

# Questioning the Benefits of Large-Scale Land Investments to Customary Land holders: A Case of ‘Quality’ Employment in Chiwala Chiefdom

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## ABSTRACT

Focusing on the quality of employment and adopting the case study design, the study undertook an in-depth investigation of the benefits and challenges of land investments to the natives of Chiwala chiefdom. It was purely qualitative study and was driven by both primary and secondary data to triangulate perspectives. Theoretically, the study is guided by the Social License to Operate (SLO). The four dimensions of quality employment by interrogating equality of opportunity, decency of work, fair wages and skills development from the sampled mines were adopted. In view of equality of opportunity, there was no connection between what was agreed in the Resettlement Agreement Plan (RAP) and the reality after grant of the Social License to Operate (SLO). The local people who had given up their land for the investment had not been prioritised for the employment. Outsiders and those endorsed by the senior chief were given priority, Equality of opportunity was absent. Decency of work could not be ascertained as there were variances in the conditions of work as work hours extended beyond twenty hours. PPIs provided were mostly work suits without or worn out helmets, googles, gloves, safety shoes and breathers. Workers and communities alike were exposed to dust fumes, noise and excessive physical labour. In view of fair wages, there was no uniformity and positive compliance with the minimum statutory wages. From the local communities’ perspectives and evidence on the ground, there was no skills development. Observably, the locals could not have access to work that does not require skilled training such as office orderly or cleaners in the investor entity. Evidently, the SLO has expired and the investor operating in the chiefdom must revisit their welcome in the chiefdom. The regulatory frameworks must be strengthened to ensure compliance and curtail corruption.

**Key words:** Employment, Quality, Investment, SLO, Benefit

## INTRODUCTION

In the post-independence era, sub-Saharan Africa has emerged as a hotspot for Large Scale Land Investments (LSLIs) in agriculture, extractive industries and forestry. These investments are significant drivers of economic development for the region. They are a source of employment, infrastructure development, technology transfer, and revenue for the central government. While the focus is usually on the perceived benefits, little to no attention is given to the impact of these investments on customary communities where they occur. The interaction between LSLIs and customary landholders is so important that it needs to be interrogated from both the investor and the customary landholder perspectives. This is because customary communities depend on their land for a myriad of livelihood activities as well as social and cultural identity.

In the Zambian scenario, the need to interrogate the interplay between LSLIs and the benefits to customary communities is an urgent matter. Chiwala chiefdom on the Copperbelt province of Zambia provides an ideal case to assess this relationship. By identifying best practices and proposing actionable recommendations, the study contributes to the growing discourse on leveraging sustainable investment to achieve a balance between the reality of LSLIs and the need for equitable and sustainable employment opportunities such as decent work, fair wages and skills development. Through the case of Chiwala chiefdom, this research adds to the dialogue on inclusive development and how responsible management of LSLIs may anchor socio-economic development for rural communities. Situate within research on extractive industries and drawing on primary data, the article

discusses both the challenges and the benefits of LSLIs in developing economies.

## **Context And Significance of Sustainable Large Scale Land Investments In Zambia**

At regional level, sustainable investments have emerged as a cornerstone for economic transformation and social equity in Sub-Saharan Africa. This is favoured by the region's developmental potential inherent in its abundant natural resources, youthful population, and growing markets. The region presents significant opportunities for investments that can drive economic growth. However, these opportunities are counterbalanced by persistent systemic challenges such as poverty, infrastructure deficits, climate vulnerabilities, and social inequalities, which hinder progress toward sustainable development.

Sustainable investments, defined as capital allocation in projects that generate long-term economic, social, and environmental benefits, are critical to addressing these challenges. In Sub-Saharan Africa, sectors such as renewable energy, sustainable agriculture, green infrastructure, and water resource management have been identified as priorities for achieving sustainable development goals (SDGs) (World Bank, 2020). Given the urgent need to accelerate sustainable development in the region, a critical examination of the benefits and challenges associated with investments is both timely and necessary.

