

**Land tenure policy and practice in Zambia:  
issues relating to the development of the  
agricultural sector**

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# Land tenure policy and practice in Zambia: Issues relating to the development of the agricultural sector

## 1 Introduction

1. As the Terms of Reference state, land policy and the proposed land tenure reforms of Government have important implications for the development of the agriculture sector in Zambia. The purpose of this report is to 'identify the critical issues that will need to be assessed further if DFID decides to offer support to the agricultural sector' (Appendix 6).
2. The work is based on a ten-day visit to Zambia, 18-27 November 2002, in which meetings were held with government officials and those of donor agencies, NGOs and DFID-Zambia (see Appendix 2)<sup>1</sup> and a brief field visit was made to Central Province. On returning to base, a review has been conducted of documentation relating to land policy and tenure reform in Zambia (see Appendix 1).
3. During the course of the country visit, Government published its Draft Land Policy in the *Daily Mail* on 21 November 2002. In addition to setting out some general policy objectives, it provides a very detailed description of the institutional framework for the administration of the land sector. (see Appendix 3).
4. The author is grateful for the opportunity to carry out this review and for the generous help and assistance provided by GRZ, donor and DFID officials, the Kenya Land Alliance and Oxfam.

## 2 Land and agricultural resources

5. Chapter 5 of the PRSP (GRZ 2002) presents an optimistic view of Zambia's agricultural resources. The constraints imposed by Zambia's tropical continental position and relief on the climate and water resources should be noted. Although better endowed with lakes, swamps and perennial rivers than its neighbours, the year-round supply of water for domestic stock and arable agriculture in Zambia can be a serious problem. Further, soils derived from the ancient peneplain and the Kalahari sands are generally infertile and require large quantities of nitrogenous fertilizer.
6. Because the planting season is short and the rains are uncertain, only one rain-fed crop per year can be harvested over much of the country. As in 2002, the rains may break late and delay planting or fail soon after sowing. The rain may fall in violent and erosive storms, or over such a period that weeds cannot be controlled, or there may be a mid-season drought or the rains may end early before the crop has matured.
7. Zambia is well known for the year-to-year variations in the amount and temporal distribution of rainfall and the marked effect this has on maize yields, the volume of sales to

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<sup>1</sup> Names, contact numbers and notes of the meeting have been incorporated to facilitate follow-up discussions.

towns and on grain prices, which can fluctuate within very wide limits (Allan 1965). Hence successive governments have become preoccupied with intervening in grain and fertilizer marketing to reduce the burden on urban consumers (some 45% of the population) and the risks of food riots.

8. The PRSP (GRZ 2002) notes that Zambia's surface area amounts to 75 million hectares of which only 12 per cent (9 m ha) is suited for arable agriculture and only 2 per cent is under crops at any one time. Taking into account the land rotation system practiced by the majority of Zambia's half a million traditional farmers, a much larger area (possibly 6 to 9 per cent of the country) is probably used for the different arable systems, both commercial and traditional. The clearing of the forest for the *chitemene* system and large-scale commercial production will have increased wet season run-off and exposed the land to erosion.

9. The stimulation of agricultural production on small-scale and large farms alike will require much closer attention to conservation farming, less dependence on agro-chemicals and more sensitivity to the interdependence of agriculture and the environment. Cash crop monocultures are recognised by many as being unsustainable for the small farmer. The agronomic literature for tropical Africa increasingly argues that more attention should be paid to alternative methods of soil moisture and fertility conservation and to local crop varieties.

10. A precondition for small-scale farmers to invest their blood and sweat in sustainable agriculture is the promise of long term, inter-generational security of tenure. This issue receives attention in this paper. However, the particular nature of the agro-ecology of Zambia should be borne in mind in the planning and the design of development assistance for any cash-driven agricultural economy envisaged in the PRSP.

### **3 Agrarian structure**

11. Commercial farms in Zambia are mainly located on State Land, which incorporates the land with the best potential. State Land bisects the country in a narrow strip 30 to 50 km wide from Choma in Southern to Kabwe in Central Province and northwards. Other segments of State Land include a small part of Eastern Province around Chipata (for cotton and soybean) and in the north around Mbala (coffee). See land tenure map on page 4 (Siddle, 1971).

12. National crop area and production statistics published by the CSO are not considered to be reliable. Extreme caution should be exercised in using them to inform policy (Litschauer and Rowe 1995). For the commercial sector on State Land, maize dominates the cropping system but has decreased over time with a shift to burley tobacco, wheat, soybeans and cotton. In the traditional sector, maize again dominates the cropping system and accounts for just over half the arable area. Provincial-level data from the CSO reveal that the bulk of maize, tobacco, sunflower and seed cotton produced by smallholders is planted in Eastern, Central and Southern provinces. This is the primary agricultural production region of Zambia, with traditional cultivation based on hand-hoe farming, with oxen used in some

areas. Maize is the chief staple followed by sorghum, while relish crops are vegetables, beans and groundnuts. Cash income for most farmers comes from sales of beer, fish, chicken and the surplus of the maize harvest.

13. Historically, Zambia has relied heavily on the commercial farm sector to feed its highly urbanized population and work force. In the 1960s, large numbers of expatriate farmers emigrated for several reasons: independence, marketing policies that eroded profits, stringent controls governing the expatriation of profits and the incentives offered by Zimbabwe and South Africa to encourage European farmers to resettle there. Of the 1185 European farms in Zambia in 1961, there are now some 300 'white farmers' (S. Zyambo, ZNFU, pers. com). Bruce and Dorner (1982) mention this same number of 300, which suggests the exodus may have stabilised.<sup>2</sup>

14. To fill the production gap after the Europeans had emigrated, the government undertook a number of programmes on State Land. In some cases parastatals took over leases direct. In others, settlement schemes were established, sometimes on farms where parastatals had failed, which involved the subdivision of large commercial operations.

15. Following independence, the agricultural sector witnessed a rapid expansion in the number of 'medium scale' and 'emergent' commercial farms.<sup>3</sup> According to Roth (1995) most large-scale farms (97%) and to a lesser extent medium-scale farms (75%) and 'emergent' farms (66%) are concentrated on State Land on the line of rail in Southern, Central, Lusaka and Copperbelt provinces. However, only 14% of smallholder households are located in these provinces. The majority reside in Northern (29%), Western (22%), Luapula (19%), and North Western (14%) on Customary Land, where they are less well connected to urban centres and where marketing and physical infrastructure remain less developed.

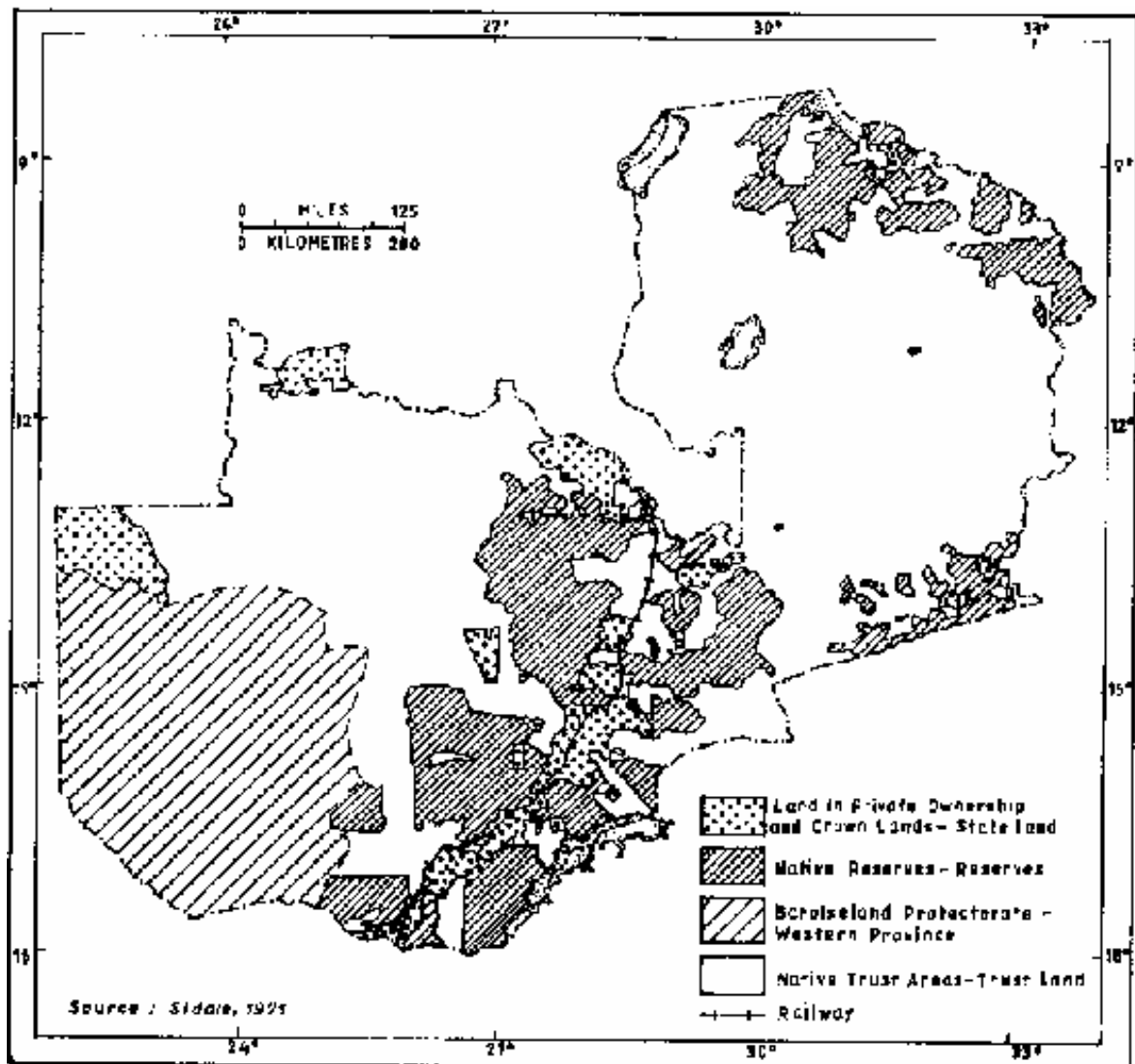
16. Summarising, State Land has the best agronomic potential. It is also best located with regard to communications infrastructure. Smallholders are more evenly distributed throughout the country on Customary Land, on soils with lower potential and in areas more remote from markets for inputs and outputs. For the purpose of improving production and income from agriculture, an investment in the resolution of land related problems on State Land is expected to be more crucial than on Customary Land. The 1993 Land Policy Conference recommended that efforts should focus on this sector (see Appendix 4).

### **Land Tenure in Zambia ca. 1971**

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<sup>2</sup> Or is this a myth, so often repeated that it is now cut in stone?

<sup>3</sup> Interestingly, Table 5.2 in the PRSP (GRZ, 2002) quotes exactly the same figures for the different categories of farms (attributed by the authors of the PRSP to the MoAC, Agricultural Bulletin, 2000) as Roth (1995). However, Roth (page 6) states that the statistics refer to the situation in 1989.



Source: Siddle, 1971.

#### 4 Land laws and land tenure categories in Zambia

17. Land laws in Zambia, fall into three categories. Modern customary law draws its inspiration from African culture (Gluckman 1941: 1953). While its origins are indigenous, many modifications have taken place in customary law during the past one hundred years.<sup>4</sup> Most Zambians conduct their activities in accordance with customary law. Broadly speaking, English common law of the Commonwealth constitutes the common law of Zambia. A considerable number of laws have been promulgated which are applicable to land; the most important are: the *Constitution of Zambia*; the *Lands Act 1995*, (which repealed the controversial *Land (Conversion of Titles) Act 1975*); *The Lands and Deeds Registry Act 1914* as amended; *The Land Survey Act 1960*; *The Agricultural Lands Act 1960*; *The Lands Acquisition Act 1970*; and the *Town and Country Planning Act*. In the legal hierarchy, local courts are the lowest judicial bodies. Their jurisdiction covers civil disputes under customary law, including land disputes and marital and property claims. Appeals lie with

<sup>4</sup> In this regard customary law is as modern (and as archaic) as English common law.



subordinate courts, from which they may be advanced to the high court, and then the Supreme Court. The *Lands Act* 1995 established a Lands Tribunal, the jurisdiction of which is to settle disputes relating to land. Disputes relating to State Land have been its focus so far.

18. While Zambia covers a total landmass of 75 m ha, State Land comprises only 4.5 m ha (6%), and Customary Land comprises the rest (93.9%) (formerly consisting of Reserve Land, 27.2 m ha, 36.2%, and Trust Land, 43.3 m ha, 57.7%). See Table 1.

19. The area of each category tends to vary as records in the Land and Deeds Registry are said to be in some disarray (e.g. piecemeal conversion of Customary Land to State Land by way of leasehold since ca 1985 does not seem to have been taken into account in the 1993 data).

<b>Table 1. Land tenure classification (millions of hectares)</b>						
Land category	1937*	Per cent	1950*	Per cent	1993**	Per Cent
Reserve land		93.3				
- Barotseland	15.0					
- other reserves	13.8					
- unassigned	38.1					
Crown (European) land	3.6	5.0	1.9			
State land***					4.5	6.0
Forest and game land	2.0	2.8	0.4			
Customary Land				96.7		94.0
- Reserve land			28.7		27.3	
- Trust land			40.5		43.4	
Unalienated Crown Land						
Total****	72.5		71.5		75.2	

Notes to Table 1

\* Robin Palmer 'Land in Zambia' in *Zambian Land and Labour Studies, vol 1, Occasional Paper no. 2* (Lusaka, National Archives, n.d.) Quoted by Roth (1995).

