

Legal Preparedness for REDD+ in Zambia

Country Study

November 2011



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Abbreviations and Acronyms

BDS	Benefit distribution system
CBNRM	Community-Based Natural Resource Management
CCFU	Climate Change Facilitation Unit
CDM	Clean Development Mechanism
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COP	Conference of the Parties
DIP	Decentralization Implementation Plan
EIA	Environmental impact assessment
EMA	Environmental Management Act No. 12 of 2011
ERB	Energy Regulation Board
GHG	Greenhouse gas
GMA	Game Management Area
GRZ	Government of the Republic of Zambia
ICCPR	International Covenant on Civil and Political Rights
ICECSR	International Covenant on Economic, Cultural and Social Rights
IUCN	International Union for Conservation of Nature
JFM	Joint Forest Management
LDC	Least Developed Country
MACO	Ministry of Agriculture and Cooperatives
MEWD	Ministry of Energy and Water Development
MOFNP	Ministry of Finance and National Planning
MTENR	Ministry of Tourism, Environment and Natural Resources
MRV	Monitoring, Reporting and Verification
M&E	Monitoring and Evaluation
NCCRS	National Climate Change Response Strategy
NCCDC	National Climate Change Development Council
Draft NFP	Draft National Forestry Policy of 2010
NPD	National Programme Document
NGO	Non-governmental organization
PSRP	Public Service Reform Programme
PSDRP	Private Sector Development Reform Programme
Ramsar	Convention on Wetlands
REDD+	Reducing emissions from deforestation and forest degradation, sustainable management of forests and conservation and enhancement of forest carbon stocks
SPCR	Strategic Programme for Climate Resilience
SEA	Strategic environmental assessment
UNCBD	United Nations Convention on Biological Diversity
UNCCD	United Nations Convention to Combat Desertification
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
ZDA	Zambia Development Agency
ZESCO	Zambia Electricity Supply Corporation
ZAFFICO	Zambia Forestry and Forest Industries Corporation

Executive Summary

This report on Legal Preparedness for REDD+ constitutes one of three Country Studies conducted in Zambia, Vietnam and Mexico to review existing laws and institutions relevant to REDD+ at the domestic level. It seeks to identify and analyze challenges and innovations for REDD+ implementation with the ultimate aim of drawing generic options and recommendations to support REDD+ countries in strengthening capacity. Laws and institutions not only prohibit or incentivize but they also provide an overall enabling framework that guides public and private sector activities toward desired ends. They can thus eliminate challenges to REDD+ activities, promote social and environmental co-benefits as well as improve overall implementation by enabling positive steps toward new low-emission pathways. This is particularly important for countries motivated to mitigate climate change by reducing emissions from deforestation and forest degradation without compromising the essential ecosystem services that forests provide to the economy and local livelihoods.

The strong need for Legal Preparedness for REDD+ has been highlighted in recent years with gains made in the international community as to what a future REDD+ mechanism may entail. The Cancun Agreements reached at the 16th Conference of the Parties to the United Nations Framework Convention on Climate Change set out a basic framework for REDD+ activities, guidance and safeguards, which form the analytical foundation for these Country Studies. This is supplemented by an increasing wealth of sources on the legal and institutional aspects of REDD+ from experts in law, governance and natural resource sectors across the world. Building on those prior sources, it is hoped that the current project will identify key messages for country policy-makers based on lessons learned through the review of laws, policies and regulations and multi-stakeholder consultations at the domestic level.

The results of this Country Study on Legal Preparedness for REDD+ in Zambia underscore the cross-sectoral and multi-jurisdictional nature of REDD+ implementation. Although it is of primary significance, REDD+ not only concerns the forestry sector but also crosscutting issues of land tenure, land use planning, protected areas, easements, land acquisitions, and trade and commerce as well as sectoral laws concerned with the drivers of deforestation and forest degradation, such as energy, agriculture and mining. The breadth is wide because laws create rights, responsibilities and hierarchies in interests that affect issues such as carbon ownership and use, the risk of reversals and displacements, participatory decision-making, results-based benefit distribution, and incentives to relieve forests of services that can be substituted with low-emission alternatives.

Furthermore, the review of laws and institutions in those sectors in this Country Study suggests that Zambia may face the following key challenges in implementing REDD+ activities, guidance and safeguards, while also noting several in-country innovations, *inter alia*:

Key Challenges to Legal Preparedness for REDD+ in Zambia

- 1. Equitable and secure land tenure:** Land tenure defines the right to own, use and transfer the lands on which forests are situated. The nature of rights over land can have a bearing on a number of issues for the success of REDD+ activities. It is important that land tenure is both equitable and secure to enhance social benefits to land owners and users,

reduce the risks of conflicts and promote transparent and accountable monitoring and reporting on carbon reductions.

2. Clarity and coherence of laws and institutions related to REDD+: Clarity and coherence across government actors, civil society and the private sector are necessary to address the drivers of deforestation and forest degradation and implement mitigation activities in a manner that provides adequate substitutes for unsustainable practices without compromising human needs. Gaps and conflicts in and among institutional mandates may result in the absence of action, duplication of efforts or cancelling out of positive initiatives. Coordination across sectors can support incentives to relieve the pressure on forests for ecosystem services, such as alternative energies and sustainable agriculture.

3. Regulation of the charcoal industry for effective REDD+ implementation: Charcoal is one of the primary drivers of deforestation and forest degradation in Zambia, is a source of energy and is a flourishing industry providing employment along the production and supply chain. Addressing certain drivers may be very challenging where they not only relate to the subsistence of local communities but also the national economy, whether formal or informal. Legal and institutional arrangements for REDD+ should realistically reflect its relative importance to the economy and consumers, and the capacity for the country to provide substitutes in the immediate- to long-term.

4. Benefit distribution systems that are equitable and results-based: Benefit distribution systems enhance the social benefits of REDD+ activities for communities directly involved in REDD+ activities for poverty reduction and sustainable development. They also provide the foundation for effective implementation and permanence by incentivizing activities that sequester carbon and limit or reduce emissions through results-based payments or other non-monetary benefits.

Innovative Laws and Institutions for Legal Preparedness for REDD+

5. Responsive national forest governance systems: Zambia's draft National Forest Policy of 2010 (NFP) was developed in parallel with the country's preparation for REDD+ readiness under the UN-REDD Programme. The NFP is a national scale policy for forest governance that embeds REDD+ activities, guidance and safeguards into its objectives, strategies and measures. The NFP has been translated into a Bill for a new Forests Act, which will add detail to the broader policy framework with specific targets and commitments to be grounded at a later stage in derivative legal instruments.

6. Decentralized decision-making and two-way information systems: The Zambia Strategic Programme for Climate Change Resilience builds into current development plans an innovative social and financial infrastructure for climate change adaptation that could be an institutional model for REDD+ implementation. It allows communities to act as key stakeholders in early-warning systems, joint decision-making and implementation of resource management that relies on enhanced information systems and financial distribution mechanisms.

7. Incentivizing private and public investments: The Zambia Development Agency (ZDA) has wide-ranging powers to make recommendations to reconcile legal and institutional frameworks for fiscal incentives as well as provide non-fiscal support to investors. The ZDA has already made significant gains in eliminating barriers to business investments, generally, and has shown marked interest in areas of sustainable development that affect REDD+ implementation across key sectors through tax exemptions and pricing tools for renewable and alternative energies and agriculture.

As in many other countries, preparations for REDD+ in Zambia are young. Zambia does not yet have a stand-alone REDD+ strategy or action plan. When it does have such a strategy or action plan, Zambia will still have to contend with existing laws and institutions that impact REDD+ implementation. This Country Study was based on a variety of generic legal instrument options to implement REDD+ drawn from a wealth of sources in the international community. Nevertheless, Zambia could still benefit from further country-driven research and assessment, technical assistance and capacity building. Those three needs are frequently associated with the scientific aspects of REDD+, such as forest reference emission levels and verification of carbon sequestration. However, this Country Study and feedback from multi-stakeholder consultations conducted thereon demonstrate that they also have distinctive legal aspects. In sum, next steps in REDD+ preparations in Zambia or elsewhere could consider how those three needs are met for legal and institutional frameworks so as to ensure both equality and effectiveness in REDD+ implementation.

1 Introduction

Zambia has approximately 50 million hectares (ha) of forests covering 66.4% of its total land area. Forests are one of its most important natural resources and contribute directly to peoples' livelihoods. Forest dependent communities rely on them for sustenance, medicine and culture, as do urban populations who heat their homes and cook with biomass energy. However, Zambia has an estimated deforestation rate of between 250,000 to 300,000 ha per year; this is rapidly depleting forest services and compromising regeneration. Deforestation and forest degradation also contribute to the emission of GHGs and decrease global carbon sequestration. Therefore, with climate change as an immediate concern of international magnitude, Zambia has committed to redirect the sector toward long-term sustainability.ⁱ

Zambia is one of 13 pilot countries that benefits from the UN-REDD Programme, which endeavours to prepare developing countries for a future REDD+ mechanism that will create a financial value for the carbon stored in forests. At COP16 to the UNFCCC, the international community made significant gains in elaborating what such a mechanism may entail. The resulting Cancun Agreements set out a basic framework for REDD+, which has been identified as including three key elements: mitigation activities, guidance on how they should be undertaken and safeguards. They also contain provisions for the phases and manner in which REDD+ activities should be developed as well as requirements for monitoring, reporting and information systems.ⁱⁱ REDD+ activities may include those described at paragraph 70 of the Cancun Agreements—namely, reducing emission from deforestation and forest degradation, sustainable management of forests, and conservation and enhancement of forest carbon stocks (REDD+ activities). Additionally, the guidance provisions at Annex I to the Cancun Agreements form an integral part of the whole and require that REDD+ activities are, *inter alia*, country-driven, consistent with sustainable development needs and results-based. The safeguards for REDD+ found in the same Annex similarly state that the following should be promoted and supported, *inter alia*, transparent and effective national forest governance structures, respect for the knowledge and rights of indigenous peoples and members of local communities, actions to address the risks of reversals and actions to reduce the displacement of emissions.

Notably, the Cancun Agreements also request that countries develop and implement national REDD+ strategies or action plans that address the drivers of deforestation and forest degradation at the same time as they “enhance other social and environmental benefits [...] taking into account the need for sustainable livelihoods of indigenous and local communities and their interdependence on forests in most countries.”ⁱⁱⁱ The drivers of deforestation and forest degradation in Zambia are currently understood to primarily result from the consumption of charcoal and wood fuel for domestic, commercial and industrial use; agricultural expansion of low-yield smallholder farms; and timber extraction.^{iv} While empirical evidence is being gathered to better comprehend those drivers,^v it is clear that Zambia's economy is highly intertwined with essential services that forests provide, such as energy and food. The drivers of deforestation and forest degradation also provide a significant source of employment and revenue at local and national levels along the production and supply chain. Consequently, it has been recognized that REDD+ will ultimately require “fundamental changes in the economy and the development path,” and any measures for REDD+ will be required not to compromise livelihoods.^{vi} This increases the challenge to developing countries, and those who support them, to at once guarantee climate change mitigation as well as improved social benefits to local and national stakeholders. Moreover, it highlights the necessity of an appropriate regulatory mix to incentivize, enforce and otherwise guide public and private sector activities toward REDD+ desired ends.

The purpose of this Country Study is to review existing laws and regulations relevant to REDD+ in Zambia in order to identify and analyze legal challenges and innovations for REDD+ implementation. Ultimately, the project aims to draw generic options and recommendations to support REDD+ countries in strengthening their legal and institutional capacity. The Country Study is organized in several Parts. After this Introduction, Part 2 discusses the importance of legal preparedness for REDD+ and introduces the analytical framework used herein to identify key challenges and innovations in Zambia's legal and institutional framework, which is located at **Annex 1**. Part 3 situates REDD+ within Zambia's general governance framework, including its development goals, decentralized administration and laws for public participation and access to information. Part 4 reviews a wide range of existing laws and institutions in Zambia that have a bearing on REDD+ implementation, including land tenure, land use planning, energy and electricity, and trade and investments, among others. Part 5 draws out key challenges to legal preparedness for REDD+ in Zambia, focusing on those most pertinent to the Cancun Agreements and REDD+ activities, guidance and safeguards. Before the Conclusion at Part 7, the final Part 6 reveals certain of the innovative legal and institutional reforms that are presently underway in Zambia that may affect REDD+ implementation, such as the draft National Forestry Policy of 2010.

2 Importance of Legal Preparedness for REDD+

2.1 Laws and institutions for REDD+ design and implementation

The Government of the Republic of Zambia (GRZ) has dedicated one component in its UN-REDD Programme National Programme Document (NPD) to strengthening the national governance framework for the implementation of REDD+, including the reform of related institutional, legal and financial mechanisms.^{vii} The objective of that component is reinforced by Zambia's review of the existing legal context for REDD+, which reveals both that "forest management in Zambia has not been effective" and that "some of the outcomes of policies in other sectors provide perverse incentives for deforestation and forest degradation."^{viii} Zambia faces significant challenges in creating the right regulatory mix to reduce deforestation and forest degradation and undertake other REDD+ activities. However, it is certainly not unique in that respect. The Cancun Agreements provisions on REDD+ are new, even still evolving, and many domestic legal regimes were created prior, without REDD+ strategies in mind. Nonetheless, an enabling legal and institutional framework is a prerequisite to effective REDD+ implementation.

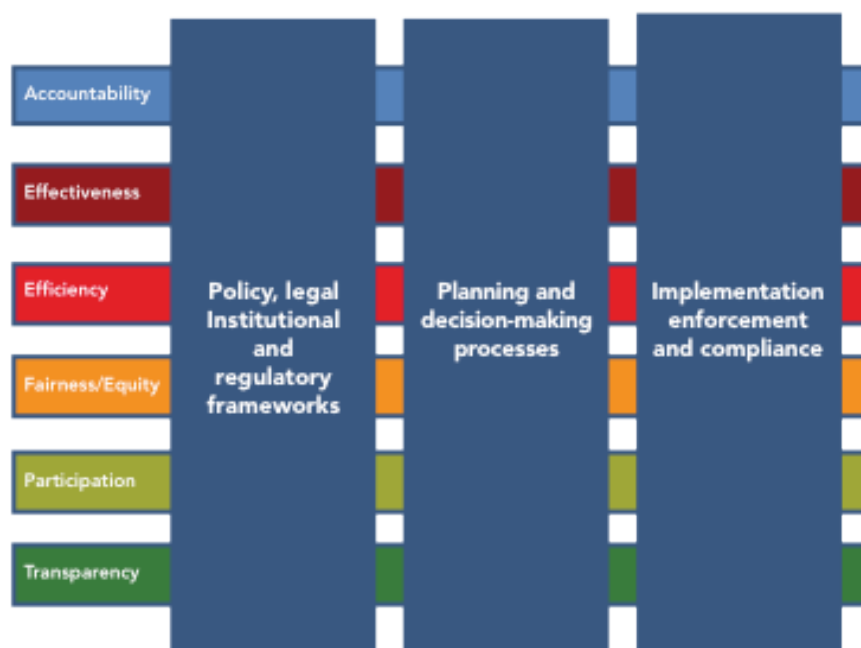
Laws are often mistaken for the "stick" over the "carrot." They are, however, capable of both functions and more. Laws and institutions not only prohibit or incentivize but they also provide an overall enabling framework that guides public and private sector activities toward desired ends. They can thus eliminate barriers to REDD+ activities, promote social and environmental co-benefits as well as improve overall implementation by enabling positive steps toward new low-emission pathways across relevant sectors. The term "laws" is meant inclusively herein to encompass "soft" and "hard" legal instruments that fall along a spectrum of precision, delegation and obligation, such as government policies, legislation and regulations.^{ix} Laws have many functions for REDD+ preparedness. They furnish government actors with jurisdictional mandates, delineate public and private rights and responsibilities, create project-level programmes and implement fiscal policies that engage investors. As this Country Study concerns Legal Preparedness for REDD+, the term "institutions" is restricted herein to legally backed customs, behavioural patterns and rules that are implemented by public and traditional administration systems.^x Laws and institutions can thus have a neutral, inhibitive or facilitative effect on REDD+ implementation and are integral to the preparatory process.

2.2 Legal Preparedness for REDD+ Reference Tool

This review and analysis of Legal Preparedness for REDD+ in Zambia was conducted using a Reference Tool that was designed to identify concrete legal and institutional instruments that may be conducive to fulfilling the requirements of the REDD+ activities, guidance and safeguards found in the Cancun Agreements. That Reference Tool, located at **Annex 1**, is not comprehensive and may not be applicable to each country. Nor is it meant to provide precise indicators for data collection and assessment since any such criteria are highly contextual and should be tailored to the country based on REDD+ strategies.^{xi} Instead, the Reference Tool seeks to set out a variety of generic legal and institutional options available to policy makers in planning and implementing REDD+ activities. As such, it provided a foundation for a broad-based gap analysis through which the laws and institutions examined in this Country Study were identified for key challenges and innovations.

The generic legal instrument options for implementing REDD+ activities, guidance and safeguards contained in the Reference Tool are reproduced from documented recommendations found in a wealth of sources. For instance, one source, the UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)*, identifies policy, legal, institutional and regulatory frameworks as one of the three pillars of REDD+ governance. There, “REDD+ governance is assumed to refer to the oversight of all institutions, policies and processes that a country has in place at national and subnational levels to implement REDD+.”^{xii} **Figure 1** illustrates the pillars and principles that characterize good governance under that model. The pillars of good governance for REDD+ occur simultaneously and hence all contain legal and institutional considerations underpinned by the key principles: accountability, effectiveness, efficiency, equity, participation and transparency. Relevant elements of those pillars that have been incorporated into the Reference Tool as legal instrument options include, *inter alia*, clarity and coherence of laws and institutional mandates across sectors impacting REDD+, such as forestry, land use and trade and investment; full and effective stakeholder participation in the design of policies relating to REDD+; and accessibility, fairness and independence of grievance mechanisms.^{xiii}

Figure 1: Pillars and Principles of Good Governance for REDD+



(UN-REDD & Chatham House, 2011)

Additional key sources from which specific legal instrument options were documented in the Reference Tool include the FAO and Profor, *Framework for Assessing and Monitoring Forest Governance*; IUCN, *Legal Frameworks for REDD: Design and Implementation at the National Level*; Baker & McKenzie and Covington & Burling LLP, *Background Analysis of REDD Regulatory Frameworks*; and ICV, Imazon and WRI, *The Governance of Forests Toolkit (v.1)*.^{xiv} As illustrated in the table at **Annex 1**, however, the primary source for the Reference Tool is the Cancun Agreements themselves, which contain numerous provisions that can be grounded in a range of concrete legal instruments. **Figure 2** summarizes select provisions of the Cancun Agreements, which are reproduced in the Reference Tool along with correlated legal instrument options. The Reference Tool should be referred to as desired by the reader for informational purposes in reviewing this Country Study.

Figure 2: Summary Cancun Agreements Provisions for Legal Preparedness for REDD+

- | | |
|--|---|
| <ul style="list-style-type: none"> • Ensure that REDD+ activities are used to enhance other social benefits • Fully respect human rights • Address the drivers of deforestation and forest degradation • Develop a national REDD+ strategy or action plan • Develop national forest reference emission levels and/or forest reference levels • Develop national MRV systems • Develop information systems on how the safeguards are addressed and respected • Promote and support transparent and effective national forest governance structures, taking into account national legislation • Address land tenure issues • Address gender considerations • Promote and support actions to address the risk of reversals | <ul style="list-style-type: none"> • Promote and support actions to reduce the displacement of emissions • Promote and support multiple forest functions • Undertake activities consistent with national sustainable development needs and goals • Promote and support that actions complement or are consistent with international agreements • Promote and support that actions complement or are consistent with national forest programmes • Undertake activities to be consistent with adaptation needs • Undertake activities that are results-based • Promote and support the knowledge and rights of indigenous peoples and local communities • Promote and support the full and effective participation of relevant stakeholders in para. 70 activities and developing and implementing national REDD+ strategies or action plans |
|--|---|

2.3 Breadth of laws and institutions reviewed

This Country Study reviews laws and institutions that have a bearing on REDD+. Therefore, not only is the forest sector considered but also crosscutting issues of land tenure, land use planning, protected areas, easements, land acquisitions, and trade and commerce as well as sectoral laws concerned with the drivers of deforestation and forest degradation, such as energy, agriculture and mining (see **Annex 2 “Government of Zambia Laws Reviewed”**). The breadth is wide because laws create rights, responsibilities and hierarchies in interests that affect issues such as carbon ownership and use, the risk of reversals and displacements, participatory decision-making, and results-based benefit distribution. Gaps and conflicts in institutional mandates may also result in the absence of action, duplication of efforts or cancelling out of positive initiatives where actors work at cross-purposes.

Zambia does not yet have a stand-alone REDD+ strategy or action plan and the existing laws are the only information on which to consider its legal preparedness. When it does have such as strategy or action plan, Zambia will still have to contend with laws and institutions that impact REDD+ because coordination across government actors, civil society and the private sector is necessary to address the drivers of deforestation and forest degradation and implement mitigation activities in a manner that provides adequate substitutes for unsustainable practices without compromising human needs. Consequently, the importance of laws and institutions for the success of REDD+ implementation necessitates review across all related sectors.

In conducting such a review, it is important to bear in mind the spectrum of domestic legal instruments with their respective processes of origination, precision, delegation and enforceability. Those elements influence the appropriateness of laws and institutions in a given circumstance insofar as they determine with what ease a particular instrument can be created or modified and to what extent it can be successfully implemented.^{xv} In Zambia the predominant legal instruments are the Constitution, National Policies, Acts of Parliament and Statutory Instruments. The Constitution is the supreme law of the country and sets out the respective jurisdictions of public and traditional administrations, including the law-making process and fundamental principles that govern the relationship of the State to the population. As such, the Constitution informs the enactment and interpretation of all other laws and can be amended only where two-thirds of the National Assembly votes in favour.^{xvi}

National Policies are formulated by Cabinet and constitute a formal legal instrument in Zambia.^{xvii} They set out broad objectives, thematic areas and mobilization goals to guide the formulation of other legal instruments such as Acts of Parliament. It is customary practice in Zambia that legal instruments in a particular thematic area cannot be proposed without a corresponding and overarching National Policy. However, National Policies rarely contain targeted commitments or action items. Acts of Parliament are legislatively backed laws enacted when the majority of members of the National Assembly support a Bill through several readings.^{xviii} The most malleable legal instruments in Zambia are Statutory Instruments such as Regulations. Statutory Instruments are subsidiary laws that are developed by actors with authority delegated pursuant to Acts of Parliament.^{xix} Statutory Instruments are often used to create specific programs or action areas because they require no or little Parliamentary consideration and provide streamlined law-making processes that can evolve quickly in response to unforeseen exigencies. The derivative nature and flexibility of Statutory Instruments does, however, mean that they must be entirely consistent with and only relate to their source, cannot trump Acts of Parliament and can be easily repealed or amended as required.

3 Situating REDD+ within Zambia's Governance Framework

3.1 Overview

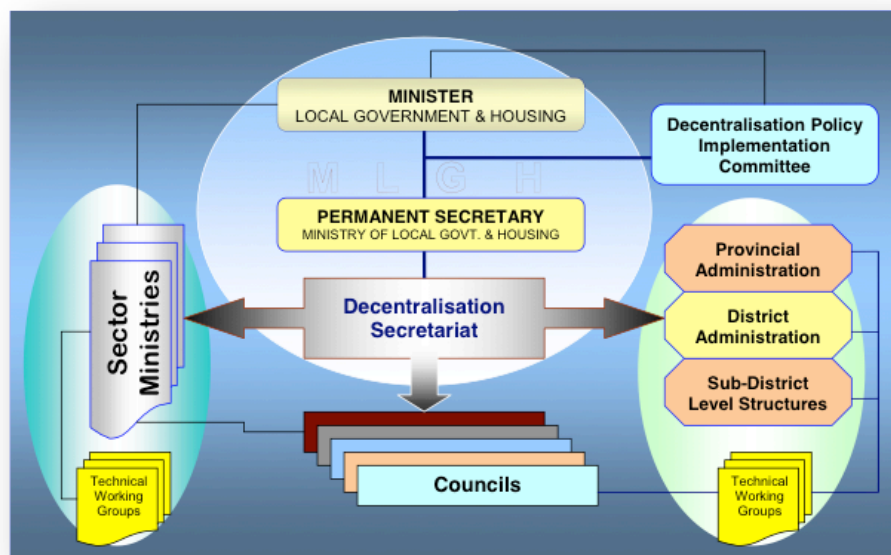
Part 3 of this Country Study situates REDD+ within Zambia's broader governance framework with an emphasis on issues raised in the Cancun Agreements for the REDD+ guidance and safeguards such as, *inter alia*, national development priorities, objectives and circumstances; human and indigenous rights; and public participation in REDD+ development and implementation. Accordingly, the Part addresses the following: (s.3.2) Public service reforms and decentralized administration; (s.3.3) Development goals; (s.3.4) International commitments; (s.3.5) Human and indigenous peoples rights; and (s.4.6) Public participation in decision-making and access to information.

3.2 Public service reforms and decentralized administration

The GRZ's decentralized administration framework is enshrined in the Constitution of 1996 and is of the utmost importance to legal preparedness for REDD+ insofar as the Constitution allocates jurisdictional authority across the country.^{xx} In 2002, Zambia adopted its first National Decentralization Policy, which aims to improve the public service through the devolution of power to locally elected authorities. That Policy was developed as a core element of the Public Service Reform Programme (PSRP), which was launched in 1993 along with widespread economic liberalization policies that drastically reduced the budgetary resources of Zambia's centralized government departments and agencies.^{xxi} The GRZ has since enacted legislation that seeks to mainstream the devolution of duties across all sectors, including under the current Sixth National Development Plan (2011-2015) and Revised Decentralization Implementation Plan (2009-2013) (DIP). As a result, any future REDD+ mechanism will have to respond to the jurisdictional requirements of decentralized administration, whether for benefit sharing distribution systems, forest management plans or enforcement.

The Zambian public administration framework is divided into the Central Government, Provincial and District Administration and City, Municipal and District Councils. Zambia counts 9 Provinces and 73 Districts, within which there are Councils dispersed across 4 Cities, 14 Municipalities and 54 Districts. The Central Government consists of ministries and their agencies with the Provincial and District Administration providing extension services for coordination and monitoring to the lower levels. Councils operate under the direct oversight of the Ministry of Local Government and Housing pursuant to the Local Government Act of 1991 (**Figure 3**). Councils deliver a broad range of services from housing, land use planning, social development, and water and sanitation, and they are the primary actors for on-the-ground implementation of national policies. In turn, Councils are assisted by Area Development Committees that represent community concerns through local ward councilors.^{xxii}

Figure 3: Government of Zambia Decentralized Authority to the Council Level



(GRZ, Decentralization Implementation Policy 2009-2013)

Councils frequently experience difficulties in executing their duties for reasons including financial and human resource scarcities as well as sectoral legislation that has not yet been amended to correspond to their

jurisdiction.^{xxiii} In order to overcome those barriers, the DIP seeks to increase the authority, capacity and accountability of Councils.^{xxiv} This includes creating appropriate legal and institutional structures by reviewing existing laws, policies and regulations to enact changes that ensure compatibility between decentralized mandates and national laws. The DIP remarks:

The current policies and pieces of legislation governing the operations of the public service, in general, and the sector Ministries/departments, in particular, were developed without devolution but with deconcentration in mind. Some of them are at variance with the requirements of devolution as enshrined in the Decentralization Policy... The policies and sectoral laws conflicting with the Decentralization Policy must be identified and reformed accordingly to achieve a supportive legal framework for decentralization.^{xxv}

The Fifth and Sixth National Development Plans support that objective of the DIP by emphasizing the requirement for sectoral policies, in particular, to adapt by allowing functions to flow down to the District level. For those, and perhaps other reasons, the years 2009-2011 have seen a number of legal and institutional reforms, including in sectors that are related to REDD+ as in the draft Forestry Policy of 2010, Environmental Management Act of 2011, Water Resources Management Act of 2011, and draft Urban and Regional Planning Bill of 2009. Newly emerging climate change institutional frameworks, that could include REDD+ as one thematic area, have similarly incorporated decentralized administration with two-way information sharing and decision-making, and localized implementing agencies (see **Section 6.3**).^{xxvi}

In addition to the abovementioned political administration that ends at the ward level, there is also a strong traditional administration system in Zambia. The traditional administration is constituted of 73 tribes headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs, who delegate rights and responsibilities within their jurisdictions. Chiefdoms are typically located on customary lands and the political administration often has little authority over traditional administration or, in the least, must engage in consultations before undertaking many activities (discussed further below).^{xxvii} The traditional administration is guaranteed by the Constitution,^{xxviii} is a formal arm of the GRZ and must be respected in the establishment and execution of REDD+ projects as a legal requirement.

