

Zambia Land Alliance (ZLA) Workshop Presentations

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A. Summaries of issues

1. Dual Land Tenure

As part of its colonial legacy, Zambia inherited a dual land tenure system. Broadly speaking, there are two different types of tenure systems viz:

- a) *Customary land tenure; and*
- b) *Leasehold tenure*

This anomaly has survived independence. Some people hold land under customs and tradition while others hold under leasehold. In some cases, members of the same family hold different rights and interests based on different tenures. One person can and in fact most Zambians hold leaseholds simultaneously as they hold customary rights to ancestral land.

Question (s)

- 1.1 How did Zambia come to have the two types of tenure?
- 1.2 How valid was the colonial title to land based on concessions concluded between King Lewanika and the British South Africa Company?
- 1.3 What is the status of customary land tenure in Zambian law?
- 1.4 Does a person holding leasehold tenure enjoy superior rights relative to the one holding customary rights even though the latter rights and interests preceded the former?
- 1.5 What are some of the benefits due to a holder of one and not the other of the two tenures?
- 1.6 Does the Lands Act provide for freehold and what difference does the freehold entail over and above leasehold?
- 1.7 Should Zambia continue with the dual land tenure system or not?

2. National land policy

Zambia does not have a definite national land policy. Up to now, the country has only caricatured and incomprehensive policies often in fragmented form. The first attempt to develop a national land policy was through the appointment of the Land Commission way back in 1967. However, this addressed only aspects of challenges to the colonial system of land tenure and in any case was preoccupied with the issue of racism in land. Besides addressing the issue of absentee landlords and undeveloped or unused land, government used the Commission report and recommendation to repeal the anomalous position of the Barotse status and declared Barotseland a reserve at par with other reserves in the country. The 1975 'watershed' land policy declared land socialist property banning land sales unless with presidential consent which also applied for subdivisions and in fact for any dealings in land. This was amended in 1985 by providing explicit provisions to regulate foreign dealings in land. Though this was retained by the 1995 MMD government land reforms, the socialist policies were reversed and the land market reintroduced. Currently, as stated in both the Draft land policy and the Fifth National Development Plan

(FNDP), the objective behind the current efforts is two-fold. First, government is trying to streamline the process of land delivery so as to ease the process of access to land. This entails introducing systems that are accountable, transparent, equitable, efficient and effective. At the core of this is to deal with corruption. Second, government would like the policy to encourage chiefs to deliver their land to investment.

Question (s)

- 2.1 Why is a national land policy important to have as an instrument of development?
- 2.2 What are some of the examples of fragmented land policies in the country?
- 2.3 Looking at the Draft land policy, what is wrong with regards (a) process and (b) content?
- 2.4 Does the FNDP deal adequately with challenges in land?
- 2.5 To what extent would the Draft land policy be made to more effectively articulate challenges in land?

3. Legal regulatory framework

Besides article 16, the Constitution does not explicitly make provision on land. Article 16 guarantees individual right to property. It also provides for the power to expropriate unused and undeveloped land which is reiterated in Article 11. It is anticipated that expropriations will be subject to the principle of compensation. The President is empowered to acquire any land and assign it for agricultural development. Article 16 empowers government to develop a comprehensive land policy. Based on the Constitution, the Lands Act (1995) is the main regulatory framework for the administration of land. As indicated, the Act provides for the dual system of tenure. The power to alienate land resides in the President in whom alone all land is vested. Unless alienated in accordance with the Act, possession of any land outside of this renders one to the status of squatter and be liable to eviction. Instead of promoting decentralisation, the 1995 Land Act provides for the power on the Commissioner of Lands to retrieve the land that was subject of council or local authorities' jurisdiction. However, Chiefs are empowered to approve all land deals intended to convert customary to leasehold title. Similarly, councils are entitled to recommend applications for title to land. Though not yet implemented, provision exists for the Land Development Fund (LDF) intended to open up virgin areas for development. A distinctive feature of the 1995 Land Act is the introduction of the Lands Tribunal. It was considered vital to have a quasi-judicial machinery outside the judicature but with power of sanction to facilitate easy and simple dispensation of land-related disputes.

