s ‘Four Corners’ project was based on a vision of a landscape sufficiently connected ecologically to allow wildlife to move outside of and between protected areas. The ‘Four Corners’ initiative was not based on any pre-agreed ‘buy-in’ by governments, leaving AWF to build constituencies through the project. Initially, there was confusion over the linkage between the tourism focused OUZIT championed by RETOSA, and the wildlife focus of ‘Four Corners’ promoted by AWF. Although the wildlife authorities acknowledged the ‘Four Corners’ initiative it was a transboundary project and not an official initiative.

In July 2003 ministers from Angola, Botswana, Namibia, Zambia and Zimbabwe signed an agreement setting in motion the KaZa TFCA treaty process and defining its key elements. These included *inter alia* harmonizing land use; adjusting policy and legal frameworks; active support for ecologically and socio-economic sustainable tourism

development; establishing mechanisms for co-ordination, and mobilising financial support and human resources to achieve the objectives (Travel News, 2003).

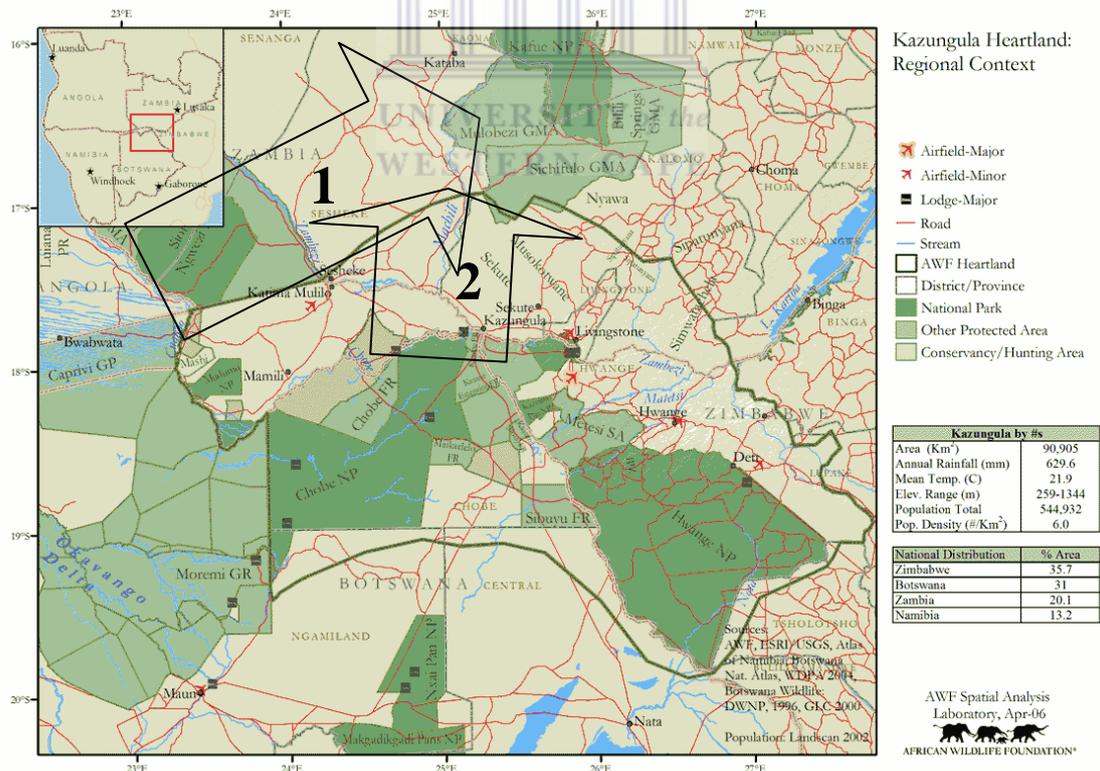
The KaZa TFCA has attracted the attention of international conservation NGOs such as the African Wildlife Foundation (AWF), The Peace Parks Foundation (PPF) and Conservation International (CI). While the huge transfrontier conservation vision demands cooperation, as yet there is no mechanism to ensure it and competition over funding and positioning at this point is inevitable. AWF has maintained a field presence since 2001 and a substantial part of its programme is focused on nine communities, including five in Zambia, whose land provides the desired ecological ‘corridors’ between several protected areas (AWF, 2005). The PPF is not field-based but provides high level political, institutional and technical facilitation (e.g. GIS services). Conservation International is focused on monitoring elephant movement and opening up habitat in the Caprivi, Angola, and Zambian transfrontier area to support a corridor from Botswana. Namibia’s Caprivi Strip is ‘sandwiched’ between protected areas with large elephant numbers in the south, and potential habitat in the north. Namibia has strong, well coordinated NGOs working to ensure an enabling policy environment and the social capital necessary to benefit from increasing wildlife numbers. The next section introduces the issue of corridors and the challenge to manage a mobile wildlife resource across bounded tenurial units.

### **Elephant movement in the Kavango-Zambezi (KaZa) TFCA**

The vision of a mega park for elephants enabling congested elephant herds in Botswana and Zimbabwe to move to habitat in Zambia and Angola provides a compelling conservation narrative. As a ‘flagship’ species elephants attract public attention and sympathy, and linkages designed for them would also benefit a wide range of other species (Bennett, 2003). Bennett (2003:196) says that “the protection of movement paths is essential if connectivity is to be maintained in the long term” and Cumming (1999:11) adds that the “distribution of ‘umbrella’ species has a bearing, both ecologically and economically, on the development of TFCA’s and corridors linking existing protected areas”. Knowledge of elephant movement has important implications for managing their populations and ecosystems (Cumming, 1999) and in terms of reducing the inevitable human-wildlife conflicts while maximizing the benefits for rural people (Biodiversity Foundation, 2003).