\*\* Zulu (1993). Roth (1995) quotes similar data from a Ministerial Statement in Parliament in August 1987

\*\*\* According to Roth (1995) using 1973 data this includes the following: former freehold (1.0 m ha), leasehold (1.3 m ha), land under tribal occupation (0.5 m ha), unalienated land (0.1 m ha), inundated by water (0.2 m ha), forest reserves (0.5 m ha), protected forest reserves (0.4 m ha)

\*\*\*\*The discrepancy between totals is carried over from the original official sources.

## **5 Stages in the development of Zambia's land policy**

### **5.1 The colonial period**

20. In 1924 control over all land in present-day Zambia (with the exception of Barotseland) was transferred from the British South Africa Company to the Governor of Northern Rhodesia. In 1928, the Northern Rhodesian (Crown Lands and Native Reserves) Order in Council was promulgated, creating two categories of land: Crown Land and

Reserves. The former was meant for Europeans (from which Africans were forcibly evacuated); the latter was set aside for the use of the indigenous people (Bruce and Dorner 1982). The Reserves were delineated mostly in Northern, Eastern, Copperbelt, Central and Southern. In the last three mentioned provinces the Reserves flanked the State Land to the East and West of the line of rail (see attached 1971 map on page 4 showing distribution of land tenure categories).

21. Following the Pimm Commission, the *Northern Rhodesia (Native Trust Land) Order in Council* 1947 reversed the policy which reserved a large proportion of the country for Europeans. Around 57% of the country, formerly 'unassigned' land, forest and game land and unutilised Crown Land was returned to Africans and named 'Trust Land'. Thus by 1950, the Crown Land reserved for Europeans had shrunk to a little less than 1.9 m ha and that for Africans (Reserves and Trust Land) had increased to some 70 m ha. The area set aside for Europeans had proved to be greatly in excess of that eventually needed because the influx of white settlers never materialized. Trust Land was not subject to the same restrictions as the Reserves and could be leased to non-Zambians. But, as with the Reserves, interests and land rights in Trust Land fell under customary law and the administration of the traditional authorities.

22. The policy of land reservation through the Reserves and Trust Land did not apply to land in Barotseland proper. According to the *Barotseland North-Western Rhodesia Order in Council* of 1899, land in the central regions of Barotse was set apart for the *litunga* and their people.

23. According to Roth (1995), a number of important developments followed in the post World War II period. First a wave of settlers did eventually acquire farms and over a thousand were established by the 1960s. Prior to the 1930s, allocations of Crown Land were granted in freehold but, post World War II, the settlers were granted leaseholds due to the Colonial Government's dissatisfaction with freehold tenure arrangements which did not permit sufficient control by the state.

24. Extensive changes in the tenure arrangements for commercial farming on leases of Crown Land accompanied the *Land Ordinance* of 1956, which introduced the concept of progression whereby a farmer who performed satisfactorily could upgrade tenure from leasehold to freehold. The 1956 ordinance was later repealed by the Colonial Government and replaced by the *Agricultural Land Act*, 1960, which remains in force and provides for the allocation of agricultural leases on State Land.

## **5.2 The early post independence period**

25. Zambia inherited four categories of land in 1964: State Land (formerly Crown Land), Freehold Land, Reserves and Trust Land.

26. Under the terms of the Barotseland Agreement of 1964, the *litunga*'s powers over land in Barotseland, as governed by Lozi customary law, were recognized and guaranteed, as they were in Article 8(2) of the Independence Constitution of 1964. Land in Barotseland continued under the control of the *litunga* until the *Western Province (Land and*

*Miscellaneous Provisions) Act 1970*, which vested all land in Western Province in the President of Zambia as a reserve.

27. The United National Independence Party (UNIP) was sympathetic to developments taking place in Tanzania, which also resonated with the principles of customary land law in Zambia. Land belonged to the people. The individual's right to land was simply the right to use it. Land was not seen as a commodity to be alienated for private gain. UNIP adopted a socialist-leaning philosophy and Zambia became a one-party state in 1973. The political objective was to mould Zambia into a classless society in which the exploitation of one man by another was to be eliminated (Mvunga 1982). Only small-scale private property was permitted and large-scale enterprises, whether industrial, commercial, agricultural or financial had to be undertaken either by the state or by institutions controlled by the state.

28. Accordingly, *The Land (Conversion of Titles) Act 1975* completed and confirmed the land nationalisation programme by vesting all land in Zambia in the President, to be held by him in perpetuity on behalf of the people of Zambia. Freehold land held by commercial farmers was converted into leaseholds for 100 years and unutilised tracts of land were taken over by the state. Freehold titles in residential areas were similarly treated. All sales of land *per se* (excepting the developments on the land such as buildings, farm infrastructure, etc.) were prohibited.

29. Any form of transaction or dealing in land without the prior consent of the President was prohibited. All undeveloped land was acquired by the central or local government, as were most forms of rented property. In exercise of his powers, the President was empowered to fix the maximum amount received, recovered or secured in any land transaction, provided that in fixing such amount, no regard was to be taken of the value of the land, only the developments on the land.

30. Until repealed by the *Lands Act 1995*, the *Zambia (State Land and Reserves) Orders 1928 to 1964* governed the administration of Reserve Land. Under these orders, the land was set apart for the sole and exclusive use of the indigenous peoples of Zambia, although the President could make grants of land to Zambians and rural councils for periods up to 99 years. Under the *Zambia (Trust Land) Orders 1947 to 1964*, which was also repealed by the *Lands Act* of 1995, the President could grant a right of occupancy of up to 99 years to a non-Zambian and demand rent for the use of the land. While Zambians and District Councils could own title, non-Zambians were also allowed to do so provided that they qualified as investors or were approved by the President, who normally made such grants in the form of leasehold. Either by oversight or design, the laws governing the granting of Reserve and Trust Land by the President (in effect the Commissioner of Lands) were not repealed by the *Land (Conversion of Titles) Act 1975*. The practical effect was that land matters in Reserves and Trust Lands continued to be interpreted in the light of the Orders of the colonial government.

31. Under the *Local Administration Act* 1980 to 1992, chiefs were statutory members of rural councils, a policy endorsed by *Administrative Circular No. 1* of 1985<sup>5</sup> in which the Department of Lands stipulated that the consent of the chief must be obtained before an application of leasehold on Customary Land could be approved. This circular has been reproduced in Appendix 5.

### **5.3 Land policy reforms under the MMD government**

32. In its manifesto, the Movement for Multiparty Democracy stated that

‘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 ...’.

The manifesto went on to state that 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).

### **5.4 Land Policy Conference 1993 and the proposed reforms**

33. In 1993, the *National Conference on Land Policy and Legal Reform* recommended among other things that there should be two classes of land (State Land and Customary Land) and that the respective interests should be a 99-year lease with provision for automatic renewal, and customary interests that could be subject to grants of durations to be determined according to the purpose for which the grant was being made (Ng’andwe, 1993). Furthermore, the role of chiefs in policy formulation and allocation of land in customary areas should be recognised. On State Land it was recommended that market forces should determine the price of land, while the land market in customary areas should be left to evolve according to local conditions. With respect to the land rights of women and vulnerable groups, it was proposed that the principle of equality should govern access to land. To facilitate the implementation of land reforms in rural areas, it was recommended that a Land Development Fund be created to improve infrastructure in rural areas to facilitate settlements.

34. The recommendations of the 1993 Land Policy Conference, as reported by Roth (1995) are attached as Appendix 4.

### **5.5 The Lands Act no 27 of 1995**

35. After a heated national debate, which saw the withdrawal of the initial Lands Bill because the opposition perceived that customary tenure and the position of chiefs would be threatened, *The Lands Act* was finally passed by Parliament. It continues to be the substantive land law in place. It repealed *The Land (Conversion of Titles) Act* 1975, yet all land continues to vest in the President who is required to give consent to a person who

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<sup>5</sup>The 1985 Administrative Circular provides the regulations for the implementation of only a small part of the Lands Act 1995, namely aspects relating to application for leases and the procedures for allocation.

wishes to sell, transfer or assign any land. These powers are delegated to the Commissioner of Lands. The Act further 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, or any other title that the President may grant (Kajoba, 1998).

36. In order to foster cooperation from traditional leaders in matters concerning the conversion of customary rights into leasehold rights, the *Lands Act* 1995 states that the President 'shall not alienate any land situated in a district or an 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).

37. The Act also made provision for the establishment of the Lands Tribunal whose jurisdiction is to settle disputes relating to land including matters of compensation to be paid as the situation may require.

38. Recognising that land *per se* has value, the Act states, that 'the President shall not alienate any land ... without receiving any consideration, in money for such alienation and ground rent for such land except where the alienation is for a public purpose,' and where 'a person has the right of use and occupation of land under customary law and wishes to convert such right into leasehold tenure ...' (GRZ, 1995, p. 272).

39. With respect to non-Zambians, the *Lands Act* 1995 permits the President to alienate land to a non-Zambian who is a permanent resident and to those non-Zambians who are investors within the meaning of the *Investment Act* 1993.

40. The 1995 Act, by repealing the *Zambia (State Lands and Reserves) Orders*, 1928 to 1964, the *Zambia (Trust Land) Orders*, 1947 to 1964 and the *Western Provinces (Land and Miscellaneous Provisions) Act*, 1970, created a new land category, namely 'Customary Area'.<sup>6</sup>

41. The Act is, by any standards, a very brief piece of legislation, covering only eleven pages. Part V 31. (1) (p. 279) of the Act states that 'the Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act'. Surprisingly, however, no regulations have ever been drafted. The regulations still in effect are those of Circular No. 1, 1985, 'Procedure on Land Alienation'. Although a reasonably well-drafted and well-conceived piece of legislation, because of the absence of clear regulations setting out the required procedures and the prescribed forms for routine transactions, it is not as effective as it could be. It does not provide the 'coherent, simplified and relevant land law code' promised in the MMD manifesto of 1991.

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<sup>6</sup> Referred to as 'Customary Land' in this report but sometimes referred to as 'Traditional Land' by officials. Customary Land is preferable because Customary Law governs tenure arrangements.

## 6 Land administration

### 6.1 Customary Land

42. Some background may be helpful in explaining the sensitivity and complexity of customary tenure arrangements and the long-running resistance to change by traditional leaders. If the statistics are correct, Customary Land covers 94% of the country and Customary Land law affects the great majority of Zambian farmers and their husbands.

43. William Allan (1965) in his classic study *The African Husbandman* (Chapter XX) provides a synopsis of land tenure arrangements prevailing in customary areas in Zambia in the first half of the last century. His explanation draws on the findings of Max Gluckman (1941: 1943) on the customary land-holding systems of the Bantu-speaking peoples of Central and Southern Africa. Gluckman explained that chiefs did not allot the land directly to their subjects who used it. Rather, land was allocated to sub-chiefs who in turn allotted shares to village headmen. At the village level, the headman allotted land to heads of sub-sections or heads of families and they distributed land to their dependants.

*'Each of the persons granted land in this way was secure in his rights and could not be expropriated without fault. He could transmit his rights to heirs, but could not transfer them to anyone else without the permission of his seniors. If rights were vacated they rested in the next senior in the hierarchy'* (Allan, page 361)

44. Gluckman referred to this nested system of customary rights and responsibilities to control, administer and distribute land as 'estates of administration'. Interests in land were eventually parcelled out to the end user as 'estates of cultivation' (i.e. for use and occupation). These customary rules are, of course, unexceptional. They will be recognised across the vast savannah areas of Central and Southern Africa. In Zambia, they provide the basic framework of customary land law for the majority of tribes. Variations occur in some land-scarce areas, where 'estates of administration' or 'control' are vested in segments of clans or lineage; sometimes matrilineal lineages.

45. An important feature of the customary land tenure system was the right of avail that was shared by all people belonging to a particular tribe. This right did not depend on the discretion of the chief or headman. He was required to provide residential, arable and grazing land for all his subjects. A tribesman was entitled to land without giving anything for it, but he had a duty to protect and conserve it. Although the concept of individual ownership was unknown, the rights to residential land were exclusive and permanent. The holder could protect his rights by civil action against any person, even the chief, except when land needed to be acquired in the public interest. In this case the chief would allocate an equivalent piece of land in compensation. Customary law permitted tribesmen to transfer interests in residential land among themselves, but only with the consent of the chief. Although the concept of land sales was unknown, there was no rule forbidding payment for improvements.<sup>7</sup> The free transfer of unimproved land was taken for granted. It was received free and was given free. It was not viewed as a commercial asset. As explained in Section 5,

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<sup>7</sup> Although, it was only in 1940 that the Barotse National Court authorised the sale of doors and windows in huts, though not huts themselves.

the principle of land having no monetary value (and the ban on the sale of land) found its way into statutory law in *The Land (Conversion of Titles) Act 1975*, although subsequently overturned in the *Lands Act 1995*.