Question (s)

- 3.1 Given the current constitutional review process, suggest how the Constitution can be made to provide for land, land rights and interests?
- 3.2 In the current form, how can the poor and vulnerable use the Constitution to ensure access to secured rights and interests in land?
- 3.3 Does the principle of compensation enshrined in the Constitution apply also to customary land granted to investors or seized for other purposes?
- 3.4 The current arrangement is that land is solely vested in the President for and on behalf of citizens.
 - a) What does this (vestment) mean?
 - b) Are there other models for vesting land besides in the President?
 - c) Why should vesting land in the President raise concerns?
- 3.5 Why did the 1995 Land Act receive hostile reception when it was introduced?

- 3.6 Are there specific areas of concern in the Act that often come up each time the statute is considered?
- 3.7 What are some of the concerns around the Lands Tribunal and suggest how they could be addressed?

4. Women and land

Though they are the greatest users of land, women do not enjoy equal rights of access to land in both customary and leasehold tenures. Most of the reasons behind this anomaly are historical but lack of systems of administration sensitive to gender in land compounds the problem. The district status reports undertaken as part of this exercise clearly demonstrate that only a handful of women have been granted land under statutory leasehold. Similarly, and even more problematic, most customary systems exclude women from accessing land due to their gender. There are instances, however, where custom embraces women on equal terms with men but these are an exception. Under the Draft land policy, it is proposed that a 30% quota be reserved for women to apply for all land alienations whether by the Commissioner of Lands or councils.

Question (s)

- 4.1 In what way can women's access to land be encouraged?
- 4.2 What should be done in customary areas to encourage women's access to land in equality with their male counterparts?
- 4.3 What should be done in leasehold tenure to encourage the principle of equal access to land for women on the same terms as men?
- 4.4 Does the Constitution and the Land Act protect women from discrimination in land administration and alienation processes?

5. Squatting

Squatting is a major problem in Zambia. Owing to both historical and current factors, most people find themselves squatters on their own land. The colonial land legacy did a lot to promote landlessness and most people whose ancestors were dispossessed at the time of colonialism remain landless to this day their land still under state or private control. Government policies in encouraging its own or private development since independence particularly after the 1995 Land Act have exacerbated the plight of poor people. Liberal economic policies resulting in new mining projects, private investors in agriculture, rapid and unplanned urbanisation, etc., have led to more and more people being turned into squatters. Underlying this is the law. The 1995 Land Act and general law do not adequately provide for the protection of squatters.

Question (s)

- 5.1 What are the various models in other jurisdictions that have been used to provide legal protection to squatters?
- 5.2 In Zambia, how does the law seek to provide for squatters?
- 5.3 Examine how the 1995 Land Act expose the poor to conditions leading to squatting
- 5.4 How does the judiciary in Zambia seek to protect squatters?

6. Chiefs and land

We have already pointed out that chiefs play an important part in land administration. This is the case from the first time white settlers sought to obtain land through King Lewanika. Though

marginalised by both colonial and post-colonial state, chiefs have nevertheless continued to play a role in land administration at colonial rule through consultation and today through approvals prior to land alienation. In customary areas chiefs continue to exercise customary power and control as provided for in each culture and tradition. One of the problems associated with chiefs is that some of them are corrupt. Instead of consulting their councils before granting approvals, it is alleged that some chiefs discharge this responsibility alone and corruptly. On the other hand, government accuses chiefs of not being forthcoming in releasing their land for development. In fact, some chiefs have 'sold' most of their peoples' land to investors without taking the interests of their people at heart.

Question (s)

- 6.1 What role (s) should chiefs play in land administration?
- 6.2 Should chiefs approve land prior to conversions?
- 6.3 Some chiefs do not discharge their land administration powers transparently and accountably, what suggestions would you make to address this?
- 6.4 In customary areas, what measures should be introduced to empower women and subjects to participate in decisions dealing with land administration?