Understanding how investment can be optimised to balance investor interests with sustainable development from the perspective of employment is essential for creating inclusive and resilient economies at the local level. Mambilima (2021), has observed that there are continued concerns around the benefits accruing from investment activities in developing countries. In the Zambian perspective, large scale land investments especially extractive industries such mining, economic and livelihood activities stimulation through employment and skills transfer are some of the expected outcomes of investment (Mambilima, 2021), A balance must be seen between the investor interests and those of the local communities. It is the focus of this article to examine this balance from the perspective of quality employment among the customary landholders who mostly lose land without their consent and little or no compensation.

## **Theoretical Anchorage**

Guided by the Social Licence Theory also known as the Social Licence to Operate (SLO), this research investigates the benefits that have and continue to accrue to the communities of Chiwala chiefdom stakeholders amidst the investments in limestone mining. SLO represents the continuing acceptance, approval and support of stakeholders including and more importantly communities (Alice Stuart, 2023). This is well fitted within this research as it interrogates whether or not the communities of Chiwala chiefdom continue to appraise the investments operating in their areas in the light of Vision 2030 on Sustainable Development Goals with respect to equitable and sustainable employment opportunities such as decent work, fair wages and skills development. Decent work, fair wages and skills development are the fundamental lenses through which this paper assesses whether Dangote investments are still acceptable, approved and supported.

## **Methodology**

This is a qualitative research anchored on a case study research design. The case of Chiwala chiefdom serves as a perfect case study because it has received a fair share of investment in the extractive industries particularly limestone mining. The chiefdom is well situated in Masaiti district of the Copperbelt province and is home to five companies engaged in limestone mining and production of quarry as well as cement. In terms of the research paradigm, the paper is informed by the constructivist approach. The participants construct their own understanding of the phenomenon and knowledge is co-generated by the participants and the researcher.

Participant selection criteria was based on those who had either directly taken part in the events leading to the investment by the five companies or were actually employees or former employees. Headpersons presiding over Chingwere, Chisoboya, Kapala, and Chilengwa as well as the youths in the villages were selected as participants because of their active involvement in the processes leading to the investment by Dangote. Persons who had recently migrated to the chiefdom and those who neither worked for Dangote nor the other investors were excluded except those who worked for Neelkanth. Neelkanth was selected on the basis that a pilot indicated that it offered the worst work conditions in the chiefdom.

In terms of sampling technique, maximum variation and i-criterion purposive sampling techniques were adopted to capture the population that had personal experience of the variables under investigation.

Data was collected using semi-structured interview guides and Focus Group Discussions. Observations were also adopted to collect data. Though permission to assess the work places proved difficult to obtain, the researcher observed the surrounding environment, the PPIs worn by the workers, the work hours and the number of employees in each shift. The researcher targeted knock off time to catch the employees as they walked home and engaged in conversations with them. The data collection period lasted from December 2023 to May 2024.

Data analysis was done by Deductive Thematic analysis as key issues relevant to maintaining SLO were considered. The analysis informed the results and the discussion of the findings.

### **The Legal Framework On Large Scale Land Investments And Employment In Zambia**

These are two separate frameworks: one on Large Scale Land Investments and the other on Employment law within the Republic. Despite this separation, all legal frameworks in Zambia are anchored on one main structure enunciated in the Constitution (article 7) recognising the following as comprising the general legal framework:

1. this Constitution;
2. laws enacted by Parliament;
3. statutory instruments;
4. Zambian customary law which is consistent with this Constitution; and
5. the laws and statutes which apply or extend to Zambia, as prescribed.'

Notably, the Constitution sets itself as the most important general framework. Article 1(1) provides that all other laws, customary law or customary practices that contradicts the Constitution is invalid. Article 1(1) qualifies its application to only what is inconsistent with the constitution. Therefore, where only a section in for instance an Act of Parliament is found wanting, then such a section will be declared inconsistent on the basis of Article 1(1).

Zambian Courts have severally invoked article 1(1), and most recently, the Constitutional Court in *Godfrey Malembeka (suing as Executive Director of Prisons Care and Counselling) v Attorney General and Electoral Commission of Zambia* (2017). In this case, prisoners were barred from participating in the democratic process of electing leaders during general elections on the authority of sections eight (8), 9(1) (e) and 47 of the Electoral Process Act number 35 of 2016. Godfrey Malembeka sought to challenge these sections for want of constitutionality particularly on the basis of articles 18, 20, 23, 28, 43, 45, and 46 of the Constitution. It was contended that the Constitution in the aforementioned articles, guarantee the right of every Zambian citizen to participate in the election of their leaders. The Court agreed with the petitioner, Godfrey Malembeka, and declared sections 9(1) (e) and 47 of the Electoral Process Act null and void to the extent that they contravened article 46 of the Constitution.