3.3 Development goals

The Cancun Agreements state that REDD+ activities should be undertaken in accordance with national development priorities, objectives, circumstances and capabilities and should be consistent with sustainable development needs and goals.^{xxix} Zambia was recently assigned middle-income ranking by the World Bank; however, it is an LDC that still shows significant disparities in the distribution of wealth and basic social benefits, particularly as between urban and rural areas, where REDD+ activities will occur. Therefore, while Zambia has partially achieved its long-term development strategy under Vision 2030 to become “a prosperous middle income nation by 2030,”^{xxx} there are still significant gains to be made. Vision 2030 was enacted as a long-term plan to provide coordination for all sectors. Zambia’s long-term goals of relevance to REDD+ include creating a climate to attract investors, strengthening infrastructure and accountability of public finance, enforcing labour laws and “ensuring the equitable distribution of wealth in a society whose members have property rights, access to adequate and affordable housing, safe and clean water and proper sanitation.”^{xxxi}

The mid-term Sixth National Development Plan (2011-2016) (SNDP) proposes objectives relevant to REDD+ such as social infrastructure development for decentralized governance institutions to enhance delivery; expansion of

electricity availability and improved sustainability of biomass energy to alleviate charcoal consumption; increased agricultural productivity and; securing improved market access for locally produced goods and services through value addition. The SNDP objectives also comprise general objectives to reduce poverty and increase access to basic services. More directly affecting Legal Preparedness for REDD+ are its objectives to review existing legislation to address emerging issues on climate change; strengthen laws for environmental management across sectors; and improve regulation of the forestry sector.^{xxxii}

3.4 International commitments

The Cancun Agreements promote and support that REDD+ activities complement or are consistent with the objectives of relevant international conventions and agreements.^{xxxiii} Zambia is a signatory to numerous international treaties that may influence how it undertakes REDD+ activities. These feature: (a) the UNFCCC, which includes the Cancun Agreements; (b) the UN Convention on Biological Diversity (UNCBD), which includes work programmes on forest biodiversity; (c) the UN Convention to Combat Desertification (UNCCD), which speaks to the need for Parties to ensure sustainable forest management, afforestation, reforestation and soil conservation; (d) the International Tropical Timber Agreement (ITTA), which enjoins parties to promote sustainable management of tropical timber producing forests; and (e) Ramsar, which supports conservation of nature reserves for forested wetlands. Zambia is also a signatory to human, indigenous and women's rights treaties that may inform the social aspects of REDD+ activities, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Cultural and Social Rights (ICECSR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Labour Organization Convention No. 169, the African Charter on Human and Peoples Rights, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination and the Universal Declaration of Human Rights. In terms of further "soft law" guidance over these matters, Zambia has also adopted the the 1992 Rio Declaration of the UN Conference on Environment and Development, the 2002 Johannesburg Declaration and Plan of Implementation of the World Summit on Sustainable Development, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which although non-binding unlike treaties, can, under the doctrine of legitimate expectations, guide the country's steps in this realm of law and policy and be used as an assessment standard.

3.5 Human and indigenous peoples' rights

The Cancun Agreements emphasize that Parties should fully respect human rights in all climate change actions. Furthermore, they safeguard the knowledge and participation of local communities and indigenous peoples in planning and undertaking REDD+ activities.^{xxxiv} Zambia's accession to numerous international treaties, mentioned above, also gives guidance as to how its REDD+ activities must comply with human rights obligations. The Bill of Rights recognizes that every person is entitled to fundamental rights and freedoms of the individual, whatever his race, place of origin, political opinions, colour, creed, sex or marital status. This includes the protection "from deprivation of property without compensation," albeit with a list of 27 exceptions.^{xxxv} Articles 12 to 31 further capture some of the basic human rights contained in its international commitments, such as the right to life, freedom of association and freedom of expression. The Constitution also recognizes as two Principles of State Policy that the "State shall endeavor to provide clean and safe drinking water" and "shall strive to provide a clean and healthy environment for all."^{xxxvi} The Environmental Management Act of 2011 (EMA) also creates the "right to a clean, safe and healthy environment."^{xxxvii} Three areas of human rights that merit increased attention in Zambia,

including for REDD+ projects, are the equal treatment of women, youth and persons living with HIV/AIDS. The Human Rights Commission that investigates violations and maladministration of justice in Zambia has reported breaches in these areas in recent years.^{xxxviii} The SNDP and recent GRZ sectoral policies and legislation habitually note gender, youth and HIV/AIDS as crosscutting issues that must be addressed in implementing the law.

As the UN General Assembly has done, Zambia has adopted the soft law UNDRIP and the 1992 Rio Declaration. Zambia is also a signatory to the ILO Convention No. 169. Those treaties contain important provisions to protect the property, culture, laws and institutions of indigenous peoples, including rights against relocation and for free, prior and informed consent (FPIC).^{xxxix} At the domestic level, pursuant to the Constitution of 1996, Chiefs, and traditional and cultural leaders, enjoy guaranteed governance roles, including “such privileges and benefits as may be conferred by the Government and the local government or as that leader may be entitled to under culture, custom and tradition.”^{xl} Pursuant to the Constitution, one Principle of State Policy includes that the “State shall take measures to promote the practice, enjoyment and development by any person of that person’s culture, tradition, custom and language.”^{xli} Furthermore, indigenous rights to land and natural resource management are reflected in the Lands Act of 1995, which recognizes customary tenure and prior consent of the Chief in cases of alienation. As with other property, the Constitution protects customary lands from compulsory possession and acquisition without compensation.^{xlii} (For more customary land tenure, see **Section 4.3 “Land use, ownership and management”**) Lastly, the Constitution expressly prohibits discrimination on the grounds of race, tribe, colour or creed, and allows positive discrimination in exempting the application of general laws to “members of a particular race or tribe” where customary law applies.^{xliii}

3.6 Public participation in decision-making and access to information

The Cancun Agreements safeguard the full and effective participation of relevant stakeholders, particularly local communities and indigenous peoples, in developing and implementing national REDD+ strategies or action plans. In addition, they call for transparent national forest governance structures and systems of information on how the safeguards are being addressed and respected.^{xliv} Public participation in decision-making and access to information are also essential to the law making process and can be encouraged through the development of management structures that encourage stakeholder engagement. A variety of legal tools can be used for this purpose as indicated in **Annex 1**, including clearly defined and enforceable rules on levels, timing and mechanisms for stakeholder participation; consultations in project design and implementation for the broader public audience; and accessible and enforceable access to information rules for all applications, EIAs, SEAs, project documents, laws and institutional mandates affecting REDD+ activities.

Several international agreements to which Zambia is a signatory define the manner in which it must engage stakeholders in decision-making and provide transparent, timely and accurate access to information. For instance, the ICCPR stipulates that every citizen shall have the right and opportunity to participate, without distinction and without unreasonable restrictions, in the conduct of public affairs, directly or through freely chosen representatives.^{xlv} The UNDRIP also confers on indigenous peoples the right to choose the modalities of participation and the right to participate fully “through representatives chosen by themselves in accordance with their own procedures.”^{xlvi} A number of other treaties recognize participatory approaches specific to environmental decision-making, such as the UNCCD, the UNCBD and the Ramsar Convention.^{xlvii} The Rio Declaration also sets out principles of access to information, participatory decision-making and access to justice in environmental

matters.^{xlviii} Furthermore, Agenda 21 specifies the need of individuals, groups, and organizations to be consulted in EIA processes.^{xlix}

The recently enacted Environmental Management Act of 2011 channels Zambia’s international obligations for public participation and access to information at the domestic level. The EMA begins with a statement of principles, which include that “the people shall be involved in the development of policies, plans and programmes for environmental management” and “the citizen shall have access to environmental information to enable the citizen [to] make informed personal choices...”ⁱ With respect to SEAs and EIAs, the National Policy on Environment of 2007 states that EIAs must be made public and under the EMA, the Minister may regulate the information to be provided as well as procedural requirements for public hearings.ⁱⁱ During 2011-2012, the Environmental Management Agency (Agency) must also develop a Central Environmental Information System that will consolidate all environmental information within sectoral ministries and establish guidelines for gathering, processing and disseminating environmental information, including all policies, regulations, reports, environmental strategies, and other information relating to the environment published by the MTENR or the GRZ.ⁱⁱⁱ Access to information for the public will be promoted through knowledge-sharing techniques such as publication of information in the Central Environmental Information System, public information and education campaigns, and the integration of environmental matters in learning institutions.ⁱⁱⁱⁱ The Minister must also prescribe under a Statutory Instrument the manner in which the “right” to participation in decision-making on policies, strategies, plans, programmes, laws and regulations will be ensured, including through public review of documents and public hearings.^{liv} The National Policy on Environment of 2007 aims to “integrate local representatives into the decision-making process in order to empower local communities in the management of natural resources”^{lv} and Zambia has implemented several programmes for community-based natural resource and forest management, which are discussed in **Sections 4.3.7 “Protected areas and community-based natural resource management” and 4.4.4 “Joint Forest Management.”**

The enactment of the EMA is still fresh and public participation and access to information in the context of government policy making is still closely controlled. In Zambia, stakeholder consultations are held in advance of the drafting of National Policies, Acts of Parliament and Statutory Instruments. Draft National Policies are then submitted to targeted stakeholder and expert review prior to submission to the Cabinet. Acts of Parliament are first translated into a layman’s version, which is released prior to consideration by the National Assembly. Only when a Bill is before Parliament does it become available for public viewing in full form. Lastly, regulatory Statutory Instruments are established in streamlined procedures at the ministerial level but must be accompanied by an explanatory memorandum to assist the scrutiny of the Committee on Delegated Legislation, which confirms that statutory authority is used appropriately. All laws are published in the Zambia Gazette in hardcopy.^{lvi} The legislative process has been critiqued by stakeholders and civil society organizations as largely exclusionary and inaccessible. A draft Freedom of Information Bill was tabled before the National Assembly in 2002 but later withdrawn.

4 Review of Existing Laws and Institutions Impacting REDD+

4.1 Overview

Part 4 of this Country Study reviews a wide range of existing laws and institutions in Zambia that are most pertinent to REDD+, including land tenure, land use planning, energy and electricity, and trade and investments, among others. Those laws and institutions are intimately connected to REDD+ and to each other insofar as they

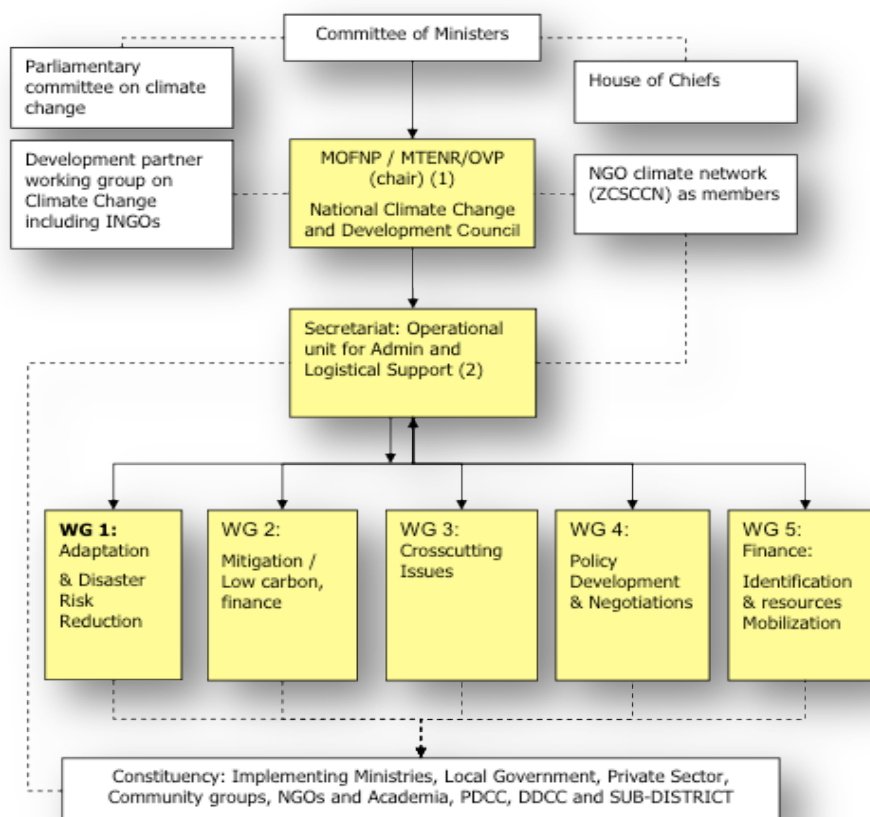
may challenge or enable the success of REDD+ activities, guidance and implementation. For instance, land tenure laws affect rights to own, use and transfer forested lands that may be subject to REDD+ activities; the regulation of the energy sector may prohibit or enable actions to address charcoal production as a driver of deforestation and forest degradation, including through the promotion of alternative energies; and trade and investment laws may serve to incentivize new investments in agricultural practices that increase sustainable management of forests. Accordingly, this Part examines laws and institutions falling within the following overarching categories: (s.4.2) Climate change strategies; (s.4.3) Land use, ownership and management; (s.4.4) Forestry; (s.4.5) Integrated environmental management; (s.4.6) Energy and electricity; (s.4.7) Trade, investment and financial accountability. Various gaps, barriers, challenges and opportunities will be briefly mentioned throughout, leaving an in-depth analysis of key challenges and innovations to **Sections 5 “Key Challenges to Legal Preparedness for REDD+” and 6 “Innovative Laws and Institutions Impacting REDD+.”**

4.2 Climate change strategies

The Cancun Agreements were reached in the context of the UNFCCC with REDD+ as one measure to reduce emissions that contribute to climate change in the forestry sector. Moreover, the Cancun Agreements explicitly request that REDD+ activities be implemented in the context of sustainable development while responding to climate change, including through consistency with the adaptation needs of a country. Planning for the National REDD+ Strategy in Zambia is proceeding in parallel with the National Climate Change Response Strategy (NCCRS).^{lvii} The NCCRS has been finalized by the Climate Change Facilitation Unit (CCFU) of the MTENR and is being drafted into Bill form to be approved by Cabinet as a National Climate Change Policy. The NCCRS currently proposes three models for coordinated climate change governance and an inter-ministerial Steering Committee has been called upon to negotiate a conclusive determination. Although the UN-REDD focal point is located in the Forestry Department, separate from the CCFU, according to all sources, it is probable that the Steering Committee will establish a new institutional framework with REDD+ as one of the many climate change activities under the broad oversight of a centralized National Climate Change Development Council (NCCDC) (**Figure 4**).

The MTENR, MOFNP and/or Office of the Vice President may chair the NCCDC. Members of the NCCDC will include representatives of key stakeholder groups and the line ministries, who will be informed by expert working groups and overseen by high-level inter-ministerial and permanent secretary committees. General climate change and REDD+ policies will be approved at the NCCDC level and administered by implementing agencies, such as line ministries and departments down to District Councils, civil society and Chiefdoms. Therefore, the NCCDC model seeks to work from existing institutional mandates and expertise at the implementation stage while also promoting integration of objectives through high-level inter-sectoral policy guidance. As a subset of climate change, various cross-sectoral aspects of REDD+ would be undertaken by the most relevant and capable implementing agencies to address sustainable forestry extension services, alternative energy, agricultural management, and robust and accountable finance distribution systems, as appropriate.

Figure 4: Organizational Chart of the National Climate Change Development Council



(GRZ, Ministry of Tourism, Environment and Natural Resources, National Climate Change Response Strategy, 2011)

Another climate change institutional model, which complements the above and devolves it further, is the proposed Strategic Programme for Climate Resilience (SPCR) for Zambia, financed by the Multi-Donor Strategic Climate Fund. That pilot programme for adaptation to climate change is being implemented by the MOFNP and has designed a participatory decision-making and benefit sharing mechanism for monetary and non-monetary disbursements down to the Sub-District level in 1/3 of all Districts in Zambia.^{lviii} It is suggested in **Section 6.3** that this is an innovative development in decentralized administration that could be used as a model for future REDD+ design and implementation.

4.3 Land use, ownership and management

4.3.1 Overview

Interests in land, including forested land that may host REDD+ activities, are diverse and are often regulated by separate legislative mandates, for instance for agriculture, natural resource management and land use planning. This section will address those laws and institutions with a bearing on land use, ownership and management with the exception of the forestry sector and integrated environmental management for which in-depth reviews are provided at **Sections 4.4 and 4.5**, respectively. Therefore, the below subsections consider the following: Land

tenure (s.4.3.2); Land use planning (s.4.3.3); Mines and minerals (s.4.3.4); Agriculture (s.4.3.5); Easements and land acquisitions (s.4.3.6); and Protected areas and community-based natural resource management (s.4.3.7).

Zambia's Integrated Land Use Assessment

Although it does not properly concern Legal Preparedness for REDD+ at this preliminary stage, it is notable that Zambia in conjunction with FAO conducted an Integrated Land Use Assessment (ILUA) from 2005-2008.^{lix} That assessment imparted essential information on trends across land-based natural resources, albeit through the extrapolation of select samples to the national level. ILUA II, now in progress, endeavors to calculate carbon volumes by tree species as a reliable foundation for national baselines, forest reference levels and/or forest emission reference levels, although calculations for the purposes of additionality may also incorporate historical data and future land use projections, depending on methodologies to be decided by the UNFCCC.

4.3.2 Land tenure

Land tenure can have a grave impact on the effectiveness of REDD+ as it defines the right to own, use and manage the lands on which forests are situated. Clear land tenure arrangements are necessary to enable the identification and accountability of responsible authorities at various levels for decision-making, implementation and enforcement of the law. Moreover, in countries where the exploitation of natural resources is central to livelihoods and the national economy, as in Zambia, REDD+ could increase conflict over land tenure, requiring mechanisms to anticipate and diffuse those scenarios. This section comprehensively reviews Zambia's land tenure regime in relation to REDD+, including sections on: Historical foundations of land tenure; Present *de jure* and *de facto* land tenure; and Registration of tenure. Key challenges posed by the land tenure regime are further considered in **Section 5.2 "Equitable and secure land tenure."**

Historical foundations of land tenure

The legal and institutional framework for land tenure in Zambia straddles a colonial past, sovereignty and contemporary requirements of socio-economic development. The colonial administration appropriated lands from indigenous tenure and segregated them between those entrusted in the Crown (State Lands) and those reserved for Zambians (Reserve and Trust Lands). State Lands were developed for production and export, while Zambian management of Reserve and Trust Lands was relegated to inferior parcels far from access to transport and communications and effectively excluded from marketing infrastructure. Following independence, Zambia inherited that land tenure regime, which is now reflected in the Lands Act of 1995.^{lx} Therefore, as the colonialist administration had centralized the vesting of land in the Secretary of State for colonies, Zambian land continues to vest centrally in the President, as represented by the Commissioner of Lands. The designation of Trust Lands and Reserve Lands was repealed, however, only insofar as they are now collectively customary lands, meaning that there are currently two classes of tenure in Zambia, (1) customary and (2) State.^{lxi}

Present de jure and de facto land tenure

The Ministry of Lands is composed of the Lands Department, Lands and Deeds Department, Lands Tribunal, Survey Department, and Survey Control Board, which carry out functions for land surveying and identification, processing applications for leasehold tenure, registration of title and dispute resolution. In order to meet Zambia's greater decentralization policy, the Ministry of Lands has devolved land administration but only down to the Provincial level and depends on District Councils to process applications for leases and evaluate requests for conversion of customary land.^{lxii} However, capacity is limited and "communication between local and central levels has often been less than optimal."^{lxiii}

Leasehold is the category of land that most resembles private or freehold ownership in Zambia, which was eradicated under the Lands Act of 1995. Leasehold title is available to Zambians on the President's discretion and also to non-Zambians, under certain conditions up to 99 years renewable.^{lxiv} Nevertheless, there are considerable restrictions to leasehold ownership. Firstly, the Commission of Lands cannot alienate any land situated in an area held under customary tenure without taking into account local customary laws and consulting the Chief or, in the case of a Game Management Area, the Director of National Parks and Wildlife Service (see **Section 4.3.7 "Protected areas"**).^{lxv} The Ministry of Lands can also take measures on leasehold plots for the control of settlements, methods of cultivation and utilization of land as is necessary for the preservation of natural resources as well as set aside land for forest reserves, Game Management Areas and National Parks according to a stipulated development and control plans.^{lxvi} Moreover, even where land is possessed under leasehold title, "a person shall not sell, transfer or assign any land without the consent of the President."^{lxvii}

The overriding authority of the Ministry of Lands, including to designate forest reserves and protected areas, could be advantageous to REDD+ should it decide to allocate areas eligible for REDD+ activities. However, it could also be discouraging to private investors seeking a freehold interest in lands for the purposes of REDD+.^{lxviii} In that respect, the registration of land through a Certificate of Title pursuant to the Lands and Deeds Registry Act of 1994 strengthens the leaseholders' rights to land. A Certificate of Title is conclusive and no action for possession, action for recovery or easements can be brought to the detriment of the title-holder.^{lxix} Furthermore, the Land Registrar shall issue a new Certificate for transfer of any interest in land in a streamlined manner where the title-holder submits a prescribed registration of deed transfer form.^{lxx} The Lands Acquisition Act of 1970, which was never repealed, permits the President to compulsorily acquire any class of land with just compensation or resettlement, albeit that "just" compensation may also be no compensation, as where the land is deemed "undeveloped" or "unutilized."^{lxxi} Nevertheless, it has rarely been applied in practice and has been restricted to acquisitions in the national interest.

Currently, approximately 94% of all land in Zambia is held under customary tenure and 29% of the remaining 6% of State Land has been alienated under leasehold (equaling 2%).^{lxxii} It should be noted, however, that those figures are uncertain due to land conversions over recent years and further assessment is needed with a Land Audit planned for the 2012 budget. As indicated above, customary land is occupied by 73 tribes, headed by 240 chiefs, 8 senior chiefs and 4 paramount chiefs. Land allocation is carried out by Chiefs and the headmen of villages through *de facto* management. *De facto* management at the local level does not contain any provisions for the sustainable management of common-pool resources relevant to REDD+ such as agriculture, grazing, energy or other forest-based industries. Therefore, although *de jure* ownership remains vested in the GRZ, there is no formalized system of devolved management rights to the village level and the customary land market is unregulated.^{lxxiii} The Lands Act does contain a catchall provision permitting the Minister of Lands to make regulations for the better carrying out of the Act; however, it has not been used to formalize decentralized land governance in line with *de facto*

practices, which include granting occupancy and use-rights, overseeing transfers, regulating common resources and adjudicating land disputes within communities.^{lxxiv}

Moreover, many have expressed concerns for inequitable *de facto* practices at the local level in the allocation of lands and benefits to women, disabled persons, youth and persons with HIV/AIDS,^{lxxv} which may challenge equitable benefit distribution systems for REDD+ revenues. However, the Lands Tribunal does not have jurisdiction to hear matters arising from customary land management unless the dispute arises as a result of a decision made by the Commissioner of Lands, Minister or the Registrar.^{lxxvi} There is currently a Lands Tribunal Bill that has been brought to Parliament that may extend that jurisdiction to customary land. However, the Constitution expressly permits discriminatory treatment on the basis of attributes such as sex and marital status for the allocation of property.^{lxxvii}

Residents of customary lands can alter the nature of their rights to *de jure* control and thereby increase security of tenure in two ways (1) the conversion of customary to leasehold tenure under the Lands Act and the Lands (Customary Tenure) (Conversion) Regulations or (2) perpetual succession to land through incorporation under the Land (Perpetual Succession) Act.^{lxxviii} In both cases, the Ministry of Lands has noted barriers that inhibit the awarding residents *de jure* control in practice. With respect to conversion to leasehold, the legislation requires that an applicant obtain prior approval of the Chief and local authority before any alienation of land can take place.^{lxxix} This raises concerns with regards to local power imbalances as Chiefs are high in the traditional administration, removed from village communities, not required by the legislation to obtain free prior informed consent (FPIC) or consult lower ranks in the traditional administration or community members, and may also fear the erosion of their power from alienation, thereby placing them in a conflict of interest.^{lxxx} In practice, leasehold conversions are increasing for alienation in and around urban centers as awareness of the value of land and the importance of industrial and infrastructure development spreads. In rural areas, land conversion is less frequent and often takes place at the request of District Councils or private investors, rather than residents. With respect to the second means to convert customary lands to *de jure* control, the Land (Perpetual Succession) Act predates the Lands Act by over two decades and presumes that freehold tenure still exists. Therefore, its validity is questionable.^{lxxxi}

Whether such entitlements to convert customary land to *de jure* ownership would be granted on any given application is debatable but there is a general lack of public knowledge about the above provisions and they are rarely used.^{lxxxii} Moreover, because customary tenure is already seen as legitimate *de facto* ownership of lands in the eyes of customary landholders, many communities do not see the benefit of formalizing title, which could leave them vulnerable to subsequent regulation by land use planning authorities in the political administration (see **Section 4.3.3 “Land use planning”**). On the other hand, without *de jure* leasehold title or clear property rights residents cannot use land as collateral to access capital markets and may encounter difficulties in contracting with international investors for REDD+. Furthermore, the UN-REDD Programme NPD remarks that insecurity in tenure and the lack of clear rights in Zambia:

...presents potential legal obstacles to the benefit distribution system of potential revenues and may lead to communities showing little motivation to invest in REDD+ initiatives and to raise finance from external investors.^{lxxxiii}

Registration of tenure

Registration of tenure through Certificates of Title is not permitted unless land is first converted to leasehold.^{lxxxiv} The Registry of Deeds suffers from a lack of capacity that may dissuade interested private buyers or investors. The Lands and Deeds Registry Act Cap. 185 of 1994 requires the registration of every document purporting to grant, convey, transfer or lease land or an interest or charge upon the land. Those documents must be accompanied by a diagram, plan or description of the land in accordance with the Survey Act and/or approved by the Surveyor-General. This becomes problematic for investors because of inefficiencies under the Survey Act, which dates from 1960 and is not consistent with contemporary methodologies. There is also a lack of information on, *inter alia*, the location of land parcels and the identification of occupiers in Zambia, albeit it differs regionally. However, while the legislation may be outdated for international investors, for local communities, registration may be too stringent, costly and inaccessible, where the Ministry of Land only has representation at the national and provincial level.^{lxxxv}

Nevertheless, land surveying may be ameliorated in the coming years with changes to land use planning legislation and institutions, as discussed immediately below. Certain Districts have also benefited from initiatives of the Ministry of Lands to survey and allocate plots through customized processes.^{lxxxvi} Furthermore the Ministry of Lands is in the course of drafting a new Statutory Instrument that amends the Land Circular No. 1 of 1985, which pre-dates the Lands Act but set out user-friendly instructions as to how to alienate land. The new Statutory Instrument will serve the same educative purpose, without changing the rights and responsibilities set out in the legislation.

