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Landscape Conservation and Land Tenure in Zambia: Community Trusts in the Kazungula Heartland

AWF Working Papers



Simon Metcalfe

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together with the people of Africa,
works to ensure the wildlife and
wild lands of Africa will
endure forever.



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The AWF Working Paper Series has been designed to disseminate to partners and the conservation community, aspects of AWF current work from its flagship African Heartlands Program. This series aims to share current work in order not only to share work experiences but also to provoke discussions on what's working or not and how best conservation action can be undertaken to ensure that Africa's wildlife and wildlands are conserved forever.

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Cover photo credit: AWF (clockwise: Zambezi River, Zambian village in Trust areas and Chief Mukuni)

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Preamble

The management of communal land for sustainable conservation and development in southern Zambia poses a major challenge. The communal areas have great potential for conservation because they have extensive wildlife habitat with low populations that provide an opportunity if secured, for opening connectivity with wildlife rich areas in Zimbabwe, Botswana and Namibia. Apart from the conservation opportunity the presence of wildlife, together with other abundant natural resources in the area, also provides potential for enterprise development that could improve local livelihoods. However, both the conservation and development potential is frustrated by a dualistic land tenure and administration system that distorts incentives for dynamic community and private sector partnerships. Most of the Zambian land in the Upper Zambezi transboundary area is under customary tenure. Customary authorities can provide private access to community land but should the investor desire formal legal protection then the customary right of access can be processed to leasehold status through the Commissioner of Lands. Leasehold land is alienated from customary to state tenure and the management become divided between customary and statutory authorities with consequent inefficiencies. Sites on the Zambezi River are becoming tourism investment “hotspots” and if access is not well negotiated risk being financially inefficient, socially inequitable and a threat to landscape connectivity. Furthermore, accountability between Chief and community is often subjective and situational with examples of enlightened action and rent seeking behaviour. Unless the challenges encompassed by dualistic tenure and participatory common property management are met investment may be negative for livelihood improvement.

Fundamentally, the rich land and resource endowments of Zambian communities are not matched by clarity on who is entitled to manage and benefit from them. Therefore land reform, which normally takes a long time, is required to correct these disincentives. In the interim, the African Wildlife Foundation has been working with communities, organised through their traditional chiefdoms, to pilot community trusts. The trusts are a mechanism and model that can secure community land and natural resource rights, democratise land management and provide a conducive environment

for communities to engage in and benefit from investment. This paper documents AWF’s experience so far with community land trusts in five chiefdoms of southern Zambia.

1. African Wildlife Foundation’s Heartland Strategy

AWF, is an international conservation organization that works with the people of Africa to ensure that wildlife and wild lands endure forever. It is committed to applied conservation in Africa and its programme presently focuses on eight African landscapes (termed African Heartlands), selected for their critical wildlife conservation importance and value to the people who depend on their resources. An AWF Heartland defines an area where it promotes landscape level conservation and supports integrated land management for biodiversity conservation and livelihood development. A Heartland is a mosaic of habitats and movement needs of key wildlife species and also a tenurial mosaic of state, private and community-managed lands (Metcalf 1995). Habitat corridors and other linkages require land and ideally, a secure long-term arrangement with the responsible land managers is needed to ensure that there is an ongoing commitment to the objectives of the linkage (Bennett 2003). In the knowledge that landscape viability is an outcome of interacting ecological and human management systems AWF helps to secure protected areas as ecological anchors and promotes sustainable management in surrounding areas by fostering socio-economic activities that help to secure core habitat and where possible expand it. AWF works with partners - specialists, governments, private sector and communities - to develop shared management plans and identify priority interventions to deliver concrete conservation and economic impact at the landscape level (AWF 2001; 2003; 2004). Strategically, conservation threats to landscape are reduced through improved knowledge, enabling policy, collaborative governance and positive management incentives.

1.1 Kazungula Heartland (see map)

The Kazungula Heartland covers a 90,000-km² transboundary area with important terrestrial and fresh water ecosystems and is a prime African wildlife and tourism area. Kazungula includes several protected areas, holds the highest number of African elephants and is home to the Victoria Falls, the icon of the Zambezi

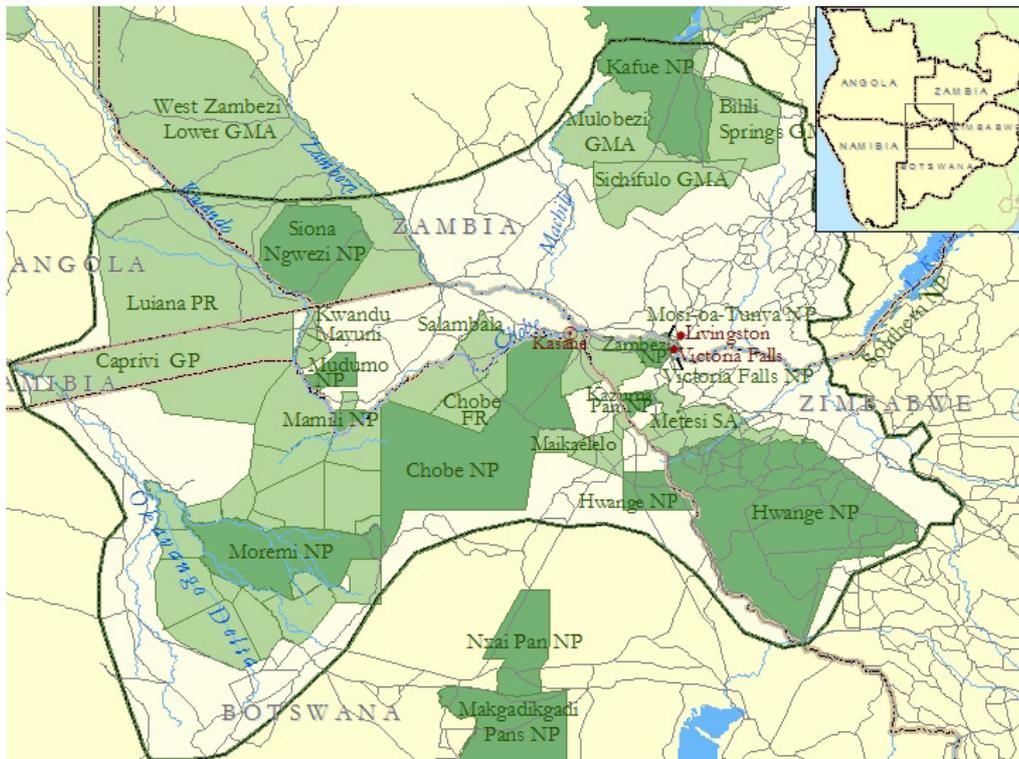
River, which is a major drainage system and conservation target. AWF has been involved in Kazungula since 2000 and has established an overall strategy and identified a core set of priority interventions, achievable within its manageable interest and likely to leverage maximum possible conservation impact at the landscape level. One priority is to establish a wildlife corridor between Zimbabwe and Botswana where substantial wildlife populations in Chobe and Zambezi National Parks exist, and across the Zambezi River with Zambia and the Kafue National Park. Sekute community land is a vital stepping-stone between Chobe, Zambezi and Caprivi to the south and the 5,9 million hectares of the Kafue National Park and its surrounding Game Management Areas to the north. Zimbabwe's Zambezi National Park connects directly with Sekute while the corridor from Botswana's Chobe National Park passes through Caprivi in Namibia. Namibian conservation agencies have been working for over decade promoting community conservation within a transboundary landscape context. AWF's community conservation work in the Zambian