7. Council administration of land

As implied before, councils are important organs in land administration. Based on the principle of subsidiarity, councils act as the lowest tier of government providing the services basic to ordinary men and women. Though established under the Local Government Act, councils perform most of their land administration functions under the Lands Act and the Town and Country Planning Act. The Housing Act was introduced to augment the function of housing delivery more especially to poor communities within council jurisdiction. Under this Act, land arrogated to councils could be categorised into either statutory or improvement areas. Determination of which of the categories an area should fall under is a political act informed by professionals. In Lusaka and other cities, council land is either statutory, improvement or none of the two. An upgrading programme exists by which to promote conditions, councillors in a meeting can declare a given area statutory by which council commits itself to provide basic amenities and residents to receive council certificates of title for their properties. The layer below statutory is an 'Improvement Area' which though not similar to statutory nevertheless is recognised by council. Holders of land under Improvement Areas are entitled to the possession of Land Record Cards in recognition of their pieces of land. A land record card is a kind of a licence to acknowledge the transaction between the holder and the issuing council. But councils are extremely corrupt. Party officials outside councils allocate land to residents without authority to do so. Individual councillors also allocate land outside councils. Councils are simply chaos when it comes to land administration.

Question (s)

1. What should be the role of councils (rural, town, municipal and city) in land administration?
2. Does the Council certificate of title and land record card empower the holder equally with the holder of the Certificate of Title under the Lands and Deeds Registry Act?
3. Should the agency councils hold from the Commissioner of Lands be held at the discretion of the latter?
4. Explain what happened at the Lusaka City Council and Commissioner of Lands with regards the Baobab College land?
5. How can corruption in council administration of land be controlled?

8. Registration and titling of land

The main framework for the registration and titling of land is the Lands and Deeds Registry Act. Only leasehold land is subject to registration. Customary land falls outside the ambit of the Lands and Deeds Registry Act. This pre-independence statute has governed registration of leasehold land. Land under the direct jurisdiction of the State through the Commissioner of Lands is subject to the powers of the Commissioner to grant or alienate in his discretion. In other cases such as land the Commissioner has delegated to councils, he does so upon receipt of recommendations from respective council (s) these are non-binding on the Commissioner. Once an alienation has been made, the file moves to the Registrar of Lands who causes the transaction to be registered and a Certificate of Title issued. Land not yet surveyed is subject of only 14-year Provisional Lease. Agricultural Land Resettlements are dealt with separately under a different policy but settlers are issued with a 30-year lease. While councils may issue a 99-year Council Certificate of Title for land under council jurisdiction, Land Record Holders obtain seven year records in respect of land in Improvement Areas. The Lands Act provides a maximum 99-year lease for land already surveyed. While in theory a registration should take three days, it in practice often takes very long for the Registrar of Lands to issue a Certificate of Title. Finally, either the Registrar of Lands or councils around the country have updated records of how much land under their respective jurisdictions have become statutory. The Registrar does not know how much land under his jurisdiction still is available for alienation.

Question (s)

- 8.1 Should all land be subject to registration of the holder?
- 8.2 Why should there not be a uniform lease of equal duration?
- 8.3 What is the effect of a Certificate of Title in respect of the rights of the holder and duties of third parties?
- 8.4 What changes would you recommend to the disparities in titles and instruments due to holders of land in council areas?
- 8.5 What should be done to expedite land audit at the Ministry of Lands so that the Commissioner and Registrar operates from the position of knowledge in as far as land availability is concerned?

9. Land administration

Land administration entails institution, procedures and systems of administering land in place for accessing, delivering, holding and enjoying land. Based on the two types of land tenure, customary land is administered by institutions and systems provided by customs and procedures evolved from time to time. There is no uniform system of customary land administration as this depends from community to community and attempts to standardise it risky oversimplifying a very complex institution. While in some communities highly centralised system exists, others operate opaquely decentralised systems basically operated by family and similar structures. In his book 'Essays on Lozi Land and Royal Property', Gluckman has disclosed that under Lozi tenure, 'the right of every subject to be given some arable land is one of the heaviest responsibilities of the king'.¹ This shows that Africans in traditional society enjoyed much more superior rights than their counterparts today where one is expected to be grateful for obtaining an offer of land from government.