Lastly, the Lands Act creates a Land Development Fund, financed by a percentage of fees for registration of title and subsequent leasehold rents. The Land Development Fund assists Districts Councils to “develop” their jurisdictions, for instance through physical infrastructure such as roads.^{lxxxvii} Although it had a slow start due to underperformance of funding,^{lxxxviii} the Land Development Fund has accrued enough to allocate returns, for instance of over USD 2 million to 25 Councils in 2010.^{lxxxix} There is general sentiment amongst stakeholders that the Land Development Fund should also be open to support the poor through benefit sharing, however, it remains restricted to the Councils’ use.^{xc}

4.3.3 Land use planning

Existing land use planning regime

Land use planning has a strong bearing on REDD+ implementation as it defines a hierarchy of land use rights that affect forest management. In Zambia, the planning and administration of zoning and developments is the responsibility of the Ministry of Local Government and Housing under the Town and Country Planning (Amendment) Act of 1997. Local planning authorities at the District, Municipal and City levels are designated within their respective jurisdictions consistent with decentralization policies and can grant permission to develop or subdivide lands.^{xc} “Land” is defined by that Act to include buildings erected on lands as well as land covered by water, meaning that the planning jurisdiction extensively covers land and coastal management.^{xcii}

The Town and Country Planning (Amendment) Act requires a local planning authority to submit to the Minister a Structure Plan for its jurisdiction comprising a survey of the planning area. The planning authority is also to submit a policy and general proposals in respect of the development and use of the area. Subsequently the Minister may

order a Local Area Plan, Development Plan or Regional Plan to target specific developments. Applications by the public or private sector for permission to undertake works are judged against those plans.

The Town and Country Planning (Amendment) Act has limited scope as it does not apply to customary areas, which are extensive, unless the President applies it to them by statutory order or they fall within a Regional Plan.^{xciii} Moreover, the Act does not bind the GRZ, unless the suggested development pertains to an area that is already subject to an approved Structure Plan or Local Area Plan. With respect to agriculture, the legislation only applies to the subdivision of established agricultural lands.^{xciv} It also does not apply to any forest reserves, protected forest areas and Game Management Areas where a Development Plan has not been ordered.^{xcv} The Ministry of Lands also notes that where land use planning does apply, it has been poorly enforced.

Should the GRZ decide to establish a Regional Plan for REDD+ projects, it could use the Town and County (Amendment) Act to evade land use management rights of local communities on customary lands. Although that Act does not generally apply to customary lands, where a Regional Plan for coordination of services and development is ordered, it does so apply.^{xcvi} Forestry is one of the land use activities that are specifically designated for potential Regional Plans.^{xcvii} Therefore, according to Part VIII of the Act, if a Regional Plan for forest management is ordered by the Minister, and that Plan is approved, no “land reserved in any regional plan for a specific public purpose be used otherwise than for that purpose without the consent of the Minister.”^{xcviii} This section does not require consultation or consent from local communities.

Furthermore, where land is required to be included in a Structure Plan or Local Plan, “the Minister may recommend to the President that the land may be acquired by the President in accordance with the Lands Acquisition Act” and that land can be disposed of to any body or person for development.^{xcix} It is unclear, whether that section for land acquisition equally applies to Regional Plans. Regardless, customary land under a Regional Plan could not be used by local communities for anything but specified purposes. Evidently, this would not be an equitable or results-based method to establish REDD+ projects should the public, local and indigenous communities not form an integral part of the planning and implementation process. If the Cancun Agreements guidance and safeguards for REDD+ are adhered to, however, the Town and County (Amendment) Act could be used as a mechanism for regional coordination of a number of communities at once through the appointment of a regional planning authority for REDD+ from any ministry, department or local community as appropriate.

Land use planning reforms and the Urban and Regional Planning Bill of 2009

The recent, Urban and Regional Planning Bill of 2009, expected to be approved by Parliament by the end of 2011, will extend the reach of land use planning regardless of land tenure or land administration system. Local District, Municipal and City Councils will now be the main authorities responsible for planning in urban and rural areas on State and customary lands. Each local authority will be required to prepare an Integrated Development Plan (IDP) based on Planning Guidelines, receive and process planning applications, implement development plans, and promote and facilitate sustainable land development. The Planning Guidelines will deal with issues such as National Parks and Game Management Areas, areas of environmental value, agricultural production and forest reserves, customary tenure, and private-public partnerships for land development and thus could greatly affect REDD+ planning.^c

The recent Urban and Regional Planning Bill of 2009, expected to be approved by Parliament by the end of 2011, will extend the reach of land use planning regardless of land tenure or land administration system.

As illustrated in **Figure 5**, IDPs will contain Spatial Plans with surveys of areas in question, including key performance indicators. Performance indicators are meant to measure and assess how development objectives are achieved and provide a source for monitoring and review of implementation. Planning Inspectors for each local authority will also be employed to pursue the control and enforcement of IDPs. The IDP can be further detailed in Local Area Plans and Sectoral Area Plans. The preparation of Local Area Plans may be initiated by a community and may be apt to address the management of local forests for REDD+ activities. Local Area Plans may also provide a basis for property demarcation that facilitates clear land tenure registration. Sectoral Area Plans will be aimed at special aspects or issues that are identified by planning authorities, including land issues such as agriculture, wildlife management and forestry and could be used to carve out areas for REDD+ implementation.^{ci}

One of the guiding principles of the Bill is security of tenure. Concerning lands under customary tenure, planning authorities will be required to reach special Planning Agreements with traditional authorities that cover standards and procedures for decision-making and communication on planning issues and land development. According to the Forestry Department, planning authorities have already responded well to potential REDD+ strategies and have begun to use integrated land use management planning for their jurisdictions in consultation with the MTENR and Ministry of Agriculture and Cooperatives.

Figure 5: Draft Urban and Regional Planning Framework



(GRZ, Ministry of Local Government and Housing, Guide to the Draft Urban and Regional Planning Bill, 2009)

4.3.4 Mining and minerals

Mining and minerals exploitation is a strong industry in Zambia; copper mining and export accounts for almost 90% of export earnings and has had significant contribution to the country's GDP.^{cii} Mining is linked to the Sixth National Development Plan and Vision 2030, and overwhelmingly takes priority over other rights tied to the same

geographic location. Mining and mineral exploitation impact REDD+ implementation insofar as subsurface rights often take precedence over land and forest management and can thereby cause reversals or displacements and compromise results-based payments to persons involved in forest management. The Lands Act, which recognizes customary tenure, does not apply to subsurface rights and pursuant to the Mines and Minerals Development Act of 2008, all rights of ownership in, prospecting and disposing of minerals are vested in the President “notwithstanding any right, title or interest which any person may possess in or over the soil in, on or under which minerals are found.”^{ciii} In practice, the Ministry of Mines and Minerals Development administers licenses for mining prospecting and development, subject to EIAs that could be of importance to REDD+ activities. For instance, in deciding whether to grant any mining right, environmental considerations must be taken into account, including the need to conserve and protect the air and soil. Moreover, socio-economic impacts are to be assessed in consultation with the Environmental Council of Zambia, based on which the Minister may impose conditions on the license, including for reforestation.^{civ} Arguably, those socio-economic impacts could include adverse impacts of mining operations on the viability of REDD+ activities for local communities.

The proper designation of forests for REDD+ projects, whether under the Mines and Minerals Development Act, Lands Act, Forests Act, Town and Country Planning Act or new legislation, will impact whether mining rights are superior and how REDD+ projects may be protected from the risks of reversals from the exercise of subsurface rights to lands. Despite their overwhelming priority, mining rights cannot be exercised without consent of the appropriate authority upon any land used as a forest nursery or plantation or any other “installation for working a forest,” or areas declared to be a National or Local Forest under the Forests Act. Mining rights cannot be exercised on any National Park or Game Management Area without complying with the Zambia Wildlife Act. Moreover, they cannot be exercised on any land that, under the Town and Country Planning Act, cannot be developed without permission. The legislation does not define what is an “installation for working a forest” or who an “appropriate authority” is for the purposes of consent and whether she would include traditional leaders on customary lands.

In terms of mitigating harm caused to REDD+ investors, should mining activities impact established REDD+ project sites, pursuant to the Act, a license holder is strictly liable for any harm or damage caused by mining operations, including to the environment, to the economy or social cultural conditions, livelihoods or indigenous knowledge systems, any damage to the economy of the areas or community, or any other consequential disorder. The mining license holder must also compensate any aggrieved person where there has been a disturbance of landowners’ trees. Notwithstanding, an application for damages would require litigation that could be costly or ineffective.^{cv} Although the Mines and Minerals Development Act does create an Environmental Protection Fund, it does not provide insurance for such compensation in the event that the license holder lacks funds; rather, it provides coverage for various debts due to the GRZ.^{cvi}

4.3.5 Agriculture

According to the UN-REDD Programme NPD, agriculture is a significant driver of deforestation and forest degradation in Zambia.^{cvi} Agricultural practices are managed on smallholder lands allocated by the traditional administration and through leasehold ownership on State lands. Although a forthcoming UN-REDD Programme study on the drivers of deforestation and forest degradation will provide more detail, the NPD attributes the contribution of agriculture to deforestation and forest degradation to the expansion of smallholder plots on customary and State lands, including protected areas, to meet sustenance needs due low productivity. Zambia’s

agriculture sector is largely rainfall and groundwater dependent, soils are fragile and increasingly unsustainable practices do not promote regeneration or allow lands to lay fallow long enough to promote fertility.^{cviii}

National agricultural policies focus on the sector's contribution to employment, GDP and food security. The Agricultural Lands Act of 1960 is limited in application to State lands and establishes the Agricultural Lands Board to advise the Commissioner of Lands with respect to the alienation of those lands into economic agricultural units.^{cxix} Holdings can subsequently be allotted to applicants who pay annual rent. Every lessee is required to "beneficially occupy his holding," including "the practice of sound methods of good husbandry" based on terms laid down by the Board before granting the lease.^{cx} Lessees have the right to cut down and use any indigenous trees on their holdings as required for farming and domestic purposes but cannot sell or remove timber.^{cxii} However, these provisions are rarely enforced and natural resource management is left to the discretion of leaseholders, which could potentially result in emissions displacements that undermine REDD+ efforts elsewhere should leaseholders decide to harvest trees on their land.

The Agricultural Lands Act may have little bearing on REDD+ implementation as State lands could constitute only 6% of Zambia's land area and leaseholds only 26% of State land (approximately 2%). It should be noted, however, that those figures are uncertain due to land conversions over recent years and further assessment is needed. According to the UN-REDD Programme NPD, the greater impact of agriculture on REDD+ preparedness comes from unregulated practices on allotments granted by traditional administrations on customary land or encroachments onto reserve land, which the Agricultural Lands Act does not have a mandate to address. These trends may change as the Ministry of Agriculture and Cooperatives implements its National Agricultural Policy (2004-2015), which aims "to promote development of an efficient, competitive and sustainable agricultural sector, which assures food security and increased income," including through agricultural expansion as detailed below.^{cxiii}

The National Agricultural Policy is premised on increased productivity and liberalization of export markets to contribute to the industrial development of the sector. The Policy's strategy to achieve its objectives is at once to increase yields, promote environmentally sustainable practices and expand agricultural lands. The Policy's focus on increasing yields and environmentally sustainable practices are conducive to REDD+ strategies as they could relieve some human pressure on forests with methods such as, *inter alia*, increased irrigation, rainwater harvesting, soil fertility, technology and crop extension services. In particular, the Policy recommends irrigation, conservation farming, afforestation and agroforestry. In 2005, the GRZ approved a National Irrigation Policy and in 2011 became a borrower of USD 115 million under the World Bank Irrigation Development Support Project. Moreover, in practice, extension officers from MACO do provide outreach education in communities on water management and agroforestry. The latter, in particular, is finding more prominence in light of REDD+ strategies and ongoing consultations for integrated land use management through local planning authorities.

At the same time, the National Agricultural Policy also emphasizes the expansion of areas under cultivation including through large-scale agricultural development and commercial farming on new farm blocks opened in each of the 9 provinces. Seemingly, this could conflict with REDD+ strategies should farming developments expand onto forested lands. A registry of available farm blocks, published by the Zambia Development Agency lists several such farm blocks in order to attract investors (**Figure 6**).^{cxiiii} The conversion of customary lands into farm blocks has also been critiqued by stakeholder groups as having been acquired under inequitable circumstances with only the consent of Chiefs and inadequate provisions for FPIC of communities and individuals.

If they are to relieve the current reliance on low-yield farming associated with deforestation and forest degradation in Zambia, those new agricultural markets must be adequately targeted at domestic rural

communities. As recognized by the National Agricultural Policy, in order for rural consumers to access the products of commercialized agricultural markets, significant infrastructure development such as rural feeder roads will also have to be realized. This will require coordination across sectors under the Ministry of Works and Supply, Ministry of Energy and Water, Ministry of Lands and local planning authorities as well as private sector investment. Moreover, in order to maintain consistency with overall REDD+ objectives and not to displace overall emissions, scaled-up agricultural productivity may have to grapple with the contribution of fertilizers to atmospheric concentrations of GHGs.

Figure 6: Ministry of Agriculture and Cooperatives Identified Farm Blocks

FARM BLOCK	PROVINCE	DISTRICT	SIZE (Ha)
Nasanga	Central	Serenje	155,000
Kalunwange	Western	Kaoma	100,000
Luena	Luapula	Kawambwa	100,000
Manshya	Northern	Mpika	147,000
Mikelenge/Luma	North-Western	Solwezi	100,000
Musakashi (SADA)	Copper-belt	Mufilira	100,000
Muku	Lusaka	Kafue	100,000
Simango	Southern	Livingstone	100,000
Mwase-Phangwe	Eastern	Lundazi	100,000

(UNCTAD, 2011)

4.3.6 Easements and land acquisitions

Easements and acquisitions allow a relevant actor to enter and develop works or undertakings on a parcel of land despite *de facto* or *de jure* land tenure. Easements and acquisitions could impact REDD+ projects should they reverse gains made in the Cancun Agreements paragraph 70 activities through the removal of trees or displacement of projects. Easements and acquisitions are permissible under various legislation (see also the broad acquisition power of the Commissioner of Lands at **Section 4.3.2**). The Water Resources Management Act of 2011 allows easements in respect of the construction, inspection, maintenance, operation or repair of water works, including canals, channels, pipelines, storage, purification plants and hydroelectric power plants. Where the easement is on customary lands it must have the written consent of the traditional authority under whose jurisdiction the land falls.^{cxiv} The Electricity Act of 1995 also permits the acquisition of lands for any undertakings relating to the generation, transmission, distribution or supply of electricity by an operator, with compensation pursuant to the Land Acquisition Act. With respect to forested areas, the Electricity Act states that “where on any land, including State Land, trees or undergrowth obstruct or interfere with the construction, working or maintenance of any transmission line, the operator” may cut down or trim the trees on notice to the land holder.^{cxv} In preparing for REDD+, the GRZ may have to reconsider this hierarchy of rights created by such easements and acquisition and/or a risk sharing scheme to compensate investors for possible of reversals should easements and acquisition usurp established land use practices for REDD+.

4.3.7 Protected areas and community-based natural resource management

The GRZ could carve out forested lands for REDD+ projects by designating them as protected areas. Additionally, Community-Based Natural Resource Management (CBNRM) on protected areas may provide a model for future REDD+ benefit distribution systems. Protected areas for wildlife and biodiversity conservation fall under the jurisdiction of the Zambia Wildlife Authority (ZAWA) of the MTENR, pursuant to the Zambia Wildlife Act of 1998 and the Policy on National Parks and Wildlife of 1998. Protected areas are designated as National Parks, Game Management Areas (GMAs), and bird and wildlife sanctuaries, of which there are 19, 36 and 3 respectively.^{cxvi} National Parks and GMAs can be declared and acquired from any lands in Zambia for the purposes of conservation, excepting lands for mining. Entrance to National Parks is highly restricted as they are not intended for human settlement or use.^{cxvii} On GMAs and other open areas on customary lands of relevance to wildlife conservation, communities can register as a Community Resource Board (CRB) to administer CBNRM. The CRB and ZAWA develop a structured plan for CBNRM to “promote and develop an integrated approach to the management of human and natural resources,” including negotiating agreements with and tour hunting outfitters operators, managing wildlife and appointing scouts to exercise duties as wildlife police officers. Wildlife police officers have the power to arrest persons in contravention of the Act, providing on-the-ground capacity support to ZAWA.^{cxviii}

One of the objectives of the Wildlife Act is to “enhance the economic and social well-being of local communities in GMAs.”^{cxix} In registering as a CRB, a community must also establish a fund to receive revenues payable from licenses, concessions and services relating to the use of wildlife resources in the area or donations, which are redistributed to enhance the economic and social wellbeing of the local community and subject to annual audits.^{cxx} According to ZAWA, the current agreed ratios for revenues are as follows:

Hunting Fees: Local Communities (CRBs) – 45%, Chiefs – 5%. ZAWA – 40%, Central Treasury – 10%

Concession Fees: Local Communities (CRBs) – 15%, Chiefs – 5%, ZAWA – 80%.^{cxxi}

CBNRM originally began as an unregulated pilot program and, due to its achievements, significant efforts were made to incorporate it into the legislative and policy framework.^{cxxii} Areas under CBNRM have seen a drop in the number of poaching incidents and significant poverty alleviation. The successes of CBNRM have been attributed to the benefit sharing aspects as well as the transfer of policing to local the communities. From 2001 to 2005, amounts dispersed to CRBs totalled the ZMK equivalent of USD 1.7 million. Local communities are expected to use those funds for agreed socio-economic development projects with 45% to be reinvested in wildlife protection, 35% on community projects, such as schools, health centres and feeder roads, and 20% on administration of the CRB.^{cxxiii}

Challenges faced by CBNRM include local elite capture of fund revenues, which have not been subject to consistent MRV, robust stakeholder participation in decision-making as well as encroachment on GMAs for natural resource use. Although ZAWA has been relatively effective in the management of wildlife, encroachments for illegal forest harvesting for charcoal production or timber and clearing for agriculture developments are less well managed. The latter could partly be a consequence of the GMA’s focus on wildlife over habitat, which may create distorted value perceptions of other natural resources that have no immediate tangible revenue benefits to communities. Furthermore, fires are a frequent problem in GMAs, which in the case of REDD+ threaten the permanence of carbon sequestration.

Since the enactment of the Environmental Management Act of 2011, the Minister of Tourism, Environment and Natural Resources may also declare any environmentally sensitive or fragile area, such as wetlands, to be an

Environmentally Protected Area, the management of which is vested in the Environmental Management Agency.^{cxv} Wetlands in Zambia also include forested areas, National Parks and GMAs such as the Bangweulu Swamps and the Luangwa Flood Plains.^{cxvi} Pursuant to the Water Resources Management Act of 2011, the Water Resources Management Authority has responsibility to “conserve, preserve and protect the environment, in particular, wetlands [and] marshlands...and take into account climate change and the challenges posed by climate change...].”^{cxvii} Therefore, forested wetlands or marshlands may be subject to the control of those two authorities.

Furthermore, many of the protected forests in Zambia were designated as such to protect catchments and watercourses. The Minister of Energy and Water Development may designate forested lands that accommodate catchments and watercourses, as “water resource protection areas.” In so doing, the Minister may impose, regulate or prohibit any activities on those areas taking into account other legislation; authorities for wildlife, natural resources, tourism and forestry; and members of the public.^{cxviii} The Water Resources Management Act also permits recommendations to the Commissioner of Lands to acquire lands for the functions of the Act.^{cxviii}

Dependant on the methodologies adopted by Parties to the UNFCCC, forests that have been subject to conservation measures in the past may or may not be eligible for REDD+ finance, due to concerns for additionality. Arguably, there is no additionality if areas under conservation would have been conserved regardless of REDD+ finance. In attempting to benefit from REDD+ to the greatest extent possible, Zambia may develop its baselines, national forest reference levels and/or emission levels using future predictions of deforestation and forest degradation to protected areas based on ongoing socio-economic trends as other countries have done, such as Guyana where there has been little deforestation to date.^{cxix} That said, protected areas have experienced at least some illegal encroachment, meaning that historical baselines might equally apply. Interestingly, the draft National Forestry Policy of 2010 has called for the reclassification of protected areas to allow for “an integrated landscape approach based on their environmental and socio-economic significance” (see **Section 6.2**).^{cxix} Arguably, those reforms could improve access to REDD+ finance for para. 70 activities beyond conservation.

4.4 Forestry

4.4.1 Overview

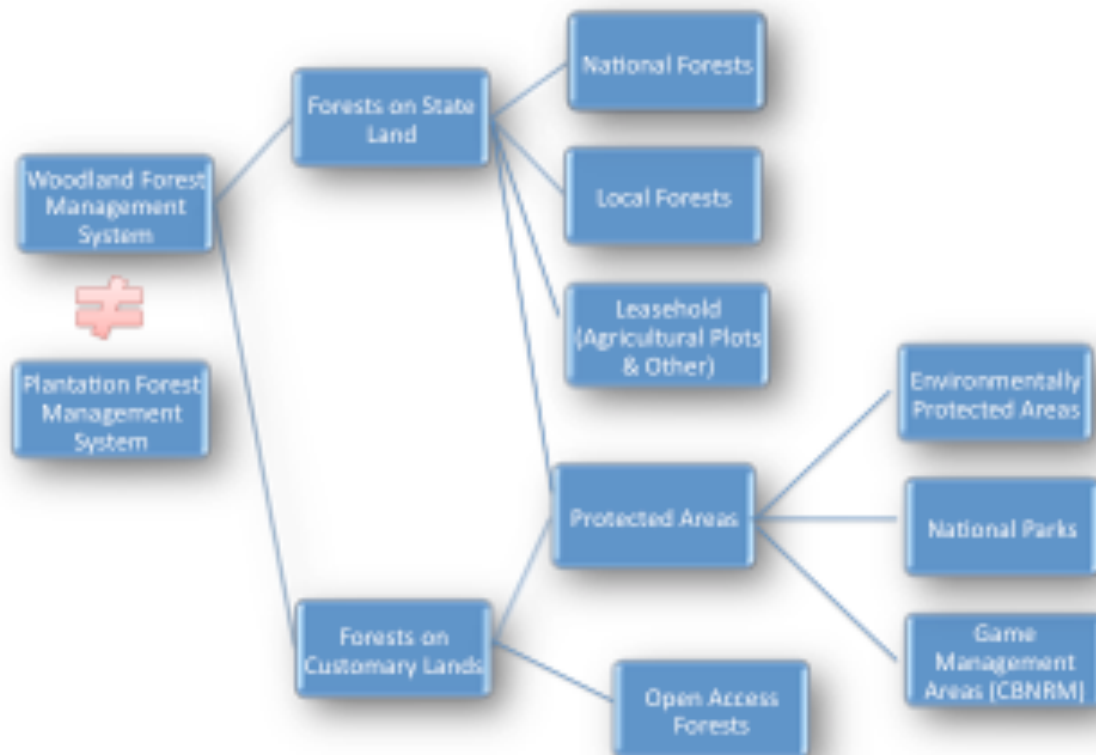
The forestry sector is arguably the most important to REDD+ implementation as it defines the ownership, use and management of the primary resource that is the subject of REDD+ activities. In seeking to reduce emissions from deforestation and forest degradation, the Cancun Agreements call for transparent national forest governance structures, taking into account national level legislation; measures to address the risk of reversals and reduce the displacement of emissions; and the promotion of actions that complement or consistent with national forest programmes; among others. This section comprehensively reviews Zambia’s forest laws and institutions, including sections on: (s.4.4.2) Historical foundations for forest governance; (s.4.4.3) Existing forestry laws and institutions; (s.4.4.4) Joint Forest Management System; (s.4.4.5) Plantation Management System; and (s.4.4.6) Control of deforestation and forest degradation.

4.4.2 Historical foundations for forest governance

Zambia established its first forestry law with the Forest Ordinance in 1949 under a centralized colonial administration. It was revised in the 1960s and 1970s to incorporate a range of forest management practices but

remained nonetheless based on a centralized approach, including under the still-authoritative Forests Act of 1973, whereby all forests are “vested in the President on behalf of the Republic.”^{cxvii} The Forests Act subdivides forests based on the land on which they rest in reference to the pre-1995 legislative regime for Trust, Reserve and State Lands as well as forest functions. Therefore, the terms used in the Forests Act to designate lands predate and differ from those used in the contemporary Lands Act of 1995, which creates ambiguities in interpretation. Even so, subject to several Presidential Orders,^{cxviii} forests can now be classified into 2 overarching forest management systems Woodland and Plantation Forest Management. Woodland Forest Management encompasses all indigenous forests and can be further subdivided into: (a) State reserves protected from open access, (b) “open areas” on customary lands accessible to communities for subsistence and (c) protected forests managed for conservation, wildlife and biodiversity (see **Section 4.3.7 on “Protected areas”**).^{cxviii} Forests on reserve lands are classified as National or Local Forests and are subject to user rights for commercial harvesting through concessions and licenses by the Forestry Department. National Forests supply timber and other resources in the national interest, including for export, and Local Forests supply the same for surrounding communities (**Figure 7**). Zambia’s forest reserves occupy about 9% of its total land area and forests in protected areas another 9%, with 82% of the forests on open areas.^{cxviii}

Figure 7: Classification of Forests in Zambia



Alongside other devolution programmes in Zambia in the 1990s and corresponding budgetary cuts to national agencies as well as progress in the international regime toward forest standards under Agenda 21, the Zambia Forestry Action Programme began in 1997 and the Zambia Forestry Action Plan in 1998 to develop a new framework for local sustainable forest management. Accordingly, the Forestry Policy of 1998 and Forests Act No. 7

of 1999 were passed, both of which emphasized the strong role of participatory management. The Forests Act of 1999 provided sweeping changes: it incorporated commitments to international agreements; guaranteed the participation of local communities, traditional institutions and knowledge, NGOs and other stakeholders in sustainable forest management; supported methods to meet the demand of multiple users of resources in an integrated manner; called for methods to share the costs and benefits from moneys relating to forests with local communities; established a Forest Commission to restructure the Forestry Department; and allowed for the designation of Joint Forest Management Areas with a new governance system (see **Section 4.4.4**). However, although the Forests Act of 1999 was passed by Parliament it was never declared to be in force due to the financial commitments required by those institutional changes. Over a decade later, the Forests Act of 1999 still remains in limbo and most of its provisions unfulfilled and the Forests Act of 1973 still in force. Nevertheless, different forms of forest management have evolved over time through *ad hoc* Statutory Instruments and *de facto* management.^{cxxxv}

In order for the forestry sector to continue the shift that was envisaged in the Zambia Forests Action Plan in 1998 and also to align the sector to current trends and international strategies, including for REDD+, the GRZ recently embarked upon the review of the Forest Policy of 1998. The draft National Forest Policy of 2010 is under consideration for final approval by Cabinet and is also being translated into a Bill for a new Forestry Act of 2011, expected to be heard after the national elections of 2011. The draft Bill is currently in possession of the Ministry of Justice and will remain confidential until it is before Parliament. The draft National Forest Policy of 2010, which has been publicly distributed in stakeholder consultations, is discussed in **Section 6.2**.

4.4.3 Existing forestry laws and institutions

Forestry Department mandate and *de facto* management

Pursuant to the Forests Act of 1973, the Forestry Department is mandated to manage all trees other than leasehold, including reserves and customary land.^{cxxxvi} All trees and forest produce belong to the President. Forest produce is defined expansively to include bamboo, bark, bedding, bees, beeswax, boards, canes, caterpillars, charcoal, chips, climbers, cones, coppices, creepers, earth, fibres, flowers, fruits, fuel wood, fungi, grass, gums, hives, honey, honeycomb, humus, insects, leaves, litter, logs, moss, mushrooms, and wood spirits, among others.^{cxxxvii} The recognition of those rights relating to forest produce could be important to a future REDD+ definition carbon ownership and use because it signifies a legal distinction between property rights tied to forests and those tied to land. This is supported by the Lands Act of 1995, whereby “a person may acquire land but not natural resources...on it.”^{cxxxviii} Evidently, the definitions from the 1973 legislation do not explicitly include carbon and, despite the inclusiveness of the definition of “forest produce,” carbon rights are unclear.