section of the corridor is also designed to complement that effort.

Habitat in the Zambia community lands is largely intact but fragmented and disturbed in critical riverine areas by the land use practices of communities. To become an ecological reality the corridor has to be embedded within a socio-economic, political and institutional system. The conservation goal of the proposed northern Botswana-Southern Zambia corridor is to restore, maintain and protect wildlife movement and dispersal areas around and between protected areas and to secure habitat and species diversity. Working with local people, local authorities (customary and statutory) and wildlife agencies AWF maps existing wildlife populations and movements as well as human/wildlife conflict zones to establish corridor viability. Having established latent potential for the corridor AWF is addressing the socio-economic context to design a strategy to secure it. The ecological objective cannot be imposed on rural communities living on their own land

but needs to be negotiated, adopted, supported and implemented by them. To achieve that AWF is working to establish the enabling conditions to realise the corridor. The strategy needs a supportive policy framework, strong land and resource management institutions and efficient and equitable natural resource enterprises that improve local livelihoods (Metcalf 1996a).

AWF's community conservation and enterprise development initiative in the Zambian section of the Kazungula Heartland focuses on the participatory establishment of land

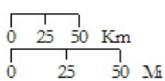


Four Corners Heartland: Regional Context

- AWF Cons. Center
- AWF Office
- Country Boundary
- Road
- Stream
- Open Water
- AWF Heartland
- National Park
- Other Protected Area

Sources:
AWF, ESRI/USGS

AWF Spatial Analysis Laboratory
Feb-04



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and natural resource management institutions. The institutions exist to help the communities manage their resources in such a way that they help deliver viable enterprises that serve both landscape conservation and rural development outcomes.

2. Background to Zambian communities and AWF's strategy

Most of Zambia lies on high plateau 3,500 - 4,500 feet above sea level that is broken by the Zambezi River valley and its Kafue and Luangwa River tributaries. The Zambian section of the Kazungula Heartland is situated in the Zambezi valley area and lays in Zambia's agro-ecological Zone 1, which has the harshest climatic conditions, rainfall less than 800mm. and a short cropping season of 80-120 days and carries a medium to high risk of drought. Four of the chiefdoms (Sekute, Mukuni, Musokotwane and Simwatachela) are in Southern Province, which has an average population density of below 15 people km². Inyambo District lies in Western Province, which has an average population density of only 6 people per km². A massive 53% of all under five aged children are nutritionally stunted on an age, weight and height basis, 73% of the total population is considered poor and 56% extremely poor (ECZ 2001). With a total population of 778,740 persons in Southern province under the age of 20 those orphaned of one parent because of HIV/AIDS amount to 9% (135,086).¹ Some 42% of all households in Southern Province earn less than half a US dollar a day of which only 27% is derived by on-farm income, 25% by non-farming and 28% from wage labour. Households produce only 26% of food consumed and cope with shortages by reducing daily meals and other household items or substituting normal meals with natural fruits.

Community lands in Zambia are a key part of Kazungula with good wildlife habitat and well endowed with natural resources but with low wildlife populations. Since 2001 AWF has been working intensively with five Zambian chiefdoms, a population of some 100,000 in an area of about 1 million hectares. The area stretches all along the Zimbabwean and Namibian border and radiates north from the Zambezi River. Despite opportunities for community conservation and enterprise development the communities lack support systems to exploit existing

opportunities. For example, during its initial involvement AWF facilitated a group of Zambian community leaders to visit community conservation schemes in Botswana, Namibia and Zimbabwe to help them design plans for themselves. The leaders found that although they lacked support to establish wildlife based enterprise they had real opportunities as Zambia's liberalization and tourism drive has resulted in an increased investment interest around Livingstone, including their areas, especially those on or near the Zambezi River.

In Zambia, traditional rulers are land authorities and "gateways" to investment. The Chief's approval and recommendation on "external" investment is the critical first step in securing a lease on customary land. Unfortunately, there are several inefficiencies in the process that mean that a tourism investment may serve neither a positive conservation nor a community livelihood outcome. Unless the land conversion process and natural resource laws are improved and strong institutions developed it is probable that as things stand private sector investment may result in more impoverished communities and unsustainable landscape management. Communities risk losing strategic land and resources because of weak rights, poor collective action and failure to capture income from their natural assets. AWF has consulted extensively with the traditional rulers and with their support initiated a process of consultation with their sub-authorities and subjects with the view to establishing registered (incorporated) community trusts based on the chiefdom area and authority. The trusts have been registered, have constitutions, and with AWF's help are getting ready for the business of wildlife driven development. The trusts could make a radical step in communal land reform in Zambia and become a new model. To understand the opportunities, challenges and threats it is necessary to understand the Zambian land reform and socio-economic context.