¹ . Max Gluckman, Essays on Lozi Land and Royal Property, The Rhodes-Livingstone Paper, Number Ten, p. 14

Simultaneous with traditional mechanisms is the formal State-based administration system of land. This is provided in the array of instruments most directly in the since deceased colonial Orders-in-Council; predecessor and successor to the Lands Act as well as the current 1995 Lands Act; Statutory Instruments including S.I. No. 7 of 1994 in which the President delegates his powers over land to the Commissioner of Lands; Local Government Act establishing and setting out powers for councils, Chiefs Act providing for the recognition of Chiefs and their functions; Village Development Act, etc. Under the current arrangement, leasehold land is centrally administered by the Commissioner of Lands who is appointed by the President in his sole discretion and who is answerable only to him and to no other in terms of discharge of functions of his office. Though the framework refers to a 'Commission of Lands', in fact only one person the Commissioner of Lands, operates the framework and the law allows him to do in his discretion. Based on the 1985 Amendment, the President attends to alienation of land to foreign or non-Zambians personally. Besides only councils, the system of land administration is individual or personal in nature relying on Chief, Commissioner of Lands and President. Second, though administration is supposed to be guided by Circular No. 1 of 1985 this is in the discharge of the discretionary power by the Commissioner and in any case the Circular lacks statutory force. Instead of easing the administrative bottlenecks the Circular compounds the throes of administrative mayhem applicants must go through to get their applications for land processed. Besides the Chief, government does not recognise community's own systems of land tenure administrations prevalent in villages and communities though these are recognised and are being applied and implemented by local systems.

Question (s)

9.1 How adequate is the present system of land administration at the Commission of Lands in meeting the objectives of accountability, transparency, equity, etc?

9.2 How can land administration be made more accountable and more decentralised to encapsulate good practices at local levels?

9.3 Current procedures for accessing land are laborious and bureaucratic. How can land administration be made more open, simple, accessible and accountable?

9.4 Corruption in land administration is a notorious fact. Government has taken some of the high profile cases of corruption to court. How can the land administration system be made anti-corrupt?

10. Investors and land

The Lands Act enshrines generous provisions in Section 3 on access to land by non-Zambians the ordinary parlance being 'investors' While it is not possible in other countries for non-citizens to hold land on similar terms to those of citizens, all that an investor needs to do is to submit the application through the Commissioner of Lands to the President. The Act states that investors' cases will be dealt with by the President implying some kind of an advantage over that of the local. The President does not have to see applications from Zambians. Furthermore, due to the principle that non-Zambians should acquire land on similar terms, fees charged for non-Zambians until recently were the same. Even after this was changed and non-Zambians have their own fees which are higher than those chargeable to citizens, they still are far below the market value.

Locals get nothing in form of compensation when land is transferred from their to the jurisdiction of investors whether local or foreign. Yet, it has been law since as far back as 1930 (see case of Sakariyawo Shobi v. Moraimo Dakolo and others, 1930, Appeal Cases, 667) that extinguishment of pre-existing rights and interests in customary are compensable. Individual holders are entitled

to compensation for the loss of their rights while the chief is entitled to claim for reversionary interests. In Zambia, however, customary holders are paid nothing for their land.

Question (s)

10.1 What changes would you like to see to Section 3 of the Lands Act in respect of access by non-Zambians to land?

10.2 How should the law be made to favour locals against foreigners in granting access to land?

10.3 Most ex-Zimbabwean white farmers upon being repossessed of their land in Zimbabwe have settled in Zambia where instead of getting land through alienation generally bought land on the market. Consequently, most of them are recorded merely as purchasers or not at all. What suggestion would you make to try and introduce transparency in such dealings?