The quarter million square kilometer KaZa TFCA has an estimated 150,000 elephants, the biggest meta-population in the world. The area's economic potential is in its wildlife, the Zambezi River and the iconic Victoria Falls. Wildlife is ecologically anchored in several protected areas (dark green colour in Figure 1 below), inter-connected by substantial community lands, especially in Caprivi (Namibia) and Zambia (light colour in Figure 1). The transparent arrows on Figure 1 provide a rough idea of potential landscape connectivity on Zambian land. Elephants moving in Zambia between Sioma Ngwezi and Kafue National Parks would traverse a tenurial mosaic as follows: (1) Sioma Ngwezi NP where the Zambian Wildlife Authority (ZAWA) controls land and wildlife<sup>7</sup>; (2) Game Management Areas where wildlife is controlled by ZAWA but the land is communal<sup>8</sup>; (3) 'Open' Communal Land where wildlife benefits are accessed by non-consumptive wildlife use and (4) Forest Reserves where the Forest Department controls land and logging but ZAWA controls wildlife<sup>9</sup>. Both the Forest and Communal authorities lack wildlife use rights to manage elephant.

**Figure 1: Map of the Kavango-Zambezi Transfrontier Conservation Area**



<sup>7</sup> National Park rules restrict hunting but low wildlife numbers make tourism a 'hard sell'.

<sup>8</sup> The GMA can benefit from hunting revenues but the quotas are small. The Zambezi River could capture tourism revenue through communal land tenure, not ZAWA's wildlife tenure.

<sup>9</sup> Joint Forest Management could provide a co-management option in local (not state) forests

A pre-feasibility study commissioned by the inter-governmental KaZa TFCA Steering Committee in 2005 states that “as a general principle harmonization of land use practices ....should happen in ‘small bits’ through incremental expansion of existing transboundary initiatives” (PPF, 2006b:13). The report emphasises that faunal corridor options, for elephants and other important species which regularly move across important boundaries, should be fully explored and clearly identified (PPF, 2006b:13). The PPF also facilitated a meeting with private sector operators interested in investment in Zambian communal land and financed a consultancy to determine potential corridors to facilitate wildlife movements between the Zambezi and Kafue (PPF, 2006a). Commercial investment in communal areas in Zambia will be a critical issue for realising conservation and development objectives. While conservation planners and private sector investors know what they want communal residents have real and unmet needs. The transaction costs involved in promoting, facilitating, and assisting common property management are significant and are multiplied when an enabling policy environment is lacking (Uphoff, 1986). How communities would respond to increased elephant numbers on their land needs to be tested through an opinion survey of attitudes and values (Cumming & Jones, 2005). This would also illuminate key conditions that would lead to community accepting elephant, and clarify their rights to sustainably use the species to benefit their lives.

### **The role of Zambian traditional institutions in land and natural resource management**

Zambian Chiefs (traditional rulers) are customary owners and statutory custodians of the land (GRZ, 1995). Under customary law, Chiefs determine local user and settlement rights, while statutory law recognises the Chiefs’ authority and empowers them to negotiate access with outside parties. Land and natural resources (wildlife, forestry, minerals and fisheries) are vested in the President of Zambia (on behalf of the people) and while the Chief can grant access to land the same is not true of other resources. Commercial farmers and tourism investors can be granted access to land by Chiefs but wildlife hunting, timber logging, mining rights and access to fisheries requires permission of the relevant government agencies. Land law restricts the President from alienating any land held under customary tenure without consideration of customary law, consulting the Chief and local authority of the area or any other affected person. Chiefs are recognised as institutions (body corporate) to discharge customary law and preserve public peace in their areas that does not contradict the constitution and is not repugnant to natural justice

or morality (GRZ, 1965). The courts of Zambia are required to apply African customary law as long as it is not repugnant to justice, equity or good conscience.

In 2002 the Ministry of Lands publicly reviewed its land policy with the intent to review the Lands Act of 1995. Issues raised included the marginalisation of the poor in the land policy formulation process, lack of community participation in the land alienation process, lack of information from the Government, women's tenure insecurity, inaccessible surveyors and dispute resolution mechanisms, and the 99-year lease period. In addition, the issue of corruption in land administration was raised as well as the need to recognise 'traditional title deeds'. The alienation of communal land to non Zambian commercial farmers and tourism operators on the Zambezi River was especially sensitive (Jere *et al*, 2006). The draft land policy has yet to be presented to the Zambian cabinet.

The Ministry of Lands 'Guidelines on Land Alienation' state that the any person who holds customary tenure may convert it into a leasehold tenure not exceeding 99 years. (GRZ, 2006). The prescribed procedure is to apply to the Chief who considers the application and gives or refuses consent. The guidelines provide more incentive for commercial investment than empowerment of households and villages. The chief may not be interested in alienating customary land to leasehold title to communal people unless there is a compelling commercial reason, as it would weaken his ownership. Dualistic, customary and statutory tenure combined with rapid alienation of land for commercial purposes is promoting individualised wealth accumulation and eroding community social security as well as fostering open access, over utilization, and misuse of resources (GRZ, 1994). Poor statutory monitoring and ineffectual sanctions reinforce 'freerider' behaviour (Berkes *et al*, 1989).