Secondly, Acts of Parliament are the second most important source of law in Zambia. Sean Mulcahy and Kate Seear (2023), define an Act of Parliament as a specific law that is made by parliament. In Zambia, the authority to make law, which is also identified as the legislative authority is according to article 62 (2) of the Zambian Constitution primarily vests in Parliament. For example, the Zambian parliament enacted the Investment, Trade and Business Development Act in 2022. This is the key legislative instrument on investment in Zambia. Acts of Parliament are governing laws particular to specific sectors and form the main basis of the individualised discussion on the legal frameworks.

In addition to Acts of Parliament is delegated legislation which speaks to laws that are made by authorised bodies or persons other than Parliament. On the authority of the Constitution (article 62(3)), law may also be made by other persons who are identified and conferred with power to make law. This is understandably rights as certain laws may be specialised thus the need for specialised persons or entities to make them. This is the basis for statutory instruments are a form of delegated legislation. The Constitution (article 266) defines a statutory instrument as 'means a proclamation, regulation, rule, by-law, order or other similar legal instrument made under

a power conferred by this Constitution or an Act of Parliament.’ In the Covid-19 era, the Minister of Health passed inter alia the Public Health (Notifiable Infectious Disease) (Declaration) Notice, 2020.

The foregoing relate to Zambia’s dual and partially inherited legal system comprising statutory law based on the received English law and customary law. The Constitution of Zambia recognises customary law as forming part of Zambia’s legal system. Customary refers to the customs, traditions and practices of the different ethnic groupings native to the different parts of Zambia. It is the oldest system of law that sits on law that is not written yet authoritative. Despite this nature, it can still be invoked by the Courts to determine a matter before it.

In terms of laws and statutes extended to Zambia, the English Law Extent of Application Act Chapter 11 together with the British Acts Extension Act Chapter 10 of the Laws of Zambia provide specifically for application of English law such as common law and doctrines of equity (English law Extent of Application Act, s.2) as well as selected British statutes. English law serves a filler role in cases where Zambian law does not cover a certain aspect. Where Zambia has adequate law to cover a situation, then Zambian law must be used. The Supreme Court in *The People v Shamwana and Others* (1983) ZMHC 1, referred to English law as reserve law. Shamwana and twelve others had been indicted for treasonous acts. The accused argued that the law relevant to their matter was the British Treason Act 1795 applicable to Zambia by virtue of the English Law (Extent of Application) Act then chapter four (4). In view of the British Treason Act, the accused asserted that the law applicable to the offence was by virtue of the English Law (Extent of Application), the British Treason Act of 1795. However, the court rejected that argument and posited that were Zambia had enacted a law on a subject matter as was the position in this case, the law applicable was the Zambian law particularly, the Treason Act No. 35 of 1973.

In the wake of the global village and countries being part of the global community, Zambia inclusive, the Ratification of International Agreements Act number 34 of 2016, anchors International covenants. The Act (s. 12(2) (e)), extends the traditional application of international instruments only after domestication through the local legislative process to the use of other enforceable means such as the courts. Had the case of *Zambia Sugar PLC v Fellow Nanzulukwa* (2001) come after the Ratification of International Agreements Act, it would have been decided differently. In that case, Fellow had worked for Zambia Sugar from 1992 till 1996 when his employment contract was terminated without notice. At the point of termination, he received a three months’ equivalent of his salary in lieu of notice. Fellow argued that the absence of valid reasons for the termination was a contravention of the International Labour Convention No. 158 of 1982. As a result, he unsuccessfully brought an action in the Industrial Relations Court. The Industrial Relations Court ruled that the conditions of service had been observed. On appeal, the Supreme Court upheld the decision of the Industrial Relations Court and added that international instruments could only be applied after being domesticated. The courts were limited to the circumference of domestic law.