The recognition of rights relating to forest produce could be important to a future definition of carbon for REDD+ because they signify a legal distinction between property rights tied to forests and those tied to the land.

The Forestry Department is divided into the Extension and Research Branch. The Forestry Department has representation in each of the 9 provinces and every District. District level functions are numerous and include: extension services to local communities such as education and technical support, enforcement of regulations through licensing and patrols, managing protected forests, collecting revenues from the sale of forest products,

and managing forest woodlots and plantations.^{cxix} There is a general consensus that the Forestry Department is understaffed and has inadequate resources to carry out its mandate, particularly at the District level. According to the UN-REDD Programme NPD, Zambia forest governance suffers from, *inter alia*:

- Inadequate number of skilled forestry personnel
- Inadequate forest product monitoring and control systems
- Limited geographic coverage of forestry personnel to carry out patrols in protected areas
- Inadequate collaborative arrangements between local communities and government
- Lack of involvement of local communities and other stakeholders in forest management
- Inadequate funding to national forestry management.^{cxl}

De facto management of post-harvest and forests on customary lands are left to local communities.^{cxli} Pursuant to the Act of 1973, major forest produce on customary lands is conserved for the use and benefit of inhabitants for felling and clearing of lands with a view to agricultural or other developments for personal use.^{cxlii} Therefore, use of forests for the purposes of sustenance and fuel wood is unregulated, with the exception of charcoal production, which requires a license.^{cxliii} Common challenges faced by the Forestry Department on reserves include encroachment, lack of maintenance of forest boundaries and poor fire management. On customary lands, illegal charcoal and timber production have “flourished.”^{cxliv} Moreover, the use of unsustainable agriculture practices is unregulated despite that they may greatly reduce forest recovery and encourage persistent forest clearing.^{cxlv}

4.4.4 Joint Forest Management System

Comparable to CBNRM, Joint Forest Management (JFM) was a community based sustainable forest management initiative. As with CBNRM, JFM may provide important lessons learned for REDD+ planning and implementation, including for community benefit distribution systems. With the non-commencement of the Forests Act of 1999, the GRZ established JFM under a series of Statutory Instruments in 1999 and 2006.^{cxlvi} Between 2000 and 2005, the government transferred over 200,000 ha to 10 forests under JFM pilots.^{cxlvii} JFM was also piloted through the Provincial Forestry Action Programme after 2006, with the aim of testing and generating JFM guidelines. However, certain provisions in the Forests Act of 1999 that underpinned the JFM approach were not integrated into the Statutory Instruments, the most important being benefit distribution sharing between the government and local communities undertaking sustainable forestry activities. JFM has had little success since 2006 and USAID reports “[d]onors have been reluctant to continue programs or develop new interventions absent the necessary institutional framework.”^{cxlviii} Therefore, while the concept of JFM on its face could provide a best practice for REDD+ projects insofar as it concerned community based forest management activities, it has been widely critiqued as having lacked the proper legislative backing to deliver substantial benefits to local communities.^{cxlix}

Pursuant to the Forests Act of 1999, a percentage of the revenues payable under licenses, permits, concessions and services within a JFM area would be payable to a fund to be dispersed for technical and administrative costs as well as to local communities and traditional institutions.^{cl} However, the Statutory Instruments omitted any “formal mechanisms or standards for equitable benefit sharing between the Forestry Department and the community...The only reported benefits accrued to the local communities in JFM areas are some acquisition of technical skills, availability of forest products and opportunities for forest-based income generating activities.”^{cli} Contention over establishing a BDS for JFM arose from the nature of forest management, which is fundamentally different from CBNRM. Under the latter, all community members could share revenues from concessions and photography and tourist licenses. However, under JFM those revenues would only be available on select lands

featuring productions that generate revenues, such as plantations. Therefore, for those JFM areas that historically protected forests, for instance, to preserve catchment areas, there would be no similar revenue from which to disperse funds. The MTENR perceived this as inequitable and excluded distribution of revenues from JFM pilots. Nevertheless, the lack of adequately planned and legally backed benefit distribution systems (BDS) is attributed as one of the primary reasons for the ineffectiveness of JFM, including the withdrawal of donor support.

Additionally, one study reported that the lack of a BDS for JFM was actually superseded by the lack of decision-making powers as a factor discouraging local communities from participating in JFM.^{clii} The JFM system depends on direct support from the Forestry Department to provide representation on the Forest Management Committees that determined JFM area management plans.^{cliii} However, the Forestry Department lacks the resources to provide that support to geographically dispersed JFM initiatives.^{cliv} Moreover, the Forest Management Committee also required a representative of the District Council who, as a general government official for the area, may not have had an adequate appreciation of forest management to carry out their JFM duties effectively. In the result, the Forest Management Committees have been ineffective in creating management plans that sufficiently reflect community concerns.^{clv} Zambia's experience with JFM thus provides important lessons consistent with the Cancun Agreements request that REDD+ activities support and promote enhanced social co-benefits as well as guarantee participatory decision-making for indigenous and local communities.

4.4.5 Plantation Management System

The Woodland Management System encompasses all indigenous forests for protection, management, conservation and harvesting. The Plantation Management System is geared toward afforestation of non-indigenous and indigenous trees for harvesting, either for energy or timber. The Forestry Department favours revitalizing the Plantation Management System in order to relieve communities' reliance on indigenous forests for fuel and charcoal production and therefore reduce emissions from deforestation and forest degradation. Plantations, if managed sustainably, also provide a source of sequestration and employment. The Plantation Management System is primarily the mandate of the Forestry Department and the parastatal company, ZAFFICO. Plantation management has controlled encroachments fairly well although it has also suffered from poor silvicultural management and replanting. In the past 3 to 4 years, ZAFFICO has begun to replant approximately 200,000 to 300,000 seedlings per year. However, due to the lack of previous replanting, it is predicted that the plantation system will soon experience a depletion of resources that will only recover once regeneration has taken place in up to 15 years' time. However, The Forestry Department and the Ministry of Lands have recently come to an informal agreement to promote private investment in plantations by waiving a lessee's rent prior to first harvest. It is anticipated that the Minister of Lands will formalize the agreement as a Statutory Instrument in 2011. It is unclear at this stage in the UNFCCC negotiations if plantations will qualify for REDD+ finance. Nevertheless, as recognized in Zambia, they could assist in relieving pressure on indigenous forests by diverting the drivers of deforestation and forest degradation to forests grown for those purposes.

4.4.6 Control of deforestation and forest degradation

Illegal deforestation and forest degradation on reserves and protected areas for agriculture, timber and charcoal production are flourishing in Zambia.^{clvi} Charcoal production and timber harvesting are not *per se* illegal. However, pursuant to the Forests Act, they do require licensing. Similarly, agriculture on State lands is not illegal but it must

be undertaken in accordance with allotments under the Agricultural Lands Act. In each case, licensing or concession fees or rent are payable to the relevant authority acting as a regulatory filter.

Charcoal production, in particular, is a vibrant informal industry, which UNDP Zambia has estimated is employing over 1 million people along the production and marketing chain. The use of forests for the production of charcoal and wood fuel, accounts for over 70% of the total national energy consumption. A recent study by the Centre for Energy, Environment and Engineering (Lusaka) found that charcoal is typically produced from biomass remaining after local residents' clear their own lands for agriculture but is also a targeted business on State lands and protected areas. While producers tend to be community members, there are also middlemen and marketers, who respectively transport and sell charcoal to primary used in urban centers and abroad. Producers from local communities find licensing and concession fees or leasehold rent prohibitively high and do not apply to legitimize their activities under the law. This is partly attributable to upfront payments that are due prior to sale rather than as *ex-post* royalties.^{clvii}

As discussed previously, the Forestry Department has limited capacity to patrol local forests for enforcement. With budgetary cuts to the Forestry Department in the 1990s, the Forest Policy of 1998 eliminated the scouts or forest guards that previously formed part of the local enforcement cadre and instituted JFM. Therefore, instead of policing at the source, existing Forestry Department enforcement practices are restricted to the erection of barricades on feeder roads and collection of conveyance fees as a condition of passage.^{clviii} In effect, although this enforcement mechanism could provide a financial disincentive to the charcoal trade, it does not directly regulate the amount of charcoal under production, the location or what technical methods are used, and in effect allows the industry to distribute the costs along the supply chain. The challenge that the charcoal poses to legal preparedness for REDD+ in Zambia is discussed more thoroughly in **Section 5.4 "Regulation of the charcoal industry for effective REDD+ implementation."**

4.5 Integrated environmental management systems

Zambia's environmental and natural resources management laws and institutions developed over time along a sectoral approach without intra- and inter-sectoral institutional arrangements for coordination. At various periods, there have been up to 11 government ministries involved in environmental affairs and over 33 Acts of Parliament affecting the environment without a single overarching institutional arrangement, institution or policy mandated for integration and collaboration over environmental issues. Often those disparate laws and institutions directly affect sectors related to REDD+ implementation, including those discussed above under **Section 4.3 "Land use, ownership and management"** such as water catchment areas, National Parks and land use planning. In 1992, the Environmental Council of Zambia was created through the Environmental Protection and Pollution Control Act of 1990, in order to create nationwide coordination but was unable to fulfill its mandate, largely due to insufficient resources.^{clix} The current National Policy on Environment of 2007 was "designed therefore to create a comprehensive framework for effective natural resource utilization and environmental conservation and which will be sensitive to the demands of sustainable development, thereby filling the vacuum."^{clx} That Policy was supplemented by the Environment and Natural Resources Management and Mainstreaming Programme (2008-2012) (ENRMMP).^{clxi}

There are two primary components to the ENRMMP: capacity building and the establishment of an environmental fund. The former is centered on strengthening the Planning and Information Department (PID), which has no functioning M&E system. The PID will now undertake cross-sectoral policy and programme formulation, data

management and information provision, and monitoring of policy implementation. The ENRMMP also emphasizes the review and coordination of existing legislation in sectors affecting the environment, specifically targeted at sectors relevant to REDD+ such as land use planning, forestry, agriculture and energy, among others. The ENRMMP's Capacity Building Subcomponent on "Harmonizing the legal regime" for those sectors has not yet been entirely achieved; however, the MTENR successfully repealed some legislation and consolidated it into the new Environmental Management Act of 2011 (EMA).

The EMA transforms the Environmental Council of Zambia into an Environmental Management Agency with expanded authority. The EMA states, "the Agency shall manage natural resources in open areas which are not regulated or protected under any other written law."^{clxii} This provision has no elaboration but ostensibly gives the EMA jurisdiction to manage natural resources on all customary or leasehold lands that have not been subject to licensing, regulation or protection under other legislation, including forested lands that may host REDD+ activities. Given that land and natural resource management are highly unregulated under the Lands Act, Agricultural Lands Act and Town and Country Planning Act, this could result in a deeply novel relationship between the GRZ and customary land tenure holders by extending the political administration's control onto otherwise unregulated areas. Similarly, the Agency will establish strategies and standards for the management of protected areas relevant to REDD+ with reference to other legislation such as the Zambia Wildlife Act, Forests Act, Water Resources Management Act and Town and Country Planning Act. The EMA's absolute authority over environmental protection matters is confirmed by a supremacy clause that applies to all written laws, other than those dealing specifically with environmental elements (i.e. water, atmosphere, soil, vegetation, climate, wildlife).^{clxiii}

Of particular relevance to REDD+, the EMA requires consultation with "the Agency in the preparation of any plan relating to forestry..."^{clxiv} which may necessitate that REDD+ planning be conducted with the input of the Agency. The Minister may also declare any environmentally sensitive or fragile area, such as wetlands, to be an Environmentally Protected Area that management of which is vested in the Agency.^{clxv} Furthermore, any project that may have an effect on the environment, adverse or otherwise, cannot be undertaken without the Agency's prior written approval and conditions based on an EIA.^{clxvi} As a result, all REDD+ projects will be required to undergo EIA procedures and seek approval from the Agency at the planning stage. EIAs could be used to ensure certain REDD+ guidance and safeguards are met.^{clxvii}

Three additional provisions of the EMA are worth mention for their impact on REDD+, namely the creation of the interim Environmental Fund, Central Environmental Information System and Public Participation mechanisms. The interim Environmental Fund will consist of moneys allocated by Parliament, fines or donations from developers conducting activities with adverse effects, and grants from any source.^{clxviii} The Fund will be used for various environmental protection and restoration projects, including, as indicated by the ENRMMP, "community-based natural resources management and sustainable natural resource based enterprises."^{clxix} As discussed above in **Section 3.5**, the EMA grounds Zambia's international obligations for public participation and access to information at the domestic level. The Central Environmental Information System will also co-ordinate the management of environmental information within sector ministries and establish guidance for gathering, processing and disseminating environmental information, including policies, regulations, reports, applications and other information relating to the environment published by the MTENR or the GRZ.^{clxx}

The ENRMMP also projects the establishment of an Integrated Management System that has not explicitly been worked into the legislative function of the new Central Environmental Information System. Pursuant to the ENRMMP, the Ministry will create Environmental and Natural Resources Information Management and Monitoring and Evaluation Systems that will allow all central and field units to be integrated into ITC systems for ongoing

planning and accountability. Such systems, if developed, could establish the basis for the information systems for REDD+ required by the Cancun Agreements. However, the MTENR advises that their development has been stalled for lack of funds.

4.6 Energy and electricity

The primary challenge to REDD+ in the energy sector arises from the use of indigenous forests for the production of charcoal and wood fuel, which causes emissions from deforestation and forest degradation. Wood fuel and charcoal account for over 70% of the total national energy consumption in Zambia.^{clxxi} Charcoal products are primarily used in urban centers and exported across the continent, with only 9.5% of households using charcoal in rural communities. This is despite the availability of electricity, which is not at all negligible in urban areas with a service rate of 44%. Moreover, Zambia has abundant resources for hydro, biomass from waste, solar, geothermal, wind and other alternative energy sources that are beginning to attract investments.^{clxxii} In addressing the drivers of deforestation and forest degradation, Zambia will have to grapple with how to mainstream alternative sources of energy to replace the services provided by charcoal and/or to make charcoal production and consumption more sustainable for consistency with REDD+ implementation. Of particular relevance to this sector are legal mechanisms such as pricing tools and tariffs, tax incentives, perverse subsidies and energy blending standards that can enable or inhibit the scaling-up of alternative energy operations. Consequently, this section reviews how the electricity and energy sectors are currently regulated with respect to the switch from the forest dependent energy source charcoal to alternative sources.

General responsibility for energy policy in Zambia falls under the Energy Regulation Board (ERB) within the Ministry of Energy and Water Development pursuant to the Energy Regulation Act of 1995. The ERB must monitor the levels and structure of competition and pricing within the energy sector with a view to promoting competition and accessibility to companies, “in conjunction with other Government agencies, formulate measures to minimize the environmental impact of the production and supply of energy” and make recommendations to the Minister for regulations under the Act.^{clxxiii} In addition to the Energy Regulation Act, the National Energy Policy of 2008 recognizes all sources of energy, including biomass, hydro, biogas and renewable sources as well as the need for fiscal incentives and smart subsidies to enable them.^{clxxiv} It also devotes a section to ensuring “better management of woodlands and forests as sustainable sources of wood fuel” and “improve[d] technology of charcoal production and utilization” through a number of means such as technical capacity extension services and efficient kilns and stoves.^{clxxv} Despite its mandate under the above laws, the ERB does not actively seek to switch consumers from charcoal to electricity or to improve biomass efficiency and principally limits its functions to licensing and controlling the tariffs that electricity utilities can charge consumers. As the MEWD’s jurisdiction concerns the “production” and “supply” of “energy,” it views the regulation of the charcoal industry through licensing and enforcement as the responsibility of the Forestry Department pursuant to the Forests Act. Therefore, while the MEWD does promote some pilot programs for efficient methods of production and use of charcoal (discussed below), it does not regulate the growing and harvesting of trees. Nor has the ERB been involved in promoting alternative energy.

To calculate electricity tariffs, the ERB uses the ‘Revenue Requirement’ method, which is “the sum of all allowable costs, including a rate of return, deemed just and reasonable for the supply of electricity to customers.” Depreciation and taxes are also added to the utility’s operating expenses in calculating tariffs.^{clxxvi} This inclusion of taxes in the calculation of operating expenses could disadvantage the competitiveness of utilities that produce alternative energies if they receive tax exemptions, as it directly undermines the intended financial incentives for

those utilities in the tax regime (for a list of such tax exemptions see **Section 6.4**). Moreover, that tariff methodology allows for considerable discretion to favour certain industries.^{clxxvii} According to the Centre for Energy, Environment and Engineering (Lusaka) and UNDP Zambia, even though electricity is already available in many households in urban centers, consumers often opt to use charcoal instead of electricity because tariffs are perceived as more expensive and/or difficult to manage under consolidated monthly payments, whereas charcoal can be bought at a small price daily. However, the ERB has not yet used its regulatory power to provide pricing tools or otherwise give preferential treatment to enable renewable or efficient energy initiatives that could assist in encouraging consumers to make the switch to electricity from charcoal, which relies on forest resources.

Beyond the ERB, the MEWD has launched several pilot programmes to encourage more sustainable methods of charcoal production and use. In the 1990s the MEWD published a manual on charcoal production,^{clxxviii} which it is currently revising to take into account additional sustainability measures. Moreover, the MEWD has bought cookstoves through local manufacturers to supply pilot areas and has provided technical assistance in others on how to build cookstoves. Those MEWD pilot projects are limited in scope and donor driven rather than receiving direct budgetary contributions. However, although it acted in isolation for many years on those pilots, the MEWD and the Forestry Department have begun to dialogue with respect to REDD+. That has resulted in the MEWD facilitating purchases by the Forestry Department of cookstoves in order that the Forestry Department might also assist with community extension services.

In addition, in 2008, the Energy Regulation Act was supplemented by a Statutory Instrument to include biofuel within the definition of “energy,” which now allows the MEWD to control the production and pricing of biofuel as an alternative to charcoal. Biofuel standards have since become available with the Zambia Bureau of Standards, budgetary allocations to develop the industry have been made and blending ratios have been set for the national fuel mix.^{clxxix} The MEWD is also implementing several programs for biofuel and other forms of bioenergy in pilot programmes. In one of several instances, in partnership with the UN Industrial Development Organization (UNIDO), Zambia aims to replace 1 District’s entire fuel use for commercial and household energy with bioenergy from a gasifier plant for power generation using sources such as sawdust and agricultural waste.^{clxxx}

The Rural Electrification Authority (REA) established under the Rural Electrification Act of 2003, is an ambitious program that supports alternative and renewable electricity for rural areas, such as mini-hydro and solar power.^{clxxxi} That said, the electrification of rural areas, while it will provide some relief to pressure on forests for wood fuel, may not replace consumption of charcoal in urban centers. Moreover the mandate of the REA to develop electricity, rather than energy, means production methods that could make charcoal more sustainable at the source, such as kilns, are not promoted.

ZESCO is the largest power utility and is government-owned. ZESCO is involved at all stages of electricity generation (98% of the national market) and transmission (69% of the national market).^{clxxxii} ZESCO, like the REA, has focused its priorities on hydro and other renewable sources, also in its distribution through the national grid. In order to mitigate the continued use of charcoal and wood fuel, and switch people to electricity use, ZESCO will install 350,000 solar geysers in the next 3 years free of cost to customers. In the absence of any pricing tools from the ERB, ZESCO is also introducing Demand Side Management such as deferred payment schemes, which it claims will provide a sustainable way of reducing the rate of deforestation by providing pricing incentives to use electricity.^{clxxxiii} This ZESCO Demand Side Management could assist in filling the gap created by the ERB’s ‘Revenue Requirement’ tariff methodology, which has not favoured pricing tools to facilitate the use of electricity over charcoal despite direct access to the grid, and thereby contribute the alleviation of reliance on forests for energy and enhance the success of REDD+ implementation.

4.7 Trade, investment and financial accountability

4.7.1 Trade and investment

As with other types of trade and investments, climate finance for a future REDD+ mechanism will require fiscal incentives and accessible business development procedures to attract investors. Trade rules and incentives are an essential component of regulatory measures to promote REDD+ activities from direct project funding to enhancing investment in alternative and efficient energy.^{clxxxiv} The Private Sector Development Reform Programme (PSDRP) was launched by the Ministry of Trade, Commerce and Industry in 2005 in order to facilitate domestic and international private investments by reducing the costs of doing business, simplifying licensing and registration procedures and promoting public-private partnerships. Two of the accomplishments of the PSDRP were the enactment of the Zambia Development Agency Act of 2006 and the Public Private Partnership Act of 2009, which established respective programmatic agencies under the Ministry of Commerce, Trade and Industry and the MOFNP.

The Zambia Development Agency (ZDA) could facilitate private investments in REDD+ in Zambia by recommending income tax and VAT exemptions on carbon credits, as is already done for the CDM in South Africa, or financing small rural forest management enterprises. The ZDA inter-ministerial Board of Agency could also spearhead legislative and institutional reforms across the sectors that drive deforestation and forest degradation in order to support the effective implementation of REDD+ efforts, for instance by removing perverse subsidies to the mining sector for energy. Moreover, the ZDA could provide non-fiscal support in liaising forest management communities with international investors and overseeing the terms and conditions of contracts. These and yet other measures could be conducive to REDD+ development, as discussed in **Section 6.4 “Incentivizing Investments at the Zambia Development Agency.”**

The ZDA was created as the amalgamation of five statutory agencies, the Export Board of Zambia, Small Enterprise Development Board, Zambia Export Processing Zones Authority, Zambia Investment Centre and the Zambia Privatization Agency. The ZDA is intended to improve service delivery to private investors in executing the mandates of those former agencies as well as new tasks under the ZDA Act.^{clxxxv} Pursuant to the Act, the ZDA’s mandate is extremely wide-ranging. It is governed by an inter-sectoral and inter-ministerial Board of Agency composed of representatives of, *inter alia*, the Zambia Chamber of Commerce and Industry, the Environmental Council of Zambia, 8 ministries with responsibilities over trade and industry, finance, labour, agriculture, tourism, education, skills training and mining, the Attorney General, the private sector and civil society organizations. Its functions include areas of relevance to a future REDD+ finance mechanism, such as:

- Provide detailed impact analyses of sectors of the economy, including agriculture, mining and infrastructure development
- Formulate investment promotion strategies
- Give advice to the Minister on matters relating to industry development and productivity, investments, exports, and micro and small enterprises
- Promote and coordinate GRZ policies on, and facilitate, investment in Zambia

- Assist in securing from any State institution any permission, exemption, authorization, license and any other thing required to establish a business, including land acquisitions
- Explore ways of fostering business linkages, such as partnerships, joint ventures and other strategic alliances, in greenfield investments
- Cooperate with other State institutions and the private sector in areas such as standardization and certification, trade and labour and trade and the environment^{clxxxvi}

Since its establishment in 2007, the ZDA has made significant progress in streamlining legislative business registration processes and has harmonized laws relating to the promotion and facilitation of trade and investment and recommending fiscal incentives across all sectors. Fiscal incentives are regulated as subsidies and tax exemptions under the Income Tax Act, Value Added Tax Act, Customs and Excise Act, Immigration and Deportation Act, Citizen Economic Empowerment Act and Competition Act, among others. One of the purposes of the ZDA is to streamline the development of sectoral fiscal incentives under provisions of the Act or Statutory Instruments thereunder. In addition to general tax incentives under that legislation, pursuant to the ZDA Act, the Minister can declare any area a “multi-facility economic zone”(MFEZ) which sets terms and conditions under which goods and services produced or provided in the MFEZ may be sold, exported or otherwise disposed of as well as prohibit certain activities.^{clxxxvii} The ZDA can also declare Priority Sectors, which, along with MFEZs benefit from supplementary tax exemptions and fiscal incentives.

As a development agency, Vision 2030 and the SNDP guide the ZDA’s mandate. Therefore, it is required to have regard in its operations to poverty reduction, scaling-up rural infrastructure, sustainable development, gender equality and the impact of HIV/AIDS on sectors.^{clxxxviii} For those purposes, the ZDA administers a Trade and Investment Development Fund that may enable micro, small, skills training, rural or other similar enterprises to access financial resources, including through loans and repayment schemes.^{clxxxix}

Similar to the ZDA, the Public Private Partnership (PPP) Unit of the MOFNP, also a creation of PSDRP, is an equally widely mandated agency that promotes the participation of the private sector in the financing, construction, maintenance and operation of any project; advises the GRZ on administrative procedures in relation to project development; conceptualizes and identifies potential projects for public procurement and develops technical and best practice guidelines in relation to all PPPs, including standard contracting provisions.^{clxc} Contingent on how the GRZ defines carbon ownership (which could under the Forests Act of 1973 potentially fall under the definition of “forest produce” and thereby belong to the GRZ), investors in REDD+ may be required to pass through administrative and contracting procedures with the PPP Unit, for instance to determine royalties to government for carbon credits and the transfer of credits for trade in the international carbon market.

4.7.2 Financial transparency and accountability

The transparency and accountability of financial investments directed toward REDD+ has a bearing on attracting investors and equitable revenue sharing for results-based activities. The design of sound domestic REDD+ finance systems constitutes one action area in several countries’ preparations for an anticipated international REDD+ finance mechanism under the UN-REDD Programme, including for the management of BDS disbursements.

Financial transparency and accountability may also influence other REDD+ requirements for MRV should investors wish to earn carbon credits that are commensurate to their specific contributions toward results-based activities. Beyond basic economic expertise, therefore, REDD+ finance systems raise legal and institutional issues such as anti-corruption, multi-jurisdictional information systems and risk sharing or insurance.

Zambia habitually grapples with the misappropriation of funds in public office. This has been critiqued as a potential threat to REDD+ activities as it could undermine political will to safeguard important Cancun Agreement requirements for transparency and accountability.^{cxci} The Office of the Auditor General has Constitutional jurisdiction to verify that moneys expended have been applied to their proper purpose and to audit the accounts of every statutory corporation, department in which funds and accounts are established and private institution that receives GRZ grants, pursuant to the Public Audit Act Cap. 378 and the Public Finance Act No. 15 of 2004.^{cxcii} In addition, the Anti-Corruption Commission (ACC) has a mandate to investigate a range of corrupt government financial practices under an Act of the same name and the Penal Code.

The current administration of the GRZ has pledged to strengthen anti-corruption institutions and launched a campaign to investigate abuses resulting in several prosecutions in recent years. Integrity Committees were also established in at least 8 ministries to promote transparency, implement Corruption Prevention Action Plans that encourage regulatory reforms to minimize opportunities for corruption, educate staff, address complaints and conduct M&E.^{cxci} In 2009, the Cabinet passed a National Anti-Corruption Policy, in which the situational analysis identifies some 23 laws impacting on anti-corruption leading to “a disharmony in the definitions and inadequate applicability of the provisions relevant to anti-corruption.”^{cxclv} The GRZ has since been unrolling an implementation plan with reforms underway, including whistleblower legislation to protect persons who report the misappropriation of funds.^{cxcv}

To address issues of accountability at their source, the MOFNP as the custodian of all financial flows to the GRZ is also implementing an Integrated Financial Management Information System (IFMIS) with the support of the World Bank under the Public Expenditure Management and Financial Accountability (PEMFA) Program. The World Bank has remarked that the GRZ’s “accounting function is heavily reliant upon manual record-keeping, especially in the line ministries,” which results in both problems with regard to recording, accounting and reporting and the timeliness and accuracy of information.^{cxclvi} The IFMIS will establish computerized accounts in all government institutions across the country consistent with decentralized governance so that they can be monitored centrally by the MOFNP. Several ministries are already undertaking those reforms. The PEMFA is also strengthening public procurement legislation, as under the Public Procurement Act of 2011, and reforms in the Office of the Auditor General, especially through decentralization of the office at the Provincial level for increased coverage.^{cxclvii} Furthermore, the MOFNP through the World Bank Funded Strategic Program for Climate Resilience, which requires distribution of funds at the District level to local communities, seeks to strengthen District level capacity for financial management.^{cxclviii}

The IFMIS will establish computerized accounts in all government institutions across the country consistent with decentralized governance so that they can be monitored centrally by the MOFNP.