### **Communal land tenure and wildlife tenure**

The conservation priority for elephant corridors assumes that communities will help secure them despite the real costs and indirect benefits involved. One of the main lessons of CBNRM was that conservation costs should be aligned with its benefits. The disjunction between the costs of human-wildlife conflict and the benefits from sustainable utilization does not ensure effective management of wildlife as it fails to provide a focused value for those who live with it (Ostrom, 1990; Murphree, 1991). People with elephant on their land need to be the first to secure benefit from them and in such amount

as to provide a positive incentive (Barbier *et al*, 1990). CBNRM in southern Africa supported elephant trophy hunting, not to legitimise sport hunting *per se*, but in order that benefits could be matched with costs at an appropriate social-ecological scale (Zimbabwe Trust, 1989; 1990). Zimbabwe, Botswana and Namibia all linked elephant trophy hunting to community-based conservation precisely to match the costs of living with elephant with the benefits of its sustainable use (Peterson, 1991; Jones, 1999). 'Dualistic' communal land and statutory wildlife tenure produces sub-optimal conservation and development results as it casts state and community as adversaries rather than partners (Thomas, 1991).

The Zambian communities in the KaZa TFCA, situated north of Caprivi communities, do not have Namibia's strong CBNRM background. Eight per cent of Zambia is designated as National Parks and a further eight per cent as Forest Reserves. Some 64 per cent of Zambia is under customary tenure but of that figure some 20 per cent is designated as Game Management Areas (GMAs), leaving 44 per cent as nominally 'Open' Communal Areas (Machina, 2005). The 44 per cent is nominal because within the 'Open' areas customary land has been alienated although the amount is difficult to ascertain (ZLA, 2004). The GMAs, which act as buffer zone areas around all the major National Parks, are customary land but the Zambian Wildlife Authority (ZAWA) has statutory control over wildlife utilization. Wildlife populations permitting, ZAWA administers GMAs as sport hunting concessions, which provide a significant part of ZAWA's revenue. ZAWA markets the hunts, collects the revenue and, under its community conservation programme, shares this with the resident communities through Community Resource Boards (CRBs) (GRZ, 1998a; 1998b).

As the land remains customary, the traditional ruler can negotiate land access to non-consumptive wildlife tourism but because ZAWA designates GMAs as hunting concessions this restricts the land use options of the communities. Institutionally, the CRBs are positioned at the customary 'headmanship' (ward) level, between the Chieftaincy and the social unit of households clustered as a village. The design of the CRB promotes participation and benefit at a level below the Chiefdom and although this has merit for wildlife tenure, it conflicts with the statutorily recognized land tenure authority of the Chiefdom. The unit of wildlife co-management and the unit of customary land tenure is a scale mismatch.

### **Communal land tenure in relation to forest tenure**

Zambian communal areas situated in the KaZa TFCA contain a number of Forest Reserves, which could provide wildlife corridor “stepping stones” (Bennett, 2003:49). Some Forest Reserves are designated as ‘Local’ (customary land) and others as ‘State’ (state land). The Forestry Department controls access to all commercial logging but lacks authority for wildlife use in the forests. Communities receive no benefit from logging but do access forests for grazing and non-forest timber products. This is permitted as long as it is not commercial or in conflict with conservation objectives, although the Department has few staff to monitor this. The Forest Act (GRZ, 1973) vests the ownership of all trees in the President with no provision to grant rights to local communities or traditional authorities. The Forestry Policy (GRZ, 1998c) encourages participatory Joint Forest Management (JFM) with active involvement of local communities in the protection, management and utilization of forest resources. The policy accords high priority to community based forest management plans, and provides incentive mechanisms for community participation. The JFM policy envisages community-private sector partnerships in forestry management but is inactive because the enabling legislation – the Forest Act of 1999 - lacks the commencement order necessary to restructure the Forestry Department as a Commission or to implement the JFM programme. Commencement of the new legislation would enable the transfer of user control and management rights to participating communities. Communities are expected to form a legal personality to satisfy JFM policy as well as CRBs to access wildlife in the forests. Although the Forest Act of 1973 does not provide for transfer of ownership of forests it does provide for transfer of control and management of local forests to another person (GRZ, 2006b).

Faced with ‘dualistic’ land and natural resource tenure, the African Wildlife Foundation promotes and supports chiefdom level community development trusts as a mechanism for managing commercial access to communal land, to engage with the wildlife and forestry authorities and the overall public-community sector policy environment. CBNRM in Zimbabwe, Namibia and Botswana was launched by wildlife legislation. In Zambia, co-management is the wildlife policy option, but is only operational where hunting quotas exist, while joint forest management is the forest policy option. Meanwhile the most commercial option in some communal areas is to use customary land tenure as a basis to engage commercial agricultural and tourism investment and implement a ‘home grown’ community-based natural resource management.