International instruments form part of the general legal framework. Notably, international instruments are anchored on article 7(e) of the Zambian Constitution.

An individualised discussion of the legal frameworks is desirable for an in-depth understanding of the interplay between the frameworks.

### **Legal Framework on Large Scale Land Investments**

In Zambia, historical legal transitions have largely contributed to the present day frameworks on land investment and employment. In the 2016 amended Constitution, sustainable development is perched as one of the national values and principles (article 8). This recognition well anchors the call for a balance between investment and sustainable development, not merely attracting investment. This also resonates with the sustainable development principles in Vision 2030 on Sustainable Development Goals (SDGs) and the country’s ambition to be a mid-class income nation by 2030.

### **Evolution of the Investment Regulatory Framework in Zambia**

The type of economic ideologies a country embraces are key in shaping its investment profile. At independence, Zambia inherited a relatively rich liberalised economy. This wealth was solely linked to the flourishing copper industry (Mwanza, 1997). By 1975 this rising curve, precipitated by nationalisation of private enterprises,



dropping copper prices, and the rise in oil prices, began to fall (Inna V. Andronova, Lubinda Haabazoka, and Aaron Mwewa Kasonde, 2022). By 1990, business enterprises had been fully nationalised while the economy was barely surviving.

The legislative authority concisely discussed below reflect the regulatory framework for foreign direct investments in the extractive industries in Zambia, particularly mining:

### **The Lands Act 1995**

The Lands Act, enacted by the Zambian Parliament in 1995 ushered in a new dispensation in land commoditization and Foreign Direct Investments. At the occasion of the enactment, land became a commodity in resonance with the liberalised economy amidst policy shifts for attractive land based investments. The Lands Act (s.3 (3)) provides for instances when the President can provide consent for alienation of land to foreign investors: where a company with at least twenty-five percent (25%) of the shares issued are held by Zambian citizens and is registered under the Companies Act number 10 of 2017; where the foreign investor is a statutory corporation established by an Act of Parliament; and where the foreign investor is a co-operative society with a maximum of twenty-four percent (24%) of the members are non-Zambians and is registered under the Co-operative Societies Act.

### **The Lands Acquisition Act Chapter 189 of 1995**

Arguably, there is no absolute ownership and security of tenure in Zambia. This is because the Lands Acquisition Act Chapter 184 of the Laws of Zambia permits the president to acquire any parcel of land held by any person. Section 3 confers authority on the president to compulsorily acquire land in national interest. Prima facie, this sounds attractive to the investor as land may be acquired from the native land holders for investment purposes, the reverse may also obtain.

### **The Mines and Minerals Development Act Number 11 of 2015**

The Mines and Minerals Development Act is the primary and principle legislation on mining in Zambia. It provides the framework for investing in the mining sector. Section six (6), establishes the Mining Licensing Committee which is responsible for the issuance of mining licenses.

### **The Investment, Trade and Business Development Act 2022**

This is the core legislation on investment in Zambia. It pronounces its relevance in its preamble that it is there to, 'foster economic growth and development by promoting trade, business development and investment in the Republic.' It provides the step by step investment process through the Zambia Development Agency endowed with the authority for its administration.

### **The Zambia Development Agency Act 2022**

The Zambia Development Agency was created in 2006 under the Zambia Development Agency Act as a continuation of the Investment Centre under the older legislative regime. It is a one stop centre with the responsibility of managing investment through facilitation and registration. It provides investment certificates to investors who satisfy its requirements.

### **The Zambia Environmental Management Act Number 12 of 2011**

Within the context of investment, the Zambia Environmental Management Act (ZEM-Act) provides for assessments of the impact of certain investments projects on the environment. Where the Environmental Impact Assessment denotes serious environmental effects, a recommendation may be made to halt such projects. In the preamble, the Act identifies some of its purposes including integrated environmental management and the protection and conservation of the environment through the sustainable management and use of natural resources. Considering the growing calls and policy orientation for industrialisation in Zambia, the need to control pollution which is feature industries, the ZEM-Act also provides for the prevention and control of pollution. All large Scale land investments must pass an Environmental Impact Assessment (ZEM-Act, section

12(1).