46. From time to time, the Bantu peoples of southern Africa have resolutely opposed the idea of selling land, particularly where there are chiefs who insist on their obligation as trustees to allot land to their subjects. Opposition to sale of land is not confined to Zambia. For example, the sale of land is still opposed by many Batswana and Basotho. The insistence on ultimate tribal rights in land and the right of avail of every adult tribesman to some land have proved extremely persistent in South and Central Africa, even among migrant labourers. Because of the uncertainty of urban employment, the lack of social security, the inability to acquire land and houses in towns, migrant labourers look for their ultimate security to the tribal lands and members of specific villages or kinship groups. In effect, chiefs and headmen are expected to keep land for migrant workers in return for the money that they bring home from the urban areas. William Allan explains that the arrangement by which rights to arable land were retained by men who migrated to towns, 'to raid' there for money, continued until pressure on the land became such that the chief was left with insufficient land to distribute.<sup>8</sup>

47. Successive governments have 'blown hot and cold' over the role of the chiefs in land administration and a great deal of ambiguity surrounds their current status. However, in rural areas, especially in Western Province, the role of chiefs in administering Customary Land has probably not changed greatly for the majority of people. The chiefs continue to grant rights to occupy and use land, impose restrictions on the use of customary areas (e.g. prohibiting cultivation or the grazing of animals in a certain area) and resolve disputes with the help of groups of elders.

48. According to Roth (1995), until independence, chiefs held responsibility for all land in the Reserve and Trust areas (see Section 4 for an explanation of these categories). After independence, the chiefs were relieved of their *de jure* responsibilities for land allocation, but their *de facto* position probably changed very little as they were not replaced by effective structures.

49. In 1985, partly to gain favour with the chiefs and partly in recognition of their custodianship of customary law and rights, government decided that the chiefs ought to be formally consulted when customary land was being granted for leasehold purposes in terms of the *Zambia (State Lands and Reserves) Orders, 1928 to 1964*, and the *Zambia (Trust Land) Orders, 1947 to 1964*. The chiefs' powers are confirmed by the *Lands Act 1995* and Circular No 1 of 1985 (see Appendix 5), which is still in force.

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<sup>8</sup> This breakdown of the traditional right of avail occurred in the former 'Independent and Semi-independent States' of South Africa, where land was critically scarce and where the 'government' chiefs, could in any case rely on their official salaries. The apartheid state used its control over chiefs as a means of controlling land access to recalcitrant Africans.

50. Despite the requirement that the consent of the relevant chief be obtained prior to the granting of leasehold rights, the traditional authorities are less than happy.<sup>9</sup> They are not well informed about the law and they report widespread incidents of 'land grabbing' by officials.

51. It is reported by the Zambia Land Alliance that if Customary Land is leased and for some reason is repossessed, it no longer falls under the jurisdiction of the chief. Thus it would seem that once land is granted in leasehold, all customary rights to that land are extinguished and so is the authority of the chief over that land.<sup>10</sup> This could be rectified in an amended law by providing for the local community to have the benefit of ground rent from land excised (but not alienated) from the customary domain.

## **6.2 Leasehold tenure**

52. The Land Tenure Center Research Paper (Roth, 1995) contains useful information on the demand for leasehold properties and the factors influencing demand for title and so on.<sup>11</sup> Conversion of customary land to leasehold has been taking place since 1985; yet the pace since 1991, when it reached something of a plateau, has remained steady at about two to four thousand per year, the number being determined by the capacity of the Ministry of Lands.<sup>12</sup> The MOL is reported to have a backlog of several years in the handling of applications for all types of leases and under current conditions many applications may never result in a title.

53. Two reasons, sometimes inseparable, are repeatedly offered for the demand for leasehold titles: enhanced security of tenure and the greater security offered to lenders through the mortgaging of the land title (Roth 1995).

54. Little empirical information is available on tenure security on either State Land or Customary Land in Zambia. The leasehold system itself can be a source of insecurity, because chiefs consent to outsiders being granted leases, transgressing the rights of local rights' holders, perhaps denying the right of parents to bequeath land to their offspring. At the same time, the prevailing sporadic tenure upgrading or titling system<sup>13</sup> is susceptible to land grabbing by those with sharp elbows, dispossessing the poor and vulnerable members of the community. Further, when applications made according to the formal procedures result in several years delay, applicants are tempted to find ways of jumping the queue. The process then becomes overtaken by graft and corruption and the integrity of the system is undermined. The result is that statutory title may be no more secure than unrecorded customary grants.

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<sup>9</sup> Two chiefs were interviewed in Central Province in the course of brief field visits on 23 and 24 November 2002.

<sup>10</sup> Compare Botswana where common law leases are obtainable on Tribal Land, but the land remains Tribal Land under the jurisdiction of the Tribal Land Board, which collects the ground rent.

<sup>11</sup> The information is now seven years old and uses still earlier data, yet the account given by Roth is consistent with that provided by my informants.

<sup>12</sup> The statistics on leases issued are not broken down into residential and agricultural categories or state and reserve leases.



55. Nonetheless, applications for leasehold rights continue to accumulate, presumably because the customary system is less secure and predictable than it used to be. Customary Land may not be available in the area of choice. Ties between the urban population and chiefs have weakened considerably with time and the right of avail is no enjoyed for many people who have moved away. In any case, some chiefs are reluctant to designate land for leases and thus lose control over it.

56. A further factor in the growing demand for titles is likely to be the growing awareness of Zambians of the value of land as a commodity. This realisation has transformed the land market in neighbouring Botswana on both State and Tribal Land (Adams 2003).

57. Again there is a lack of systematic information on the use of land as collateral for investment credit.<sup>14</sup> Roth (1995) states that it is difficult to conclude from the available data on existing mortgages and agricultural charges placed on titles that land titling has had a significant effect on credit access.

58. Smith (2001) conducted a field study in Southern Province with the aim of answering the question whether different land tenure conditions affected the organization and performance of small farmers and whether customary land tenure must be converted to a statutory, individualized land tenure system as a pre-requisite for investment in farm improvements and obtaining credit. His interim findings are important to note and worth quoting:

‘With reference to .... tenure security’s positive effects on agriculture (incentive to improve land, access to credit, and efficient land markets), this study so far finds evidence only for the first. The apparent under-utilisation of farmland in even this highly productive and commercialised study area suggests that problems of input supply and animal traction are more urgent in the short term than access to land and tenure security.

Nonetheless there is the example of Asian countries such as Taiwan, South Korea and Thailand that achieved significant agricultural and economic development after granting freehold to small farmers. These examples continue to resonate. Nor can the strongly expressed desire for titles found in this study be dismissed. The reasons for wanting title seem equally salient: secure possession and bequeathment, and protection of fixed investments. These suggest that many farmers don’t plan to use titles to lever themselves up to the level of ‘emergent’ or medium-sized farmers, but instead believe that they need them as a defensive measure, even on customary lands.

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<sup>13</sup> Students of land tenure reform distinguish between (a) sporadic upgrading which permits individuals to make pre-emptive moves against neighbours and (b) comprehensive upgrading programmes that proceed area by area and provide scope for land claims to be systematically advertised and adjudicated.

<sup>14</sup> Telephone enquiries to two banks yielded only general information, i.e. that banks accept agricultural land titles as collateral but no quantitative information or indications of trends.

Such perceived insecurity probably deserves to be remedied. But a system as well-evolved, egalitarian, and self-regulating as African customary land law should not be tinkered with lightly. Also, it should be remembered that titles and inheritance statutes are legal instruments that are only as good as their accessibility, predictability, and enforcement.’ (Smith 2001).

### 6.2.1 Steps in securing leasehold tenure

59. The procedures for applying for a lease are set out in *Administrative Circular No 1* of 1985 (Appendix 5). These precede the current *Lands Act* 1995 and must be read with the Act in mind. The circular is a set of instructions addressed to all provincial permanent secretaries and district executive secretaries. It includes the forms to be used in applying for land. The process is also described in the Draft Land Policy, 21 November 2002.

60. In the case of Customary Land, both the 1995 Act and the Circular require the chief’s consent to a lease and that the lease be considered by the appropriate subcommittee of the rural council and then be approved by a meeting of the full council. This procedure is described by Roth (p. 52, 1995) and was confirmed by the PS of the Ministry of Local Government (see notes of meeting with the PS, 21.11.02 Appendix 2). The process is also described in the Draft Land Policy (Appendix 3). In the case of State Land, there is no need for a chief’s consent.

61. The registration of a 99-year lease in terms of the *Lands and Deeds Registration Act* requires a rigorous boundary survey as set out in the *Land Survey Act*, 1960 and *Survey Regulations* 1971. However, an interim or provisional 14-year lease can be granted on the basis of a sketch plan.<sup>15</sup> Due to the shortage of land surveyors holders of 14-year leases face great difficulties in upgrading 14-year interim title to one of 99 years and therefore have only very limited tenure security.

## 7 Land titling and the development of agriculture

62. The chapter on *Agriculture* in Zambia’s PRSP (GRZ 2002) pays more attention to land issues than is usually found in PRSP documents. The relative confidence placed in leasehold tenure (on 6% of the land) and the seeming lack of regard for customary tenure on the remaining 94% could be considered out of touch with research findings into the relationship between land tenure and farm production elsewhere in the region. The PRSP (p. 55) states that the statutory system, which provides for title deeds for a renewable period of 99 years, *provides a sense of security and places value on land for commercial transactions*. The PRSP places emphasis on *streamlining the land tenure system to make it receptive to the policy of liberalisation and full utilisation of land suitable for agriculture* (page 56). It refers to the *low utilisation of land because of cumbersome procedures in obtaining title deeds and lack of incentives for utilisation of idle land* (page 58).<sup>16</sup>

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<sup>15</sup> Whether this arrangement has any legal basis is not clear.

<sup>16</sup> It makes no reference to large expanses of State Land which are idle because they have been acquired from the state at less than market value and are being held for future sale at no cost because ground rents are nominal. Nor does the PRSP refer to large areas of idle land which are the subject of disputes unresolved by the Land Tribunal.

63. Studies by the Land Tenure Center (Bruce, 1996), principally in the former communal areas of Kenya, but also in Senegal, Somalia and Uganda, have failed to reveal a causal relationship between formal registration of individual rights and investment in land improvements and on farm productivity. It has been concluded that: (a) in view of the generally depressed conditions of agriculture and in the absence of other possibilities for improvement, titling did not have a significant impact; (b) giving weak titles, constrained by various conditions and prohibitions, did not have the anticipated incentive effects on title holders; (c) even in a vital and market-oriented agriculture such as that of Kenya, other factors (e.g. farm size and market access) overwhelmed the effects of titling; and (d) much of the demand for titling arose from a wish to prevent the state giving the land to someone else. This last point is worth emphasising because it could help explain the strongly expressed desire for titles found by Smith (2001).

64. Platteau (1996) argues that, in cases where a significant relationship is found to exist between enhanced on-farm investment and titling, this need not mean that they are causally linked. Farmers may tend to register land parcels that benefit from comparatively high levels of investment. In other words, registration may not stimulate investment, but merely be positively related to it.

65. Customary tenure is perceived to be insecure in Zambia because governments continue to give it a second-class status. Ironically, insecurity is not confined to Customary Land. Holders of State Land also feel insecure: because of the problems of survey and registration of interim (14 year) leases; because of the over-centralised and inefficient land administration; because of rent-seeking officials and the lack of information about the law and regulations and the lack of transparency.

66. The Agriculture chapter of the PRSP makes several statements about the need to establish capacity to adjudicate contract disputes, yet nothing is said about the urgent need to clear the backlog of years of land disputes which arise from problems encountered by the public in dealing with the office of the Commissioner of Lands. The Lands Tribunal, established under the Lands Act of 1995 is moribund due to dysfunctional provisions in the Lands Act and under funding. Unresolved disputes result in land lying idle.

67. Section 5.3 *Interventions in Agriculture* (3<sup>rd</sup> and 4<sup>th</sup> paragraph) is more open-minded about the problem and is worth quoting in full.

*Zambia will also review the Land(s) Act of 1995 and assess the implementation progress. The Land(s) Act of 1995 was aimed at attaching value to land and enhancing security of tenure, thereby creating land markets and initiating major economic activities. It removed two obstacles to land markets: it allowed state land to be sold and customary land to be leased, with the consent of the chiefs. However, very little progress has been made in market development for land, titling both customary and state lands, and setting up a land administration system and procedure to meet the demands of such a complex task. It is therefore important to find out what the real issues are and start addressing them. The starting point will be a review of the situation to identify appropriate interventions and instruments, and*

*this task will be launched immediately after the adoption of the PRSP and will be completed within six months. (pp 58-59, GRZ 2002)*

## **8 Current land policy consultation process**

68. According to the Permanent Secretary of the Ministry of Lands, the *Lands Act* 1995 was pushed through Parliament in 1995 very hurriedly and as a result it lacks public support. For this reason, the MOL is in the process of consulting stakeholders on the appropriate scope and content of land policy and legislation in Zambia.

69. The Draft Land Policy, published on 21 November 2002, is reproduced in Appendix 3. The draft document (at this stage) provides very little information on the subject of policy issues.<sup>17</sup>

70. A committee, comprising officials as well as civil society members, chaired by the Director of Human Resources and Administration drafted the published document, which draws heavily on drafts prepared over the last decade.

71. According to the PS MOL (22 November 2002), a consultative workshop to review the policy in each province was initially planned; so was the translation of the draft land policy into seven local languages, and radio programmes and other media events on the subject. The requested budget was originally Kwacha 1.5 billion (say US\$350 000), but this had been reduced to about US\$ 60,000 due to the scarcity of funds. In the circumstances, it will be possible for MOL to cover only one province given the very limited resources available. The Zambia Land Alliance has undertaken to help with a few local level workshops at district level.

72. It is understood that consultations opened in Lusaka Province on 16 and 17 December 2002 with a workshop for Chiefs. Consultations continued on 18-19 December with the general public and on 20-21 December with submissions by interested persons/institutions. It is unlikely that the process will move beyond Lusaka, due to financial constraints.