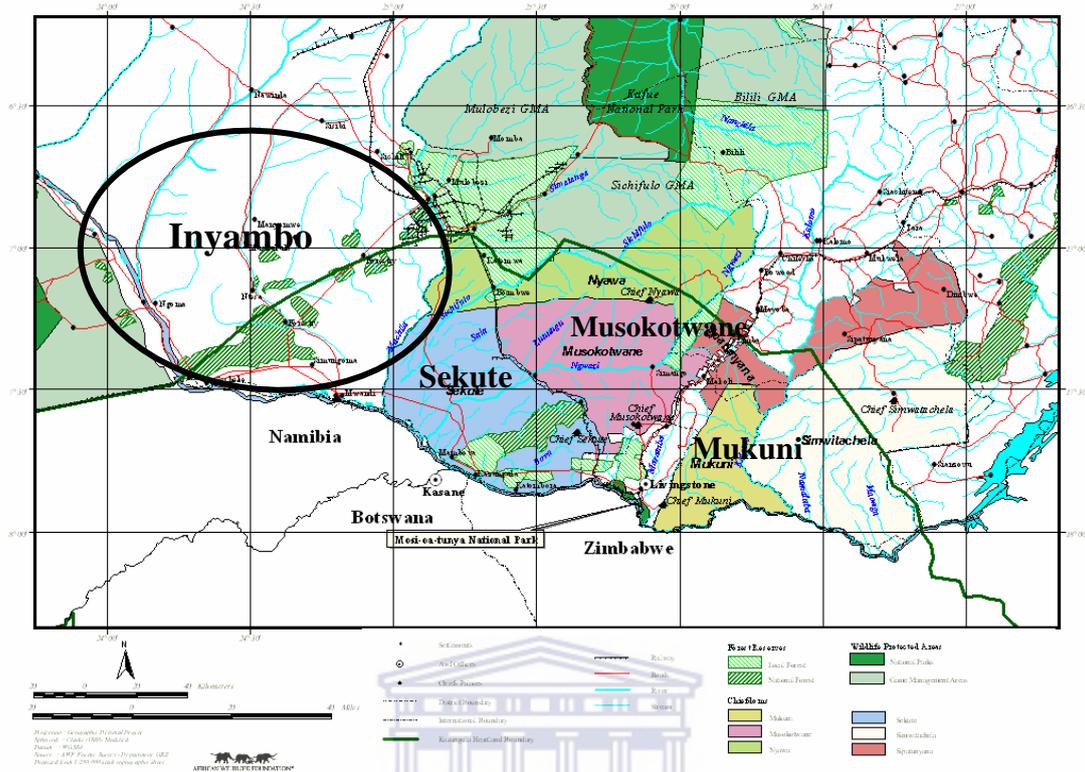
### **The innovation of chiefdom level community development trusts**

Traditional rulers (Chiefs) are the ‘gateways’ to commercial farming and tourism investment on customary land. The Chief’s approval and recommendation on investment is the first step toward securing statutory leasehold. Critically, although traditional rulers control commercial access to communal land they lack administrative capacity to ensure positive conservation or financial impact, or equitable distribution of the benefits. Since 2003 AWF has facilitated five Zambian Chiefdoms in the KaZa TFCA to use their land rights as the basis for establishing participatory and juridical Community Development Trusts. All members of the community are entitled to membership through village and area committees and Chiefdom level boards. The boards can negotiate and sign agreements, acquire permits and enter into contracts. Although Chiefs cannot be forced to allocate land to the trusts, the community bodies hope to persuade the Chiefs to allocate the trusts exclusive access to strategic parcels of land, with the intention of then negotiating with the private sector on a head lease to sub-lease basis. This prevents customary land being alienated, as would be the case if the Chief granted land directly to private investors, and also ensures the potential for contract-based lease management that the customary permission-to-occupy does not. Village Assemblies elect committees that send representatives to area and board levels. The trusts could also provide a mechanism to link land rights with wildlife and forest rights (AWF, 2005). The trust board is accountable to members through an annual general meeting and a general assembly held every three years (Sekute Trust 2003). The trusts, as with CBNRM generally, run the risk of becoming inefficient and dominated by local power elites. This can only be avoided if rights were vested in villages, if downward accountability of the board to the trust members is a reality, or if statutory oversight is established.

Trusts have been registered in the Inyambo, Sekute, Mukuni, Musokotwane and Simatachela Chiefdoms. The need to manage external commercial investment in communal land is the catalyst for this reform process and the trusts are a response to this pressure.

Figure 2 below shows communal and forest land as well as GMAs and National Parks. The forest land within Inyambo (circled) and Sekute (blue) provides connective wildlife habitat.

**Figure 2: Zambian Chiefdoms in the KaZa TFCA & Forest Reserves**



The next section provides a brief presentation of four Zambian chiefdoms in the KaZa TFCA, starting with the Inyambo Chieftaincy in Western Zambia. The following section introduces other chiefdoms situated in Zambia’s Southern Province and which also provide wildlife habitat.

### **The Inyambo Chiefdom and the Barotse Royal Establishment**

The proposed KaZa elephant corridors would traverse Inyambo Chiefdom land and forest reserves (see figure 2 above). The Zambian Wildlife Authority, as the lead TFCA agency, the Forestry Department and traditional rulers would be the key tenure authorities. The Inyambo Chiefdom receives rainfall less than 800 mm per annum and has a short crop-growing season of 80-120 days, carrying a medium to high risk of drought (ECZ, 2001). Western Zambia has an average population density of six people per square kilometer, with 73 per cent of the population considered poor and 56 per cent extremely poor (ECZ, 2001). The land under Chief Inyambo Yeta (in Shesheke District) is the most southerly of seven traditional Chiefdoms in the Barotse Royal Establishment (BRE), home of the Lozi people.

The Lozi retain a well developed cultural and political identity, with a documented history as a political system dating back to the 17<sup>th</sup> century (Engelbert, 2004). There have been 22 *Litungas* (kings) presiding over a hierarchical structure of power that begins with the *Kuta* or Royal Council, made up of 15 counselors including the *Ngambela* (prime minister). Under this top tier are seven districts, each in turn with its own *Kuta* and Chief and each incorporating seven counties. Below the county, overseen by an *Induna* (councilor), is the smallest political unit, the village, and the lowest power holder is the village headman (Engelbert, 2004). Barotseland, the size of France, no longer formally exists and the King no longer controls hunting rights or access to forest reserves and minerals.