3. Background to Customary Land Tenure in Zambia

African customary tenure was historically the dominant mode of rights and obligation to land and its resources until colonialism provided a dramatic shock and transformed and alienated the shared "commons" into systems of "native trust", state and private tenure. These three over-arching systems have persisted under African nationalist governance with the general tendency toward the erosion and privatisation of customary tenure (Platteau 1992). The customary "commons"

¹ Of the 135,086 orphans 62% have no father, 22% no mother and 16% no parents 16%.

means land and associated resources being available exclusively to specific communities, lineages or families operating as corporate identities. The essential element of customary tenure is that resources are available in time and space and across generations with “ownership” being vested in the members of the group who qualify on the basis of socially defined membership criteria reinforced by reciprocity (equity on a give and take basis) by and to each member of the community, organized in a social hierarchy starting with the household and spreading out spatially and up organizationally through a lineage group, clan, chiefdom, and sometimes kingdom (Okoth-Ogendo 2000).

All African countries since colonialism manifest some element of “dualistic” tenure, a division of land classification and allocation between communal and private tenure. Classically, the areas with best cropping potential were privatised and allocated to colonial elites (Quan 2000). Colonial southern Africa favoured the private settler farmer and the countries with most settlement witnessed the greatest alienation of customary lands. In South Africa communities remained with only 13% of the land area (Hall 2004). In both Zimbabwe and Namibia communities were left with some 45% of the less productive land area (Moyana 1984; Werner 2001; Lahiff 2003). Botswana and Zambia endured far less land alienation and local communities retained more land under customary tenure, albeit under colonial and later state regulatory control (Cassidy 2000). In Zambia traditional authorities as rulers and traditional systems as modes of social organization are real, recognized and very significant local institutions. Whilst typically a socialistic policy might favour community equity, the market liberalization approach favours private sector efficiency. But, the relationship between the two value systems and the relationship between community and private tenure is guided by the critical role of the state’s land and agrarian reform policy.

3.1 Zambian Tenure and Land Law

It is officially stated that Zambia covers a total landmass of 75 million hectares of which State Land comprises only 4.5 million hectares (6%) and Customary Land the rest (94%) (Adams 2003). In 1924 control over all land in present-day Zambia (with the exception of Barotseland, now Western Zambia, which had its own treaty with Britain) was transferred from the British South Africa Company to the Governor of Northern Rhodesia. Two categories of land were created:

Crown Land and Reserves, the former for European farmers and the latter set aside for Indigenous People. The Crown Land followed the railway line from Livingstone to Lusaka and up to the Copperbelt and included good arable land on the central plateau. The number of white farmers expanded after the Second World War to a peak near 1500 (Adams 2003). The African Government led by Dr. Kenneth Kaunda became a one-party state in 1973 with a political objective of establishing a classless society and one in which land would not be a commodity. Only small-scale property was permitted, all freehold land was changed to leasehold and the large-scale white farms disintegrated. Any transaction in land without prior consent from the President was prohibited (Adams 2003). The laws governing the granting of customary land in practical terms continued to be interpreted in the light of the Orders of the colonial government: traditional authorities were recognized and that authority was exercised in the person of the traditional ruler (Hansungule 2001).

In 1985 the Ministry of Lands issued Administrative Circular No. 1, 1985 which set out the procedure by which customary land could be alienated to a private person or body. First, was the approval of chief, followed by a resolution of the District Council, and finally approval by the Commissioner of Lands for the conversion of tenure from customary to leasehold. The 1995 Land Act codified these procedures in statutory form and they largely hold today. One provision of the circular was that no more than 250 hectares of land could be converted at any one time although this is not in the present Land Law and both Chiefs and Government have recently approved more (Hansungule 2001). The initial approval often occurs without capacity (e.g. surveyors, technical advisors etc.), is arbitrary and without clarity on issues (e.g. extent of land approved) (ibid.). The traditional rulers or chiefs formal involvement actually ends at “approving” the conversion. Once the chief has approved the matter ends there, as he/she has no power to sign the conveyance as one of the parties to the contract. The lease contract is between Commissioner of Lands, as Lessor, (on behalf of the President) and the Lessee on the other. The Chiefs’ initial recommendation must be followed by the District Council’s collective resolution to issuance and therefore can be an important mechanism to check a Chief’s use of power. The Land Commission can check both chief and council. Alternatively, the opportunities for rent seeking at each stage also exist (ZLA, 2004).

In 1991 the United National Independence Party's (UNIP) was challenged by the Movement for Multi-Party Democracy (MMD) whose democratic pluralism and neo-liberalism was apparent when its manifesto stated, '*the MMD shall institutionalise a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private property and ownership of land ...*' and went on to say it aimed to prepare legislation that would restore the confidence of investors in land and would '*attach economic value to undeveloped land, encourage private real estate agency business, promote the regular issuance of title deeds to productive land owners in both rural and urban areas...*' (MMD, 1991, p7).

The Land Policy Conference of 1993 proposed there should be two classes of land - state and customary - and that the role of chiefs in policy formation and allocation of land in customary areas should be recognised. On state land it was recommended that market forces would determine land prices while the land market in customary areas should be left to evolve according to local conditions. The Lands Act no. 27 of 1995 was passed after heated debate that included a very vigorous defence of customary tenure and the position of the chiefs (Adams 2003). The 1995 Act continues to recognise customary tenure, although any person who holds land under customary tenure may convert the holding to a lease (state land), not exceeding 99 years. To foster cooperation from traditional rulers in the conversion of customary rights to leasehold rights, the Land Act 1995 states that the President '*shall not alienate any land situated in a district or area where land is held under customary tenure without taking into consideration the local customary law on land tenure... (and) without consulting the chief and the local authority in the area in which the land to be alienated is situated...*' (GRZ, 1995, p.271).

The Act of 1995 established a Lands Tribunal whose jurisdiction is to settle disputes relating to land matters including matters of compensation. The Act permits the President to alienate land to citizens, permanent residents and non-Zambians who are investors. The Act is only eleven pages long and certain regulations such as the important Circular No. 1, 1985, 'Procedure on Land Alienation' is still in effect. Although the Act is regarded as well drafted it still awaits the 'coherent, simplified and relevant land law code' promised in the MMD manifesto of 1991 (MMD 1991). In 2002 the Government of Zambia, through Ministry of Lands, announced it was reviewing its land policy and appealed to the public for submissions with the intent to review the Lands Act of 1995 after finalising the policy. Many

issues were brought forward including the marginalisation of the poor in the land policy formulation process, lack of community participation in the land alienation process, lack of information from the Government, women's tenure insecurity, inaccessible surveyors and dispute resolution mechanisms, and the 99-year lease period. In addition, the issue of corruption in land administration, the need to recognise 'traditional title deeds', the alienation of land to non Zambians, and the privatisation of communal areas from major rivers that should be owned and controlled by the rural people. The Draft Land Policy is still waiting to be presented to the Zambian cabinet.