73. The situation is in contrast to that prevailing in 1993 when USAID funded a national Land Policy Conference. On that occasion the conference was followed up by valuable research by the Land Tenure Center, but was not followed through for reasons which need to be clarified.

74. The land policy-making process varies from country to country and so does the scope and content of the published policy paper. However, the feeble land policy process in Zambia stands in contrast to that adopted in Botswana, where for the last quarter of a century, policy-making in the different sectors, including land, has followed an iterative sequence extending up to two years: (i) a commission of inquiry (or an expert review) involving calls for written submissions, public meetings in different parts of the country involving a wide range of stakeholders; (ii) the preparation of a draft report, oral

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<sup>17</sup> It is very informative on the institutional arrangements for land administration, an item in the TOR for this assignment.

presentations and discussions at a national workshop covered by the media; (iii) a further draft paper which is debated in Parliament; (iv) the publication of a government white paper setting out the policy changes which have been adopted, the recommendations which have been accepted, amended and deferred (or rejected) complete with the justification for government having done so; (v) finally, where relevant, the drafting of new laws or amending of existing legislation.

75. As Farrington and Saasa (2002) have observed, it is difficult to detect a linear relationship (or any kind of systematic relationship) between the analysis of the problem or opportunity and the assessment of the evidence, the formulation of recommendations and the announcement of the policy change. Even then, the consistency associated with collective decision-making is absent, perhaps because policy is the prerogative of the President and reflects political short-term expediency.

## **9 Outstanding land policy issues**

76. The *Draft Land Policy* was published on 21 November 2002 for public comment (see Appendix 3). It covers both urban and rural land administration and management.<sup>18</sup> The document gives the impression of ‘business as usual’. As a draft, it provides a reasonable foundation on which to build.

77. The Land Tenure Center (Roth 1995), with USAID support, in the period 1993-94, did excellent work in support of the land reform proposals of the first MMD government, but the subsequent outcome in terms of policy, legal and institutional change in the land sector was disappointing. In developing any proposal to update and consolidate the LTC work, it will be important to discover why the recommendations were not carried through to a logical conclusion.<sup>19</sup>

78. In line with the TOR (see Appendix 6), some outstanding policy issues are raised which should be addressed in government’s final land policy document. Given the agricultural orientation of this brief, urban land administration is not considered. However, the national land policy must extend beyond agricultural land. The much-needed legislative and institutional reforms should embrace both rural and urban land. One cannot be considered without the other because it is the high value land in the urban sector that should provide the much-needed revenue for the administration of the land sector as a whole.

### **9.1 Alienation of Customary Land**

79. The Draft Land Policy anticipates that the system of leases will be gradually extended to the whole country, hence the need for more investment in a decentralised land administration. The continuing alienation of Customary Land (by granting leases) has

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<sup>18</sup> Land administration refers to the process of allocating land and determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies. Land management is concerned with the management of land as a resource, both from an environmental and an economic perspective.

<sup>19</sup> In the forward to the LTC Research Paper (Roth 1995), a reference is made to ‘an action plan for land tenure and administrative reforms’ contained in a document entitled ‘Land Reform and Institutional Transformation in Zambia: Recommendations for Policy Change’ (July 1994). Unfortunately, the consultant could not trace this important document. Further efforts should be made to obtain it.

financial and staff capacity implications. As the pool of existing leases expands, the demand for the reissuing of leases via surrenders or assignments will place ever-greater demand on the land registry. Currently there is only one registry office outside Lusaka, namely that at Ndola.

80. The Draft Land Policy gives no indication how acute resource constraints will be addressed. As the current policy and institutional proposals stand, the security of tenure offered by leasehold land titles is unlikely to improve. Several of the recommendations made at the Land Policy Conference of July 1993 (see Appendix 4) relate to the more strategic deployment of staff and the adjustment of their functions. For example, it is recommended that the highest priority should be getting land and titles into the hands of cultivators within the existing State Land sector (not alienating more Customary Land).

81. In view of the severe budgetary constraints, a solution is needed that will better focus the MOL's scarce resources on land administration in the commercial farming areas and rely on other institutions (i.e. the traditional authorities, district/ rural councils, municipalities) for the administration of Customary Land.

## **9.2 Land market issues**

82. Rights (e.g. leases, grants and rental agreements) to immovable property change hands in the 'land market'. It may be formal and covered by statutory law, or 'informal', in so far as buyers and sellers do not have recourse to the law if one or other fails to meet the agreed conditions.

83. For Zambia, there are two issues. First, to decide the extent to which transactions in land should take place according to market rules, or according to state rules (closely supervised by the bureaucracy); and secondly the degree to which the land market should be formally extended to Customary Land.

84. With regard to the first issue, several of the recommendations made at the Land Policy Conference of July 1993 (see Appendix 4) suggested ways of reducing dependence on the bureaucracy. For example:

- Granting the Registrar greater discretion to accept and certify appropriate parcel description as adequate for the purpose of registration.
- All 14-year leases should be automatically converted to 99-year leases, by law and without ground survey.
- In order to facilitate the operation of the land market in leasehold rights, the requirement for government consent to transactions should be eliminated (with the possible exception of lease assignment to non-Zambians).
- Development covenants should be eliminated from leases and reliance placed on upon economic disincentives for holding land idle, such as ground rents.

85. With regard to the second issue, there is no doubt a thriving extra-legal land market in operation in Zambia on peri-urban Customary Land given the rapid urbanisation that is taking place. In mapping out a land policy, it is important to know what measures are needed for more legal, efficient and transparent operation of the land market. Do existing institutions

have the capacity to support and regulate the increasing number of transactions? Do members of the public have adequate access to information to help them make decisions about land transactions? Are there unnecessary impediments to transacting land? How can the state harvest some fees and duties to pay for its land administration services?

### **9.3 Problems faced by the poor, including those affected by HIV/AIDS, in securing land rights**

86. While acknowledging the growing importance of the market in land allocation, it must be recognised that certain groups of citizens are sidelined in that process, because they do not have the financial resources or because they are disadvantaged in some other way, e.g. by reason of the law as it now stands. These groups include the poor, women and those households affected by HIV/AIDS. The Draft Land Policy makes little mention of these groups, with the exception of women, for whom 30% of all land allocations are to be reserved.<sup>20</sup>

87. The aged, the unemployed (youth, single mothers), and women heads of household are the most vulnerable as a result of 'income poverty' (i.e. lack of access to employment and land, and exposure to drought-related disaster). For the poor, it is easier to acquire land rights in rural areas on Customary Land, exercising their right of avail, but even here, their position has deteriorated in the last 25 years.

88. With the severe cut backs in the mining industry, the land rights of poor migrant workers are increasingly insecure. For example, the tenure of poor people in the Copperbelt districts of Mufulira and Chingola is particularly insecure. A complex situation has developed with large numbers of squatters on state and customary land (land held by mining companies, councils, private interests, forestry department, chiefs, etc) who are reluctant to invest in agriculture and land improvements because of their endemic insecurity (Oxfam 1998, 2002 and Palmer 2001). The Draft Land Policy (GRZ 2002a) in Appendix 3 makes no mention of how arable land will be made available for the poor.

89. The Draft Land Policy states that the current laws do not discriminate against anyone on the basis of gender, but that women still lack access to land in comparison to men because the *Land Act* 1995 recognises customary law. The proposal, that 30% of the land be demarcated and allocated to women, is of course not practicable and in any case would be impossible to monitor. Nor is it clear that other laws governing marital property do not discriminate against women.

90. Traditionally, every male head of a household is entitled to land for his homestead, cultivation and grazing, although there are exceptions. When a man dies, his male children inherit his land. Women, regardless of their marital status or age, can never acquire land or landed property on their own. They have to reside with their parents, husbands or sons.

91. The negative impact of customary law on the livelihoods of women and children is being brought into increasingly sharp focus by the HIV/AIDS pandemic which throws

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<sup>20</sup> It is not clear whether this refers just to allocations of State Land or if Customary Land is also included. The former is more likely, i.e. State Land suitable for arable production as well as urban residential sites.

women into even deeper poverty on the death of their spouse due to dispossession by the spouse's family (MacMillan 2002: Mbaya and Ngaru (2002).

92. There is general agreement among land-advocacy and women's rights NGOs that women should have equal opportunities as men to own land and exercise control over its products because:

- Women's access to land will improve both their own and their households' income, and improve household food security and child nutrition.
- Securing stronger land rights for women increases productivity because women will invest more in their land.
- Recognizing that women should have equal rights in land is necessary for justice.
- Recognizing that women should have equal rights in land will enhance economic efficiency;
- Equal land rights can empower women to fight for equality, dignity and other economic rights.

93. NGOs in Zambia and other countries of the region have been very effective in bringing these issues to the attention of the public and to politicians, but perhaps less than successful in obtaining concrete action in the legislatures (Palmer, 2003).

#### **9.4 Legal Framework**

94. The legal framework, principally the *Lands Act*, 1995, as an enabling law, is a significant improvement on earlier disparate legislation. It would be much more effective if the regulations to the Act had been drafted. PART V s. 31 (2) of the Act lists what is required. The elusive circular (*Administrative Circular No. 1 of 1985*)<sup>21</sup> dealing with the conversion of Customary Land to leasehold of State Land, covers only a small part of what is required in terms of regulations. The absence of prescribed regulations hands too much discretionary power to the Commissioner for Lands and generates work for well-informed attorneys.

95. There are numerous complaints about the arbitrariness of decision-making and the delays and costs of legal actions. The Land Tenure Center Research Paper (Roth 1995) refers to these problems in a section of their report entitled 'Ignorance of correct procedures' (page 60). Some of the difficulties could be resolved by the publication of a comprehensive and up-to-date land code embodying the principal land laws, regulations, prescribed forms and contact details of offices and so on, if necessary in local languages.

96. It may be appropriate to incorporate some essential elements of customary law in amendments to the *Lands Act* 1995 (e.g. just as Botswana did in the *Tribal Land Act* 1968). This could restrain high-handed chiefs and make them more accountable, but at the same time recognise their essential role in land administration. Amendments should provide for *quid pro quo* under which common law leases could be held on Customary Land without

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<sup>21</sup> After several attempts (at the Government Printer, Ministry of Legal Affairs, PS Ministry of Lands, Lands Tribunal), I finally obtained a photocopy of Circular No 1, 1985 on my way to Lusaka airport on 27 November. The Registrar allowed me to borrow his only copy – pasted in a ledger – and to photocopy it in the Intercontinental business centre. I have reproduced it as Appendix 5, for the record.



converting the land parcel to State Land outside the control of the chief. This is a fundamental problem with the current Act and a source of grievance.

97. Once again, the LTC Research Paper (Roth 1995) and the recommendations of the 1993 Land Policy Conference (Appendix 4) on legal reform should be revisited in a thoroughgoing review of current land law in Zambia including women's property rights. The *Lands Act 1995* postdates the finalisation and publication of the LTC study.

## **10 Development aid for the land sector in Zambia and possible DFID support**

98. Meetings with donor officials and the MOL confirmed that no donor is currently providing significant support to the land sector, but that assistance would be very welcome (see meeting notes in Appendix 2). In addition to the excellent work of the Land Tenure Center (with USAID assistance in 1993-94), ODA (1989) have supported land delivery in the urban sector. Sida has supported the technical land information work of the MOL as it has done with good effect in other countries of the region, especially Botswana.

99. Oxfam's modest support to land rights advocacy NGOs in Zambia (Zambia Land Alliance - ZLA) and the region (e.g. Uganda Land Alliance and the Kenya Land Alliance) is of great strategic importance.

### **10.1 Technical assistance to central government**

100. Zambia desperately needs and is requesting competent technical assistance and funds to assist with developing its land policy. There are some talented and knowledgeable Zambians to help, but they need to draw on lessons from the region, particularly Botswana. DFID could facilitate that process. However, lessons need to be learned from previous USAID support and why the LTC recommendations were not carried through to a logical conclusion.

101. According to the schedule set out in the PRSP, this work is long overdue. There is no prospect whatsoever of government meeting its target. (See meeting notes with the PS Lands, Appendix 2). DFID support to the land policy process could help the government to assemble the 'evidence' and to engage a critical mass of the stakeholders in the formulation of an appropriate national land policy. This proposal is compatible with the recommendation made to DFID Zambia by Farrington and Saasa (2002).

102. In an ideal world, the land policy process consists of a series of steps, some of which run concurrently:

- a) Consultation and formulation of a national land policy;
- b) Formulation of a land sector strategic plan which is in harmony with the PRSP;
- c) Rationalisation of land-related legislation;
- d) Rationalisation of the institutional responsibilities for implementation of the laws and regulations;
- e) Dissemination of information to the public, training and capacity building.

## **10.2 Support to civil society for a consultation process**

103. At the same time, supporting NGOs such as the Zambian Land Alliance, on whom government seems to be relying to ‘consult with the people’, could enhance the land policy process. The consultation process is a massive task and needs to be thought about very carefully. It is not clear that the current proposal (a series of ‘workshops’ at district level) is what is needed. This could generate more heat than light.

## **10.3 Actions to relieve tenure insecurity and support small-scale agriculture**

104. Another more action-orientated activity (c.f. policy development) is proposed by Oxfam-Zambia. On 26 November, I met with an Oxfam team to discuss in outline the nature and scope of a possible DFID-funded initiative to help resolve the tenure insecurity of poor people in the Copperbelt districts of Mufulira and Chingola. A complex situation has developed with large numbers of squatters on state and customary land (land held by mining companies, councils, private interests, forestry department, chiefs, etc) who are reluctant to invest in agriculture and land improvements because of their endemic insecurity.