Chief Inyambo Yeta is a lawyer and recently held the post of Vice Chairman of Zambia's Constitutional Commission. He is the Lozi King's Chief for the southern district of the kingdom and under Zambia's constitution he is recognized as a Senior Chief. His Chiefdom spans nearly a million hectares – far larger than most non-Lozi Chiefdoms – and has a population of some 30,000. So far, little Inyambo land has been alienated to tourism or allocated to commercial farmers. Chief Inyambo is a statutory land authority for the chiefdom but under customary law this is subject to the King's oversight and ultimate control. The entry point for negotiations with potential commercial investors is the Chief but depending on the scale of the proposed investment it could be referred to the King. In the case of one lodge on the Zambezi River, the investor maintains closer contact with the King than the Chief. In the case of a furniture manufacturer interested in timber concessions, the Chief has been the entry point. Determining the exact site of the investment could include liaison with county and village heads. Such transactions cause a high level of local discussion carried up through the nested authority structure. Foreign investors tend to believe that high level support opens doors down below but this can lead to dissatisfaction below and mistrust over the distribution of benefits, as the precise conditions of access are often not very transparent.

While commercial access to communal land is controlled by the top tier of the leadership, usufruct rights to land are decentralized. Max Gluckman (1941; 1943) explained that the *Litunga* (King) does not allot the land directly to subjects but allots it to *Indunas* (Chiefs) who in turn allot it to county and village headmen. At the village level, the headmen allot land to heads of sub-sections or heads of households, and they distribute it to their

dependents. Interests in land are still parceled out to the end user for use and occupation. Kinship ensures tenurial access, and migration to the urban areas can be seen as temporary 'raiding for money' as land is always available on return. This still generally holds under the new Land Act of 1995, but the commercial land alienation process it has promoted is dominated by the highest levels of the traditional authority.

In 2004 the Barotse Royal Establishment (BRE), the Zambian Wildlife Authority (ZAWA) and a private agency known as 'African Parks' signed a lease contract for private sector management of the Liuwa National Park. In line with Zambia's liberal investment policy, ZAWA now entertains public/private sector partnerships to improve returns from its parks. During the signing ceremony, attended by *Litunga Imwiko Lubosi* (the King), the Prime Minister (*Ngambela Manyando*) said that contrary to misconceptions regarding the deal, the agreement marked a landmark in the development of Barotseland and not just *Lealui* (the Kings winter residence) (Zamnet website, 2004). "The BRE would like to work with genuine investors to bring development to our economically depressed region, to create employment and industrial activity so as to enliven economic activity for our people" (Zamnet website, 2004). The *Ngambela* said that "the BRE was an institution of government which runs from the village level to the apex" (Zamnet website, 2004) ... and that the greatest challenge for the BRE was how to improve conditions of the people in the region. The African Parks deal would give significant benefits to the local community. *Ngambela Manyando* complained that there was uncontrolled exploitation of timber and fish stocks and that the people were anxious that they did not benefit from the depletion of forests and fish (Zamnet website, 2004).

Chief Inyambo's area has several Forest Reserves within it and the Chief concerned about the sustainability of commercial logging contracts in the state run forest reserves as well as the lack of local benefits (AWF, 2006b). The proposed wildlife corridors would necessitate a collaborative tenure linkage between communal and forest land (see Figure 2). Transactions related to commercial logging are not transparent to the Chief, and Joint Forest Management (JFM) has not been introduced yet. Consumptive use of wildlife within the forests would require communities to establish both forest and wildlife co-management agreements and institutions. AWF is working with Chief Inyambo and the Inyambo Community Development Trust to reconcile land, wildlife and forest tenure and establish a joint or collaborative management approach. The private sector finds it

difficult to negotiate investment in this fragmented tenure environment with its consequent inefficiencies. As wildlife moves across villages and Chiefdoms, as well as forest land, negotiations over wildlife corridors may force a multi-tenure combination authority. The Inyambo Trust provides a multi-purpose participatory institution that could manage land and natural resources rights, and legally engage with private sector investors (AWF, 2006b). However, securing agreement between Chief, community trust, forestry, wildlife and private sector parties remains a challenge.

In May 2006 the CEO of the PPF visited the BRE to meet the King. Flying over the area he reported that an area for elephant migrating between Chobe and Kafue has been left “virtually untouched” and that “the villages are few and far apart and large tracks of absolute wilderness still exist.” (PPF website, 2006c). The BRE will be a significant actor in the process of securing wildlife habitat and movement in Zambia. With a long tradition of dealing with influential outsiders the BRE may use its strategic regional conservation status to wrest as many concessions from the government and the private sector as it can. As the national KaZa representative, the Zambian Wildlife Authority will have to partner with the traditional rulers and the Forestry Department.

Three other Chiefdoms have land critical to connectivity in the KaZa TFCA. East of Inyambo is the Sekute Chiefdom with 60 kilometers of Zambezi River frontage. Sekute connects to the small Mosi-o-Tunya National Park at Livingstone and east of that and north of the Zambezi gorge is the Mukuni Chiefdom. North of Sekute and south of the Kafue Game Management Areas is the Musokotwane Chiefdom (Figure 2).

### **The Sekute, Mukuni and Musokotwane Chiefdoms**

The Sekute, Mukuni and Musokotwane Chiefdoms are in Southern Province which has an average population density below fifteen people per square kilometer. Some 42 per cent of all households earn less than US\$ 0.50 per day with only 27 per cent of that income derived on-farm, 25 per cent by non-farming and 28 per cent from wage labour. Households produce 26 per cent of food consumed and cope with shortages by reducing daily meals, reducing other household items or substituting normal meals with natural fruits (ECZ, 2001).