Lastly with respect to guarantees for investors against the risks of reversals, Zambia is a signatory to several international risk insurance facilities to protect investors from war, strife, disasters, political actions, land expropriation and other disturbances. These include the Multilateral Investment Guarantee Agency (MIGA) of the

World Bank, the African Trade Insurance Agency (ATIA) (supported by the World Bank financed Regional Trade Facilitation Project) and other bilateral investment protocols with a number of countries.^{cxix} Those agreements may not provide automatic coverage for REDD+ investors seeking indemnity for possible reversals as investors must contribute their own funds to be insured. Depending on the facility, Zambia's and other countries' capital contributions to insurance pool may somewhat lower the costs to investors. Nevertheless, additional risk sharing mechanisms at the domestic, regional or international level specific to climate change, and possibly REDD+, are currently the subject of ongoing UNFCCC negotiations.

5 Key Challenges to Legal Preparedness for REDD+ in Zambia

5.1 Overview

This section draws on the above review of existing laws and institutions and employs the Reference Tool at **Annex 1** to analyze what are the key challenges to legal preparedness for REDD+ in Zambia. This section focuses on the predominant challenges to REDD+ implementation in Zambia, namely: (s.5.2) Equitable and secure land tenure; (s.5.3) Clarity and coherence of laws and institutions related to REDD+; (s.5.4) Regulation of the charcoal industry for effective REDD+ implementation; (s.5.5) Benefit distribution systems that are equitable and results-based; and (s.5.6) Other key challenges. Each of those sections correlates to a combination of REDD+ activities, guidance and safeguards. For instance para. 72 of the Cancun Agreements requests that Parties address “land tenure issues”. However, addressing land tenure cannot be done in a vacuum; rather, as a principle of legal interpretation, it must be read together with yet other REDD+ guidance and safeguards, such as “protecting human rights” and “enhancing social benefits.” Additionally, in light of the review of Zambia's laws and institutions, the key challenge here becomes addressing land tenure in a manner that is equitable and secure. This is detailed further below.

5.2 Equitable and secure land tenure

5.2.1 Ensuring REDD+ implementation through equitable and secure land tenure

Land tenure is a crosscutting issue that defines the right to own and use the lands on which forests are situated. The nature of rights over land can have a bearing on a number of issues for the success of REDD+ activities identified in the Cancun Agreements, as indicated at **Figure 8**. In particular, in order to meet the REDD+ guidance and safeguards, it is important that land tenure both be equitable and secure. Specific legal instrument options that may support equitable and secure land tenure, detailed more thoroughly in **Annex 1** to this Country Study, include, *inter alia*, a legal framework that accurately responds to *de facto* occupation, management and use; clear and accessible legal frameworks supporting and protecting the attribution of entitlements under customary, leasehold, state and freehold title as well as concessions and transfers of interests; land title registration procedures that are clear, accessible and enforceable; protections against intra-community discrimination; and rules on the alienability and acquisition of lands, including free, prior and informed consent, appropriate compensation or resettlement.

Harmonizing customary tenure with statutory laws and institutions is not a simple question of formalization. The substance and form of legal instruments may be designed differently in a given context. By way of example, the capacity to implement land titling may require significant human and financial resources as well as legal education, without which they may disproportionately advantage those with independent means to access administrative

procedures. Moreover, countries may view land markets and corresponding issues of public, private and foreign entitlements according to different value systems. In all cases, however, the balanced protection of customary land tenure with international commitments to human, gender, youth and disability rights, is essential.^{cc}

Figure 8: Land Tenure and the REDD+ Activities, Guidance and Safeguards

- Address land tenure issues
- Ensure that REDD+ activities are used to enhance other social benefits
- Fully respect human rights
- Address gender considerations
- Undertake activities consistent with national sustainable development needs and goals, including reducing poverty
- Support the knowledge, rights and participation of indigenous peoples

5.2.2 Key challenges to equitable and secure land tenure for REDD+ in Zambia

The GRZ has attempted to reform the land tenure legislation several times in recognition of numerous gaps, barriers and challenges to the secure and equitable allocation of interests. In 2006, the Ministry of Lands undertook a comprehensive review of existing laws and institutions with recommendations for reform in the Draft Land Administration and Management Policy of 2006. However, the draft Policy was never enacted because concurrent Constitutional reform processes addressing land tenure have been ongoing until present. As the Constitution is the supreme law, there must be consistency in any other legislation on the same matters. There have been Constitutional discussions on a number of issues of land reform such as the establishment of a National Lands Board. However, the Ministry of Lands has postponed any amendment to the legislation governing land tenure until those Constitutional issues are resolved. Therefore, the Lands Act of 1995, its Statutory Instruments and antecedent laws that were not repealed, including the 1960 Survey Act and the 1970 Lands Acquisition Act, remain in force.

The Draft Land and Administration and Management Policy of 2006 documents that the current land tenure regime has resulted in adverse effects on communities, women, youth and persons with HIV/AIDS in establishing secure entitlements to land. In Zambia, there is a breach between *de facto* customary and *de jure* statutory land management. The Lands Act recognizes the Chief as the sole representative on customary land and goes no further into the *de facto* traditional administration of communities. Chiefs, who rank highly in the traditional administration and may be removed from village life, have formal legislative jurisdiction to assess and grant applications for leasehold title by community members, the government and external investors. Furthermore, the Constitution expressly permits discriminatory treatment on the basis of attributes such as sex and marital status for the devolution of property.^{cci} Without a formal say in the transfer of property interests, community members and vulnerable populations may be refused the opportunity to register title and may be deprived of their lands without free, prior and informed consent or adequate compensation. Although the actual practices of Chiefs in granting or refusing land title applications should not be generalized as good or bad, the absence of any recognized rights of community members and lower level traditional administrators in the land tenure regime, along with the absence of mechanisms for transparency and reporting, make land allocations vulnerable to highly discretionary and unaccountable decision-making. Furthermore, the Lands Tribunal does not have jurisdiction to hear matters arising from customary land management unless the dispute arises as a result of a decision made by the

Commissioner of Lands, Minister or the Registrar.^{ccii} However, there is currently a Lands Tribunal Bill that has been brought to Parliament that may extend the jurisdiction of the Lands Tribunal to customary land.

In addition, the Lands Acquisition Act, and other legislation that relies on it such as the Town and Country (Amendment) Act, allows the Commissioner of Lands to compulsorily acquire any lands “whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do.”^{cciii} The Lands Acquisition Act does generally require agreed upon or a “just” level of compensation or resettlement, however, the section on “principles for assessment for compensation” does not provide guidance other than to set out what can be excluded from such an assessment. The language of the legislation also envisages that the level of compensation may in fact be nil under general acquisition and is absolutely nil where the land is deemed “unutilized” or “undeveloped.” Only disputes as to compensation are permitted to be heard by a specialized administrative tribunal, while all other disputes must be brought in formal proceedings to the High Court of Zambia, which has been documented as facing its own difficulties for access to justice.^{cciv} In practice, the Ministry of Lands reports that these land acquisition provisions have opened the way for the political administration and private investors to circumvent community involvement in decision-making on the development of customary lands.

Lastly, the ineffectiveness of land title registration systems in Zambia due to outdated standards, costs and complex administrative procedures could disincentivize private investment in REDD+. Without further direction from the UNFCCC, the acquisition of lands by investors is not yet a requirement of REDD+ and rights to carbon credits could be divorced from land title. Therefore, those who hold land tenure may not by extension own carbon credits for the international market. Dependant on how carbon tenure is defined in law, the GRZ, investors or even those who undertake forest management could hold carbon tenure separately or according to a distributive allocation, for instance through the payment of royalties. In Zambia, this could also be aided by the recognition of the distinction of the ownership of trees and forest produce from that of land under the Forests Act and the Lands Act. Nevertheless, even should investors only have rights to carbon, without the clear attribution of parcels of land under forest management in Zambia, results-based benefit sharing distribution systems may be established with difficulty, and conflicts of inter- and intra-community entitlements may arise.

The Ministry of Lands is embarking on projects to address certain of the above issues on a project basis within the margins of the existing legislation. The Ministry of Lands in conjunction with the ZDA and MACO is streamlining land titling registration procedures for international and domestic investors in pre-designated farm blocks (see **Section 4.3.5**); is drafting a Statutory Instrument that provides instructions to communities on the required steps to alienate land; and has established outreach committees to facilitate land titling at the District level. Moreover, after a 2010 gender audit, which revealed limited gender mainstreaming, the Ministry of Lands is working with the Gender in Development Division of the GRZ to administer sensitization workshops to public officers.^{ccv} Though laudable, none of those projects deals with the legal foundations for the challenges they attempt to overcome.

The draft Constitution of 2010, which was disallowed in summer 2011 on its 2nd reading in Parliament, provides at least some indication of what land reforms are under discussion in Zambia. In preparation for the draft Constitution, a crosscutting Land and Environment Committee was struck with representatives from stakeholders groups, government and the legal profession. Its final Report was adopted by the National Constitutional Conference and incorporated into the draft Constitution. The draft Constitution does not itself create significant new legislative reforms but does go far in requiring the review and revision of all sectoral legislation affecting land interests, establishing guiding principles, suggesting potential areas for reform, addressing imbalances in land alienability, conducting periodic audits of land holding and tenure and guaranteeing fundamental rights to individuals and indigenous communities. Thus, the Basis of Land Policy reads:

The land policy of Zambia shall ensure –

- (a) Equitable access to land and associated resources;
- (b) Equitable access to and ownership of land;
- (c) Security of land rights and recognition of indigenous cultural rights;
- (d) Sustainable and productive management of land resources;
- (e) Transparent and cost-effective administration of land;
- (f) Sound conservation and protection of ecologically sensitive areas;
- (g) Cost effective and efficient settlement of land disputes; and
- (h) That river frontages, islands and lakeshores are not leased, fenced or sold.^{ccvi}

The draft Constitution of 2010 also explicitly allows for the reclassification of lands beyond State and customary tenure, including the possibility of new modes of alienation in addition to leasehold.^{ccvii} It prohibits a Chief or local authority from unreasonably withholding consent to an applicant applying to alienate land located in their jurisdiction, which could potentially empower both intra-community as well as external applicants. The draft Constitution would also extend GRZ control over the regulation of “the use of any land, interest or right in land in the interest of...public order, public morality, public health, land use planning or the development or utilization of property,” including on customary lands. Additionally, it proposed rather stringent provisions for foreign ownership of lands in Zambia with the delegation of power to determine exact limits, which could be used to take into account gestation periods for REDD+ carbon investments. Furthermore, of relevance to REDD+ benefit distribution system, it provides that “Parliament shall enact legislation ensuring that major investments in land benefit local communities and their economy.”^{ccviii}

5.2.3 Summary conclusions on Legal Preparedness for REDD+ and land tenure

The legal and institutional framework for land tenure in Zambia faces significant challenges that may affect crosscutting issues to be addressed under the Cancun Agreements and REDD+ activities, guidance and safeguards. The GRZ has already formalized customary land tenure. However, a disconnect between the *de jure* regulation, *de facto* practices, and international commitments to respect the rights of community members and vulnerable populations exists, which threatens equality and security of tenure. The Ministry of Lands is working toward improving the accessibility, effectiveness and equality of land titling procedures in projects that could assist in bridging the gap. However, those projects sit within the margins of existing legislation and do not attempt to tackle source problems. Furthermore, while legislative reforms have been proposed in the Draft Land and Administration and Management Policy of 2006 and draft Constitution of 2010, they have not yet borne fruit. Therefore, the GRZ continues to face key challenges to equitable and secure land tenure for REDD+ that can be summarized as follows:

Figure 9: Key Challenges to Equitable and Secure Land Tenure for REDD+

- **The Ministry of Lands has not decentralized its services down to the District level (s.4.3.2)**
- **Customary lands cannot be alienated or interests transferred unless they are converted to leasehold or a permanent succession (s.4.3.2)**

- The processes for converting land to leasehold require consent of the Chief, who may be removed from the village administration and may have a personal interest in the land in question (s.4.3.2)
- Leasehold lands are subject to certain controls of the GRZ including the control of settlements, methods of cultivation and natural resource management (s.4.3.3)
- Lands can be compulsorily acquired by the Commissioner of Lands based on a considerable level of discretion as to what is in the interests of the Republic without stipulated levels of “just” compensation (ss.4.3.2, 4.3.3, 4.3.4, 4.3.6)
- Lands can be compulsorily acquired without compensation if the Commissioner of Lands finds that it is undeveloped or unutilized despite customary or leasehold land tenure (s.4.3.2)
- There is no formal system of devolved use, possession or management rights on customary lands (ss.4.3.2, 4.3.3)
- The Lands Tribunal does not have jurisdiction to hear disputes arising from customary land management unless it arises as a result of a decision made by the Commissioner of Lands, Minister or the Registrar (s.4.3.2)
- The Land Development Fund is not open to access by communities but only to infrastructure development by Councils (s.4.3.2)
- The land registration process is outdated, lacks human and financial capacity and there is a lack of information on the location and occupiers of land parcels (s.4.3.2)
- Land tenure does not include subsurface rights to minerals and lands can be acquired for the purposes of mining except in limited circumstances of forest management without consent of the appropriate authority, who remains undefined in the legislation (ss.4.3.2, 4.3.4)
- Customary land rights will need to be reevaluated in light of expanding land use planning jurisdiction of the political administration under the Urban and Regional Planning Bill (ss.4.3.3)

5.3 Clarity and coherence of laws and institutions related to REDD+

5.3.1 Ensuring REDD+ implementation through clarity and coherence

The clarity and coherence of policies, legislation, regulations and institutional mandates related to REDD+ are crucial to overcome inhibitive ambiguities and conflicts among REDD+ planning and implementing actors. This aspect of legal preparedness for REDD+ derives from a number of requirements under the Cancun Agreements and REDD+ guidance and safeguards, as indicated at **Figure 10**. In particular, clarity and coherence contribute to the cross-sectoral coordination across ministries, departments and agencies that is necessary to address the drivers of deforestation and forest degradation in a manner that does not deprive forest dependent communities of human needs, such as food and energy. Gaps and conflicts in institutional mandates can result in the absence of action, duplication of efforts or cancelling out of positive initiatives where actors work at cross-purposes. Additionally,

clarity and coherence of laws and institutions address hierarchies in land and natural resource interests, such as mining, easements and acquisitions for undertakings, which can quickly undermine ongoing REDD+ forest management activities. Such occurrences could have a detrimental effect not only on the permanence of mitigation effects but also on the possibility of results-based payments destined to enhance social benefits for communities.

Consequently, it is vital that legal and institutional frameworks have a high degree of cross-sectoral and multi-jurisdictional coordination from the national to the local level. Supportive legal instrument options, detailed more thoroughly in **Annex 1** to this Country Study, include the repeal of laws and regulations that create perverse subsidies; enactment of fiscal incentives that assist in relieving human pressure on forests; consistent definitions of key terms relating to forests, land use and carbon markets; establishment of inter-sectoral committees and working groups; and rules defining and supporting carbon ownership and use.

Figure 10: Legal and Institutional Clarity and Coherence and the REDD+ Activities, Guidance and Safeguards

- **Ensure that REDD+ activities are used to enhance other social benefits**
- **Address the drivers of deforestation and forest degradation**
- **Promote and support transparent and effective national forest governance structures, taking into account national legislation**
- **Promote and support actions to address the risk of reversals**
- **Promote and support multiple forest functions**
- **Undertake activities consistent with national sustainable development needs and goals, including reducing poverty while responding to climate change**
- **Undertake activities that are results-based**
- **Promote and support that actions complement or are consistent with national forest programmes**
- **Promote and support actions to reduce displacements of emissions**

5.3.2 Key challenges to clear and coherent laws and institutions for REDD+ in Zambia

The UN-REDD Programme in Zambia is young. In-country preparation began approximately 3 months prior to the writing of this Country Study. To date, knowledge and information sharing among government departments and agencies has been minimal, let alone the coordination of institutional mandates across diverse sectors. Existing programmes that may ultimately have a beneficial effect on future REDD+ activities, such as renewable and efficient energy pilot projects at the MEWD, have typically resulted from planning and implementation carried out in isolated instances without cross-sectoral consultation. That said, in what little time it has had, the UN-REDD Programme in Zambia has held several workshops with crosscutting government and stakeholder attendances. Moreover, the draft National Forestry Policy of 2010 (see **Section 6.2**), which was prepared with REDD+ in mind, refers to future collaborations among, inter alia, the MEWD, MOFNP, Ministry of Lands, MACO, ZDA, and Ministry of Justice. The Forestry Department cannot, however, lead cross-sectoral initiatives alone and a key challenge for Zambia will be to encourage other sectors to work together on different goals toward the same objective.

Presently, jurisdictional mandates for land use planning and forest management in Zambia suffer from considerable legislative ambiguities that could challenge the success of REDD+. Despite that all trees are vested centrally in the President, forests are predominantly governed by unregulated *de facto* management at the community level without any legislative requirement for sustainable management of common-pool resources for

agriculture, grazing, energy or other forest-based industries. Those lands that have been acquired under leasehold tenure for agricultural purposes must follow the Agricultural Lands Act prescription for “good land husbandry.” However, in practice, management is left to the landowners’ discretion, which the legislation explicitly recognizes as including rights to deforestation. Lands under leasehold ownership, other than agricultural lands, are subject to District Council land use planning, however, they constitute less than 2.5% of all lands in Zambia.^{ccix} Consequently, the vast majority of lands in Zambia, including forested lands that fall under customary tenure, are entirely unregulated with respect to natural resource management. The Ministry of Lands reports that this fragmented land use planning regime has had a “devastating” effect on the rates of deforestation and forest degradation and that there has been a constant flow of disputes between community members and government agencies, and government agencies amongst themselves.

The legislative reforms that have or are anticipated to take place by the end of 2011 ostensibly address the above ambiguities by extending the political administration’s jurisdiction over land use planning onto customary lands. However, those reforms may serve to further confound institutional mandates on overlapping areas of forested lands for planning, management and enforcement of REDD+ activities. For instance the Environmental Management Act of 2011 states that “the Agency shall manage natural resources in open areas which are not regulated or protected under any other written law.”^{ccx} This provision would appear to give the Agency jurisdiction over forest management on all customary lands without regulated or protected forests. However, the Water Resources Management Act of 2011 also gives the Water Resources Management Authority broad responsibility to “conserve, preserve and protect the environment.”^{ccxi} In turn, the MEWD may designate water resource protection areas, including forested lands that protect catchment and watercourses; the Forestry Department has the power to declare and manage all National and Local Forests; and the Minister of the MTENR to declare Environmentally Protected Areas as well as National Parks and GMAs in consultation with ZAWA. Furthermore, the Urban and Regional Planning Bill of 2009 will extend the jurisdiction of local Councils to develop Integrated Development Plans, Local Area Plans and Sectoral Area Plans, including for natural resource and forest management on customary lands.

But for the EMA’s proviso respecting “any other written law,” cited above, no hierarchy of mandates is set forth in those other diverse sets of legislation. Moreover, the EMA itself could be read to mean that as long as the natural resource is not regulated or protected, the Agency can still exert authority over its management even if other aspects of the open area are otherwise regulated, creating another layer of overlap and potential conflict. Unclear hierarchies are also observable under the multiple pieces of legislation concerned with easements and land acquisitions, which can often be declared without prior consultation with other traditional and political authorities.^{ccxii} The mining sector, which usually takes precedence over other land uses, still yet becomes unclear where forests are concerned because mining rights cannot be exercised upon any land used as a forest nursery, plantation or any other “installation for working a forest” without consent of the appropriate authority. However, the legislation provides no definition of who is an “appropriate authority” or what is an “installation for working a forest.” Therefore, it is not apparent whether REDD+ activities, such as conservation and sustainable forest management, are exempt from the superiority of mining rights.

Lastly, government ministries, departments and agencies will increasingly have to contend with the decentralization of power down from the national to the District Council level. Pursuant to the Revised Decentralization Implementation Plan (2009-2013) and the Sixth National Development Plan (2011-2015), the decentralization of functions is a requirement across all sectors. Representation at the District Council level plays an important role in coordinating disparate community efforts across the country by developing and implementing land use management plans that are tailored to the needs and capacity of the community but consistent with

national policies. In terms of the REDD+, this can assist in mitigating the risk of displacements, increase capacity for benefit sharing and the establishment of information systems that channel community-level indicia to national registries, as well as assist in on-the-ground law enforcement. Unfortunately, the Forestry Department is almost alone in its representation at the District Council level and improvements may be more a question of human and financial capacity than of will.

5.3.3 Summary conclusions on clarity and coherence of laws and institutions for REDD+

The establishment of clear and coherent laws and institutions for REDD+ poses a new challenge to Zambia's current governance framework. Historically, GRZ ministries, departments and agencies have largely operated in isolation, including from traditional authorities who carry out unregulated *de facto* management of natural resources on which had previously been estimated as 94% of Zambia's lands. Recent legal reforms that attempt to resolve those issues have extended broad jurisdiction to multiple institutions on potentially overlapping areas of forested lands. The stipulation of hierarchies of interests as among those institutions and others who undertake land use planning developments at the District Council level, for waterworks or energy utilities, is ambiguous. Moreover, although it is a requirement of Zambia's development priorities, the majority of centralized ministries do not yet have representation at the District level where communities are situated. Therefore, the GRZ continues to face key challenges to establish a legal foundation for clear and coherent governance of REDD+ activities that can be summarized as follows:

Figure 11: Challenges to Clear and Coherent Laws and Institutions for REDD+

- **Trees and forest produce belong to the President regardless of land tenure but are not yet defined as including carbon ownership (s.4.4.3)**
- **The Forestry Department, Zambia Wildlife Authority, Environmental Management Agency, Water Resources Management Authority and Minister of Energy and Water Development have jurisdiction to manage overlapping areas where forests are located (ss.4.4, 4.3.7, 4.5)**
- ***De facto* forest and land management has little *de jure* backing (ss.4.4.3, 4.3.2)**
- **Land use planning does not apply to customary lands, agricultural development and does not bind the GRZ (although this may change with the Urban and Regional Planning Bill) (s.4.3.3)**
- **Land use planning under a regional plan mandates designated activities on customary lands but does not require consultation with or consent of tenure owners (s.4.3.3)**
- **Forested areas may be protected from mining rights upon any land used as a forest nursery, plantation or any other "installation for working a forest" without consent of the appropriate authority, however, "appropriate authority" and "installation for working a forest" lack definition (s.4.3.4)**
- **Land acquisitions can occur for any purpose in the interests of the Republic, including on forested areas (ss.4.3.2, 4.3.6)**
- **Easements for purposes such as water works, including hydropower installations, are permitted under various laws (s.4.3.6)**

- Land acquisitions for electrical generation, transmission, distribution or supply by an operator can be granted at the discretion of the Commissioner of Lands (s. 4.3.6)
- Lessees of agricultural lands do not fall under the jurisdiction of the land use planning authorities and can remove forests, thereby displacing REDD+ efforts made elsewhere (ss.4.3.3, 4.3.5)
- The GRZ's plan to open up new agricultural blocks does not explicitly take into account possibly consequential deforestation in selecting locations. Moreover, the conversion of customary lands into farm blocks has been critiqued by stakeholder groups as having been acquired under inequitable circumstances with only the consent of Chiefs and inadequate provisions for FPIC of communities and individuals. (s.4.3.5)
- The Energy Regulation Board tariff methodology could penalize investors in renewable and efficient energies as a result of positive tax incentives granted by the Zambia Development Agency (s.4.6)
- The majority of government departments and agencies, including the Ministry of Lands, have not devolved down the District level where implementation of policies and programmes takes place (ss.3.1, 4.3.2)

5.4 Regulation of the charcoal industry for effective REDD+ implementation

5.4.1 Ensuring REDD+ implementation and the drivers of deforestation and forest degradation

Charcoal production is one of the primary drivers of deforestation and forest degradation in Zambia. The Cancun Agreements request that countries address the drivers of deforestation and forest degradation, while also ensuring social and environmental benefits and the adherence to human rights, poverty reduction and development goals, as indicated at **Figure 12**. However, addressing certain drivers may be more challenging than others, for instance where they not only relate to the subsistence of local communities but also to the overall economy, whether formal or informal. In such instances, REDD+ forest management or even command and control legislation that prohibits activities through bans or licensing and enforcement may not provide an adequate substitute to address the drivers. Instead, the right policy mix must be found that relieves the human pressure on forests but does not compromise livelihoods. Zambia's charcoal industry may be one such instance.