B. Presentation of Studies

The presentation is based on four studies conducted over a period of ten (10) months from since the end of 2006. Thematic areas the basis on which the studies were conducted are the following:

- 1. Analysis of the Draft Land Policy**
- 2. Land in the Fifth National Development Plan**
- 3. Dual Land Tenure System; and**
- 4. Status Reports: Chipata, Mansa, Monze and Mongu**

While the study of the dual land tenure was initiated jointly by the MS-Zambia and Zambia Land Alliance (ZLA), the other three were specifically requested for by the ZLA. The dual land tenure study has previously been presented to stakeholders at a meeting held at MS-Zambia. However, given the similarity of the issues in all the four themes and given that most participants to this workshop did not attend the presentation at MS-Zambia, it would be to their advantage that the same be repeated.

1. Analysis of the Draft Land Policy

Basically, the analysis aims to contribute to the debate towards a national land policy. It is common knowledge that Zambia has had no definitive land policy from since independence. The paper strongly argues on the need for a land policy. However, this must be done democratically, inclusively, and after taking into account the genuine needs of the people in tenure. It is necessary that policy precedes comprehensive research so that the exercise is based on felt needs and challenges put forth by the people themselves. The paper emphasis the need for bottom-up approach as the most appropriate method to use in developing ideas and issues to enshrine in the draft. Therefore, the paper argues that while the need for a policy is self-evident, the process for its development should aim at triggering autochthonous ideas. The paper bemoans the fact that government appointed a committee of civil servants in the Ministry of Lands without the necessary political mandate to develop the policy which process is essentially political and therefore beyond the jurisdiction of civil servants.

2. Dual land tenure system

This study aims to interrogate the dual land tenure system in Zambia and whether this is an adequate system both for individual and group access to land. The two-tenured system the country inherited from colonialism has divided Zambians into two distinct people holding different rights in land depending on status. The status of these rights is different depending on different tenure systems. Yet, the paper argues, the Constitution anticipates equality of rights irrespective of status. Simultaneously, the paper advances the view that as presently constituted, both the law and practice tend to discriminate against holders of customary rights. Inherent discrimination against customary landholders is part of the wider scheme initiated during the colonial period. It was in order to dispossess local people of their land that legal recognition was wilfully not extended to customary land holdings. Therefore, customary landholders suffer from insecurity of tenure including land dispossessions and consequent evictions. The State, which is mandated to protect citizens more especially the poor, has nevertheless refrained from doing so for fear that investors may be scared away. Adoption of liberal economic policies has encouraged the spiral of land dispossession particularly against people already do not have secure rights.

3. Fifth National Development Plan (FNDP)

This is not an analysis of the FNDP as a whole. It would be beyond the scope of the study. Basically, the study is limited to an analysis of the chapter on land in the FNDP and of aspects of the FNDP bearing on land. The study begins by tracing back the development of the concept of development plans from way back in 1965 when government instituted the provisional plan lasting two years. It points out that save for the period of tenure of the Chiluba administration, Zambia has been under plans throughout since independence.

With regards to land in the FNDP, the study highlights the fact that just like the Draft land policy, the primary objective of the Plan is to stimulate access to land more especially customary land. It points out that the main motive behind government's intention to plan for land is in order to secure land both for local and foreign investment. While the Plan boasts of the widest possible consultation with citizens, the study doubts whether chiefs, one of the most important stakeholders, were adequately consulted given that they are implicitly being blamed for not releasing land for development. Second, the Plan seems to favour only one concept of land tenure the leasehold or private tenure system. There is no indication that in the ten years of the Plan, government also intends to invest in the development of a stronger system of customary tenure. Besides promising to promote access to land for women which implicitly includes promoting women's access to customary land, the Plan does not concern itself with developing customary land tenure system which leaves holders of this tenure in a quandary.