The Sekute Chiefdom is connected directly with to Zimbabwe's protected areas in the south and to Botswana's Chobe National Park via the Impalia and Kaseke Conservancies in Caprivi (Namibia), with whom it has established a community level transboundary coordinating forum. A Zambezi River passage links northward with several forest reserves, but the area between the river and the main road has become congested with tourism lodges and commercial farms. The Sekute traditional authority has alienated much of its riverfront and a lot of arable land in inefficient and non-transparent commercial deals (ZLA, 2004; 2005; AWF, 2006a). AWF supported the Sekute Community Development Trust to register as a voluntary society under the Societies Act, and also to register a Trust Deed under the Land Act through which assets such as land can be held. The Sekute Trust raised awareness of land alienation issues and lost livelihood options, which led to raised tensions between the Trust and the traditional leadership. The Trust advocated a moratorium on land alienation until an effective system was put in place and requested that the chief allocate land to the Trust for conservation and development purposes (Munodawafa, 2005a). In September 2006, after some procrastination, Chief Sekute agreed to release two Zambezi River islands and a substantial piece of land connecting to forest reserves to the Trust. Landscape management within the Sekute Chiefdom requires conservancy style planning with private lodge owners and farmers, as well as forestry and wildlife authorities.

The same process was followed with Chief Mukuni, the traditional patron of Livingstone, who has direct access to high level politicians and officials, including ZAWA Board members and the main tourism operators. His land is adjacent to the Mosi-o-Tunya National Park and connected to potential KaZa TFCA wildlife movement areas (Figures 1 and 2). The Mukuni area is experiencing increasing incidents of human-elephant conflict and a community-based approach to problem animal control is now being implemented (Munodawafa, 2005b). The Chief has negotiated several private sector investments on his land and recently supported the Mukuni Trust to be a co-signatory and beneficiary with him in a re-negotiation of private sector contracts. Chief Mukuni sees advantage in linking his patronage with a legally constituted community trust as the arrangement is popular and functional. It is also supported by the private sector as it provides investors with formal leases. The Chief has recently allocated 10,000 hectares to the Trust in an experimental conservation and development initiative (Mukuni, 2006). The Trust can attract donor funding for land use planning and investment, as well as raise

its own equity before negotiating with the private sector. Mukuni is helping the development of other trusts by getting support from the Chiefs and raising awareness about the benefits of modifying land tenure in order to engage public and private sector parties and leveraging better development opportunities.

The Musokotwane Chieftaincy has an educated leadership and distinguished background in Zambian nationalist history (Henderson, 1970). The Chiefdom was among the first to encounter missionaries, traders and administrators whose entry point and the capital of the country until the 1924 was Livingstone. The late Chief was a distinguished lawyer and politician and his close relative, the late Dr. India Musokotwane, was the first Director of The World Conservation Union's (IUCN) Regional Office for Southern Africa. The Chiefdom lies north of Mukuni and Sekute and provides an important habitat link between Kafue and the Zambezi wildlife transboundary area (Figure 2). A population of 50,000 live in 21 headmanship / administrative areas now coordinated in the Siluwe Community Development Trust, registered in July 2003. Lacking direct access to the Zambezi River means that not as much commercial tourism interest has been shown in this area.

The next section explores the issues presented earlier in the paper, related to social and ecological scale mismatches, costs, benefits and the feasibility of elephant corridors and the relevance of recent regional CBNRM and wildlife management experiences. The construct of wildlife connectivity (corridors) provides a framework for discussing these issues in a context of communal tenure reform.

## **TENURE REFORM AND ELEPHANT CORRIDORS IN ZAMBIA**

### **Social-ecological scale, tenure and wildlife corridors**

A working definition for scale mismatches between human management and biophysical systems suggests they occur “when the scale of environmental variation and the scale of social organization responsible for the management are aligned in such a way that one or more of the functions of the social-ecological system are disrupted, inefficiencies occur, and/or important components of the system are lost” (Cumming et al, 2006:14). The potential for the movement of wildlife (ecological connectivity) between the Zambezi River and present day Kafue National Park was lost, particularly for elephants, during the

twentieth century. This occurred in a period of transition from customary-based states and tenure, through colonial expansion and into African nation states characterised by 'dualistic' tenure arrangements. This shift from a traditional to a rational-legal system was accompanied by bureaucracy and the establishment of new boundaries between communal people, national parks and forest reserves. Tenure over land, wildlife and forest is fragmented and largely isolated in policy sectors. Remaining customary land has been further divided between 'Open' communal areas and 'Game Management Areas'.

Social and ecological connectivity is not addressed when tenure is divided, and land and natural resources are managed by governance systems that do not combine public, community and private interests effectively (Mitchell, 2005). Policy isolation would remain in the separate single resource tenure co-management plans of the Zambian wildlife and forestry agencies. Further, wildlife tenure is separated between its commercial consumptive use managed through wildlife law, and non-consumptive tourism managed through communal land tenure. Zambian communities have a largely negative relationship with the wildlife authority, based on human-wildlife conflict and dissatisfaction related to crop damage and problem elephant control. Communities have a long-standing sense of injustice that state-owned wildlife is a liability to their already vulnerable livelihoods. The forest tenure single tenure policy means that forests are managed for timber alone and not as holistic land units containing wildlife and non-timber forest products. The Fisheries Department also manages fisheries in isolation and lacks the policy and capacity to address fishing tenure issues or transboundary fisheries management.