105. A proposal is being developed to establish two ‘land advisory centres’ staffed by Oxfam (legal eagle, map fundi and horticulturalist/agronomist), one in each district, to work with District Councils and small groups of ‘squatters’ to formalise their land tenure status, by repossessing idle land if necessary. The initiative would aim to influence policies at district level, and build up case histories of required legal and administrative procedures for application elsewhere and the reform of the *Lands Act*, 1995.

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## Appendix 2 Schedule of Meetings and Discussions

Meetings of Martin Adams (DFID Land Study) with stakeholders, Lusaka 18-27 November 2002			
Time date	Place	Present	Summary of discussion
14.00 Monday 18/11/02	DFID-ZA Tel 254363 BHC, Independence Avenue <a href="mailto:m-mumbwatasai@dfid.gov.uk">m-mumbwatasai@dfid.gov.uk</a> <a href="mailto:r-montgomery@dfid.gov.uk">r-montgomery@dfid.gov.uk</a>	R. Montgomery M. Mumbwatasai	<ol style="list-style-type: none"> <li>1. In line with its commitment to supporting the government's priorities as set out in the PRSP, DFID Zambia is currently examining options for a renewed engagement in the agricultural sector. The need for an exploratory study of the land sector was identified in 'Zambia Agriculture Scoping Study' (DFID-Zambia, September 2002) and is linked to the planned 'Political Economy Study', which due to commence imminently.</li> <li>2. The Zambia Agriculture Scoping Study seeks to understand the current barriers to investment in agriculture. Rather than the traditional route of funding government support services to farmers, the focus is expected to be on the demand-side, i.e. relieving the constraints identified by farmers' organizations and lobby groups. The study of the political economy (of agricultural production) is expected to throw light on a possible approach.</li> <li>3. The ToR require an assessment of the consultation process on land policy currently underway. To what extent is the process of value? Is it going to address the issues?</li> <li>4. The ToR do not cover urban land issues as DFID has 'no interest in the regularization of informal settlements', etc. Peri-urban land issues should be considered only in so far as they affect agricultural livelihoods.</li> <li>5. The PRSP is considered by DFID to be the outcome of a robust consultation process. However, the agriculture chapter could be considered weak.</li> <li>6. A list of contact person was made available as follows: (i) FAO, World Bank, Agricultural Consultative Forum (a legacy of the now abandoned SIP/SWAP process), USAID (ii) Ministry of Lands, Ministry of Agriculture, Ministry of Local Government (iii) Zambia Land Alliance, Oxfam, a.n.other (iv) Zambia National Farmers' Union.</li> </ol>

14.00 Tuesday 19/11/02	Zambia Land Alliance, Off. Of the Zambia Civic Education Association, Plot 2, Cnr of Manchinchi Rd and Azikiwe Crescent, Northmead Tel 222432 and 096 755642 <a href="mailto:land@coppernet.zm">land@coppernet.zm</a>	Henry Machina, Coordinator M. Adams	<p>1. Oxfam has funded the ZLA since 1997. It follows a similar pattern to the Kenya Land initiative evaluated by the consultant in 2001. The secretariat was established in November 2000. It is currently formulating a 3-year strategic plan. (Henry Machina previously attended the SARPN land reform meeting in Pretoria in June 2001. Knows Ephraim Munshifwa in the Dept of Lands in Gaborone). ZLA is made up of an Alliance of four NGOs ('Women for Change' (Emily Sikazwe 224309/221001); Zambia Civic Education Association; Law and Development Association; Catholic Commission for Peace and Justice).</p> <p>2. The 1995 Lands Act was drafted and implemented too hurriedly. At the time the 1995 bill was being drafted there was very little consultation. Government pushed it through without reference to the people, particularly traditional leaders. Some chiefs are 'giving' land away without the consent of their people. Once it is converted to state land, then local people never get the land back. Customary rights are being over ridden. Henry believed there are no provisions relating to development covenants and the cancellation of these leases. If there are, they are not implemented. He said is a failure on the part of government to respect customary rights holders.</p> <p>3. The Land Tribunal provided for in the 1995 Act (but which became operational in 1997) is not accessible to the people. It is too centralised and legalistic. Appellants have to be represented by lawyers (actually not correct). ZLA are calling for District Dispute Resolution arrangements.</p> <p>4. Women's land rights are very weak under customary law. They have secondary or tertiary rights. There are some exceptions in the case of matrilineal tribes. Zambia is ethnically very diverse. The weak position of women was evidenced with the privatisation of council houses in the urban areas. 75% of those who obtained titles were men. The officially controlled allocation process is very corrupt.</p> <p>5. The government has promised a constitutional review process.</p> <p>6. The Land Policy Review Process is a 'government thing'. NGOs are running a parallel process. Government confines itself to the provincial centres. ZLA are taking it down to district level in 12 districts. ZLAs are translating documents in to local languages, etc. The most recent draft of the land policy is expected to be published in the newspaper shortly (Times of Zambia/ Zambia Daily Mail). A draft land policy has been available since 1993 and the same basic format is periodically updated.</p>
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<p>15.00 Tuesday 19/11/02</p>	<p>World Bank, Country Office, Anglo American Corporation, 74 Independence Avenue 252811/253223 <a href="mailto:amwanakasale@worldbank.org">amwanakasale@worldbank.org</a></p>	<p>Alex Mwanakasale (Agricultural Specialist)</p>	<ol style="list-style-type: none"> <li>1. Land is not a sector in which the Bank is working. The Bank encounters land issues in the privatisation of parastatals, in agricultural marketing reform etc. in the context of the “Agricultural Sector Investment Programme”. Land does crop up as an element in the so-called “Letter of Development Policy”. It was never implemented, as the need did not arise. This was in the context of state farm privatisation. That project is now closed.</li> <li>2. Most of the problems arise from the dysfunctional land administration, i.e. the procedures of allocation and titling.</li> <li>3. There is a small land component in Copperbelt Province where there is an artificial shortage of land. Most peri-urban land owned by mines. Perhaps the land is under protected forestry. There is a problem of squatters with no formal rights. People do not want to return to the deep rural areas. If intensification is to take place must there be tenure security? Is this a legislative issue?</li> <li>4. The Bank could be involved in a process of redistributive land reform because of the land crisis in the Copperbelt. Anglo American pulled out in April (or pull out in April next?). There is no alternative but to promote agriculture. For this purpose, the people need to have access to land..</li> <li>5. The Bank is currently preparing a project with GRZ involving ‘agricultural commercialisation’. The purpose is to encourage farmers to produce for the market. Out growers need access to land. Land administration needs to be simplified. Titling needs to be more streamlined.</li> <li>6. Most state land is occupied. Land repossession, arising from failure to develop it, is uncommon.</li> <li>7. Most agricultural land for ‘new’ development is obtained through the chiefs. The Council may negotiate with the chief for agricultural lands. Otherwise, private entrepreneurs may negotiate directly with the Chief. Controversies arise when the chiefs part with land and central government claims that it was not aware that local people are losing out.</li> <li>8. Zambia is not homogeneous in these matters. The King (Litunga) of Barotseland (Western Province) has more autonomy in decision making about the allocation of land. Barotseland has more autonomy in this regard.</li> <li>9. Alex said that the people in the rural areas do not seem ready to deal with a developing land market. The World bank will be ready to help the GRZ with updating the land registry if approached.</li> </ol>
<p>0900 Wednesd ay 20/11/02</p>	<p>Ministry of Lands 2<sup>nd</sup> floor Mulungushi House Independence Avenue</p>	<p>PS Ministry of Lands</p>	<p>Meeting postponed till Friday</p>

<p>08.30 Thursday 21/11/02</p>	<p>Ministry of Local Government, Church Road 250528 (Very helpful and confident Personal Asst. 'Stella')</p>	<p>D.C. Sadoki, Permanent Secretary</p>	<p>1. Local Government is more involved with allocation of rural land than any other Ministry including the Ministry of Lands. Every inch of Zambia falls under a local authority. (Officials of district councils act as agents for the Commissioner of Lands in processing applications for land titles).</p> <p>2. Trust land is unalienated land that is held in reserve for conservation purposes (wildlife, forests, etc.) (NB this land is not the same as 'trust land' in Kenya, i.e. land that is held in trust by the County Councils for local communities). Trust land in Zambia may be degazetted for the purpose of adding to state land or to customary land. In this regard, the PS said that trust land fell into 'a hybrid' category. In other words, it could be added either to state land or to customary land. (In fact Trust Land was abolished under the Lands Act 1995 and incorporated with Reserves as 'Customary Area').</p> <p>3. Customary land is predominantly rural and falls under the jurisdiction of the chiefs. Chiefs allocate land to groups (e.g. a village community) or to individuals for the purpose of 'settlement'. Village land allocations are recorded at the local-level, in 'village registries', in which are also recorded vital statistics.</p> <p>4. An individual applying to the chief for land, with the intention of obtaining a 'title deed', will initially receive a 'permit' from the chief describing the location and size of the parcel, which may be between a few hectares up to about 250 ha. The application then goes for endorsement to a Development sub-committee of the District Council (comprising both councillors and officials). Councils may be 'very strict' in assessing applications and may require to see financial statements from the applicant's bank, etc. Council sets an annual lease rental. Provided that the full Council endorse the application, the land will then be surveyed and beacons. The application and survey plan are then forwarded to the Commissioner of Lands in Lusaka or Ndola, who will normally approve the application on behalf of the President and convert the land parcel to state land, thus removing it from the jurisdiction of the Chief. According to the PS MLG, the Lands Act allows the chief to continue to have his say about how the land is used and managed. In practice the chief's influence over the situation is apparently nominal which is a source of contention. In theory the Commissioner can issue a notice requiring the holder to show cause why the land remains undeveloped, etc. The chief however is unlikely to regain possession of the land because someone else will step in and acquire it.</p> <p>5. According to the PS, under the Lands Act of 1995, the granting of a 99-year lease is dependent on a detailed land survey and beaconing of the land boundaries. If it is not beaconed, only a provisional certificate of title (a 14-year lease) can be granted. At the end of that period, the land reverts back to customary land. A 99-year lease can be sold to a third party. (In fact the Lands Act of 1995, says nothing about land survey. Presumably, this matter should have been covered by regulations in terms of the Act. Regulations have never been drafted.)</p>
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10.00 Thursday 21/11/02	Ministry of Agriculture, 4 <sup>th</sup> Floor Mulungushi House 250532	A.K Banda Director of Planning	Mr Banda said that land scarcity in Zambia was not a problem. Every villager has a right to be allocated land, for residential and production purposes. Land was not a problem for the small farmer. However, one could spend a long time looking for 60-100 ha of serviced arable land in an accessible location on state land. He said that the process of land allocation was slow and complex. Land surveyors, needed for the acquisition of a 99-year lease, were in short supply. He believed survey regulations were too rigorous. He personally was having difficulties converting a 14-year provisional certificate of title into a 99-year lease. To him the procedures were not clear. People did not know where to go. The process was not transparent. He agreed that there was need for a land code that would set out the law, the regulations, the statutory forms etc. A provisional certificate of title was not an adequate basis for investment in farm improvements because 'anybody could grab it'. He felt that there was too much 'gate keeping' by the officials in the office of the Commissioner of Lands. He said that rentals were very low and that they did not justify the cost of collection.
11.30 Thursday 21/11/02	Government Printer		Government Printer to purchase of the Land Act 1975. (The Lands Act of 1995 is an 'empty shell' without the regulations.) The Local Government Act 1996 was not in stock, neither were the regulations to the Lands Act. Referred to Ministry of Legal Affairs.