4. Status Reports

This study is more of a report. ZLA decided to do a 'fact-finding' status report to determine a number of things particularly the current state of allocation of land in councils and resettlement schemes. Inevitably, this leads to the discussion of broader issues such as chief or customary land and the whole notion of tenure. However, the primary objective of the study was to seek out council records and records of resettlement schemes in relation to land allocations particularly to determine the extent to which allocations are equitable, gender sensitive and non-discriminatory of the poor.

Initially, it was decided that the study centres on five cities and towns viz Lusaka, Chipata, Mansa, Monze and Mongu. However, owing to unanticipated difficulties with Lusaka, it was decided not to deal with Lusaka. Part of this problem was that the study coincided with the

explosion of corruption allegations at the Ministry of Lands which saw several senior officials being suspended and later arrested for alleged corruption in their work. With this, officials were reluctant to cooperate with the researchers seeking data most of them considered too sensitive.

Generally, the research found that councils continued with land allocation function. However, they lack modicum of capacity to prepare and plan the land including surveying to make it ready for alienation. Second, it is a big problem that the Commissioner of Lands has not decentralised land administration to councils more especially township and rural councils. As agents of the Commissioner of Lands, councils had very limited role to play in spite of the fact that they came into these bodies by democratic process. On the other hand, the Commissioner of Lands is an appointee, and there is no democracy on how he comes in office besides the fact that he administers his functions and takes some of his crucial decisions all alone. Third, it was common in all the four councils surveyed for men to dominate the allocations. Only a handful of women benefited from land allocations.

This last aspect also reflected in agricultural resettlements. Most settlers tended to be men. Policy did not promote allocation of settlements to women save in exceptional instances. The process of selection as to who gets a settlement is not always open. Allegations of corruption were rampant. Similarly, most settlers even though settled for many years nevertheless have not been granted with title deeds. The settlement policy states that title deeds would be issued on the basis of capacity and only to those able to develop the land. In practice, it is government which lacks capacity. Settlements lack the basic necessities including water, roads, schools and other amenities, etc. There were no incentives to encourage people to take on settlements. We also found complete lack of knowledge by settlers of procedures and rules that govern access to government services including title deeds. Finally, it was found that chiefs were increasingly becoming reluctant to give more of their land for settlement programme.

C. Additional questions

1. Is a definitive national land policy a necessity?

2. Does the Zambian Constitution in its present form provide for individual and group access to land on secured terms?
3. What is the advantage and disadvantage of the property clause in Article 16 of the Constitution to the poor in relation to land?
4. What is the meaning of the 'dual land tenure'?
5. What are the implications of duality of tenure to land holders?
6. Is leasehold tenure equivalent to private property?
7. What are some of the best practices:
 - a) in leasehold tenure?
 - b) in customary tenure?
8. What are some of the bad practices:
 - a) leasehold tenure?
 - b) customary tenure?
9. What were some of the contentious issues behind the 1995 Land Act?
10. What is the policy of government with regards to promoting women's access to land?
11. The Department of Resettlement is located in the Office of the Vice President. In your view, should this be the case, if not, why?
12. Should the Lands Tribunal be decentralised down to the village level or not? If yes, what would be some of the advantages? If not, what would be some of the disadvantages?
13. The Supreme Court has ruled that the Lands Tribunal has no power to order cancellation of a title deed in a matter. Meanwhile, the Lands Tribunal is trying to obtain this power. What is your view?
14. There is chaos in the allocation of land in urban areas with individual councillors and even party officials at branch and sections pretending to be councils and allocating land. How do you think this problem should be addressed?
15. Squatting is a major problem in Zambia. Several hundreds of thousands of people squat especially in leasehold land. What do you think should be done?
16. There is rampant corruption in land administration. Both customary and formal authorities in leasehold and customary areas have been criticised for promoting or even perpetrating corruption. How can corruption in land be dealt with?
17. How do you look at the FNDP on land in particular the claim that it was a product of broad consultation?
18. Should land be vested in the President?

- a) If yes, why?
- b) If no, why?

19. What does vestment of land really entails?

20. What is the content of a leasehold? What is the content of customary title?