Not all access granted to community land and natural resources necessarily ends up as leasehold land because the private investor may be satisfied with use rights alone. The Chief has the legal right to allocate the **use** of land for specific purposes to whomsoever, after consultations with tribal representatives. This may be done without ratification by the District Council. An investor may only need a few hectares for a lodge but desire a vast area with exclusive transverse rights for tourist clients. The land lease may be used where an investor wishes to protect a capital investment but the rest of the land may remain customary with an exclusive easement or traverse right over it for particular uses and at particular times of the year. Overtime the rights of access to customary land could become quite complex in terms of leases and use rights. Disputes over customary access would be settled under customary law and statutory law used for leasehold disputes. It is unclear how willing the Zambian state would be to sue the highly respected chiefs.

3.2 Management of Access to Customary Land and Natural Resources in Zambia

Max Gluckman (1941; 1943) explained that chiefs do not allot the land directly to their subjects but allot it to sub-chiefs who in turn allot it to village headmen. At the village level, the headmen allotted land to heads of sub-sections or heads of households and they distributed it to their dependents. Interests in land were parcelled out to the end user for use and occupation. From a customary perspective kinship ensures tenurial access and migration to the urban areas could be seen as temporary 'raiding for money' as land was always available on return. Ownership of customary land is hugely skewed against the women. Under customary tenure women's land rights only exist within their virilocal marriages. When a woman marries she moves

to her husband's village and only has use of her husband's land at his pleasure. In event of divorce she will return to her own relatives but if widowed she would normally be allowed use of her husband's lands as long as she wishes but has no independent rights. Her rights to land exist only through her father, husband and later her sons. Her daughters as direct patrilineal descendents have use rights until their marriages. This situation has become a huge gender concern in the context of HIV/AIDS, which leaves many women dependent on the charity of their husband's brothers. Some women have advocated that 30% of land be reserved for women and 10% for people with physical disabilities under the present policy debate. Despite passing of the Intestate Act of 1989 the rights of widows and orphans are being violated in terms of land (Hasungule 2001; Min. of Lands 2005).³

Although most African governments have to a greater or lesser extent disempowered traditional authorities Zambia more than most any other has not. However, it can be questioned whether it is the traditional ruler or the institution of the chiefdom that is empowered, and whether they are, or not, the same thing. This issue is played out in the land alienation process and is directly relevant to AWF's work with chiefdom level land trusts. Although it is sometimes stated that 94% of Zambia falls under customary tenure from that proportion must be deducted the 8% of the country designated as national parks and further 8% designated as forest reserves (Min. of Lands 2005). From the remaining 76% must be deducted 2% for urban areas and 12% as unspecified areas (e.g. state farms, property, military, research stations etc.). Finally, from the remaining 64% the Game Management Areas (GMAs) that make up 22% of Zambia's land area must be considered (Machina 2005). The GMAs, which act as extensive buffer zone areas around all the major national parks, are customary land but the Zambian Wildlife Authority (ZAWA) has statutory control over wildlife utilization. When wildlife populations permit ZAWA uses the GMAs as sport hunting reserves and they provide a significant part of ZAWA's revenue. ZAWA markets the hunts, collects the revenue and shares it with the resident communities through the community resource boards established by its community conservation programme.

³ In Oliver Mtukudzi's famous song 'Neria' and the feature film made to its story line he advises kindness and generosity by brothers to their late brother's widow as the culture expects and not to exploit her material possessions or herself through abuse of the institution of 'widow inheritance'.

The GMAs are a form of co-management in which ZAWA controls hunting revenue but because the land is customary the traditional ruler can negotiate land access to non-consumptive wildlife tourism. In the Lower Zambezi area AWF's Zambezi Heartland is working in GMAs (Chiawa and Rufunsa) and open community areas (Siavonga). In Kazungula Heartland AWF is working with five open community areas (chiefdoms) and not the neighbouring GMAs that connect them to Kafue National Park. The Chiawa GMA in Zambezi Heartland provides an example of land use contestation where ZAWA controls hunting concessions but Chieftainess Chiawa has conceded several land leases to safari tourism operators all along the Zambezi River. ZAWA has not been able to establish a management plan in the Chiawa GMA that reconciles consumptive and non-consumptive wildlife use nor general land use in relation to cropping and livestock subsistence use of the community. The sub-optimal tenurial structure in the GMAs exists because the customary land authority is not allied with ZAWA as a wildlife authority nor the sectoral agencies that regulate access to forestry, fishery or non-forest timber products.

The Open Areas under customary tenure (outside GMAs) comprise 42% of Zambia but within many of them are state forest reserves (% already deducted) and the state still regulates commercial use of forest, wildlife and fishery resources. One critique of the Land Law concerns the fact that strategic parts of Open Areas are targeted for leasehold investment and becoming "hotspots" of alienation. One of the major tourism "hotspots" in community areas concerns the Zambezi River, which is prime real estate for the private sector and a key conservation zone. Zambia's liberalization policy is being fuelled by displaced Zimbabwean agricultural and tourism interests and South Africa's recent entry to the regional market.

3.3 Does the Land Law enable Conservation and Development

Zambian communities in the Kazungula Heartland have land that private sector demand could develop. While the traditional ruler can agree to alienate customary land he/she is not in the final outcome the lessor and not in control of the lessee contract, its performance, or the full benefits that may flow from it. The Commissioner of Lands is the statutory landlord, controls the lease and receives direct benefits. In recognition of the potent "gatekeeper" role of the chief and his ongoing presence, legitimacy and influence the

private investor will agree a “royalty” payment with the chief. Right from the start this dual and uncoordinated rent collection creates inefficiencies and raises transaction costs. In addition the traditional ruler can grant access directly outside the statutory system and this is especially important in regard to the large proportion of wild land

Several inefficient outcomes result from this duality in tenurial administration. Firstly, the chief may well make the deal directly and informally and thus the chiefdom is not a general beneficiary. The chief may not be well advised and guided in the negotiation and may be paid a symbolic rather than commercial rent. The investor, having to pay twice may become less interested in long-term social and ecological sustainability than in securing sufficient short to medium term security to enable profit. The lease fee paid to the Commissioner of Lands is not strategically connected to the District Council or Chief and thus does not ensure local appreciation of the land alienated. Finally, land once alienated from customary land to leasehold land cannot return to customary tenurial status so every time a private sector tourism or agricultural venture is established on customary land that land is permanently alienated with no provision for the chief or community to ensure the lease is managed effectively or performs according to the lease conditions.