The likelihood of success in securing elephant corridors in this context is small. Managing a mobile and fugitive wildlife resource across a spatial land tenure mosaic requires that community-conserved areas are recognized and wildlife is managed through a partnership of equals between community, forest and wildlife authorities (Dudley & Philips, 2006). Communal landholders living in elephant rangeland need livelihood incentives to conserve wildlife corridors connected through a conservancy approach that provides a scale match between political, economic and ecological dimensions. This calls for wildlife management units that collaborate spatially and hierarchically, and that distribute costs and benefits. But distribution of power between the state, traditional

leaders and communities is asymmetrical, and this has to be addressed if wildlife habitat is to be secured with the support of poor communal households (Peters, 2002).

The social-ecological scale mismatch in Zambia is largely a consequence of poorly designed policy and management initiatives (Cumming *et al*, 2006), and as such can be corrected. Socio-economic and ecological synergies would result if communal and forest land and wildlife resources were managed holistically and collaboratively. 'Proprietorship' (tenure) and 'subsidiarity' (governance) could be openly renegotiated to establish nested authority for elephant at appropriate local, national and regional levels and ecological scale. Market value for elephant products would result if sustainable use principles are applied. Preservation of a burgeoning elephant population combined with trade restrictions will not make wildlife a competitive land use and livelihood option (Barbier *et al*, 1990; Barnes, 1999).

Public sector financing of protective areas is stagnating, and increasingly public-private sector financing mechanisms are being developed (Hutton *et al*, 2005; Zamnet, 2004; Emmerton *et al*, 2006). Wildlife management costs and benefits need re-apportioning between protected areas and Chiefdoms, and within the Chiefdoms, coordinated spatially outward and organizationally upward from villages. Synergy between conservation and livelihood objectives could be achieved by using protected areas as conservation 'sources' for wildlife populations and by providing hunting quotas for communal conservation 'sinks' (R. van Aarde pers. comm.). If transboundary management of the shared elephant population is established this could scale-up a transfrontier 'source and sink' dimension, and provide Zambia with use quotas above those justified by the actual elephant population on its soil. This approach could be an appropriate subsidy between countries, and between protected areas and communal GMAs and 'Open' areas.

The present system of communal land alienation produces neither tangible livelihood nor conservation benefits. Communal tenure issues exert their effects at various spatial and temporal scales as resource endowments vary in time and space (Kepe, 1997). Within Chiefdoms and between them, access to particular resources at particular places and seasons is highly dynamic and driven by need, opportunity and proximity (Kepe, 1997). Livestock accesses forage and water seasonally, and access to fish, thatching grass, wood for craft and charcoal making use particular spatial tenure niches that are socially and

politically embedded in communal tenure (Cousins & Claasens, 2006). Alienation of riverine tourism sites and designation of wildlife corridors can disrupt these arrangements and be a source of conflict if not understood and taken into account. A viable entitlements framework should look beyond a broad tenurial dispensation, whether statutory or traditional, highlighting those institutions which complement each other in mediating access to environmental resources (Kepe, 1997). Government legislation alone will not solve the entire problem; embedded common property management that fosters shared resource management and reduces conflict between institutions should be recognized and supported (Kepe, 1997).

### **Transboundary scale and diminished community ‘voice’**

Wolmer (2003:276) questions whether transboundary initiatives will improve or impair livelihoods, and expresses the hope that the “bioregional plunge” will encourage true self determination and not “alienate community land as occurred in the Mozambique sector of the Great Limpopo Transfrontier Park” (Wolmer, 2003:278). Livelihoods in the Zambian community areas described above depend on access to natural resources. They would be more resilient if strengthened and more sustainable if the local capability to manage common pool resources was more efficient (Chambers & Conway, 1992). At present livelihoods are not improving but are vulnerable to the shocks of droughts and HIV/AIDS. Increased elephant numbers on communal land would result in more crop damage and add to household vulnerability. To counter this, wildlife management has to address household costs and not just provide group benefits. The social asset of indigenous knowledge systems exemplified in the Barotse Kingdom and the Zambian Chiefdoms have been weakened by the government’s appropriation of wildlife and forest use rights. If projections for tourism are realised then communities with strong land, wildlife and forest tenure, supported by an efficient local government and natural resource sector civil service, should have improved livelihood security. Lack of strong tenure would magnify present social stratification and differentiation, with the most vulnerable households becoming even more of a rural underclass.

A transfrontier treaty process that promotes strong local proprietary rights could catalyse a national communal tenure reform process. However, this seems unlikely as it is designed and led by single tenure wildlife authorities, who generally lack the political strength to lead a multi-sector process. If communal tenure reform is not addressed by

each participating country, the TFCA goal of landscape connectivity will be undermined. Mozambique's designation of the Limpopo National Park as part of the Great Limpopo Transfrontier Park revealed a traditionalist tendency above a more innovative state-local co-management approach. A 'blueprint' transfrontier approach based on the Limpopo TFCA example would discourage innovation and adaptive management that could provide valuable lessons on best practice (Wolmer, 2003). The cultural dimension of transboundary management is downplayed in the transfrontier conservation vision although local communities have co-evolved with the landscape. National sovereignty may be threatened by a spectre of ethnic 'petty' nationalism and political fragmentation, but regional integration should provide space for shared identity and not leave communities isolated on the national periphery. Culture transcends the confines of patriotic nationalism but its diversity is as threatened as biodiversity, and for many of the same reasons. A transfrontier cultural identity would enrich a tourism industry enamored by romantic Victorian notions of the African bush (Marks, 1984).

Hutton *et al* (2005) are correct in observing that transboundary conservation planning scale favours the 'voices' of national elites, technical experts and international conservation agencies over those of local communities. If transfrontier conservation is to go beyond paper treaties, joint management plans and optimistic hopes of progress, then a strong communal-state partnership is needed as a sound basis for efficient and equitable community-private sector agreements. The Zambian Wildlife Authority (ZAWA) is just months away from signing the KaZa TFCA MOU, but has yet to consult national landholder or stakeholder constituencies. ZAWA's vested interest in revenue generation could jeopardize its other roles as TFCA facilitator, service provider and regulator.