11.45 Thursday 21/11/02	Ministry of Legal Affairs Fairley Road 251588	Consilia	Informed that the Local Government Act could be printed for me from a CD ROM. Collect on Friday. However the Regulations for the Lands Act would have to be obtained from the Ministry of Lands.
12.00 Thursday 21/11/02	Land Tribunal	Registrar Land Tribunal	Briefly met with the Registrar to arrange an appointment for 1400 Friday.
14.00 Thursday 21/11/02	FAO, House No 5, Addis Ababa Drive, Ridgeway 252558 <a href="mailto:fao-zmb@field.fao.org">fao-zmb@field.fao.org</a>	Richard W. Fuller, Resident Representative	<ol style="list-style-type: none"> <li>1. Mr Fuller had emphasised to DFID the importance of making the link between the agricultural sector and other sectors. For example, 'land issues come up in everything' – including irrigation development policy and strategy. Periodically land scams, particularly involving the acquisition of land by foreigners, hit the press. For example, a South African recently managed to acquire 200 km<sup>2</sup> (14x14 km).</li> <li>2. Fuller recommended a meeting with Mr Aongala, Director of Planning in Ministry of Natural Resources and Tourism. There were problems in the allocation of the Game management Areas (GMAs). Holders of customary rights were being displaced, etc.</li> <li>3. Access to land for poor people is a problem on the 'line of rail', particularly in Copperbelt Province and Southern (south of Lusaka).</li> <li>4. He also recommended contacting Dutch Gibson and Peter Aagard (265455) and Ron Landless – commercial farmers.</li> </ol>

<p>15.00 Thursday 21/11/02</p>	<p>Agricultural Consultative Forum Secretariat, Plot 30G Sable Road, Kabulonga Tel 260767 <a href="mailto:mwanaumo@zamnet.zm">mwanaumo@zamnet.zm</a> <a href="mailto:bknebwe@zamnet.zm">bknebwe@zamnet.zm</a></p>	<p>Dr Anthony Mwanaumo (Coordinator) Bobi K. Nebwe (Programme Officer)</p>	<ol style="list-style-type: none"> <li>1. Dr Mwanaumo, an economist, talked of the artificial scarcity of land in Zambia. Because undeveloped land was not taxed, people acquired land and held on to it for speculative purposes, particularly in urban areas. He said that this also applied to well-located fertile agricultural land, which was now very difficult to come by. Smallholdings on state land in peri-urban areas (5-20 ha) commanded high prices and were being acquired and ‘demarcated’ (i.e. subdivided).</li> <li>2. State land was being widely transacted but it was not a publicly transparent process. Land administration (i.e. issuing of titles) was a highly centralised (in Lusaka and Ndola only) and land titling was excessively complicated and ‘information was internalised’. He said that there was a great deal of ‘rent seeking’ and gate keeping going on in the office of the Commissioner of Lands.</li> <li>3. He agreed that the average small farmer on customary land in remote rural areas did not have a land problem.</li> <li>4. He said that he was pleased that government and the courts were taking a firm hand with ‘squatters’. He described a recent court case involving the Catholic Church, which had obtained a court order for the eviction of squatters from their land. This ‘sent a good signal’ that government was concerned about the rule of law.</li> <li>5. Importance of a land code recognised. Decentralised deeds lodgement. Need for land servicing. Survey Act designed to keep surveyors in business.</li> <li>6. Meeting planned on “Land and Poverty in Zambia” 12 December. HIV/AIDS expected to figure. No specific study known.</li> <li>7. Recommend meeting with Mr Raymond Moyo, Asst. Surveyor General, Ministry of Lands</li> </ol>
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<p>0900 Friday 22/11/02</p>	<p>Ministry of Lands 2<sup>nd</sup> floor Mulungushi House Independence Avenue e-mail Attention PS ministry of Lands <a href="mailto:minlands@zamnet.zm">minlands@zamnet.zm</a> <a href="mailto:zsd@zasurvey.org.zm">zsd@zasurvey.org.zm</a> 253406</p>	<p>George Kavatu (Permanent Secretary) Imanga Kalyangile, (Director Human Resources and Administration) Morgan Mumbwatasai (DFID-Zambia)</p>	<ol style="list-style-type: none"> <li>1. The Regulations to the Lands Act 1995 have never been drafted. Government was still using the regulations set out in Circular 1, 1985. The Registrar of the Land Tribunal would have a copy. The 1995 Act and the national land policy were in the process of being reviewed. It was felt that the Lands Act of 1995 was forced through without adequate consultation and therefore and lack legitimacy.</li> <li>2. In the last ten years, the demand for land had greatly increased. People recognise its value and understandably want to get their hands on land both to forestall future land scarcity and as an investment. Meanwhile the government's land policy has been standing still.</li> <li>3. Government recognizes the importance of developing a computerised land information system. The World Bank may assist with the process.</li> <li>4. Government recognizes the importance of decentralising land administration (to the district level) but given the severe resource constraints, decentralisation of functions to the provincial level presents major problems. Land registration and the issue of land titles are currently confined to Lusaka and Ndola. The next priority is to provide these services at Livingstone or somewhere more centrally located in Southern Province.</li> <li>5. Government is struggling to develop a strategy which come to terms with the evolving land market. In towns, until recently, government has given land away. In rural areas, land along the 'line of rail' is the most sought after.</li> <li>6. Land policy: the Government published its land policy with a two and a half page spread in the <i>Daily Mail</i> on 21 November. The consultation process initially assumed a consultative workshop in each province and translation of the land policy into 7 local languages; radio programmes and other media events. The budget was originally Kwacha 1.5 billion (say US\$350 000) but it is now reduced to about US\$ 60,000. Probably only one workshop in Lusaka would be possible. ZLA have promised to help with local level workshops. The consultation process, however organised is likely to elicit accusations that government wants to grab land. There is suspicion of government's intentions.</li> <li>7. The Ministry requested DFID to provide technical assistance with the policy development process.</li> </ol>
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<p>1100 Friday 22/11/02</p>	<p>ZNFU Stand, Showgrounds 252649 <a href="mailto:znfu@zamnet.zm">znfu@zamnet.zm</a></p>	<p>Songowayo Zyambo Executive Director, Zambia National Farmers Union</p>	<ol style="list-style-type: none"> <li>1. Zambia has huge areas of agricultural land, much of it not fully utilised. However, land policy, land administration and land delivery have somehow created an artificial shortage of land, particularly serviced land (i.e. land accessible by road, and supplied with electricity).</li> <li>2. Because of the scarcity of land available on the 'line of rail' and because it was much sought after, there are many land disputes and squabbles and problems of squatters. Because of these unresolved disputes, much productive land remains unutilised.</li> <li>3. Other problems arise from interference by government in the land use decisions of farmers, e.g. farmers wildlife ranching on land perceived to be suitable for arable farming.</li> <li>4. In this situation of artificial land scarcity, there have been concerns that land invasions from Zimbabwe could spread northwards. However, there is not the same land hunger and sense of grievance in Zambia. Mr Zyambo said that there were some 300 white farmers in the Lusaka area.</li> <li>5. The land code proposal was well received. Land administration was slow and expensive. Less than ten per cent of ground rents were collected. Those who paid probably only did so to strengthen their claim to the land in question. There is no penalty for defaulters. He stressed the importance of the proposed computerised LIS (which was once again seen as a panacea).</li> <li>6. Mr Zyambo frequently returned to the need to service new lands both for export crops and to relieve land pressure on the 'line of rail' especially where there were problems with squatters.</li> </ol>
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<p>1400 Friday 22/11/02</p>	<p>Lands Tribunal office, a seemingly temporary pre-fabricated structure in the grounds Mulungushi International Conference Centre.</p> <p>Tel 291 921</p>	<p>Mr Fortune Kachamba The Registrar, Lands Tribunal</p>	<ol style="list-style-type: none"> <li>1. Fortune, a lawyer by training, was very forthcoming and knowledgeable regarding the Lands Act of 1995 and the land policy process. He confirmed that there are no regulations prescribed for the implementation of the Act. It was agreed that the wording of the Act is that s. 30 ‘the Minister <u>may</u>, by statutory instrument, make regulations for the better carrying out of the provisions of the Act’. The regulations currently used are those in Administrative Circular No. 1 of 1985. He said (off the record) that several attempts had been made to draft regulations, but they had not been carried through. The task had been abandoned because it was felt that the 1985 regulations served the purpose, and had in fact been the basis used by the drafters when drafting the 1995 Act. He promised to obtain a copy of the elusive Administrative Circular for me.</li> <li>2. We discussed the idea of a land code. He agreed that it was needed but pointed out that it would be strongly opposed by the lawyers!</li> <li>3. He believed that people were generally secure on customary land. Although he recognised that it will be increasingly acquired and converted to leasehold and sold by those in the know. More and more speculation on customary land could be expected. There is a lot of pressure to convert customary land to individual title, especially in the peri-urban areas.</li> <li>4. He said that the tribunal was mostly taken up with disputes relating to state land. This amounted to 4 to 6 per cent of the country, but nobody could be sure, so chaotic were the records. Most of the cases were appeals against decisions of the Commissioner of Lands, or failure to make decisions. However, the previous Chairman had extended the scope to include cases of succession (inheritance), which clogged up the system with cases which should never have come to the tribunal and created a huge backlog – currently more than two years!</li> <li>5. Funding for the tribunal is extremely erratic. The funds ‘appropriated by Parliament’ could be used up in just one hearing.</li> <li>6. He was highly critical regarding the current structure of the tribunal, which is set out in the Act (9 members, with a quorum of 5 in addition to the chairman). More than half the people identified are not necessary (e.g. physical planner, town planner, registered valuer etc.) If necessary, such people could be called as expert witnesses. Retired officials were treating the tribunal as a ‘meal ticket’. There is clear need for a change in the legislation.</li> </ol>
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11.00 Monday 25/11/02	USAID 351, Independence Avenue, Lusaka 254303 <a href="mailto:hgunther@usaid.gov">hgunther@usaid.gov</a>	Helen K. Gunther Chief, Agriculture and private Sector Office	<ol style="list-style-type: none"> <li>1. USAID are long term donors in the agricultural sector.</li> <li>2. Land tenure was perceived by USAID to be an increasing constraint for incoming investment. Leasehold has ambiguities. Banks reluctant to lend against title deeds, but on the other hand educated Zambians had problems with re-introducing freehold rights.</li> <li>3. Chiefs are incredibly powerful in Zambia. Government 'has to deal with that side of the equation' when it comes to customary land.</li> <li>4. In the context of the agricultural and economic diversification of the Copperbelt and land tenure reform, Helen proposed getting in touch with Sixtus Mulenga of the national Economic Diversification Task Force <a href="mailto:sixtus.mulenga@kcm.co.zm">sixtus.mulenga@kcm.co.zm</a> A similar model may be applicable to Southern District and the Livingstone area.</li> </ol>
14.00 Monday 25/11/02	Zambia Land Alliance (see 19/11/02)	Henry Machina of ZLA and Sefilino Mangimela of the Zambia Civic Education Association, <a href="mailto:Sefilino@yahoo.com">Sefilino@yahoo.com</a>	<ol style="list-style-type: none"> <li>1. Report back by Martin Adams.</li> <li>2. Agreed to cooperate in making a written response to the call for submissions on the National Land Policy <i>Daily Mail</i>, Thursday, November 21. Provided electronic copies of various documents on the basis of which ZLA could review the Ministry's proposals.</li> </ol>
16.00 Monday 25/11/02	Oxfam, 250 Zambezi Road, Roma Township 292 070 <a href="mailto:mmishra@oxfam.org.uk">mmishra@oxfam.org.uk</a>	Mahesh C. Mishra Programme Representative Chilufia Kasatu Annie Mumbi Bwlendo Kabanda Mumo Matandala (Oxfam field staff)	<ol style="list-style-type: none"> <li>1. Discussed the nature and scope of a possible DFID funded initiative for to help resolve the tenure insecurity of poor people in the Copperbelt districts of Mufulira and Chingola. Complex situation has developed with large numbers of squatters on state and customary land (land held by mining companies, councils, private interests, forestry department, etc) who do not invest in agriculture and land improvements because of endemic insecurity. (see Copperbelt Land Workshop, Mindolo Ecumenical Foundation, Kitwe, 3-5 October, 2002)</li> <li>2. Proposal is to establish two 'land advisory centres' staffed by Oxfam, one in each district, to work with District Councils and small groups of 'squatters' to formalise, by repossessing idle land if necessary, their land tenure status. The initiative would aim to influence policies at district level, and build up case histories of required legal and administrative procedures for application elsewhere.</li> </ol>

09.30 Tuesday 26/11/02	Ministry of Local Government Church Road 250996 <a href="mailto:townplan@zamnet.zm">townplan@zamnet.zm</a>	Dr Glynn A. C. Khonje Director Department of Physical Planning and Housing	Brief introductory meeting with Dr Khonje. Explained the background to the mission. Discussed the issues of decentralisation and the agency role of the MLG in acting as 'postman' for the Ministry of Lands which is too highly centralised. He feels that decision-making in terms of the 1995 Lands Act definitely needs to be decentralised. The Public Service Review Process (?) is currently discussing this. He expressed disappointment with the draft land policy document as published last week. He agrees that it skirted around the main issues with which government has to grapple. We discussed the problems of customary land and the need to empower chiefs but at the same time provide for appeals, etc. We also discussed the need for framework legislation and district specific regulations due to the problems of finding one formula which would suit all districts. He agreed that Western Province is a special case (like KZN in RSA). Gave him the draft Botswana Land Policy Review on diskette and asked him to pass it to the PS as previously promised.
10.30 Tuesday 26/11/02	Land Tribunal Mulungushi International Conference Centre	Registrar	Called once again for a copy of Circular 1 of 1985, which reputedly provide the regulations for the implementation of the Lands Act, 1995. The Registrar was still unable to locate a copy. He promised to have one ready for me when I call on the way to the airport tomorrow. Gave him the Botswana NLP review and the complete record of the judgements of the Land Tribunal in Botswana. If I cannot get hold of a copy, what chance does a rural Zambian stand in some distant district?  The Registrar said that he was working on a speech for the Minister who would announce the re-convening of the Land Tribunal on Thursday next.
14.00 Tuesday 26/11/02	DFID-ZM	R. Montgomery M. Mumbwatasai Amisha Patel Donata Garassi A.N. Other	Debriefing meeting
08.30 Wednesd ay 27/11/02		Mr Kachamba Registrar Lands Tribunal	I finally obtained a photocopy of Circular No 1, 1985 on my way to Lusaka airport. The Registrar allowed me to borrow his only copy – pasted in a ledger – and to photocopy it in the Intercontinental business centre. There was no working photocopier in the Ministry of Lands or Lands Tribunal. It was immensely reassuring to obtain a copy, as I was beginning to have dark suspicions.

07.30 Thursday	Courtyard Hatfield	Beth Arthy, Susan Barton (Pvt sector dev. adviser) DFID-SA	Debriefing meeting: It was agreed that in my final report I must consider the arguments for and against DFID-support to the land sector. Linkage with current food emergency could be mentioned. Rural to urban migration increasing food and income insecurity.
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## **Appendix 3 Draft Land Tenure Policy**

### **THE DRAFT LAND POLICY**

#### **FOREWORD**

The greatest resource that Zambia has is her land. The Government has recognised the importance of this resource in the development of a strong and prosperous nation. Zambia's vision could be achieved through the sustainable utilisation of her land resources not only in the short term but also in the long term. The task of the Government of the day, therefore, is to ensure that the people of Zambia are given an equal opportunity to access and utilise this resource.