Duality of authority compromises effective management unless resolved (Metcalf 1994; 1996b; 1999). If local authorities, traditional ruler or district council, and the Commissioner of Lands do not have an effective database or monitoring system to coordinate the management of leases then alienation of customary lands does not guarantee a positive outcome. Whilst the government’s liberalisation policies is supported by the international donors, agencies such as traditional authorities, the Zambian Land Alliance (ZLA)⁴, and other civic parties including gender advocates refinement of the land reform policy. AWF’s work with the chiefdom level land trusts needs to be seen in this context and is therefore not just about landscape conservation or improving local livelihoods but stands at the centre of the discourse on Zambian land and agrarian reform.

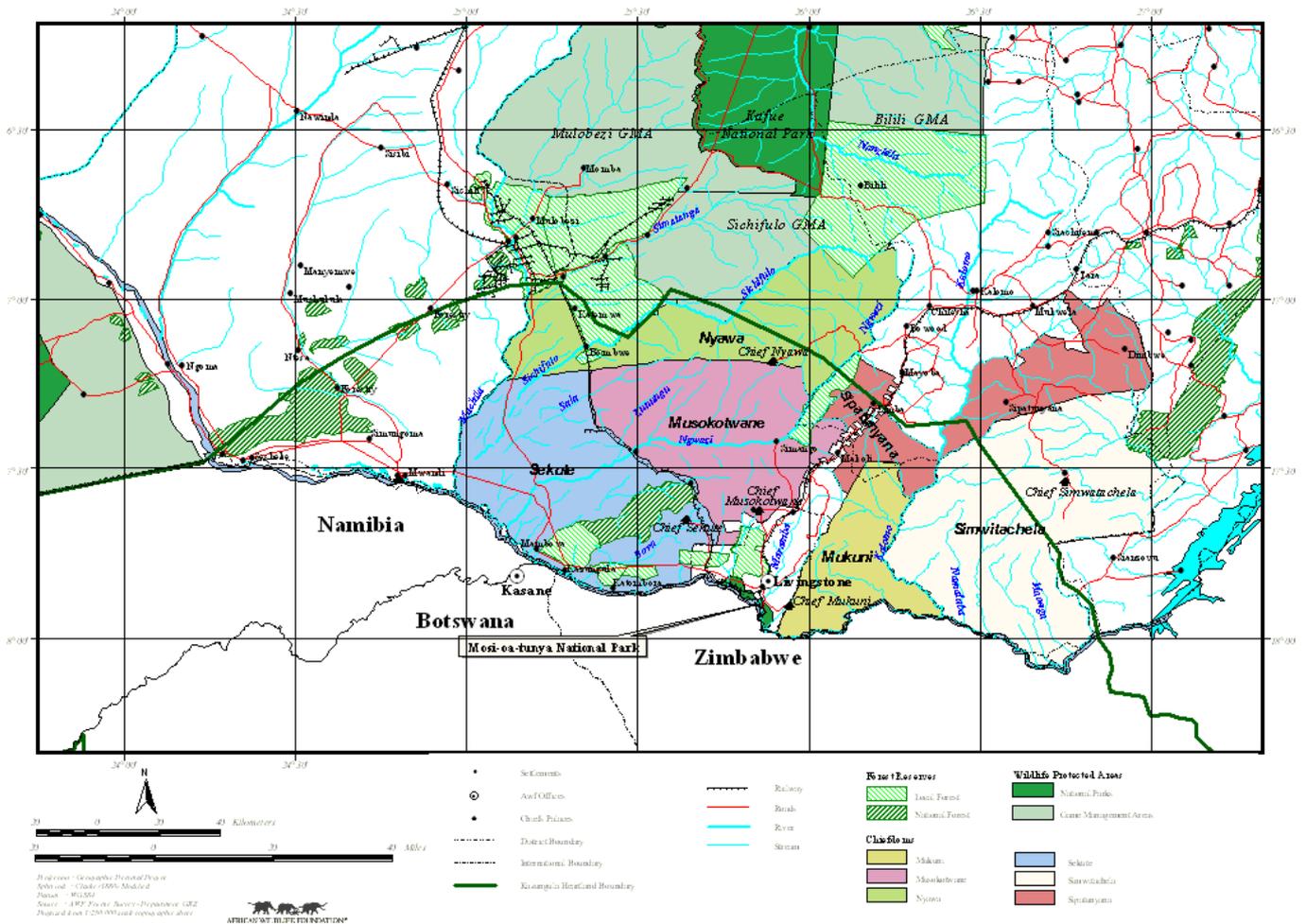
⁴ The ZLA is a network of NGOs that advocate for fair and pro-poor land policies and laws. The ZLA began as a committee in 1997 to co-ordinate activities of member NGOs to participate in and advocate the interests of its members in the ongoing Zambian Government’s Land Reform Process initiated in the early 1990’s.

4 Status of Community Land Trust Development in the Five Zambian Chiefdoms (see map)

AWF has facilitated the establishment of community development trusts with the vision of improving household livelihoods through the sustainable use of natural resources within a landscape conservation approach. AWF is also promoting equitable distribution of benefits without discrimination. The trusts possess full juridical personality and all members of the community are entitled to membership through village and area committees and chiefdom level boards. A key power of the boards is to enter and sign agreements, acquire permits and enter into contracts. A central strategy of the trusts is to apply to convert strategic parcels of customary land into leasehold. Once the trust holds leasehold land it could then seek investors and partners for development as both customary and statutory landlord. In this way customary land would be alienated from the community back to itself in the form of the trust, keep control of its land through a “head” lease arrangement and manage investments directly through sub-leases. The trusts are designed to avoid land converted from customary to leasehold tenure slipping out of the control of the community by using the advantages of private title for its own purposes. In governance terms a key element concerns the downward accountability of the Trust board to the Trust members through an Annual General Meeting and through a General Assembly held every three years (Ribot & Larson 2005; Sekute Trust 2003).