### **Regional institutional memory**

Zambia's history as a colonial protectorate in the last century, followed by two decades when the private sector and commercial farming barely survived, differs significantly from that of Zimbabwe and Namibia, whose commercial wildlife conservation informed and supported their CBNRM programmes. Zambia's system of governance is strongly bifurcated between a customary state and a nation-state with a long history of hierarchical bureaucratic governance, not characterised by policy innovation (Mandami, 1996). Zambia has only recently adopted liberalisation policies and is only now starting to adjust to neoliberal principles related to 'downsizing' the state's previously dominant role,

expanding civil society, strengthening property rights and allowing a freer market to evolve. This may partly explain Zambia's past lack of innovation and leadership in wildlife management, but also suggests that a more flexible policy environment may be forthcoming in the future. Both wildlife and forest authorities have co-management policies that promote sector-based arrangements and fail to recognise the need for integration. In Zimbabwe, the wildlife authority vested the forest agency with 'appropriate authority' for wildlife. The forestry estate surrounding Hwange National Park captured very significant revenue as a result. The forest and wildlife agencies became landscape partners, not just neighbours, and social and ecological concerns at a larger scale were well matched.

A 'holistic' village tenure nested in customarily accepted chiefdoms would be a democratic form of communal tenure (Rukuni, 1994), but might be opposed by Zambian Chiefs as it would undermine their patriarchal authority. To succeed, such a system would require technical support, administrative services and regulatory oversight from the natural resource authorities coordinated through Local Government and a Commissioner of Lands (Rukuni, 1994). Rich resource zones like riverine areas are a focus for investment and land use competition. They provide key entry points for clarifying communal tenure arrangements and settling issues such as unequal communal resource endowments between villages close to the Zambezi River and those further away. Villages empowered with land and natural resource rights could provide the foundation of a federated chiefdom-level conservancy, represented through the community trusts. Such an arrangement would address social-ecological scale issues, and provide a sound basis for negotiating access and equity within and between villages, between villages and higher levels, and between Chiefdoms and neighbouring areas generally.

## CONCLUSION

Fragmented land and natural resource tenure policy in Zambia supports a social-ecological scale mismatch that threatens landscape patterns promoting ecological connectivity, a key requirement of nature conservation. It is weak or non-existent feedback loops between resources (status, trends and benefits) and institutions that contribute to, and often exacerbate, the mismanagement of resources (David Cumming pers. comm.). When benefits accrue to the centre rather than locally, the feedback loop between resources and benefits is broken resulting in mismanagement of resources. Asymmetrical power relations, with Chiefs and state at the top and local people at the bottom, means that the constituency in favour of grounding tenure in the farmer and villages, rather than the institutions that represent them, lacks 'voice' in the policy arena. Fragmented and 'top-down' tenurial authority combined with increased commercial investment is producing a scale mismatch between conservation costs and benefits. This results in intra-communal conflict between lower and higher levels of the Chiefdoms. The need for more detailed planning, conflict management and partnership building is clear, but policy makers seem comfortable with their sectoral co-management approaches and using traditional rulers as public-community sector 'go-betweens'.

While there may be little dispute over the proposition that conservation that secures ecological connectivity depends on secure long-term arrangements between land authorities to ensure ongoing commitment (Bennett 2003), there will be considerable dispute in the process of achieving it. Increased commercial interest in and value of communal land in Zambia's Livingstone Zambezi River area presents traditional rulers with a stark choice between accumulating private wealth and supporting equitable distribution of benefits within the Chiefdom. The community trusts provide a mechanism to bind the Chief's authority with the livelihood interests of communal farmers and resource users, associated through embedded institutional understandings, in new organizational structures capable of engaging the globalised world of private property rights, legal personalities, and community-private sector business contracts and relationships (Cousins & Claasens, 2006).

Southern Africa's CBNRM programmes are flawed by their dependency on empowerment through a single resource (wildlife) that so far has not leveraged tenure of

other resources. The Zambian communities presented here are engaged in an internal negotiation process with their customary authorities that seeks to reorganize communal tenure in terms of their equity and control of private commercial access. Pessimistic assessment about the future of community rights to land and natural resources in the face of bioregional approaches, neo-colonial conservation agencies, centrist governments and avaricious capitalists, is understandable, but in this case the outcome is not a forgone conclusion. Provided with legal, enterprise and organization support local communities may just be capable of creating upward pressure to secure their rights. This would seem a more promising approach than waiting patiently for rights to be given. Optimistically, transfrontier initiatives may provide a new policy forum to make their 'voices' heard.

Raymond Bonner (1993:276) believed the "hope" for Africa's wildlife "depends on radical policies and changes of attitudes". He saw the solution in full local empowerment, such that villagers perceived wildlife on their own land, and in the park, as assets in their bank. Twelve years after Bonner (1993) wrote *'At the Hand of Man: Peril and Hope for Africa's Wildlife'*, Hutton *et al*, (2005:362) felt compelled to state that, (quoting Metcalfe [1994] as representative), "early evaluations of (CBNRM) programmes generally consisted of glib praise of the potential benefits of devolving control over natural resources to communities". Idealistic hope for an equitably shared wildlife landscape seems preferable to 'back to the barriers' pessimism (Hutton *et al*, 2005), because it motivates the altruism necessary to complement flawed policy attempts to match social and ecological scale.

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