Figure 12: Regulation of the Charcoal Industry and the REDD+ Activities, Guidance and Safeguards

- Address the drivers of deforestation and forest degradation
- Undertake activities that are results-based
- Ensure that REDD+ activities are used to enhance other social benefits
- Promote and support transparent and effect national forest governance structures
- Promote and support of multiple forest functions
- Undertake activities consistent with national sustainable development needs and goals, including reducing poverty while responding to climate change

5.4.2 Key challenges to regulating the charcoal industry for effective REDD+ implementation

Charcoal is not illegal *per se* in Zambia. Charcoal production and transport is regulated through licenses under the Forests Act with corresponding fees for *stumpage* and *conveyance*. The export of charcoal is prohibited absolutely, even if manufactured from a plantation, and offenders are subject to a fine and up to one year's imprisonment.^{ccxiii} Nevertheless, illegal deforestation and forest degradation on reserves, protected areas and customary lands to support the charcoal industry is so commonplace that UNDP (Zambia) estimates the industry as employing at least 1 million people along the production and supply chain. There is little empirical information on the charcoal trade in Zambia, which the future UN-REDD programme report on the drivers of deforestation and forest degradation may elucidate. In the interim, one 2011 study by the Centre for Energy, Environment and Engineering (Lusaka) makes the following observations, which are relevant to addressing the charcoal industry as a driver of deforestation, *inter alia*:

- Charcoal production, transport and sale is a source of valuable income for community members as well as middlemen and marketers
- Local communities find upfront (pre-sale) licensing fees prohibitive
- The primary consumers of charcoal are urban residents, many of whom also have access to electricity but have difficulties making monthly payments
- The Forestry Department does not prevent charcoal production at the source and instead charges *conveyance* fees during transport into urban areas.^{ccxiv}

The Forestry Department does not have the human and financial capacity to enforce restrictions on charcoal production at the source. Ostensibly, the Forestry Department could issue penalties and enforce illegal practices during transport at roadblocks rather than collect licensing fees as is the current practice. However, it is unclear whether prohibiting transport into urban centers is an adequate solution in Zambia, where in similar circumstances such measures only resulted in increased stocks in rural areas.^{ccxv} Moreover, while community-based REDD+ projects may offset production at the source by creating alternative livelihoods,^{ccxvi} bans on charcoal could leave other persons along the supply chain without income and raise issues of energy accessibility to consumers. This creates a complex of challenges in regulating the charcoal industry in a manner consistent with the social aspects of the REDD+ activities, guidance and safeguards. The UN-REDD Programme NPD states it thus:

Many communities involved in deforestation and forest degradation rely on the income they receive from selling of charcoal, firewood, other wood products, and agricultural products. For National REDD+ to be implemented successfully, the income they are receiving needs to be replaced either by alternative livelihoods or the provision of infrastructure and services (e.g. schools, hospitals, banks, roads and transport). If REDD+ is to be successful on a national scale, this will involve the provision of alternative livelihoods and income earning opportunities for hundreds of thousands of people. This is probably one of the most important barriers to REDD+, as even with the appropriate policy, legislative frameworks, well implemented policy and legislations, good governance and effective law enforcement, for example, REDD+ will be unsuccessful if local communities are not fully engaged and changing behaviour. Ultimately this requires fundamental changes in the economy and the development path of Zambia to ensure that sustainable livelihood options are created.^{ccxvii}

Overlapping institutional jurisdictions for the charcoal industry have also resulted in inaction on the part of government agencies. The Forestry Department is charged with licensing and enforcing the production, transport and sale of charcoal, while the MEWD has authority to monitor the levels and structure of competition and pricing

within the energy sector and “in conjunction with other Government agencies, [to] formulate measures to minimize the environmental impact of the production and supply of energy.”^{ccxviii} Both sectors have also included addressing charcoal in their national policies. Moreover, the ZDA also has a mandate under its guiding document the Sixth National Development Plan to “develop a rational and implementable approach to improve sustainability of biomass energy supply and raise end-use efficiencies.”^{ccxix}

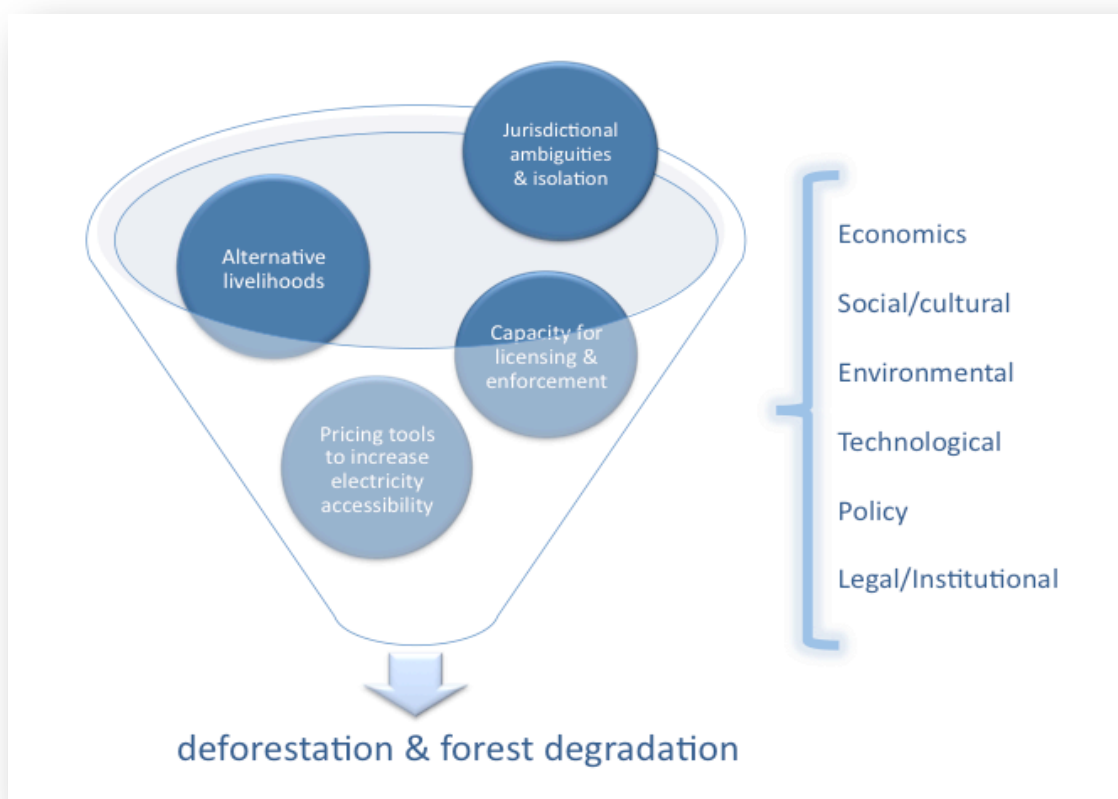
Despite those shared mandates, but for select instances, the Forestry Department, MEWD and ZDA generally administer projects in isolation with no collaboration toward a cross-sectoral approach. Instead, the ERB, which recommends regulatory instruments to the MEWD, largely limits its activities to the assessment of tariffs and has declined to exert its jurisdiction over charcoal production or supply. This is also reflected in its tariff methodology that does not seek to incentivize a switch from charcoal to electricity through pricing tools that increase accessibility. Other departments in the MEWD have facilitated and delivered projects previously mentioned above only at the pilot level contingent on external donations. The Forestry Department once provided educational extension services on sustainable harvesting practices and building efficient kilns and stoves, however, it stopped doing so due to reduced resources and now chiefly limits its activities to *conveyance* fee collection. Lastly, the ZDA, which has been involved in several independent renewable energy projects (see **Section 6.4**), has not agreed to submissions from the MEWD respecting fiscal incentives for charcoal efficiency technology to date.

Possible legal and institutional arrangements to address the charcoal trade should realistically reflect its importance to the informal economy and consumers, and the capacity for the country to provide substitutes in the immediate- to long- term. Therefore, in addition to developing and incentivizing alternative clean sources of energy, MEWD and Forestry Department could relieve the pressure of the charcoal industry on indigenous forests by taking steps to implement their existing national policies, which seek to promote sustainability through efficient technology, pricing tools and revitalization of the plantation system. Technological improvements would assist in reducing GHG emissions from production and use, as in the only 2 Clean Development Mechanism (CDM) projects in the pipeline in Zambia, which are cookstove projects. Pricing tools could help increase accessibility of alternative energies to consumers. Furthermore, revitalization of the plantation system could create new employment that replaces lost income for producers, middlemen and marketers. These tools, which are already featured in GRZ national policies, have not been implemented.

5.4.3 Summary conclusions on Legal Preparedness for REDD+ and the charcoal industry

The charcoal industry is one of the drivers of deforestation and forest degradation and poses significant challenges to effective REDD+ implementation in Zambia. **Figure 13** illustrates some of these key challenges. Not only does the charcoal industry provide livelihoods for the local communities that may undertake REDD+ activities, but it is also a source of income for hundreds of thousands of people in the informal economy. Consequently, if Zambia is to address this driver in a manner that is consistent with the REDD+ activities, guidance and safeguards, it will have to provide an adequate substitute to maintain the social benefits that should flow from REDD+ and continue to pursue its goals of poverty alleviation and sustainable development. There are already several government departments or agencies that are mandated to address charcoal production and transportation, including through promising national policies on improved efficiency technologies and pricing tools to switch consumers to alternative energy. However, rather than utilize the jurisdictional overlap to collaborate on creating the right policy mix, shared mandates have resulted in gaps and inactivity.

Figure 13: Key Challenges in Regulating the Charcoal Industry in Zambia



(Adapted from P. van Beukering et al., 2007)

5.5 Benefit distribution systems that are equitable and results-based

5.5.1 Ensuring the REDD+ implementation through benefit-distribution systems

Equitable and results-based BDS are understood to flow from the Cancun Agreements as a necessary precursor to several guidance and safeguards, as indicated below at **Figure 14**. In particular, BDS enhance the social benefits of REDD+ activities for communities directly involved in para. 70 forest management for poverty reduction and sustainable development. They also provide the foundation for effective implementation and permanence by incentivizing activities that sequester carbon and/or limit or reduce GHG emissions through results-based payments. Specific legal instrument options that may support equitable and results-based BDS, detailed more thoroughly in **Annex 1** to this Country Study, include, inter alia, rules that determine entitlement to benefits among government, landowners, local and indigenous communities and persons engaged in forest management; participatory decision-making procedures to decide the appropriate level, nature and timing of benefits, including ex-ante start-up costs; accessible and enforceable disputes resolution mechanisms that respect customary justice systems; and procedures, such as Impact Assessments, for local communities and indigenous peoples to signal unexpected impacts taking place as a consequence of REDD+ projects. Also closely tied to equitable and results-based BDS are MRV and information systems that permit the assessment of benefits, which are conditional on verifiable results, and the subsequent reporting of those benefits to the international community.

Figure 14: Benefit Distribution Systems and the REDD+ Activities, Guidance and Safeguards

- Ensure that REDD+ activities are used to enhance other social benefits
- Develop national forest reference emission levels and/or forest reference levels, including subnational levels in combination or as an interim measure
- Develop national MRV, including integration of subnational monitoring systems into a national monitoring system
- Develop an information system on how the safeguards are addressed and respected
- Undertake activities consistent with national sustainable development needs and goals, including reducing poverty while responding to climate change
- Promote and support the knowledge and rights of indigenous peoples and members of local communities
- Promote and support the full and effective participation of relevant stakeholders in the planning and implementation of para. 70 activities
- Undertake activities that are results-based
- Promote and support actions to address the risk of reversals

5.5.2 Key challenges to BDS in Zambia

The GRZ has attempted to implement several community-based natural resource and forest management programmes with BDS elements that have achieved mixed success. Joint Forest Management was a legislation-backed programme on State Lands that allowed community members to benefit from the direct products of forest management, such as non-wood forest products that could be used for sustenance or sold at market. However, although original JFM plans had included a revolving fund to redistribute funds from fees for concessions and licenses to community members that provision was never realized. Moreover, the Forest Management Committees, which were to design sustainable forest management plans, required the attendance of Forestry Department and District Council representatives, making them ineffectual. Community-Based Natural Resource Management on GMAs, which did include the redistribution of funds earned through, *inter alia*, tourist, hunter and photographer fees, has experienced more sustained success than JFM. However, it was predominantly targeted at wildlife conservation, and encroachment on GMAs for forest and natural resource uses has been reported as well as elite capture of revenues.

BDS that redistribute benefits to communities are not yet an aspect of other revolving funds in Zambia. The Lands Development Fund, which receives revenues gained from transactions, such as concessions, leases and registration of land title, does not disperse a share to communities, but rather to District Councils, for development projects. Additionally, should the new interim Environment Fund established under the EMA be distributed as proposed in the ENRMMP “project proposals will be sought and accepted only from ministries or statutory bodies aligned with one or more districts or other local authorities.” The ENRMMP admits that this is a disadvantage to civil society, although it can partner with government proposals or act as implementing agencies.^{ccxx} Nevertheless, the EMA does not explicitly exclude the possibility of civil society applications entirely and it is currently subject to discussion with respect to how the Environmental Fund will operate once past this interim stage.

There are helpful lessons to be learned from JFM, CBNRM and existing revolving funds with respect to the need for adequate incentives beyond direct forest products, participatory decision-making and comprehensive rules that promote multiple forest functions, in order to successfully achieve REDD+ activities. Nevertheless, those initiatives

provide limited evidence of the types of BDS that may flow from the Cancun Agreements. JFM and CBNRM are entirely project-based whereas the Cancun Agreements calls for national forest reference emission and/or forest reference levels. It is not yet clear how the international community will balance the need for national strategies, community-based implementation, the possibility of displaced emissions and BDS. Nonetheless, the Cancun Agreements raise unique challenges for Zambia in designing equitable and results-based BDS, including: (a) how the GRZ can promote nationally coordinated efforts at the subnational level when very disparate communities undertake forest management and (b) how the GRZ will create national reporting systems that provide information on how the REDD+ safeguards are being met across the country. These are discussed immediately below.

In Zambia, national forest reference emission and/or forest reference levels could be a combination of subnational forest reference emission and/or forest reference levels or, as an interim measure, solely subnational levels. This would provide room for REDD+ to resemble a collection of project-based activities in disparate communities and/or a “nested” approach to be accounted for at the national level. Those projects could be scaled up according to the circumstances, but Zambia would be required from the outset to regulate how displacements or continued deforestation and forest degradation in other locations will affect BDS to communities whose efforts result in verifiable outcomes. Even so, Zambia will also be required to develop an institutional reporting system to account for the displacement of those emissions as well as, inter alia, the integration of subnational monitoring systems into national monitoring systems, financial transparency and accountability, and the distribution of social benefits to communities. National information systems for REDD+ should be composed of 4 key elements: data collection, operational analysis, strategic assessment and feedback, which may involve complex activities such as conducting information gathering at the field level to be compiled into timely reports; engaging local communities, civil society and the private sector in indicator design and data collection; conducting independent auditing and verification of payments and revenues; establishing conflict resolution systems; reconciling REDD+ payments and revenues and independently verifying discrepancies; reporting to implementing and enforcement agencies; and undertaking policy strengthening and governance improvements.^{CCXXI} This requires substantial legal and institutional capacity from the stages of planning, monitoring and enforcement to strategic revisions. Presently, Zambia lacks any such information system with the MTENR Planning and Information Department having never been functional, the development of the Central Environmental Information System having been stalled by funding deficits, and the MOFNP Integrated Financial Information Management System just underway. Perhaps even more than funding deficits, the Central Environmental Information System will face an uphill battle in access data that is fragmented across the country or not yet existent.

Another challenge to equitable and results-based BDS in Zambia arises from the land tenure regime, which restricts communities interested in REDD+ projects from directly benefitting from investments on customary lands because they cannot contract, transfer or assign any interests without converting ownership to leasehold title. It is not yet clear whether this will extend to carbon rights. Whether or not carbon rights are tied to land tenure, however, if payments for REDD+ are results-based, they may depend on the volume of carbon sequestration and/or GHG emission limitations or reductions resulting from the maintenance of forests on specific parcels of land. With registration of title not permitted for customary tenure holders, there may be difficulties in clearly delineating who has rights arising from specific parcels of land as well as the concomitant benefits. Furthermore, dispute resolution processes, for instance, under the Lands Act and the Lands Acquisition Act, prevent administrative tribunals from hearing issues arising from the decisions of traditional administrators on customary lands, including those respecting the delineation of lands for REDD+ projects, and possible BDS disputes.

5.5.3 Summary conclusions on Legal Preparedness for REDD+ and BDS

As a result of lessons learned in past BDS pilot projects, Zambia has a good foundation to identify areas to be improved to develop equitable REDD+ BDS that delivers enhanced social benefits to communities. However, the MRV required by the Cancun Agreements to allow payments to be made for results-based activities will challenge the GRZ to coordinate disparate communities as well as create information systems for the international community. This is particularly the case because strong variations in practices across different communities may make standardized approaches to legal frameworks difficult. On the technical side, Zambia is aided by ILUA II, which may help to establish national forest reference emission and/or forest reference levels that are a combination of subnational levels or, as an interim measure, solely subnational levels. As regards information systems, however, Zambia currently lacks capacity to undertake the 4 key elements that could be implicated by REDD+, including data collection, operational analysis, strategic assessment and feedback. Several opportunities exist that could mitigate those challenges as discussed in **Sections 6.3 and 6.5**. Nevertheless, existing laws and institutions continue to face the challenges summarized below in **Figure 15**.

Figure 15: Challenges to Equitable and Results-based BDS for REDD+ in Zambia

- **Joint Forest Management benefit sharing provisions were not realized to redistribute funds back to communities (s.4.4.4)**
- **Community-Based Natural Resource Management in Game Management Areas targeted wildlife conservation with little emphasis on multiple ecosystem functions of forests and other natural resources (s.4.3.7)**
- **Existing revolving funds such as the Lands Development Fund and the Environment Fund do not allow project proposals from community members (s.4.3.2, 4.5)**
- **Communities undertake disparate land use and forestry activities that are not regulated or monitored for coordination by the political administration (ss.4.3.2, 4.3.3, 4.3.5, 4.4.3, 4.4.6)**
- **MTENR Planning and Information Department (PID) is not yet functional (s.4.5)**
- **Development of the MTENR Central Environmental Information System has been stalled by funding deficits and will face an uphill battle in collection fragmented or not yet existant data (s.4.5)**
- **Community land tenure holders cannot register, contract, transfer or assign any interests in land without converting and registering title (s.4.3.2)**
- **The land registration process is outdated, lacks human and financial capacity and there is a lack of information on the location and occupiers of land parcels, as well as their rights to concomitant use, management and benefits (s.4.3.2)**

- The Lands Tribunal does not have jurisdiction to hear disputes arising from customary land management unless it arises as a result of a decision made the Commissioner of Lands, Minister or the Registrar (s.4.3.2)
- Disputes regarding the compulsory acquisition of land, except for the level of compensation, must be brought as a legal proceeding the High Court (s.4.3.2, 4.3.6)

5.6 Other key challenges

Agricultural expansion under the National Agricultural Policy (2004-2015): The National Agricultural Policy emphasizes the expansion of areas under cultivation, including through large-scale agricultural development and commercial farming under new farm blocks opened in each of the 9 provinces. This could conflict with REDD+ strategies, including the risk of reversals and displacements, should those developments expand onto forested lands. In order for agricultural expansions to relieve the human pressure on forests for sustenance in rural areas, agricultural expansion must also be met by increased rural infrastructure such as feeder roads that allow the delivery of products to take place. Moreover, the acquisition of farm blocks must safeguard equitable land tenure issues such as free, prior and informed consent.^{ccxxii} The conversion of customary lands into farm blocks has been critiqued by stakeholder groups as having been acquired under inequitable circumstances with only the consent of Chiefs and inadequate provisions for FPIC of communities and individuals.

Institutional capacity for independent field-based MRV: Independent field-based MRV to test results-based practices on the ground is not yet a requirement of the Cancun Agreements as it is for the CDM. However, a number of organizations have recommended independent MRV to complement government and a stakeholder led indicator-based reporting systems.^{ccxxiii} Due the GRZ's lack of funds, unless it or local communities receive finance that can be extended to retaining those services, they may consider covering costs by devoting a percentage of amounts in existing revolving or future BDS funds thereto or by including payment by the investor as a term of contract for REDD+ projects. The Public Private Partnership Unit of the MOFNP may be able to provide advice on the same (see **Section 4.7.1**).

Capacity for legislative changes: The Zambia Law Development Commission is the agency responsible for overseeing legislative reforms and the drafting of Acts of Parliament. The Solicitor General for the Republic has publicly stated that the legal reform process is experiencing a backlog: "the large volume of legislation and subsidiary legislation to be reviewed remains a significant challenge which the government continues to grapple with. This is exacerbated by challenges related to human capacity."^{ccxxiv} The timeline for reforms to resolve legal barriers to REDD+ in Zambia must be cognizant of those delays.

6 Innovative Laws and Institutions for Legal Preparedness for REDD+ in Zambia

6.1 Overview

In spite of challenges to legal preparedness for REDD+, the GRZ has proactively pursued policies and programmes that may offer novel solutions. The innovative laws and institutions reviewed below directly or indirectly impact REDD+ planning and implementation, concerned as they are with issues such as effective and participatory forest management, institutional coordination in decentralized governance, two-way information systems, financial accountability measures, incentivizing private sector investments and streamlined legislative reform tools. They include: (s.6.2) Forest governance reforms in the draft Zambia National Forestry Policy of 2010; (s.6.3) Decentralized decision-making and two-way information systems under the Strategic Programme for Climate Resilience; (s.6.4) Incentivizing investments at the Zambia Development Agency; and (s.6.5) Other key innovations.

6.2 Forest governance reforms in the draft National Forestry Policy of 2010

The year 2011 has the potential to be a turning point in Zambia's regulation of the forestry sector. Since the 1990s the MTENR and Forestry Department have repeatedly attempted to strengthen the legal foundations for forest governance with few results. Coupled with the lack of resources to support institutional capacity, the existing patchwork of laws is widely recognized as a contributor to deforestation and forest degradation, and a barrier to meeting the requirements of REDD+.^{CCXXV} As stated by the MTENR:

Inadequacies in policies and legal framework, sector coordination and involvement of stakeholders have led to increased emissions from deforestation and forest degradation that have contributed to the change in the global climate.^{CCXXVI}

In order for the forestry sector to continue the shift envisaged in the Zambia Forests Action Plan in 1998 and also to align the sector to current trends and international strategies, including for REDD+, the GRZ recently embarked upon the review of the Forest Policy of 1998. The draft National Forest Policy of 2010 (draft NFP) is under consideration for final approval by Cabinet and has also been translated into a Bill for a new Forests Act, expected to be heard in 2011. The Bill is currently being drafted by the Ministry of Justice and will remain confidential until it is before the National Assembly. Therefore, this analysis is restricted to the draft National Forest Policy of 2010. As with other national policies in Zambia, the draft NFP remains a broad statement of objectives and measures rather than a precise legislative instrument. The Forest Bill of 2011 will add detail to the draft NFP with specific targets and commitments that will be grounded still at a later stage in Statutory Instruments.

The draft NFP was developed in parallel with the country's preparation for REDD+ readiness under the UN-REDD Programme. That fact is overwhelmingly apparent in its objectives, strategies and language, which embed a strong REDD+ approach as exemplified by the inclusion of a section on "Production, Processing and Marketing of Forest Products and Carbon Trading." The draft NFP addresses the carbon sequestration, biological diversity and other

natural resource functions of forests, and also seeks to turn forests into a “dynamic and vibrant economic machine” to the benefit of Zambian sustainable development goals and local stakeholders.^{ccxxvii} The Policy Focus and Guiding Principles are indicative of its strong relationship to REDD+ and are reproduced in part below:

Policy Focus

The National Forestry Policy is designed to reduce deforestation and forest degradation ensuring increased forest cover and enhance carbon stocks through integrated participatory management, improved law enforcement and private sector investment, and [to] transform the forestry sector into a proactive economic sector to improve livelihoods of local communities.

Guiding Principles

- Broad based participation in sustainable forest and land management
- Equity and responsibility in benefit sharing mechanisms and full consideration of gender
- Forest management based on research and extension services
- Enhance biodiversity management and conservation
- Enhance the role of forests in the abatement of climate change
- Precautionary measures to be taken prior to investment and in the introduction of harmful or invasive plants and GMOs
- Effective governance through decentralization of forest management
- Promote public private partnership to enhance investment, innovation and diversification in sustainable forest management

Those principles are further elaborated in terms of recommended legislative and institutional capacity building measures that have substantial linkages with the Reference Tool located at **Annex 1**. Certain of the most pertinent measures are discussed below.

The draft NFP begins with a list of definitions relevant to domestic and international forestry issues, including afforestation, carbon sequestration, climate change, biodiversity, conservation, deforestation, ecosystem services, emissions, forest degradation, forest, forest management, greenhouse gas, local knowledge, protection, reforestation, sink, sustainable development, traditional leader and value added, among others. Although the draft NFP does not yet contain a concrete definition of carbon ownership and use, the Forestry Department has advised that it will find its place under a future Statutory Instrument.

The draft NFP was originally drafted prior to the Cancun Agreements of December 2010 and there are discrepancies in key definitions that could pose challenges to their utility for REDD+ projects. In particular, the five REDD+ activities permissible under the Cancun Agreements are not mirrored clearly in the draft NFP. For instance, the definition of “forest management” is seemingly aligned with the term “sustainable management of forests” in the Cancun Agreements, however without the word “sustainable,” it could be conflated with other non-sustainable activities. The defined term “plantations” is also very expansive and includes “a forest established by planting or/and seeding in the process of afforestation or reforestation. It consists of introduced species or, in some cases, indigenous species.” Zambia has a history of distinguishing Plantation from Woodland Forest Management Systems (see **Section 4.4.5 and Figure 7**). However, for those who are unfamiliar with Zambia’s classification of forests, that definition does not distinguish plantation forestry for functions such as timber production from reforestation and afforestation not meant for harvest. Thus, according to a strict reading of the

draft NFP, an indigenous forest where carbon stocks are enhanced through reforestation is a “plantation,” even though Plantation Forest Management is quite different, for instance, from JFM. As the international community could treat those activities quite differently, for reasons including baselines, permanence and social benefits, discrepancies in the draft NFP definitions could create procedural bottlenecks in project approval cycles. This is mitigated at this moment in time by ambiguities in the Cancun Agreements themselves, which will be further refined at COP17 and thereafter as well as by the opportunity for further definitions in the Forests Bill of 2011 and Statutory Instruments.

The draft National Forest Policy of 2010 has a pronounced emphasis on the social benefits that can accrue from sustainable forest management, both to local communities and the country at large. As regards forest governance, ownership and use, it recommends reforms to the Forestry Department’s mandate in recognition of its limited capacity and the prime importance of local communities in planning and implementing sustainable forest management. Therefore, it calls for the redefinition of tenure regimes, roles, responsibilities and BDS that benefit local communities, women, persons with HIV/AIDS and youth. Beyond a revolving fund for benefit sharing, the draft NFP also encourages the development of value-added non-wood forest products, for instance from traditional beekeeping practices, crafts, medicine and raw materials.^{ccxxviii} NWFPs currently provide a source of employment and sustenance in rural communities and their recognition in the draft NFP accentuates REDD+ activities beyond conservation that are tailored specifically to the Zambian context.

With respect to relieving the drivers of deforestation and forest degradation, the draft NFP requests that incentives and benefit sharing mechanisms involve stakeholders in plantation forestry as a new source of livelihoods. At the same time, incentives are to be developed to promote alternative energy sources as well as technology to reduce reliance on biomass. Moreover, the draft NFP recommends the resolution of gaps and barriers across institutions that concern the drivers of deforestation and forest degradation through collaboration with other sectoral ministries, departments and agencies (i.e. MEWD, ZDA, Ministry of Lands, Ministry of Agriculture, Ministry of Justice, ZESCO) and the resolution of conflicting legislation in sectors such as mining, energy, land tenure and protected areas.

The draft NFP also addresses overarching decentralized governance in Zambia. It proposes that the role of Local Government shall be to formulate by-laws, enforce them, set aside lands for forest activities, participate in JFM and facilitate the smooth administration of forest estates. Traditional rulers and institutions shall be involved in the administration and management of forests, advise government actors and facilitate local communities’ participation. Lastly, local communities shall be the “key actors in planning and management of forests and investment in forestry at local levels” and “will be required to put in place participatory management systems to promote sustainable forest management open areas.” This would include the integration of local knowledge, extending even to traditional leadership and community involvement in dispute resolution systems on customary land. The Forestry Department would also reintroduce scouts or forest guards for on the ground patrols that were previously eliminated in the Forest Policy 1998.

The draft NFP also demands the development of forest carbon sequestration measurement standards, participatory approaches to EIAs, the development of criteria and indicators to demonstrate sustainable forest management, community monitoring and information systems at all levels. Permanence is promoted through the protection of forests against damage by fires and other natural phenomena, good pricing of forest products, benefit sharing, robust stakeholder engagement, and the mainstreaming of knowledge on emerging issues in forestry management, training and development. Emission displacements are also addressed through the promotion of trans-boundary bilateral and multilateral treaties, such as the SADC protocols. Interestingly, the draft

NFP also requests the reclassification of protected forests and forest reserves to be managed for their socio-economic significance. As REDD+ finance may be dependant on proof of additionality, this reclassification could potentially facilitate the eligibility of forested areas already subject to conservation laws for REDD+ finance by taking a realistic snapshot of anticipated deforestation rates as well as altering the nature of forest management in those areas to be consistent with recognized REDD+ activities, such as sustainable management of forests.

In conclusion, the draft NFP is a detailed and sophisticated national scale policy that is noticeably aligned with the REDD+ activities, guidance and safeguards, while also being targeted to a distinctly Zambian context. It remains to be seen whether it will be realized through the Forests Bill of 2011 in a way that adds substance to its broad policy statements and also, importantly, whether other sectors that drive deforestation and forest degradation, such as energy and agriculture, will adopt legislative frameworks that are just as promising. Preliminary information on the Forests Bill of 2011 reveals two important areas of amendment. Firstly, the new Act will likely allow the Forestry Department to issue conservation orders applicable to State and customary lands. Those conservation orders will grant the Forestry Department powers to order clear directions for forest management activities in sensitive areas that may come under REDD+ finance. They also seek to fill gaps in the Agricultural Lands Act and the Town and Country Planning Act, such as the non-application of land use planning to customary and agricultural lands. Secondly, the new Forests Act of 2011 will build on lessons learned in past JFM projects to (a) allow JFM on customary lands (whereas previously it was piloted on State lands), (b) provide BDS in the form of a small redistribution of the Forestry Department's revenues from concessions, licenses and other enterprise fees back to JFM communities. It is hoped by the Forestry Department that revitalized JFM projects will thus provide pilot programs that will generate essential information on the implementation of community-based sustainable forest management to be scaled up under future REDD+ projects.