The traditional leaders role in the trusts is community mobilization, the oversight and regulation of elections, ensuring the trust constitutions are upheld and where necessary providing arbitration to resolve conflicts. The Chiefs’ land authority status exists in law and cannot be given away so the trust will propose land sites to be converted for the traditional ruler to consider. In this way the Chiefs’ have allowed a democratic process to advise and guide them. Should they wish to ignore the advice they risk undermining the very structure they have enabled. AWF has started by focusing at the area level of the Trusts, a tier of organisation below the Chief, corresponding with the traditional headmanship, where it is helping map out and plan conservation and development activities. Working with the active participation of the communities AWF is helping to identify and prioritise natural resource and development opportunities and building them up into trust level visions, strategies and action plans. Communities are

Map of chiefdoms in Kazungula Heartland Zambia



being actively engaged to ensure they drive the trust agendas with most progress so far in the Sekute and Mukuni areas.

4.1 Sekute Community Development Trust

The Sekute Chiefdom covers an area of 250,000 hectares and is home to an estimated 17,500 people living in 2,900 households, 289 villages and 15 areas. AWF has focused on the Sekute area because of its wildlife potential, good tourism sites and 60 kilometres of Zambezi River frontage including several islands as well as protected forests. Despite its resource richness the communities are poor and the dividend from their natural asset base is low. Conservation development potential is threatened by poor returns from private sector investment and loss of control through land alienation. The community depends on the traditional authorities for leadership and lack professional advice or a coherent strategy for dealing with investment interests. AWF met with the traditional leaders to assess

Zambia’s Land Policy and the Chiefs agreed that allocating leases on customary land alienated it in perpetuity and further agreed that a community trust structure could hold a “head lease” and directly manage sub-leases to private sector investment partners. An interim committee was elected at a general meeting with representatives from all chiefdom areas. A draft trust constitution was developed that grouped the chiefdom’s 289 villages into fifteen trust areas based on their customary headmanships. The committee was tasked to create lower level structures and initiate the process of legitimating a constitution before registering it. The committee, assisted by AWF, held area meetings and set up 15 area trust committees and proceeded to establish village committees.⁵ Once that exercise was complete the trust held a general meeting to elect office bearers to the Board of Trustees. The Sekute Trust was registered with the Registrar of Societies in March 2003. AWF has assisted the trust to develop by-laws for the

⁵ AWF’s core team includes a community development and enterprise development officers and a lawyer.

management of natural resources in the area and the Kazungula District Council has since adopted these by-laws. One of the key benefits of the by-laws so far has been to control charcoal trading in the area as well as establishing a process for streamlining private sector investments. The Sekute Trust has been co-opted into the Kazungula District Development Committee, which allows it to partner government agencies.

AWF successfully supported the trust to legally challenge a private sector investor who had fraudulently claimed ownership of a prime island on the Zambezi River belonging to the community. The community has since repossessed the island, which is suitable for development of sport fishing camps, and also held general discussions with private sector operators in the Sekute area. The private sector is attracted to a plan that provides a strong and professional community partner and one capable of building long-term effective

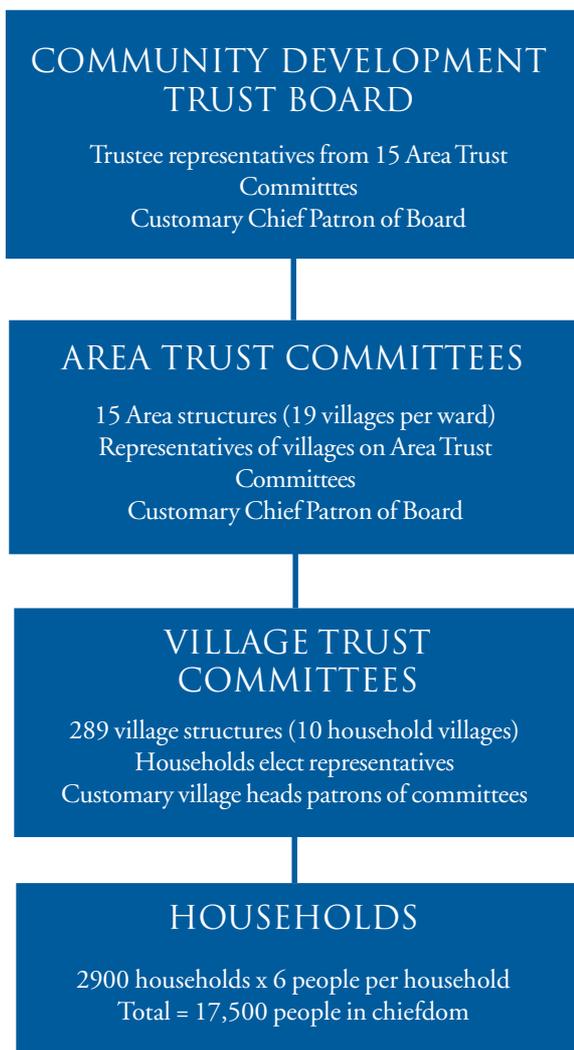
partnerships (Sekute 2003). AWF support to Sekute Development Trust is helping halt illegal allocations of land, democratise land rights, enforce natural resource management practices and effectively partner with the private sector in the area.

4.2 The Mukuni, Musokotwane, Simwatachela and Inyambo Trusts

Chief Mukuni initiated a trust to organize the communities in the Makuni area to capture benefits from booming tourism in the Livingstone/Victoria Falls area. The now well-established Mukuni Community Development Trust has progressive leadership and used AWF assistance to develop twelve lower level area boards. The trust is registered, has received training inputs, been on “look and learn” tours to Namibia and Botswana and helped facilitate the development of the Sekute Development Trust. To date the trust has negotiated contracts with eleven local investors and raised some US\$.2,500 monthly revenue. The contracts entered into by the trust involve percentage tourist takings for use of facilities built within the chieftdom. The trust intends to expand its revenue base, negotiate more partnerships and increase benefits. AWF has assisted the trust in proposal development and negotiations for a partnership with Sun International for an up-market lodge. This is still under consideration and funds are being sought to raise the community equity. There are several potential projects needing appraisal and packaging into fundable development proposals. One of the most visionary plans concerns the development of a 100,000-hectare Bweenga conservancy, a vast wilderness area below the Victoria Falls that could provide a birding and wilderness experience. This land could complement the 66 km² Mosi-oa-Tunya National Park by providing more land for wildlife dispersal. The trust needs strengthening in trust governance, proposal development, negotiating, business management and marketing. Consolidation of the lower level structures is an important prerequisite for the smooth functioning of the trust.