This Land Policy is intended in part to address the question of equity and efficiency in the land delivery system.

This Policy could not have come at a better time than this when there is an increased concern by the majority of Zambians on how land has been in the past alienated to developers.

The formulation of this Policy is a culmination of various consultative meetings, studies, workshops, and seminars for stakeholders at the District and Provincial Levels and a National Conference held at Mulungushi International Conference Centre from 19<sup>th</sup> to 23<sup>rd</sup> July, 1993. From 1993 to date consultative meetings have been held in order to ensure that the Policy addresses all issues relating to land delivery.

Judith K. Kpjjimpanga, M.P.  
**MINISTER OF LANDS**

#### **EXECUTIVE SUMMARY**

The main emphasis of this Land Policy is to address the problems associated with the land delivery system in Zambia in order to ensure equitable access to land resources and promote national development. The Policy document is presented as follows:-

Chapter One is the introduction, which justifies the need for a revised Land Policy. The Government has taken measures towards ensuring that the people of Zambia are given equal access to land and provide an enabling environment for its utilisation.

Chapter Two shows the historical perspective to land tenure, both before and after independence. It would not be easy to appreciate what is happening today without an insight of the current system of land administration inherited and developed from the past. In the pre-independence era the focus was oriented towards the white settler population. The indigenous people were left to develop on their own. In this way fertile land was identified and granted to the white settlers,

later designated as Crown Land. The indigenous people were confined to separate areas, which were designated as Reserve Lands and Trust Lands in which Customary Tenure systems applied.

At independence some white settlers objected to a new Government dominated by the indigenous people and consequently left the country but retained ownership of their land. The challenge of the Government was to release such land for development. This necessitated the enactment of laws such as the Land Conversion of Titles Act – Chapter 289 of the 1972 edition of the Laws of Zambia.

Chapter Three deals with the Situation Analysis and asserts the need for this Policy. Chapter Four outlines the objectives of this Policy.

Chapter Five focuses on the Institutional Framework and posits the fact that land is a multi-disciplinary asset hence the need for all the stakeholders to participate in its planning, administration and in monitoring its use, to ensure sustainable development for the benefit of all parties concerned.

The Government recognised the fact that for the objectives to be achieved funds should be made available to support the implementation of the programme. This will entail financial support particularly to ensure that the implementation of programmes arising out of this Policy are successful. In this regard, this Policy is intended to make it easier for the present and future generations of Zambia to continue enjoying the benefits of holding land either under statutory or customary tenure.

## **1.0 INTRODUCTION**

In Zambia, land has since time immemorial been held under customary tenure, while the coming of the white settlers saw the introduction of freehold and leasehold tenure systems. Under the current system of tenure, Customary Land constitutes ninety-four percent (94%) of the total land area of Zambia, which is seven hundred and fifty two thousand (752,000) square kilometres while State Land constitutes only six percent (6%) of the total land area. Past land policies by the colonial administration were oriented towards benefiting the white settler population at the expense of the indigenous people. Fertile land known as Crown Land was identified and granted to the white settlers while the indigenous people were confined to less fertile areas known as Reserve Lands and Trust Lands. The level of investment in the Reserve Lands and Trust Lands, by the settlers, was low because these areas did not provide adequate security of tenure as compared to Crown Land for which it was possible to hold title.

The white settler community held land largely on leasehold title or freehold title.

On the attainment of independence in 1964, most settlers objected to a new Government dominated by indigenous people and thus decided to leave the country but retained title to land.

The Zambian Government repossessed and released that land for development through the enactment of the Land Conversion of Titles Act – Chapter 289 of the Laws of Zambia. This Act sought to empower people through enabling the acquisition of undeveloped land at no cost.

The Government has taken measures to revise the procedures to ensure that all persons have equal access to land and the Government has also sought to provide an enabling environment for its utilisation. Such measures were derived from studies, workshops and seminars for stakeholders at the Provincial and District Levels and a National Conference on Land Policy and Legal Reform held at Mulungushi International Conference Centre from 19<sup>th</sup> to 23<sup>rd</sup> July 1993. Proposals and suggestions from this process have culminated in the formulation of this Policy.

## **CHAPTER TWO**

### **2.0 HISTORICAL PERSPECTIVE OF LAND TENURE**

#### **2.1 SYSTEMS OF LAND TENURE**

##### **2.1.1 Land Tenure Before Independence**

Before the coming of the white settler community, the holding of land by the indigenous people was largely through families, jointly or by a chief or chieftainess on behalf of the community in accordance with the community's respective customary laws. Individuals in the tribe had the right to use the land but not to sell it. However, they were allowed to transfer rights in land, for consideration, or as gifts subject to the local conditions and customs, while interest in land could also be inherited in accordance with the respective customary laws.

The tribal tenure systems that existed prior to 1890 were affected by the arrival of the first white settlers. The white settlers introduced the system of holding land under certificate of title in respect of Crown Land and later in respect of Trust Lands. To this effect, the Lands and Deeds Registry Act – Chapter 185 of Laws of Zambia was enacted in 1944 to provide for the registration of documents and to provide for the issue of Provisional Certificates of Title, and Certificates of Title, to provide for the transfer and transmission of registered land and for incidental matters so as to ensure that all interests in the land and other immovable properties were systematically registered. In this way the interests of the white settlers in Crown Land were registered. Crown Land was later renamed State Land through the Zambia (State Lands and Reserve) Orders of 1964. The registration of land under the Lands and Deeds Registry Act – Chapter 185 of the 1996 edition was to establish accurate records for the transfer of ownership of land.

The land held by the white settlers was generally held under leasehold or freehold title and as such enabled the title holders to use title deeds as collateral in borrowing money from lending institutions so as to develop their land. This made their land more economically developed than land under customary law.

The Northern Rhodesia (Crown Lands and Reserves) Orders of 1928 created Reserve Lands for Africans. Reserve Lands constituted 27,297,500 hectares, thirty-six percent (36%) of the total landmass of 75,264,083 hectares of land in Zambia. The white settlers retained what was called Crown Land. This land eventually became State Land.

Crown Land (State Land) was only for white settlers. Indigenous people were not allowed to own land in these areas except with permission to stay either as licensees in compounds or as

house servants for the white settlers. The indigenous people were always expected to return to their homelands (Reserves or Trust Lands).

The restriction of entry to State Land and the discrimination practised by the white settlers subsequently led to the struggle for political independence by the indigenous people.

State Land was about 4,518,953 hectares, six percent (6%) of the total landmass. The Northern Rhodesia (Native Trust Land) Orders-in-Council of 1947 created Trust Lands as a result of pressure, from the white settlers, for more land. Trust Lands constituted 43,654,168 hectares, fifty-eight percent (58%) of the total landmass.

The above Orders put the Native Lands under the supervision of the Secretary of State. The Government was empowered under the Trust Lands Orders to make grants or dispositions of Native Trust Lands to non-indigenous people, provided it was proved that these grants were for the benefit of the indigenous people.

Non-indigenous people were granted land on lease agreement by the Commissioner of Lands on the basis of a numbered sketch plan or survey diagram approved by the Surveyor General and title issued by the Registrar of Lands and Deeds, while indigenous people continued to 'hold' their land under African customary tenure. Grants or dispositions of land, to non-indigenous people, which were set aside for public purposes or mining were not to exceed the period of ninety-nine (99) years or thirty-three (33) years in the case of grants for missionary or charitable organisations, or for five (5) years in any other cases.

Several problems and opportunities were created by the coming of the white settlers, and a brief description of what each land tenure system brought about is given below.

The traditional land tenure system allowed persons within a given area to easily access land through their traditional rulers. That land could be freely passed on to family members through inheritance in accordance with the existing traditional customs and norms.

However, this system did not allow for exclusive rights in land as it was most held in common by the community. Individual ownership of land on a title deed was not provided for under this system.

The indigenous people however believed that the whole country belonged to them more than it belonged to the white settler community. Therefore, the indigenous people struggled for, among other things, an equal right to live on the State Land.

The creation of Native Trust Lands, by Northern Rhodesia (Native Trust Lands) Orders-in-Council 1947, was meant to benefit the indigenous people although in reality those lands were an extension of the Crown Lands which primarily benefited the white settlers. The creation of the native Trust Lands however obliged the Governor to consult the Native Authority before land in the Trust Lands was accessed for any purpose. Native Authorities were established in 1936 and their functions were later taken over by Rural Councils, later renamed District Councils.



### **2.1.2 Land Tenure After Independence**

The attainment of independence introduced social, economic and political changes, which resulted in the influx of people from rural to urban areas creating an artificial shortage of land. The inherited system of land administration could not meet the demand from the increasing population, particularly in urban areas.

The Government, in order to solve the emergent social and economic problems, held a referendum to address, among other things, issues related to land. Government further enacted the Lands Acquisition Act – Chapter 189 of the Laws of Zambia enacted in 1970, to enable the compulsory acquisition of land by the President, in the public interest. Vast tracts of idle land that had been left by white absentee landlords, held on freehold title or any other land left idle and perceived to be for speculative purposes, was repossessed. In addition, the Government enacted the Housing (Statutory and Improvement Areas) Act – Chapter 194 of the Laws of Zambia. This Act provides for the control and improvement of housing in Statutory Housing Areas or Improvement Areas. It also provides for the issuance of certificates of title and occupancy licences, and thereby security of tenure.

The Land Survey Act – Chapter 188 of the Laws of Zambia enacted in 1960 was aimed at providing guidelines to be followed when activities relating to land surveying were carried out. The Act among other things provides for the production of survey diagrams, plans, survey beacons and other survey marks.

The Land (Conversion of Title) Act – Chapter 289 of the Laws of Zambia of the 1972 edition provided that:-

- (a) land continued to be vested in the Republican President to hold it in perpetuity for and on behalf of the people of Zambia;
- (b) all land previously held under freehold title be converted to statutory leasehold, held for 100 years, and subsequent offers to land were to be for a period of 99 years; and
- (c) all transactions in land had to have the prior consent of the President and that in exercise of this power, the President could fix the maximum amount that could be received in any land transaction.

The Lands Act – Chapter 184 of the Laws of Zambia was enacted to give Zambians an opportunity to participate in the country's economy.

This Act provides that no land is to be transferred to a non-Zambian unless:

- (a) The non-Zambian is a permanent resident in the Republic of Zambia;
- (b) The non-Zambian is an investor within the meaning of the Investment Act – Chapter 385 of the Laws of Zambia or any other law relating to the promotion of investment in Zambia;
- (c) The non-Zambian has obtained the President's consent in writing under his hands;

- (d) The non-Zambian is company registered under the Companies Act – Chapter 388 of the Laws of Zambia and less than twenty-five per centum of the issued shares are owned by non-Zambians;
- (e) the non-Zambian is a statutory corporation created by an Act of Parliament;
- (f) the non-Zambian is a co-operative society registered under the Co-operative Societies Act – Chapter 393 of the Laws of Zambia and less than twenty-five per centum of the members are non-Zambians;
- (g) the non-Zambian is a body registered under the Land (Perpetual Succession) Act – Chapter 186 of the Laws of Zambia and is non-profit making, charitable, religious, educational or philanthropic organisation or institution which is registered and is approved by the Minister for the purposes of the relevant section;
- (h) the interest or right in question arises out of a lease, sub-lease, or under-lease, for a period not exceeding five years, or a tenancy agreement;
- (i) the interest or right in land is being inherited upon death or is being transferred under a right of survivorship or by operation of law;
- (j) the non-Zambian is a Commercial Bank registered under the Companies Act – Chapter 388 of the Laws of Zambia and the Banking and Financial Services Act – Chapter 387 of the Laws of Zambia; or
- (k) the non-Zambian is granted a concession or right under the Zambia Wildlife Act – no. 12 of 1998.

The Minister responsible for lands has also issued Land Circular no. 1 of 1985 the provisions of which are still applicable and have been reinforced by the Lands Act – Chapter 184 of the Laws of Zambia enacted in 1995. This Circular laid down detailed procedures to be followed on land alienation. The main features of the Circular were that:

- (a) Chiefs and District Councils were restricted to recommend up to 250 hectares of land on title, per applicant, in Reserves or Trust Lands; and
- (b) Chiefs and the District Councils were to certify that they had physically inspected the land in question and that no person's rights or interests were affected.

The Lands Act, which provides for the continuation of leaseholds and leasehold tenure, the continued vesting of land in the President and alienation of land by the President, the statutory recognition and continuation of customary tenure and conversion of customary tenure into leasehold tenure also provides for the establishment of a Land Development Fund and the creation of a Lands Tribunal.

## CHAPTER 3

### 3.0 SITUATION ANALYSIS

#### 3.1 LAND TENURE

For land located in a customary area the land delivery process starts with a prospective developer approaching the Chief or Chieftainess of the area for consent to hold the land on leasehold tenure and to obtain a certificate of title. Where the Chief or Chieftainess is satisfied that the land is available, the Chief or the Chieftainess writes a consent letter addressed to the Council Secretary. In addition, a site plan is drawn by a planning authority depicting the land that is being applied for. The consent letter and site plan are taken to the Council Secretary who endorses and stamps the documents, has the land inspected by the Committee that deals with land matters and has the applicant interviewed. Where the applicant is successful, the Council Secretary recommends the allocation of the unnumbered plot, to the Commissioner of Lands. The application forms, site plan and council minutes are attached to the recommendation letter which certifies that the recommended plot is free of settlement by other subjects of the Chief or the Chieftainess. If satisfied the Commissioner approves the application. For land in excess of 250 hectares the Commissioner of Lands seeks clearance from the Minister responsible for land before the Commissioner of Lands approves the application.