6.3 Decentralized decision-making and two-way information systems under the Strategic Program for Climate Resilience

The Cancun Agreements require Parties undertake activities in accordance with existing national development priorities and national legislation. The Zambia Strategic Programme for Climate Change Resilience funded by the Pilot Program for Climate Resilience under the Multi-Donor Strategic Climate Fund is a large-scale pilot that is being implemented by the Ministry of Finance and National Planning in 1/3 of all Districts in Zambia.^{COXXIX} The goal of the SPCR is "to mainstream climate change into the most economically and vulnerable sectors of the economy, in order to ensure sustainable economic development towards to attainment of the country's Vision 2030."^{COXXX} Although SPCR has a broad focus on adaptation, rather than REDD+ *per se*, it builds into current development plans an innovative social and financial infrastructure that allows communities to act as key stakeholders in early warning systems, joint decision-making and implementation of resource management. As the REDD+ activities, guidance and safeguards similarly emphasize local community involvement in decision-making for equitable results-based activities, information systems and enhancement of social benefits, SPCR is an interesting model for legal preparedness for REDD+.

One component of SPCR is framed as Strategic Programme Support to the National Climate Change Development Council. As discussed above, the Climate Change Facilitation Unit of the MTENR has initiated a process to establish a multi-sectoral institutional framework for climate change governance and has recommended the NCCDC as the most suitable of options canvassed in the National Climate Change Response Strategy (see **Section 4.2**). The

participation of civil society on the NCCDC is foreseen as select representation on the Board of Directors and thematic Working Groups, and as implementing agencies. In turn, the MOFNP has proffered an additional layer to climate change governance that complements the above and also devolves it further pursuant to the Sixth National Decentralization Implementation Policy and the Urban and Regional Planning Bill of 2009 in order to enhance community level participation.^{ccxxxi}

The objectives of the SPCR are to, *inter alia*: assist communities in highly vulnerable areas to identify and address their own options as part of local development plans; incorporate climate finance into existing community development funds; invest in highly visible infrastructure as a way to rally public support; rely on the transformative power of communication technologies; and strengthen the institutional foundation for future climate change governance in Zambia.^{ccxxxii} Three of the principal components of the SPCR work programme to achieve those objectives that are relevant to future REDD+ initiatives are: (a) two-way information flows for decision making and reporting (b) disbursement of donor finance to local development funds for participatory climate-resilience initiatives and (c) monitoring, reporting and strategic feedback. These are described below and illustrated in **Figure 16**.

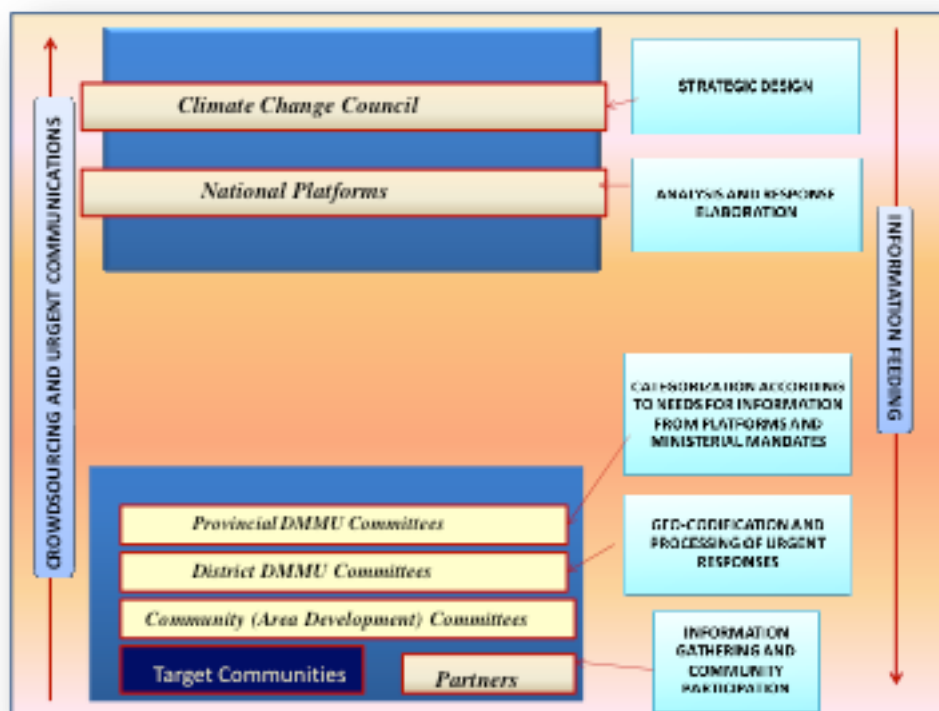
Two-way information flows for decision making: Informed by nationally designated policies and meteorological climate information, localized climate resilience planning will begin at the community level in participatory Community Area Development Committees (CADCs). In accordance with the Urban and Regional Planning Bill, which permits communities to develop Local Area Plans (LAPs) from the bottom up, CADCs will mainstream climate resilience plans into LAPs to be submitted to District level Disaster Management and Mitigation Units (DMMUs) for incorporation into umbrella Integrated Development Plans (see **Section 4.3.3**). To help communities prepare and implement LAPs, the SPCR will allocate approximately USD 85,000/District/year to engage experienced NGOs as well as provide national and regional review and monitoring. Specialized Provincial DMMUs will review LAPs and IDPs and forward recommendations thereon to the national level for assessment against climate resilience strategic criteria to be approved by the National Climate Change Development Council. Those strategic criteria are still under discussion but are expected to include the following, which underscores that climate finance will be dependent on verifiable social benefits for vulnerable communities:

- IDPs and LAPs must have completed a Comprehensive Vulnerability Assessment and Analysis that identifies to most vulnerable social groups, including elderly and women-headed households
- At least 50% of activities/funds should benefit directly the most vulnerable social groups
- Proposing institution (District Council and/or Local Area Committees) must be rated highly in fiduciary performance, according to specified standards
- Plans must demonstrate clearly how it will contribute to reduced vulnerability by promoting priority adaptation activities and clearly define beneficiaries and implementation structures.

Disbursement of donor funds to local development funds to finance Local Area Plans: The MOFNP will act as the custodian of donor funds and set aside a determinate allocation to the Constituency Development Fund, which is an existing fund currently managed by the Ministry of Local Government and Housing. That Fund targets community-based projects submitted by Area Development Committees at the sub-District level and is expected to become the basis for funding LAPs under the Urban and Regional Planning Bill. Based on LAPs and IDPs, District Councils and CADCs will access the Constituency Development Fund to make disbursements to various service providers and suppliers, whether that be to increase access to climate resilient health care and education facilities,

improve access to sustenance or to invest in local enterprises. For larger-scale projects, such as physical infrastructure development of feeder roads and canals, the MOFNP will channel the funds directly to the appropriate agency.

Figure 16: SPCR Proposed Two-Way Information System



(GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience, 2011)

Monitoring, reporting and strategic feedback: The MOFNP will take overall responsibility for coordination and execution of the SPCR and will be responsible for organizing annual audits, financial reports and procurement plans, including through increased information technology capacity. Technical committees (i.e., DMMUs/Local Area Committees) operating under Provincial and District authorities will follow up and report on local activity implementation. Additionally, the NCCDC will assign specific responsibilities to develop and administer monitoring programme indicators for on the ground reporting from partner NGOs working in each local area as well as inter-stakeholder platforms at the national, project, sectoral and local levels. The Zambia Meteorological Department and DMMUs will lead continuing climate risk assessments that provide communities with up-to-date warning systems. Lastly, the development of a Climate Information System to combine reporting from local, national and international sources will provide a forum for two-way information feedback and strategic planning.

The implementation of the SPCR is ongoing and its level of success is still unevaluated. In particular, stakeholder groups query whether targeted investment areas, including opening up the Kafue National Park, are consistent with REDD+ guidance and safeguards. Additionally, it has been noted that DMMUs should be integrated within already established Area Development Committees (ADC), District Development Coordinating Committees (DCC) and Provincial Development Coordinating Committees (PDCC) as specialized units, rather than separate and apart from those existing structures. Accordingly, the above **Figure 16** illustrating the two-way information system would

be amended to also represent corresponding DDCC's, ADC's and PDCC's at each level. The SPCR will undergo feasibility and SEA studies in order to determine such issues with a view to implementation by 2013.

Nevertheless, the SPCR does present an innovative model to coordinate the activities of otherwise disparate communities in a manner consistent with Zambia's development, climate change and public service strategies. Without recommending the SPCR model for *per se*, for illustrative purposes, a corresponding but adapted framework that still utilizes decentralized governance structures under the Urban and Regional Planning Bill for REDD+ specifically could include: community REDD+ planning committees, Local and Sectoral Area Plans, civil society capacity building support, District and Provincial level REDD+ specialized units within the District Development Coordination Committees, revolving benefit distribution fund, multi-jurisdictional follow up and M&E from the local to the international level, and national level strategic planning and financial management support. As the national REDD+ focal point, the Forestry Department could play an integral role at any of those stages, for instance in providing support to REDD+ planning committees or executing indicator-based M&E. This would not only be consistent with national development plans, the National Climate Change Response Strategy recommendations for the NCCDC but also the Forestry Department's suggested mandate for reformed Extension and Research Services under the draft NFP.

6.4 Incentivizing investments at the Zambia Development Agency

The draft National Forestry Policy of 2010 identifies the Zambia Development Agency as one of the key agencies with which it will collaborate on the forest management projects envisioned under the draft NFP, including REDD+. The Zambia Development Agency Act of 2006 gave the ZDA wide-ranging powers to make recommendations to reconcile legal and institutional frameworks for fiscal incentives as well as provide non-fiscal support to investors. The ZDA has already made significant gains in eliminating barriers to business investments, generally, and has recently shown a marked interest in areas of sustainable development such as renewable energy for which it won the 2011 UNCTAD Investment Promotion Award. This makes it an innovative institution that has already indirectly affected REDD+ preparations, by promoting a shift from reliance on charcoal. Notwithstanding that it has not yet created strong linkages with the Forestry Department, the ZDA could be an important partner in eliminating challenges to investor confidence across REDD+ related sectors as well as addressing the drivers of deforestation and forest degradation through pricing tools.

The ZDA is guided by national development policies such as Vision 2030 and the Sixth National Development Plan and its legislative mandate requires it to: encourage the development and growth of Zambian industries that are efficient in their use of resources, enterprising, innovative and internationally competitive; and ensure that industry develops in a way that is ecologically sustainable.^{ccxxxiii} Therefore, when it uses its discretion to develop new research initiatives to attract certain investments and/or responds to project proposals, the ZDA must take those conditions into account.

In the area of agriculture, one of the drivers of deforestation and forest degradation, the ZDA builds on the Minister of Agriculture and Cooperative's land development programme that seeks to increase investments in agricultural productivity for domestic consumption and export, thereby relieving pressure on indigenous forests from subsistence agriculture. For instance, general tax incentives are granted to the agricultural sector with specified activities paying less than 50% of other corporate tax rates, paying no customs duties for imports, being exempt from income tax on dividends for the first 5 years and having an allowance of 100% expenditure.^{ccxxxiv} The ZDA also lends non-fiscal support to agriculture by assisting private investors to acquire land use rights on both

customary and State lands. An Investor Handbook released by ZDA in 2011 provides instructions on how foreign investors can acquire leasehold title, which can be transferred or used as collateral. Therefore, in conjunction with MACO's opening up new blocks for expansion of the agriculture sector, the ZDA is setting up "land banks" for easy access to information on what lands are readily available for investments. As explained by the ZDA, "[t]he land banks comprise of already demarcated plots and the process of acquiring these plots is fast tracked from application for the land on behalf of the licensed investor..."^{CCXXXV} Pursuant to the ZDA Act, responsible authorities for land "shall" allocate and issue a certificate of title to land to investors where the land has previously been demarcated for the purpose applied for.^{CCXXXVI} ZDA has already publicized a cursory register of available lands.^{CCXXXVII} Furthermore, pursuant to the legislation, investments are secured by the assurance that "an investor's property shall not be compulsorily acquired nor shall any interest in or right over such property be compulsorily acquired except for public purposes under an Act of Parliament... which provides for payment of compensation."^{CCXXXVIII}

The above measures could assist in assuaging the concerns of international investors interested in land rights for REDD+ projects insofar as they facilitate increased opportunities for foreign leases of lands that are secured against acquisitions, which could cause reversals to gains made in REDD+ activities. However, the ZDA has attempted to balance those rights against domestic concerns that have been voiced over foreign ownership. The ZDA has instituted a systemic practice whereby it acquires leasehold title to lands on behalf of investors for projects without actually transferring title to those investors. This was the arrangement, for instance, in a large-scale USD 400 million project for *Jatropha* biofuel, where approximately 120,000 ha are expected to be needed mainly from customary land conversions with title that is held by ZDA. As the title-holder, ZDA can impose conditions on the land user such as environmental and natural resource management standards. At the moment the project has been allowed to use 100 ha of land for conducting necessary tests. Furthermore, the plan for that project is for the investors to prepare an Environmental Project Brief, which would provide detailed information on environmental impacts and enable them secure carbon credits. Beyond securing the land for the project, ZDA will also assist in obtaining all necessary permits and approvals and identifying a corporate Zambian counterpart for the project.

However, it should be strongly noted that the conversion of customary lands into farm blocks has been critiqued by stakeholder groups as having been acquired under inequitable circumstances with only the consent of Chiefs and inadequate provisions for FPIC of communities and individuals. This may be an area for heightened safeguards in the ZDA's work, even should it be the title-holder rather than international investors. In particular, it calls for standardized legal tools in the acquisition process to ensure adherence to international standards of FPIC, for instance pursuant to the UNDRIP.

In addition to the *Jatropha* biofuel project, in 2011 the ZDA Act was amended to expand the designation of Multi-Facility Economic Zone and Priority Sectors (see **Section 4.7.1**) to include the building of mini- and other hydro, thermal and solar power stations; the operation of thermal, hydro and solar power stations; and the generation of thermal, hydro and solar power.^{CCXXXIX} The promotion of those energy sources is supportive of REDD+ implementation as alternatives to charcoal production and consumption, which threatens the feasibility of REDD+ in Zambia. As with all other MFEZs and Priority Sectors, those renewable energy initiatives can now benefit from the fiscal incentives at **Figure 17**. Additionally, as a general incentive, MOFNP has suspended Customs Duty and VAT on all solar photovoltaic panels, batteries and related accessories. Cookstoves, kiln building activities and biomass have not yet benefitted from designation as a MFEZ or Priority Sector in a manner that addresses the charcoal industry more directly.^{CCXL}

Figure 17: ZDA Act Fiscal Incentive for Priority Sectors and Multi-Facility Economic Zones

Investment Type	Fiscal Incentive
USD 10 million and above	<ul style="list-style-type: none"> Entitled to negotiation with the Government for additional incentives other than what they qualify for under the ZDA Act.
USD 500,000 and above in Priority Sectors and MFEZ	<ul style="list-style-type: none"> 0 % tax rate on dividends for 5 years from year of first declaration of dividends. 0% tax on profits for 5 years from the first year profits are made. For year 6 to 8, only 50 percent of profits are taxable and years 9 & 10, only 75 percent of profits are taxable. 0% import duty rate on raw materials, capital goods, machinery including trucks and specialized motor vehicles for five years. Deferment of VAT on machinery and equipment including trucks and specialized motor vehicles.
Micro and Small Enterprises	<ul style="list-style-type: none"> For an enterprise in an urban area the income shall be exempt from tax for the first three (3) years. For an enterprise in a rural area the income shall be exempt from tax for the first five (5) years.
Less than USD 500,000 in Priority Sectors	<ul style="list-style-type: none"> General incentives under the Zambia Revenue Authority (Customs and Excise Act, Income Tax Act and Value Added Tax Act)

(Adapted from ZDA, 2011).

It should be noted that the ZDA's designation of certain MFEZs and Priority Sectors could conflict with REDD+, including the mining sector, the "manufacturing of wood and wood products" and the "processing of forest products."^{ccxli} Those MFEZs and/or Priority Sectors could incentivize increased deforestation and forest degradation should the ZDA not strictly apply its mandate to ensure the efficient use of natural resources and ecological sustainability. Conversely, the latter two provisions could also support the Forestry Department's plans to relieve indigenous forests from human pressure through the revitalization of plantations, which are already the subject of an agreement for fiscal incentives in conjunction with the Minister of Lands who will defer rental payments until first harvest. Furthermore, if the term of "forest products," above, is derived from the expansive definition under the Forests Act of 1973, that ZDA Act provision would extend to provide MFEZ and/or Priority Sector status to sustainable forest management outputs, such as the non-wood forest products honey and mushrooms, and would thereby exempt micro- and small- enterprises in rural areas from tax for the first five years.

Therefore, without having yet entered into substantial dialogues with the national REDD+ focal point, the existing provisions demonstrate the potential for incentives to attract investors to REDD+ projects and also enhance social benefits for local communities undertaking sustainable forest management through collaboration with the ZDA. Nevertheless, stakeholders have critiqued the ZDA incentives as catering primarily to international investors. They claim that the ZDA incentives should be reoriented to also enhance benefits for domestic communities, for instance by mobilizing capital for investments rather than simply providing incentives. Moreover, avoided deforestation and forest degradation could be more directly rewarded than under the expansive definition of "forest products" suggested above.

6.5 Other Innovations

Further other instruments offer potential lessons of value for REDD+, including:

Statutory Instruments for a phased approach to legal frameworks: Zambia has actively utilized regulatory Statutory Instruments to promote timely legal changes when amendments to Acts of Parliament are delayed or unfeasible. For instance, when the Forests Act of 1999 was not commenced, the MTENR passed 2 Statutory

Instruments to implement JFM independent of that legislation. Statutory Instruments have recently been used by the Ministry of Lands to clarify administrative procedures for alienation and the ZDA to allow renewable energy developments to benefit from fiscal incentives. Moreover, the Forestry Department predicts that many of the changes to forest governance under the Forests Bill of 2011 will come under Statutory Instruments. Although the Cancun Agreements do call for national REDD+ strategies or action plans, they may not be translated into stand-alone umbrella REDD+ laws, and even should they, relevant sectoral ministries may use their authority to tweak existing laws as appropriate for phased and cost-effective changes in the immediate term.

Reforms to fiscal transparency and accountability: The current administration of the GRZ has pledged to strengthen anti-corruption institutions. To address issues of transparency and accountability at their source, MOFNP, as the custodian of all financial flows to the GRZ, is implementing an Integrated Financial Management Information System (IFMIS) under the Public Expenditure Management and Financial Accountability programme. The IFMIS will establish computerized accounts in all government institutions across the country in line with decentralized governance so that they can be monitored centrally. Furthermore, the GRZ is a signatory to several international risk insurance facilities to protect investors from war, strife, disasters, land expropriate and other disturbances. Should those innovations extend to REDD+ projects, they may increase investor confidence both in the distribution of results-based payments as well as financial compensation in the event of reversals. As those risk insurance facilities are project-based and require applications by investors, the GRZ may also consider the creation of other domestic or international insurance facilities or carbon credit pools.

Public participation in decision-making and access to information under the EMA: The EMA of 2011 obligates the MTENR to develop measures to ensure public participation in decision-making and access to information. The Central Environmental information System will consolidate all environmental information within sectoral ministries and establish guidelines for gathering, processing and disseminating environmental information, including applications for licenses and approvals, as well as all policies, regulations, reports, environmental strategies, and other information relating to the environment published by the MTENR or the GRZ. The MTENR must also prescribe the manner in which the “right” to participation in decision-making on policies, strategies, plans, programmes, laws and regulations will be ensured, including through public review of documents and public hearings on SEAs and EIAs.

Building on past experiences with CBNRM and JFM: Zambia has made strong efforts in the past to implement community-based natural resource and forest management activities in an innovative manner. Although those efforts have resulted in varying degrees of success, the new Forests Act of 2011 will build on lessons learned to improve JFM through BDS redistributive funding mechanisms that will equally apply to customary and State lands. Those new JFM projects will be first piloted and then scaled up once they have generated useful information on improved implementation, including for REDD+ activities.

Integrated land use planning on customary and State lands: The proposed Urban and Regional Planning Bill of 2009, expected to pass in 2011, will extend District land use planning to customary lands, which were previously unregulated. The Bill requires District Councils to formulate Integrated Development Plans in conjunction with traditional authorities within their jurisdictions. Those IDPs can be further detailed in Local Area Plans, proposed at the community level, and Sectoral Area Plans that deal specifically with sectors such as forestry and the drivers of deforestation and forest degradation, agriculture and energy. This new legislation, will thus further progress the GRZ’s objective of decentralized governance by awarding Districts increased legislative authority while also creating a regime for bottom-up proposals by community members. Moreover, the new legislation has already been embraced by the MOFNP for other climate related programming and finance under the SPCR.

7 Conclusion

The purpose of this Country Study was to provide a preliminary review and analysis of Zambia's preparedness with respect to legal and institutional aspects of the Cancun Agreements and REDD+ activities, guidance and safeguards as it begins to implement the UN-REDD Programme. It identified key gaps, barriers, challenges and innovations for REDD+ design and implementation in the existing policy, legal, institutional and regulatory framework with a view to further in-depth assessments and reforms at a later date. The Cancun Agreements contain numerous provisions that implicate legal and institutional considerations that can be grounded in a range of concrete instruments. The review and analysis in this Country Study was conducted using a Reference Tool, which while primarily based on the Cancun Agreements, was also drawn from a wealth of authoritative sources, including the UN-REDD Programme, FAO, Chatham House, Profor, IUCN, WRI and Baker & McKenzie. As the future mechanism for REDD+ continues to evolve, it is the hope that Country Studies such as this will provide iterative information on the challenges domestic policy-makers face as well as innovations that may facilitate REDD+ implementation.

After a brief Introduction to Zambia's REDD+ objectives with reference to the currently understood drivers of deforestation and forest degradation, Part 2 of this Country Study discussed the importance of legal preparedness for REDD+. The Government of Zambia does not yet have a stand-alone REDD+ strategy or action plan. Even when it does have such a strategy or action plan, Zambia will still have to contend with a broad range of laws and institutions that impact REDD+ because laws create rights, responsibilities and hierarchies in interests that affect issues such as carbon ownership and use, the risk of reversals and displacements, participatory decision-making, and results-based benefit distribution. As such, they provide an overall framework that guides public and private sector activities and are integral to REDD+ preparation and implementation.

Part 3 situated REDD+ within Zambia's general governance framework, including its development goals, decentralized governance, international commitments, human and indigenous peoples rights, and public participation and access to information. Any REDD+ mechanism will have to respond to the requirements of Zambia's general system of governance insofar as it allocates fundamental jurisdictional authority across the country. This extends to District Councils, which are charged with implementing national policies as well as to traditional administrators who are a formal arm of the GRZ and must be respected in the execution of REDD+ projects.

Part 4 reviewed a wide array of existing laws and institutions in Zambia that relate to REDD+ design and implementation. The breadth of laws that have a direct or indirect bearing on REDD+ is wide because coordination across government actors, civil society, and the private sector is necessary to address the drivers of deforestation and forest degradation in a manner that provides adequate substitutes for unsustainable practices without compromising human needs. Therefore laws were reviewed in issue areas, including climate change; land use, ownership and management; forestry; integrated environmental management; energy and electricity; trade and investment and financial accountability.

Part 5 highlighted challenges to legal preparedness for REDD+ in Zambia, focusing on those most pertinent to the Cancun Agreements. While specific challenges were raised throughout the Country Study, the following four were analyzed in-depth based on the review of laws and institutions in Part 4 as well as the Legal Preparedness for REDD+ Reference Tool: equitable and secure land tenure, clarity and coherence of laws and institutions related to REDD+, regulation of the charcoal industry, and benefit distribution systems that are equitable and results-based.

Finally, Part 6 revealed certain of the innovative legal and institutional reforms that are presently underway in Zambia that will directly or indirectly affect REDD+ implementation. In spite of challenges to legal preparedness for REDD+, the GRZ has proactively pursued policies and programmes that may offer novel solutions. These include the draft National Forestry Policy of 2010, decentralized decision-making and two-way information systems under the Strategic Program for Climate Resilience, and the Zambia Development Agency's incentives for investments in alternative energies and agricultural productivity.

This Country Study on Legal Preparedness for REDD+ in Zambia investigated a diversity of legal issues with a bearing on REDD+. However, there are several common threads running through each of the above Parts that can be summarized as: (a) the need for further research and assessment, (b) the need for technical assistance and (c) the need for capacity building. Those three needs are frequently associated with the scientific aspects of REDD+, such as forest reference emission levels and verification of carbon sequestration. However, they also have distinctive legal aspects. For instance, the first suggestion could involve the determination of country-specific evaluative criteria to comprehensively assess the effectiveness of legal and regulatory instruments for Zambia's REDD+ objectives. The second could involve assistance with legislative drafting to relieve the backlog experienced by the Zambia Development Commission as well as the impartial facilitation of cross-sectoral dialogues in REDD+ working groups. Under the latter suggestion, where government actors lack the capacity to monitor and enforce forest governance laws, innovations such as CBNRM could provide solutions. Financial resources that are not otherwise available can likewise be strengthened by rules for public-private partnerships. Furthermore, legal education from the national to the community level on rights, responsibilities and alternative methods of recourse could improve the social benefits requested in the Cancun Agreements. In sum, next steps in REDD+ preparations in Zambia or elsewhere could consider how those three needs are met so as to ensure both equality and effectiveness in the REDD+ legal and institutional framework.

- ⁱ UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010); GRZ, Ministry of Tourism, Environment and Natural Resources, draft National Forestry Policy of 2010; Jacob Mwitwa; Forestry Sector Situational Analysis Report (Lusaka: GRZ, Ministry of Tourism, Environment and Natural Resources, 2009).
- ⁱⁱ FAO, Monitoring and Information for REDD+ Implementation: Draft Discussion Paper for UN-REDD Policy Board 7 (forthcoming).
- ⁱⁱⁱ Decision 1/CP.16 Cancun Agreements: Outcome of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para. 72 & Annex I, footnote 1.
- ^{iv} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010)
- ^v See Output 4.1 of the UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010).
- ^{vi} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010) at 47.
- ^{vii} See Outcome 3 of the UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010).
- ^{viii} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010), paras.49, 53.
- ^{ix} See for instance, “Keohane et al. The Concept of Legalization” (2000) International Organization 401.
- ^x This is adapted from a broader definition of “institutions” in FAO and Profor, *Framework for Assessing and Monitoring Forest Governance* (Rome, 2011).
- ^{xi} See for instance: ICV, Imazon and WRI, *The Governance of Forests Toolkit (v.1)* (September 2009); FAO and Profor, *Framework for Assessing and Monitoring Forest Governance* (Rome, 2011).
- ^{xii} UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)* (June 2011) at 4.
- ^{xiii} UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)* (June 2011) at Table 1.
- ^{xiv} Other important sources are listed in the References section.
- ^{xv} See for instance, “Keohane et al. The Concept of Legalization” (2000) International Organization 401.
- ^{xvi} GRZ, Constitution of 1996, Art. 1, 79, 139.
- ^{xvii} GRZ, Constitution of 1996, Art. 50.
- ^{xviii} GRZ, Constitution of 1996, Art. 139, 62, 78.
- ^{xix} GRZ, Constitution of 1996, Art. 80.
- ^{xx} Part VIII of the Constitution establishes a local government system in Zambia. Article 109 of the Constitution provides that there shall be a local government system to be prescribed by an Act of Parliament and that such a system ‘shall be based on democratically elected Councils on the basis of universal adult suffrage’.
- ^{xxi} GRZ, Ministry of Housing and Local Government, Revised Decentralization Implementation Plan (2009-2013) at 7.
- ^{xxii} There are also Provincial and District Coordination Committees although the Decentralization Implementation Plan notes that they have remained largely ineffective. GRZ, Ministry of Housing and Local Government, Revised Decentralization Implementation Plan (2009-2013) at 7. See also UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010) at 19.
- ^{xxiii} GRZ, Ministry of Housing and Local Government, Revised Decentralization Implementation Plan (2009-2013) at 7.
- ^{xxiv} GRZ, Ministry of Housing and Local Government, Revised Decentralization Implementation Plan (2009-2013) at 9.
- ^{xxv} GRZ, Ministry of Housing and Local Government, Revised Decentralization Implementation Plan (2009-2013) at 13.
- ^{xxvi} See for instance the Zambia Strategic Program for Climate Change Resilience implemented by the Ministry of Finance and National Planning, discussed at Section 6.3.
- ^{xxvii} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010).
- ^{xxviii} GRZ, Constitution of 1996, Part XIII.
- ^{xxix} Appendix I.1 (c),(d),(e).
- ^{xxx} GRZ, Vision 2030, s.1.0.
- ^{xxxi} GRZ, Vision 2030, s. 3.0.
- ^{xxxii} GRZ, Sixth National Development Plan (2011-2016).
- ^{xxxiii} Appendix I. 2(a).
- ^{xxxiv} Para. 1.8; Appendix I, para. 2(a).
- ^{xxxv} GRZ, Constitution of 1996, Art. 11(d), 16.
- ^{xxxvi} GRZ, Constitution of 1996, Art. 112.
- ^{xxxvii} GRZ, Environmental Management Act of 2011, s.4.
- ^{xxxviii} GRZ, Human Rights Commission, <http://www.hrc.org.zm/index.php>; GRZ, Human Rights Commission Act of 1996.
- ^{xxxix} See UNDRIP and ILO Convention No. 169, generally, and Principle 22 of the Rio Declaration, which states “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”
- ^{xl} GRZ, Constitution of 1996, Part XIII.