Chief Musokotwane’s has supported the establishment of the Siluwe trust. The chieftdom provides an important habitat link between Kafue and the Zambezi wildlife transboundary area. The area, situated north of Livingstone, has an eastern boundary with Mukuni and a southwest connection with Sekute. The community, with a population of 50,000 living in 21 administrative areas registered their trust in July 2003 and its interim committee is spearheading the internal

Figure 1: The Sekute Community Development Trust: linking traditional and democratic systems



formation of the trust. A constitution developed at a general meeting with area representatives have been followed by the establishment and strengthening of lower level structures. The chiefdom has good forest resources threatened from charcoal burners and valuable forest products like the munketti nut.

Simwatachela is remote area lying east of the Mukuni chiefdom with Zambezi River and Lake Kariba frontage. Some communities live in the semi-arid remote Zambezi valley and others on the plateau with better agricultural potential and more secure livelihoods. The valley community have a rich natural resource base, a vast wilderness but low wildlife populations due to poaching. The people rely on fishing, subsistence agriculture and cross border trading. Trust establishment is in the process of registration with an interim committee and establishing lower level structures. Tourism development potential is good but remote in the valley with its attractive river frontage sights. An investor has established a game ranch and sport fishing camp and the community wishes to build on this venture and work to increase wildlife populations.

The Inyambo chiefdom in Sesheke District is part of Western Province and a sub-unit of the Barotse Royal Establishment. Negotiations to establish a trust entail long hierarchical and bureaucratic consultations. The area is vast and well endowed with state and local forests presently exploited by outsiders with revenue captured by central government, depriving communities of valuable resources. The development of a highway linking Livingstone and Sesheke will attract increased investment interest that a viable trust could respond to and manage.

4.3 The Community Trusts and the Private Sector

AWF has invested in the trusts as common property institutions because it believes that secure and effectively managed property rights can help determine conservation and development outcome. Throughout the time AWF has been involved in this institutional development and capacity building process the private sector has been actively trying to negotiate access to community land and natural resources. A private sector consortium has been negotiating with Chief Sekute for the past three years with a proposition to form a partnership between itself and the Chiefdom to establish a conservancy. Part of the conservation logic of the conservancy is that it would contribute to the proposed corridor. Population density in Sekute is low with 60% settled near one peri-urban area leaving a lot of the 230,000 hectares is uninhabited. The plan envisages

provision of permanent water in areas away from human habitation to allow wildlife to maintain populations with minimal contact and conflict. The vision also includes a substantial investment in restocking, training and management but depends on an exclusive management deal for the private sector group. The group wants a few strategic leases for its tourism lodges and economic nodes but more critically it seeks an exclusive right of access to manage and profit from the wildlife. Part of Chief Mosokotwane's land forms the northwestern part of the proposed corridor and the conservancy. The Chief has negotiated an investment with a private sector operator who has constructed a lodge, drilled boreholes and installed pumps. A system of anti-poaching patrols has been established on a 20,000-hectare site. The investor has acquired leasehold title to 5,000 hectares of the area with exclusive use rights over the other 15,000 hectares and an option to apply for leasehold title. The Sekute investment group sees this as a pilot scheme for the whole conservancy. The arrangement hinges not so much on the alienation of land but on exclusive use rights to the wildlife resource on the land for non-consumptive and consumptive purposes.

Despite its bold vision the scheme has not progressed far for several reasons. Firstly, negotiating directly with Chief Sekute and his advisors on such a bold concept is problematic because the "deal" is based purely on customary authority and may be subject to several vagaries and misunderstandings over time and not a sound basis for a big project. Whereas a community can think in terms of perpetuity what is the life of a "partnership" and what provision is there for conflict resolution. The Sekute Trust would facilitate the possibility of a contractual relationship between two legal personalities and provide for structured community participation and more clarity on roles, responsibilities and beneficiaries. The private sector group undoubtedly has entrepreneurial skills that the trust lacks but it is also clear that the private sector group is depending on the trust to raise substantial capital investment from donors. The relationship is confused between "for profit" activity and the need to raise community financial, natural, social and human capital. AWF community conservation work on the trust must now be complemented by sound enterprise and conservation advice as a trust without investment is pointless and a mutually beneficial deal between the trust and the private sector has to be designed that delivers both livelihoods and wildlife habitat. By stepping around the land tenure issue into the wildlife and natural resource

tenure issues the private sector proposition avoids dualism in relation to the Commissioner of Lands but opens up the dualistic authority issues related to wildlife and forest management on community land.

5 The Way Forward: Linking Practice to Policy, Legislation and Institutions

In line with its economic liberalisation policy Zambia has made private sector investment in land more attractive through the Lands Act no. 27 of 1995. AWF is working within this context to ensure that its local actions fit within the Zambian national legal, policy and institutional framework. Landscape conservation, socio-economic development and good governance inter-relate and land and natural resource tenure is a critical crosscutting issue. Whereas AWF is supportive of decentralization and devolution it recognises that central government has overall responsibility for policy and an obligation for monitoring outcomes, oversight, regulation, and conflict resolution and also needs revenue to perform its role. However, the structure of co-management relationships should not compromise downward accountability in favour of upward if good governance is to be achieved. Neither should cost and benefit distributions within the chiefdoms and between them and the central government and private sector be unfair or act as negative incentives for some parties and not others. Good governance and positive incentives are necessary to ensure positive outcomes for development, conservation and livelihoods (Ribot & Larson 2005).