## **Legal Framework on Employment in Zambia**

Zambia has a rich historical and evolutionary legal framework on employment dating back to the 1965 employment Act. The Legislation considered here relates to extractive industries particularly mining.

### **The Employment Code Act Number 3 of 2019**

In 2019, the Zambian parliament enacted the Employment Code Act Number 3 as the principle legislation governing the employer-employee relationship. Prior to its enactment, there were several pieces of legislation starting at independence. The Employment Act of 1965, the Employment (Special Provisions) Act, 1966; the Employment of Young Persons and Children Act, 1933; and the Minimum Wages and Conditions of Employment Act, 1982,

### **The Industrial and Labour Relations Act, Chapter 269**

The Industrial and Labour Relations Act provides for the formation of trade unions and employers' representative organisations, including matters related to dispute resolution in employment cases. Importantly, issues relating to the right of employees to belong to a trade union of their choice is a key issue with the Zambian Constitutional and Employment regimes. All people employees alike have the fundamental of Association as enunciated in Zambian Constitution. Article 20(1) of the Zambian Constitution categorically identifies trade unions as falling within the scope of the freedom of associations. Collective bargaining and resolution within the work place are covered by the Act.

### **Minimum Wages and Conditions of Service Regulations**

General workers in the mining sector who are not covered under any law fall within the protection of the Employment Code (Minimum Wages and Conditions of Employment) (General) Orders, Statutory Instrument No. 48 of 2023 (the "General Workers Order"). According to this instrument, general workers under category I are entitled to gross of two thousand three hundred and thirteen Kwacha ten ngwee (K2, 313.10). This includes mine workers and all those within the description given in this regulation.

### **Occupational Safety and Health Act Number 36 of 2010**

Occupational health is a key pillar in the welfare of employees in the mining sector. It is anchored on the Eighth National Development, National Occupational Health Policy and the Occupational Safety and Health Act Number 36 of 2010. The Eighth National Development Plan recognises occupational safety and Health as a fundamental indicator of decent work. Decent work is a well-supported principle of sustainable development within the vision 2030. This demonstrates the relevance of occupational safety and health within the labour market and particularly the mining sector.

## **The Interplay Between Large Scale Land Investments And Quality Employment In Zambia**

### **Results and Discussion of Findings**

Generally, the results of this research show that investment in the case study area has been beneficial. However, the benefits are not to the community but to the central government and people from outside the chiefdom, in the case of Dangote who have been given jobs. The investment contributes to the economic outlook of the country at large but is devoid of any substantial benefit to the people of Chiwala Chiefdom.

Discussing the findings from the sustainable development perspective in terms of the quality of employment, four yard sticks are key. These are the opportunity to be employed, decency in the nature of the work, fair wages and skills development. This is the focus of the paper.

### **Employment Opportunities for all Eligible Members of the Chiefdom**

Results show that employment was not directly offered to the members of the chiefdom. Prospective employees

had to first work for the chief for indefinite periods without pay. Upon satisfaction of the chief, then one would be recommended for employment at Dangote Company Limited. This requirement was confirmed by all participants in the research and extended to everyone regardless of whether they had a skill or not. A key informant interviewee (KIIK1), particularly lamented, 'I was made to work for six months for the chief without getting anything but hoping he would recommend me to Dangote only to be told I did not qualify.'

This contradicted the prudent management of resources envisaged in article 265 of the constitution and the sustainable development envisioned in Vision 2030. The international Labour Organization on equal opportunity to employment considered together with Article 20(1) of the Zambian Constitution entails that no one should be discriminated against from equal access to a livelihood let alone employment. This also contradicts the first pillar of the Eighth National Development Plan which speaks to Economic Transformation and Job Creation focused on citizenry participation in the economy (Republic of Zambia. 2022). Thus sustainable development as reflected in the third pillar of the 8NDP remains outside the realm of attainability.

Additionally, another Key informant (KIICing2) observed that, when the investor was negotiating for land, we were promised, 'members of the chieftdom would be prioritised over outsiders in terms of jobs. Those were the words of the representatives of Dangote,' she intimated. It was observed that the majority of the workers at the industry were people from outside the Chieftdom and not the villages highly affected by the investment. The situation was similar at the other industries though other investors employed more than those at Dangote. Dangote was the desired employer of the villagers and outsiders as it pays better than the other investors.