- ^{xli} GRZ, Constitution of 1996, Art. 112.
- ^{xlii} GRZ, Constitution of 1996, Art.16.
- ^{xliii} GRZ, Constitution of 1996, Art. 23.
- ^{xliiv} Paras. I.8, III.C.71(c), 72; Appendix I, para. 2(a).
- ^{xliv} International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23 March 1976; 999 UNTS 171, Art. 25(a)
- ^{xlvi} United Nations Declaration on the Rights of Indigenous Peoples, UN Doc/ A/61/L.67 (2007), Art. 18.
- ^{xlvii} See for instance Arts. (3a), 10(e), and 19(1) of the 1994 UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; and Arts. 8(j) of the Convention on Biodiversity.
- ^{xlviii} Rio Declaration on Environment and Development (1992), Principle 10.
- ^{xlix} Agenda 21, approved by the UN Conference on Environment and Development on 13 June 1992, UN doc A/CONF.151/26 (vols I-III) (1992), Preamble to Ch.23.
- ⁱ GRZ, Environmental Management Act of 2011, s.6.
- ⁱⁱ GRZ, Environmental Management Act of 2011, s.29; GRZ, National Policy on Environment of 2007 at 31.
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- ^{lxiii} USAID, Property Rights and Resource Governance: Zambia (2010) at 8.
- ^{lxiv} GRZ, Lands Act of 1995, s. 3(3).
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- ^{lxvi} GRZ, Lands Act of 1995, s. 3.(7)
- ^{lxvii} GRZ, Lands Act of 1995, s. 5
- ^{lxviii} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010).
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- ^{lxxxix} GRZ, Ministry of Lands, Newsletter (May 2011).
- ^{xc} GRZ, Ministry of Lands, Draft Land Administration and Management Policy of 2006.
- ^{xci} See also: GRZ, Town and Country Planning (Appointment of Planning Authorities) Regulations Cap. 283.
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- ^{xciii} GRZ, Town and Country Planning (Amendment) Act Cap. 283 of 1997, s.3(2).
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- ^{xcv} GRZ, Town and Country Planning (Amendment) Act Cap. 283 of 1997, s.22.
- ^{xcvi} GRZ, Town and Country Planning (Amendment) Act Cap. 283 of 1997, Part VIII.
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- ^{cix} GRZ, Agricultural Lands Act of 1960, ss. 8,10.
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- ^{ccxv} P. van Beukering et al., Optimization of the Charcoal Chain in Tanzania (Amsterdam, Institute for Environmental Studies, Vrije Universiteit, 2007).
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- ^{ccxvii} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010) at 47.
- ^{ccxviii} GRZ, Energy Regulation Act of 1995, s.6.
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- ^{ccxx} GRZ, Ministry of Tourism, Environment and Natural Resources, Environment and Natural Resources Management and Mainstreaming Programme (2008-2012) s. 5.3 “Interim Environment Fund.”
- ^{ccxxi} See: UN-REDD & Chatham House, Guidance for the Provision of Information on REDD+ Governance (Draft) (June 2011), ss.3.5-3.8.
- ^{ccxxii} See for instance: FAO, IFAD, UNCTAD, World Bank Group, Principles for Agricultural Investment that Respect Rights, Livelihoods and Resources (World Bank, 2010).
- ^{ccxxiii} See for instance: UN-REDD & Chatham House, Guidance for the Provision of Information on REDD+ Governance (Draft) (June 2011) at 10.
- ^{ccxxiv} GRZ, Ministry of Justice, Law Reform in Zambia. A Paper presented by Mubanja M Kondolod , S.C. Solicitor General for the Republic of Zambia (April 2011).
- ^{ccxxv} UN-REDD Programme-Zambia Quick Start Initiative, National Programme Document (September 2010); GRZ, National Constitutional Conference, Initial Report of the National Constitutional Conference (Lusaka, 24 June 2010).
- ^{ccxxvi} GRZ, Ministry of Tourism, Environment and Natural Resources, draft National Forestry Policy of 2010.
- ^{ccxxvii} GRZ, Ministry of Tourism, Environment and Natural Resources, draft National Forestry Policy of 2010, Foreword.
- ^{ccxxviii} See also: UNCTAD & GRZ, Strengthening the Creative Industries for Development in Zambia (United Nations, 2010).
- ^{ccxxix} GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience (June 2011), at 4.
- ^{ccxxx} GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience (June 2011), at 2.
- ^{ccxxxi} GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience (June 2011), at 43.
- ^{ccxxxii} GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience (June 2011), at 1.
- ^{ccxxxiii} GRZ, Zambia Development Agency Act of 2006, s.5(3).
- ^{ccxxxiv} GRZ, Zambia Development Agency, General Tax Incentives, online: <http://www.zda.org.zm/>.
- ^{ccxxxv} GRZ, Zambia Development Agency, Zambia’s Investor Guide Handbook (June 2011); UNCTAD, An Investment Guide to Zambia: Opportunities and Conditions (UNCTAD, 2011).
- ^{ccxxxvi} GRZ, Zambia Development Agency Act of 2006, s.64.
- ^{ccxxxvii} GRZ, Zambia Development Agency, Zambia’s Investor Guide Handbook (June 2011); UNCTAD, An Investment Guide to Zambia: Opportunities and Conditions (UNCTAD, 2011).
- ^{ccxxxviii} GRZ, Zambia Development Agency Act of 2006, s.19.
- ^{ccxxxix} GRZ, Statutory Instrument No. 15 of 2011.
- ^{ccxl} It should be noted that MEWD has raised concerns that the generality of language used in the legislative provisions of the ZDA Act and other legislation under the Zambia Revenue Authority is too vague with respect to eligible components, machinery and materials for import, leading to the non-application of those provisions in specific instances for renewable energy investors. Therefore, in its submissions to the ZDA, the MEWD has requested a more comprehensive sectoral approach to Priority Sector designations that is accommodating of the nuances of renewable and efficient energy imports, production and supply, including for cookstoves and kilns.
- ^{ccxli} GRZ, Zambia Development Agency, MFEZ and Priority Sectors, online: <http://www.zda.org.zm/>.

Annexes

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Annex 2 Government of Zambia Laws Reviewed

Annex 3 List of Figures

Annex 4 Persons Consulted

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	Summary Provisions	Relevant Excerpts from the Cancun Agreements	Related Legal Instrument Options
1.	<p>Ensure that REDD+ activities are used to enhance social benefits.</p>	<p>I.10. <i>Realizes</i> that addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development, based on innovative technologies and more sustainable production and consumption and lifestyles, while ensuring a just transition of the workforce that creates decent work and quality jobs;</p> <p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;FN1</p> <p>FN 1 Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.</p>	<ul style="list-style-type: none"> ▪ Participatory decision-making procedures to determine appropriate levels, nature and timing of monetary and non-monetary benefit distribution for local communities and indigenous peoples, including <i>ex-ante</i> support for start-up costs ▪ Rules for the entitlement to and how benefits will be distributed among investors, landowners, government, local communities and indigenous peoples and persons engaged in forest management (i.e. for opportunity costs, traditional knowledge, employment, management, royalties) ▪ Enforceable provisions for free, prior and informed consent (FPIC) in all REDD+ activities that affect stakeholders, particularly local communities and indigenous peoples ▪ Labour and employment standards that take into account freedom of association and decent work conditions ▪ Procedures, such as Impact Assessments and indicator-based reporting, for local communities and indigenous groups to signal unexpected impacts taking place as a consequence of REDD+ projects ▪ Risk sharing mechanisms to insure recoverable damages for disputes between employed persons, public authorities, and national and international investors ▪ Pricing tools, value addition and other incentives to promote alternative and sustainable livelihoods, for instance from non-wood forest products or ecotourism ▪ Clear and defined rights to land, forests and carbon ownership, use and transfer that support the assessment of benefit distribution systems ▪ Legal education on designing and drafting REDD+ contracts for local communities, indigenous peoples and persons undertaking forest management activities
2.	<p>Fully respect human rights</p>	<p>I. 8. <i>Emphasizes</i> that Parties should, in all climate change related actions, fully respect human rights</p>	<ul style="list-style-type: none"> • Incorporation of human rights legislation and international commitments in REDD+ strategies and action plans (i.e. Bills of Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Universal

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			<p>Declaration of Human Rights)</p> <ul style="list-style-type: none"> • Guarantees against discriminatory practices by political and traditional administrations in all REDD+ related projects, particularly with respect to property rights • Access to justice through dispute resolution mechanisms that are accessible, effective and enforceable
3.	Address the drivers of deforestation and forest degradation	<p>III.C. 68. <i>Encourages</i> all Parties to find effective ways to reduce the human pressure on forests that results in greenhouse gas emissions, including actions to address drivers of deforestation;</p> <p>72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> • Clarity and coherence of laws and institutional mandates across multiple sectors and jurisdictions with respect to REDD+ activities (i.e. energy, agriculture, minerals and mining, infrastructure, transportation, national, provincial, local) • Incorporation of cross-sectoral policies and programmes in REDD+ strategies and action plans • Coordination through inter-ministerial committees, working groups and crosscutting teams • Repeal of laws and regulations that create perverse incentives, such as subsidies • Economic incentives to reduce the human pressure on forests in key sectors, such as tariffs, tax exemptions, subsidies, public-private partnerships, power purchasing agreements, loans and grants • Clarification of the hierarchy of competing interests in land use planning (i.e. easements, exceptions, expropriation, concessions, subsurface rights) • Prohibition, licensing and enforcement of deforestation and forest degradation reflecting actual implementation capacity, including community policing • Monetary and non-monetary substitutes for unsustainable practices, including guaranteed livelihoods through new employment or provision of new sources of food and energy
4.	Develop a national REDD+ strategy or action plan	<p>71. <i>Requests</i> developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(a) A national strategy or action plan;</p> <p>72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure</p>	<ul style="list-style-type: none"> • Key definitions consistent with international commitments and finance mechanisms • Project cycle procedures for approval, verification, data collection, auditing, reconciliation, emissions registration, and social and environmental impact assessment • Clear, consistent and coherent responsibility for REDD+ design, implementation and finance at different levels and sectors of governance • Clarification of tax and royalty treatment of investments, carbon credits earned or traded and benefit distribution systems

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		<p>issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, <i>inter alia</i> indigenous peoples and local communities;</p> <p>78. Also requests Parties to ensure coordination of the activities referred to in paragraph 70 above, including of the related support, particularly at the national level;</p>	<ul style="list-style-type: none"> • Determination of foreign investment and trading rules on ownership and use of carbon credits and export duties • Identification of whether carbon ownership is linked to the land, trees or other, where ownership lies and how it can be transferred • Rules on public and private entitlements to directly enter into contracts for REDD+ projects, public-private partnerships and public procurement laws • Enforceable public access to clear information on REDD+ procedures, applications and projects • Incorporation of the REDD+ Safeguards and issues, <i>inter alia</i>, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations
5.	<p>Develop national forest reference emission and/or forest reference levels, including subnational forest reference emission levels and/or forest reference levels in combination and/or as an interim measure</p>	<p>III.C. 71. Requests developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(b) A national forest reference emission level and/or forest reference levels or, if appropriate, as an interim measure, subnational forest reference emission levels and/or forest reference levels, in accordance with national circumstances, and with provisions contained in decision 4/CP.15, and with any further elaboration of those provisions adopted by the Conference of the Parties; FN6</p> <p>FN6 In accordance with national circumstances, national forest reference emission levels and/or forest reference levels could be a combination of subnational forest reference emissions levels and/or forest reference levels.</p>	<ul style="list-style-type: none"> • Incorporation of international modalities for the development of reference levels into national and subnational policies, such as historical baselines or projections of future trends in the forestry sector • Coordination of subnational, inter-subnational and/or national institutions for data collection • Definition of the relationship among national reference levels, subnational projects, emission displacements and benefit sharing distribution systems • Establishment of carbon emissions registries to enable credits to be issued, transferred and retired
6.	<p>Develop national MRV including the integration of subnational monitoring systems into a national monitoring system and/or as an interim measure</p>	<p>III.C. 71. Requests developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(a) A robust and transparent national forest monitoring system for the monitoring and reporting of the activities referred to in paragraph 70 above, with, if appropriate, subnational monitoring and reporting as an interim measure, FN7 in accordance with national circumstances, and with</p>	<ul style="list-style-type: none"> • Credible and transparent institutions and standards to measure, certify and verify carbon at local, subnational and national level results • Development of criteria or indicator-based data collection and reporting • Funds or contractual provisions with investors or community members to finance independent field-based MRV and review of data • Transparent and accountable financial institutions, including for reporting, auditing and

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		the provisions contained in decision 4/CP.15, and with any further elaboration of those provisions agreed by the Conference of the Parties;	<p>reconciliation</p> <ul style="list-style-type: none"> • Anti-corruption laws and investigations, including protections for whistleblowers
7.	Develop information systems on how the safeguards are addressed and respected	<p>III.C. 71. <i>Requests</i> developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(c) A system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70 above, while respecting sovereignty;</p>	<ul style="list-style-type: none"> • Social and environmental impact assessments at each stage of the project cycle approval, monitoring, reporting and verification procedures • Clear institutional roles, mandates and responsibilities for multi-stakeholder and two-way information contributions • Indicator-based data collection systems tailored to the domestic context and involving stakeholder participation, operational analysis, strategic assessment and feedback, including through publication of assessment results • Rules and institutional mandates for auditing and reconciliation responsibilities, including verification and follow-up on discrepancies • Rules for peer reviews to assist the credibility of information
8.	Promote and support effective and transparent national forest governance structures, taking into account national legislation	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;</p>	<ul style="list-style-type: none"> • Definition of key terms (i.e. forest, deforestation, permanence, carbon) • Clear and coherent laws and institutional mandates for forest management with national policies and devolved implementation that are commensurate to actual capacity • Participatory procedures for decision-making on and implementation of forest management and benefit sharing • Access to information and legal education on ownership and use rights, decision-making processes and recourse mechanisms • Transparent rules on converting or alienating forests, including for sale, land use planning, easements and concessions • Legislative fines, penalties and prosecutions that appropriately address deterrence
9.	Address land tenure issues	<p>III.C. 72. <i>Also requests</i> developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> ▪ <i>De jure</i> legal framework for land tenure that accurately reflects and addresses <i>de facto</i> occupation, management and use, including in traditional administrations ▪ Clear and accessible legal framework supporting and protecting attribution of entitlements for land tenure, including for customary, freehold, leasehold, concessions, liens and public ownership, use, management and transfers of interests

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			<ul style="list-style-type: none"> ▪ Land titling procedures that are clear, accessible and enforceable (i.e. legal education, accessible registration, disputes resolution) ▪ Rules on the alienability and acquisition of lands, including free, prior and informed consent, compensation or resettlement ▪ Coordination of land tenure with forest governance objectives and other land use planning
10.	Address gender considerations	<p>III.C. 72. <i>Also requests</i> developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> ▪ Mainstreaming of gender issues into land titling and forest management procedures ▪ Programmes for gender sensitization, focal points, consultative fora and management teams ▪ Precise rules on gender equality in benefit distribution systems ▪ Meaningful representation of gender interests on decision-making bodies at all jurisdictional levels, including at the national policy level
11.	Promote and support actions to address the risks of reversals	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(f) Actions to address the risks of reversals;</p>	<ul style="list-style-type: none"> • Action plans to deal with force majeure events (i.e. fires, extreme weather events, droughts) • Clear and coherent hierarchies in competing interests in land across sectors that threaten permanence (i.e. easements, exceptions, expropriation, concessions) • Rules for risk mitigation mechanisms such as title registration, insurance, bonds, liens, guarantees and buffers or carbon pools • Risk management tools for monitoring and enforcement
12.	Promote and support actions to reduce the displacement of emissions	<p>III.C.71. Requests developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(a) A robust and transparent national forest monitoring system for the monitoring and reporting of the activities referred to in paragraph 70 above, with, if appropriate, subnational monitoring and reporting as an interim measure, FN7 in accordance with national circumstances, and with the provisions contained in decision 4/CP.15, and with any further</p>	<ul style="list-style-type: none"> • International or regional treaties on displacements (i.e. SADC Protocol) • Subnational accords to promote coordinated actions across disparate communities • Mainstreaming of REDD+ activities into national, regional and local land use planning • Rules on the relationship between project-level, subnational and national baselines and crediting, including:

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		<p>elaboration of those provisions agreed by the Conference of the Parties;</p> <p>FN7 Including monitoring and reporting of emissions displacement at the national level, if appropriate, and reporting on how displacement of emissions is being addressed, and on the means to integrate subnational monitoring systems into a national monitoring system.</p> <p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (g) Actions to reduce displacement of emissions.</p>	<ul style="list-style-type: none"> • What activities will be counted toward national commitments • Benefit distribution among national and subnational institutions • How subnational/project-level participants will be compensated if displacements elsewhere reduce national crediting • MRV and information systems that report on how displacements are being addressed
13.	Promote and support multiple forest functions	<p>Appendix I The activities referred to in paragraph 70 of this decision should: (b) Be consistent with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems; (k) Promote sustainable management of forests;</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits</p>	<ul style="list-style-type: none"> • Integration of conservation and sustainable use of biological diversity into REDD+, and relevant sectoral or cross-sectoral policies, plans and programmes • Rules against the conversion of natural forests into plantations, including prohibitions in benefit distribution systems • System for simultaneous payments for carbon storage and biodiversity protection to promote integrated management and avoid investor favoritism to carbon-rich forests • Strategic and environmental impact assessments of REDD+ projects with biodiversity criteria
14.	Undertake activities consistent with national sustainable development and adaptation needs and goals, including reducing poverty while responding to climate change	<p>Appendix I 1. The activities referred to in paragraph 70 of this decision should: (c) Be undertaken in accordance with national development priorities, objectives and circumstances and capabilities and should respect sovereignty; (d) Be consistent with Parties' national sustainable development needs and goals; (e) Be implemented in the context of sustainable development and reducing poverty, while responding to climate change; (f) Be consistent with the adaptation needs of the country;</p>	<ul style="list-style-type: none"> • Incorporation and/or respect for commitments under national poverty reduction and development strategies (i.e. Vision 2030s, MDGs) into REDD+ strategies • Establishment of REDD+ benefit sharing systems that provide an appropriate level and form of compensation • Allocation of benefit distribution funds to finance socio-economic infrastructure with REDD+ co-benefits, such as ITC systems, legislative and institutional reforms, feeder roads and education • Creation of the right cross-sectoral policy mix to address the drivers of deforestation and forest degradation without compromising livelihoods or necessary goods and services

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15.	Promote and support that actions complement or are consistent with relevant international conventions and agreements	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;</p>	<ul style="list-style-type: none"> • Incorporate and/or respect international commitments under: <ul style="list-style-type: none"> ○ Cancun Agreements and REDD+ Safeguards ○ UN Declaration on the Rights of Indigenous Peoples ○ International Convention on the Elimination of All Forms of Racial Discrimination ○ Convention on Biological Diversity ○ UN Convention to Combat Desertification ○ International Tropical Timber Agreement ○ Ramsar ○ International Covenant on Civil and Political Rights ○ International Covenant on Economic, Social and Cultural Rights ○ Convention on the Elimination of all Forms of Discrimination Against Women ○ ILO Convention No. 169 ○ African Charter on Human and Peoples Rights ○ Convention on the Elimination of All Forms of Racial Discrimination ○ Universal Declaration of Human Rights
16.	Promote and support that actions complement or are consistent with national forest programmes	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;</p>	<ul style="list-style-type: none"> • Incremental legal reforms to existing legislation through regulatory amendments and by-laws to supplement existing laws and lower transaction costs • New umbrella policies and laws adequately address and incorporate existing laws, policies, guidelines, regulations and institutions • Incorporation of prior community based or decentralized forest management programmes and/or lessons learned • Programmes on protected areas for wildlife, biological diversity, water catchment areas and heritage conservation are respected
17.	Undertake activities that are results-based	<p>III.C. 73. Decides that the activities undertaken by Parties referred to in paragraph 70 above should be implemented in phases, beginning with the development of national strategies or action plans, policies and measures, and capacity-building, followed by the implementation of national policies and measures and national strategies or action plans that could involve further capacity-building, technology development and transfer and results-based demonstration activities, and evolving into results-based actions that should be fully measured, reported and verified;</p> <p>Appendix I</p> <p>1. The activities referred to in paragraph 70 of this decision should:</p>	<ul style="list-style-type: none"> • Robust and equitable benefit sharing distribution systems that include results-based or performance-based payments using set milestones and/or MRV criteria • Rules defining, supporting and protecting public or private carbon ownership and use, including alienability, transfer, royalty and fraud prevention rules • System of performance-based penalties resulting from non-adherence to forest management rules

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		(j) Be results-based;	<ul style="list-style-type: none"> • Short-, medium- and/or long-term contracts for carbon credits that take into account periodical review and revision of reference levels to ensure additionality (i.e. dynamic baselines)
18.	Promote and support the knowledge and rights of indigenous peoples and members of local communities	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;</p>	<ul style="list-style-type: none"> ▪ Incorporation of traditional knowledge into forest management standards • Rules to obtain and protect free, prior informed consent in all s.70 related activities • Provision of legal education to local communities and indigenous peoples (i.e. on rights to tenure, carbon ownership, labour standards) ▪ Dispute resolution mechanisms that are equitable, transparent, accountable, independent, confidential and affordable (or free), and that respect customary justice systems of indigenous peoples and local communities ▪ Reinforcement of capacity of the judiciary for alternative dispute resolution, including expanding adjudicators, arbitrators or mediators to include administrative bodies and representatives of local communities
19.	Promote and support the full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities in s.70 activities as well as in developing and implementing national REDD+ strategies or action plans	<p>III.C. 72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p> <p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;</p>	<ul style="list-style-type: none"> ▪ Design of REDD+ strategies through consensus building events with local communities and indigenous peoples • Clearly defined and enforceable rules on levels, timing and mechanisms for stakeholder participation in decision-making • Incorporation of culturally sensitive, traditional and community structures for decision-making, including representatives chosen by themselves in accordance with their own procedures • Broader public consultations at various levels of project design and implementation (i.e. public notice and open comment periods) • Accessible and enforceable access to information rules for all applications, EIAs, SEAs, project documents, laws and institutional mandates affecting REDD+ activities

Annex 2 Government of Zambia Laws Reviewed

GRZ, Agricultural Lands Act of 1960
GRZ, Constitution of 1996
GRZ, draft Constitution of 2010
GRZ, Electricity Act of 1995
GRZ, Energy Regulation Act of 1995
GRZ, Environmental Management Act of 2011
GRZ, Environmental Protection and Pollution Control Act No. 12 of 1990
GRZ, Forests Act No. 39 of 1973
GRZ, Forests Act No. 7 of 1999
GRZ, Human Rights Commission Act of 1996
GRZ, Land (Perpetual Succession) Act of 1926
GRZ, Land Circular No. 1 of 1985
GRZ, Land Survey Act of 1960
GRZ, Lands (Customary Tenure) (Conversion) Regulations of 1996
GRZ, Lands Acquisition Act Cap. 189 of 1970
GRZ, Lands Act of 1995
GRZ, Lands and Deeds Registry Act Cap. 185 of 1994
GRZ, Local Government Act of 1991
GRZ, Mines and Minerals Development Act of 2008
GRZ, Ministry of Energy and Water Development 2008 Budget
GRZ, Ministry of Energy and Water Development, Rural Electrification Master Plan
GRZ, Ministry of Finance and National Planning, Zambia Strategic Programme for Climate Resilience (June 2011)
GRZ, Ministry of Lands, Draft Land Administration and Management Policy of 2006
GRZ, Ministry of Local Government and Housing, Guide to the Draft Urban and Regional Planning Bill, 2009
GRZ, Ministry of Local Government and Housing, Revised Decentralization Implementation Plan (2009-2013)
GRZ, Ministry of Tourism, Environment and Natural Resources, draft National Forestry Policy of 2010
GRZ, Ministry of Tourism, Environment and Natural Resources, Environment and Natural Resources Management and Mainstreaming Programme (2008-2012)
GRZ, Ministry of Tourism, Environment and Natural Resources, National Climate Change Response Strategy (January 2011)
GRZ, National Agricultural Policy (2004-2015)
GRZ, National Anti-Corruption Policy of 2009
GRZ, National Energy Policy of 2008
GRZ, National Forestry Policy of 1998
GRZ, National Policy on Environment of 2007
GRZ, National Policy on National Parks and Wildlife of 1998
GRZ, Public Audit Act of 1980
GRZ, Public Finance Act of 2004
GRZ, Public Private Partnership Act of 2009
GRZ, Public Procurement Act of 2011
GRZ, Sixth National Development Plan (2011-2015)
GRZ, Statutory Instrument No. 15 of 2011.
GRZ, Statutory Instrument No. 47 of 2006.
GRZ, Statutory Instrument No. 52 of 1999

GRZ, Statutory Instrument No. 89 of 1996
GRZ, Statutory Instrument No. 99 of 1999
GRZ, Town and Country Planning (Amendment) Act of 1997
GRZ, Town and Country Planning (Appointment of Planning Authorities) Regulations of 1989
GRZ, Town and Country Planning (Delegation of Functions) Regulations of 1993
GRZ, Vision 2030 (2006)
GRZ, Water Resources Management Act of 2011
GRZ, Zambia (State Lands and Reserves) Orders 1928 to 1964
GRZ, Zambia (Trust Land) Orders, 1947 to 1964
GRZ, Zambia Development Agency Act of 2006
GRZ, Zambia Development Agency, Strategic Plan (2009-2011).
GRZ, Zambia Forestry Action Plan of 1998
GRZ, Zambia Forestry Action Programme of 1997
GRZ, Zambia Wildlife Act of 1998

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- Figure 14: Benefit Distribution Systems and the REDD+ Activities, Guidelines and Safeguards
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- Figure 16: SPCR Strategic Institutional Support to Zambia's Climate Change Programme
- Figure 17: ZDA Act Fiscal Incentive for Priority Sectors and Multi-Facility Economic Zones

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