The Chiefdoms as customary land authorities have agreed to register participatory community development trusts (bodies corporate) for the expressed purpose of harnessing their social and natural capital to leverage investment in order to improve community livelihoods. Unfortunately, their natural endowments are not matched by their tenurial entitlements because of dualistic customary and statutory tenure systems and also because of the challenge to reconcile patriarchal and democratic authority systems (Murphree 1993; Murombedzi 2001; Ribot & Larson 2005). The trusts objective is to solve both the participatory issue and the tenure duality by negotiating fair co-management arrangements intra community and between the community, central government and the private sector (Songarwe et al 2001). If that is achieved the enabling framework to receive and use private sector investment effectively will be improved. The question of human capital or the capability of the local communities to

manage their institutions remains an area of concern and one which AWF is tackling through ongoing training and support (Shackleton et al 2000).

The Forestry Act No.7 of 1999 supports the concept of decentralization and the objective of Joint Forest Management and sharing of benefits (CONASA 2002a). The Sekute and Inyambo areas contain fine woodlands, forest reserves and valuable species such as Mukwa and Teak. Timber concessions exist but it is unclear what the terms of the lease are or if there is any local benefit. The trusts will engage the Forestry Commission in negotiations aimed at benefit capture from forest products through a progressive co-management relationship with the Forestry Commission.

The Fisheries Act does not provide a legal framework for community-based fisheries management but has experimented on a project basis at Lake Kariba with zoned fishing areas with the area chief as head of all zones and assisted by village headmen in charge of each zone. The Fisheries Department (Ministry of Agriculture) has provided the secretariat to village fisheries committees and coordinated an area management plan on a co-management arrangement under which a percentage of the fish levy is ploughed back into the community (CONASA 2002a). This would be possible for the Sekute riverfront.

The Zambia Wildlife Act No.12 of 1998 makes provision for ownership of wildlife under game ranching conditions and for community benefit provided community resource boards are established and registered and embrace principles of democracy, transparency, accountability and equity. So far ZAWA has applied this policy in the GMAs where it has an interest in hunting revenues (CONASA 202a). The Community Development Trusts could negotiate with ZAWA to pilot wildlife management in the open areas based on the GMA model or a refinement of it.

Landscape Conservation and Tenure: Landscape and community development planning must be integrated at appropriate levels of scale with sufficient local participation to ensure shared understanding of the core issues, and appreciation of the relative roles of the partners. Whereas landscape level planning moves from large scale down to local scale, community development planning starts from the local household and radiates out through village, area, chiefdom and regional level land use plans. Implementation depends on community participation motivated not so much

by conservation concepts such as 'connectivity corridors' or 'threat abatement' but rather by 'cultural identity', 'land rights', 'sustainable use' and 'incentives' to derive benefit from their resources. The synergy between conservation and development goals must be clear and accepted by both sides. The appeal of a viable wildlife landscape at local level is when it complements livelihood strategies. In a community setting landscape planning is integral with land and resource management, enterprise and governance activities, all of which pivot on the fulcrum of tenure. One practical conservation activity that facilitates collaboration is by jointly addressing the 'hard edge' of human wildlife conflict because it links wildlife habitat to the people that would be in the frontline of its management. Mapping the wildlife corridor combined strategic household level production of crops like chilli peppers and community-based problem animal control could engage all the actors in the task of reducing wildlife costs and enhancing its benefits. Engaging those communities living in areas facing the highest risk of land alienation to the private sector is another key entry point for conservation planners.

Socio-economic Development and Tenure: Positive landscape level conservation in community areas can be motivated by linking livelihood needs to landscape based goods and services. The neo-liberal environment in Zambia today, in terms of land, is premised on the provision of land property rights and a market in which they can be traded. There is rapid growth in investment interest in specific areas held under customary tenure, primarily riverine sites and those with wild land and wildlife potential. The present extent of land alienated to the private sector should be mapped out and the financial efficiency, socio-economic equity and ecological sustainability of existing deals evaluated. Then a strategy should be developed to improve the effectiveness of existing deals and to ensure better future deals. The fact that the parties to land privatisation, Chief, District Council and Land Commission, do not have or share a database on this information means that no performance assessment exists. This must be corrected! In addition, it is clear that the way the Land Law is presently administered means that fundamental principles of institutional economics and common property management are askew because of a lack of congruence between the rules governing the withdrawal of resources (i.e. the granting of leases by the chief) and the rules governing the building, restoring and maintaining the resource system (i.e. control of the lease by the Lands Commission) (Ostrom 1990; Cousins 2000). It is not

sufficient for AWF to deliver a few successful conservation business ventures (CBVs) because at present they do not adequately serve conservation or development goals. The combination of a few good CBVs in the context of an improved land tenure and privatisation environment could make a very big difference.

Governance and Tenure: The Chief holds tenure in trust on behalf of his subjects and that principal is being institutionalised within the trust structures to ensure transparency and accountability. It is no small challenge to transform traditional consultative structures into modern participatory forums and to reverse upward into downward democratic accountability (Ribot & Larson 2005). Equity and gender within the trust structures must be addressed to avoid the contradiction of traditional and patriarchal local authorities being nested within a democratic constitution that provides equal rights to all citizens. Cousins (2005) believes that democratisation, like tradition, is a work in progress and that we need both together not either one or the other to reconstitute effective local common property land and natural resources management. Customary systems can strengthen and vitalise governance for land and associated resources held by and for the benefit of communities and also enable policy makers to identify resource constellations that are still subject to or ought to revert to common property management. Culture is dynamic, actively constructed in character and responsive to changing political and economic context and circumstance and rural communities do not need to disavow their cultural identities and do not need to see these in contradiction to their identities as citizens. Proponents of 'tradition' have to accommodate notions of gender equality, for example, and make arguments about the accountability of traditional authority in modern terms. This means opening up political space for democratic contestation within tradition. The pressures exerted by global economic forces, processes and policy prescriptions have led Zambia to adopt liberalisation, privatisation and market deregulation. A fundamental problem hindering democratic decentralisation of NRM concerns the structural inequalities that prevent politically and economically marginalized classes and groups from effectively voicing and defending their resource interests and claims *vis-à-vis* powerful competitors (Meyen & Doornbos 2005). The objective, therefore, is for institutional change to bring about more efficient, sustainable and equitable forms of land and NRM through the enhancement of

local participation. AWF must remain committed to this process, as it is central to its strategy.

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