### **Decency of the Work given to the Natives of Chiwala Chieftdom**

The results show that the host communities of investments in the chieftdom do not receive decent jobs. Decency of work extends to the nature of the work and the conditions in which the work is carried out. The worst observed in the study was those working for Neelkanth Industries with employees reporting as early as five o'clock and going all the way to half two the following day. The work is such that a heap of lime stone has to be cleared for any employee to knock off. One employee was met by the researcher reporting for work at four o'clock in afternoon and met again knocking off the following day at half four covered in white dust and obviously 'over exhausted'. The employee stated, 'all this is because I need to provide for my family, nine hundred kwacha is not worth it.' A mother to one of the ex-employees of the entity lamented how her son was accused of stealing and ended up being beaten suffering broken legs and was hospitalised for months. Her son can barely walk or even work. 'He used to work for only one thousand two hundred kwacha per month, and has been laid off without any benefit or proof of the allegation,' she stated. This confirms Gyapong's (2023) finding in Ghana that the large scale land investments are characterised by failed promises of decent work. People are engaged on causal basis as opposed to permanent employment.

Additionally, decency of work is also perceived from the health and the safety of the working environment. In view of the Eighth National Development Plan (8NDP), the second pillar recognises the need for a healthy labour force relevant to propel Zambia to a thriving and industrialised nation. Employees in the case study area are exposed to dust fumes, excessive noise and irregular health checks neutralising the very essence of the second pillar of the 8NDP. Further, the absence of clean drinking water comprises the health of the members of the chieftdom who ultimately form a part of the work force relevant to drive Zambia to industrialised status.

The absence of PPE especially in the presence of dust certainly impairs the safety and health of the workers as well as the surrounding environment. Despite inspections by the Mines Safety Department under Ministry of Mines and Minerals Development, the status quo has not changed.

There is no decency in the work itself and conditions in the workplace for the people in the chieftdom. They are not treated with a humane face but as villagers without entitlement.

### **Fair Wages and**

Interestingly, in a Focus Group discussion in Chisoboya, the members confirmed what had been stated by other participants. They unanimously stated, 'our chief tells Dangote not to pay us much because we will abandon work once we get paid. We are lazy people.' Clearly, the determinant of pay is not the work done or agreement

or even labour legislation but the whims of the traditional head. Workers were paid as low as nine hundred kwacha contrary to the minimum of two thousand three hundred and thirteen Kwacha ten ngwee (Minimum Wages and Conditions of Work, 2023). A comparison between the wages and the work done reveals a serious disparity. The wages are not fair.

### Skills Development.

It was found that new investors in the chiefdom opt to poach workers from other investors in the area and do not seek identify people upon whom skills could be imparted. This questions the theory that Foreign Direct Investment is known to bring to the host nation, skills development since the investment comes with new machines and generally the employees gets training in new skills relevant to work (Phiri, 2019). Since the research focused on the people of Chiwala chiefdom, it was found to be true in the case of these investments in the chiefdom except the natives as those who have been employed have hardly benefited. There is no skills transfer or development for the local people whose land now houses the million dollar investment. It remains a mere claim as informed by the Classical Economic theorist on Investment that it is wholly beneficial to the host nation yet on the ground there is nothing to attest to that.

### CONCLUSIONS AND RECOMMENDATIONS

The people of Chiwala chiefdom particularly those around the Dangote site no longer accept, approve and support the investment by Dangote Industries. The Social License to Operate (SLO) has since expired. The people have not only lost their land in the hope of new opportunities to work and earn a decent livelihood but have also lost their livelihoods. They have now maximised on charcoal burning gravely contributing to climate change and mealie meal smuggling into the DR Congo. The situation needs to be brought within the context of the labour legislation giving effect to the law and the respect by the investor and all the stakeholders including the chief of the Resettlement Agreement Plan (RAP). There is need for the inspectorate wings of the Ministry of Labour and Social Security as well as the Ministry of Mines and Minerals Development to increase enforcement of policy and legislation for an all stakeholder benefit-sharing outcome.

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