The demand for land has increased considerably and there are more applicants seeking land in both State Land and Customary Land. However, in its current state, the land delivery system is unable to meet the increase in the demand for land by the public for land on title. The high demand for land calls for the conversion of customary land into State Land to meet future land requirements.

#### Land Allocation to Foreigners

The restriction to the granting of land to non-Zambians (foreigners) was introduced in 1985 when the Land (Conversion of Titles) (Amendment) Act – no. 15 of 1985 was passed.

The land allocation procedure to foreigners does not differ with the procedure followed by Zambians. However when alienating lands to non-Zambians (foreigners) there are some conditions, which the non-Zambians are required to fulfil.

Prior to the enactment of the Land (Conversion of Titles) (Amendment) Act – No. 15 of 1985 land in Zambia was allocated freely to both Zambians and non-Zambians.

Applicants for land are required to meet any of the following conditions before they may be allocated:

#### Individuals

In the case of individuals:-

- (a) they should be Permanent Residents in Zambia or hold an Entry Permit in accordance with the Immigration and Deportation Act – Chapter 123 of the Laws of Zambia;
- (b) they must be investors within the meaning of the Investment Act – Chapter 385 of the Laws of Zambia and hold an investor's licence;

- (c) they must obtain State's consent in writing;
- (d) the interest or right in land should be inherited upon death of the title holder or transferred under the right of survivorship; and
- (e) the interest or right in land should arise out of a lease for a period not exceeding five (5) years.

### **Organisations**

In the case of a company or organisation:-

- (a) the foreign organisation or company must be an investor under the Investment Act or any other law relating to the promotion of investment in Zambia and must hold an investment licence; and
- (b) the foreign company or organisation must be registered under the Companies Act.

### **Co-operative Societies**

In case of a Co-operative society registered under the Co-operative Societies Act, No. 20 of 1998 seventy-five percent (75%) of its members must be Zambians.

### **Foreign Commercial Bank**

In the case of a foreign Commercial Bank it must be registered under the Companies Act and the Banking Financial Services Act – Chapter 387 of the Laws of Zambia.

### **Charitable, Religious, Educational, Philanthropic and non-profit Making Organisations**

The organisation must be a body registered under the Land Perpetual Succession Act, whether charitable, religious, educational, philanthropic and non-profit making and the organisation has been granted a concession or right under the Zambia Wildlife Act, No. 12 of 1998.

The land allocation procedure applicable to foreigners, under customary law, who fulfil the above requirements does not differ with the procedure followed by Zambians. They also seek the authority of Chiefs or Chieftainesses and the Council in the case of an application for customary land.

## **3.3 ENVIRONMENTAL ISSUES**

There is a general concern that people holding land often do not use it in a sustainable manner. There is, therefore, a need to come up with mechanisms for measuring, monitoring and preventing environmental degradation.

## **3.4 LAND DISPUTES WITHIN ZAMBIA**

The rights or interest over land are often a subject of a dispute. It has been observed that land, which is the subject of a dispute, can neither be productively used or developed within the stipulated period. To avoid lengthy court processes and to assist people with less income, an alternative land dispute resolution mechanism was established. The Lands Tribunal has therefore been instituted with the objective of speedily settling or preventing land disputes.

### **3.5 INTERNATIONAL BOUNDARY DISPUTES**

Zambia needs to constantly re-affirm her international boundaries so as to safeguard her territorial sovereignty. Hence there is need to maintain and re-define, where necessary, Zambia's international boundaries. This needs to be done in order to avoid any land-related conflicts with her neighbours.

### **3.6 GENDER ISSUES, PEOPLE WITH SPECIAL NEEDS AND DISADVANTAGED GROUPS**

The current laws do not discriminate against anyone on the basis of gender. The Government has, however, recognised that women still lack access to land in comparison to their male counterparts. The reason for this lies in customary practices. The Lands Act – Chapter 184 of the Laws of Zambia recognises customary laws and it is recognised that this may further perpetuate the discriminatory practices. In this regard, thirty percent (30%) of the land, which is to be demarcated and allocated, is to be set aside for women and other vulnerable groups.

This Policy seeks to redress the gender imbalances and other forms of discrimination in land tenure by providing an enabling environment for women, people with special needs and all disadvantaged groups to own land.

## **CHAPTER FOUR**

### **4.0 LAND POLICY**

Land is a very important resource and forms the basis of all human survival in terms of social and economic advancement. In recognition of the importance of land, the Zambian Government is committed to improving procedures that make land available for development. The Government will encourage people to participate in the exploration of land and its resources and facilitate the development of infrastructure as a way of safeguarding the people's rights to land whilst promoting the sustainable use and development of the country's resources.

#### **4.1 OVERALL POLICY OBJECTIVES**

The overall objectives of the land policy are to:-

- (a) recognise and promote the people's right of access to land and provide land information for the country's social economic development; and
- (b) improve land delivery

#### **4.2 SPECIFIC OBJECTIVES**

The specific objectives of this Land Policy are to:-

- (a) improve the land information system to facilitate the timely and accurate delivery of land information.

- (b) improve the capacity of physical planning in order to strengthen the land delivery system and promote co-ordination among institutions directly involved in physical planning;
- (c) ensure that the covenants and conditions under which land is held are adhered to;
- (d) promote equal opportunity for access to land while recognising customary and leasehold tenures;
- (e) promote increased revenue generation from land;
- (f) support initiatives by local investors and, where appropriate, assist foreign investors through the provision of land;
- (g) maintain a clear physical description of Zambia's international boundary with her neighbours;
- (h) redress the gender imbalance and other forms of discrimination in land holdings by providing security to all land holdings and creating opportunities for development;
- (i) encourage people with special needs and other disadvantaged groups to own land;
- (j) develop and enhance the capacity of the Lands Tribunal to quickly deal with land dispute matters; and
- (k) address the pressures and need for land by urban populations.

### **4.3 STRATEGIES**

In order to achieve the above objectives the following strategies will be undertaken:-

- (a) link the lands information systems at Headquarters to the various Regional, Provincial and District Offices;
- (b) establish an inter-ministerial Co-ordinating Committee for the purpose of bringing together various physical planning authorities in the country;
- (c) review the various pieces of legislation that relate to land matters;
- (d) sensitise the public on procedures and advantages of holding land on title;
- (e) ensure that lessees pay ground rent commensurate with the zoning of the area;
- (f) encourage investment especially in the rural areas;
- (g) conduct surveys, and construct beacons through the usage of maps and other technical records including between the borders of Zambia and her neighbours;
- (h) enforce the Ministry's policy of ensuring that thirty percent (30%) of land which is demarcated is allocated to women and groups with special needs; and
- (i) create a conducive environment for the operation of the Lands Tribunal to facilitate the amicable settlement of land disputes.

## CHAPTER FIVE

### 5.0 INSTITUTIONAL FRAMEWORK

Land is the basis of all human activity from which we derive all the basic necessities of life. An effective institutional framework for land delivery and management should therefore stress the need for an integrated approach that includes a wide range of stakeholders.

The current institutional arrangement places responsibility on the Ministry of Lands to formulate and co-ordinate the implementation of statutes related to land management in Zambia.

In order to attain and implement the Policy objectives outlined in Chapter Four, it is necessary that the statutes governing the Ministry of Lands' functions are fully appreciated. Some of these statutes require amendments as recommended at various public fora, in particular, the National Conference on Land Policy and Legal Reforms referred to in Chapter One.

The Ministry of Lands recognises the fact that various provisions in some of the statutes are no longer relevant. If the land delivery system is to conform to the demand for land and be universally accepted there is an urgent need to review and revise all land-related statutes with a view to updating and harmonising them.

### 5.1 MINISTRY OF LANDS

The Ministry of Lands is divided into four (4) Departments namely: Human Resources and Administration, Lands, Survey and Lands and Deeds Registry.

These Departments complement each other in terms of land administration.

#### 5.1.1 Human Resources & Administration Department

The Department of Human Resources and Administration following the restructuring exercise conducted in the Ministry of Lands consists of the following units which all report to the Director, Human Resources and Administration who in turn reports to the Permanent Secretary.

- (a) **General administrative services and transport;**
- (b) **Human Resources Management and Development Unit;**
- (c) **Planning and Information Unit;**
- (d) **Accounts and Internal Audit;**
- (e) **Procurement and Supplies; and**
- (f) **Registry Unit.**

This Department is responsible for the overall provision of the necessary support services for the effective and efficient operations of the Ministry.

#### Functions of the Department

The Department carries out the following functions:-

- (a) facilitates the smooth operations of the Ministry through improved planning and co-ordination of the various ministerial units and ensures easy information flow;
- (b) co-ordinates with various departments, ministries, other organisations and members of the public on matters of administration of the Ministry;
- (c) supervises, organises, plans and manages the institution through provision of goods and services;
- (d) recruits personnel according to the needs of the establishment of the institution;
- (e) allocates financial resources to support personnel in the establishment and implements work programmes performed by the institution;
- (f) attends to matters pertaining to appointments, promotions, confirmations, discipline, dismissals, receptions and ceremonies; this entails looking after staff (office and housing), arranging funerals and other related functions and further entails the overall supervision of all the Departments and operating units in the institution;
- (g) undertakes training, both on the job and at institutions of learning and keeps up to date records of all transactions involving the Ministry; and
- (h) secures transport, office equipment and materials which are needed for the better operation of the Ministry.

### **5.1.2 LANDS DEPARTMENT**

The Lands Department of the Ministry of Lands, in general, is the custodian of all land in Zambia on behalf of the President of the Republic of Zambia. The President has delegated his powers to the Commissioner of Lands to make and execute grants and dispositions of land subject to special or general directions of the Minister responsible for land. The Department is divided into three (3) sections namely:

- (a) **Lands Administration;**
- (b) **Legal; and**
- (c) **Estates and Valuation Section.**

The following are the functions of the various sections under the Lands Department:-

#### **LAND ADMINISTRATION**

- (a) ensuring that areas required for development are properly planned by the Local Authorities and the Department of Physical Planning under the Ministry of Local Government and Housing and the Land Husbandry Section in the Ministry of Agriculture, and Co-operatives;
- (b) regarding large scheduled Farms created under the Agricultural Land Act, the Ministry provides secretarial services to the Agricultural Lands Board, where applicants who wish to hold and transact in Agricultural land are interviewed; and
- (c) advising the Ministry on Land Administration, Land Policy and Legal Reforms, as well as perform other duties relevant to land such as negotiating, drawing up and executing documents where the Ministry is required to do so.



## **LEGAL SECTION**

This section:-

- (a) determines whether the covenants of the lease have been complied with;
- (b) advises Government and prepares documents for acquisition of land in the public interest;
- (c) advises the Minister on incorporation and registration of charitable and other community based organizations for the purpose of providing for perpetual succession to land under the Land (Perpetual Succession) Act – Chapter 186 of the Laws of Zambia; and
- (d) represents the Commissioner of Lands in any land dispute before the Lands Tribunal, the High Court and the Supreme Court.

## **ESTATES AND VALUATION SECTION**

### **Estates Management**

There are two (2) major functions under this section:-

- (a) managing Government property portfolio i.e. keeping an up-to-date register of Government properties;
- (b) managing the landlord and tenant relationship for Government rented premises and vice-versa; and
- (c) managing the lessor (The President) lessee (private individuals) relationship, in other words, the direct lease from the State.

The functions here include:-

- (a) monitoring of compliance with the development clause in the offer letters;
- (b) compliance of the development clause is through physical property inspections and preparation of reports thereafter;
- (c) collection of the annual ground rents from lessees through billing and distribution of ground rent bills using either the mailing addresses or using physical property inspections and preparing reports thereafter; and
- (d) managing the Consent System. Under this system all transferees and assignees should be eligible to hold land.

### **Valuation**

This section carries out various types of valuations for different purposes, notably:-

- (a) rental valuations on behalf of Government institutions;

- (b) capital valuations where the Government wants to know the most reasonable value of the real property, which the Government either wants to purchase or dispose of; and
- (c) capital valuations for incomplete structures for compensation purposes after the property has been re-entered upon by the State.

### **5.1.3 SURVEY DEPARTMENT**

The Survey Department of the Ministry of Lands, in general, plays the role of a national centre for surveying and mapping services. It is solely responsible for the production and revision of national maps of Zambia, the planning of aerial photographs, cadastral surveys and provision of national control. The Department is divided into three branches, namely:

- (a) **Cadastral Services;**
- (b) **Mapping Services; and**
- (c) **Survey Services.**

The following are the functions of the sections under these branches:-

**Cadastral Services Branch** deals with services relating to the accurate fixation and recording of legal title as well as addresses issues of boundary disputes. This branch consists of:-

- (a) **the Cadastral Drawing Office** whose functions are the preparation of diagrams and plans for all surveys carried out by the Government, and compilation and up-dating of property diagrams and other assorted plans;
- (b) **the Examination Section** which is in charge of the verification and examination of all survey records lodged with the Department from both Government and private land surveyors. This section also manages the plan-room where all survey records are archived and the numbering of all properties in Zambia is done; and
- (c) **Field Surveys** of planned areas, property boundary disputes, surveys and verification of Chiefs' boundaries are also co-ordinated and carried out under this Branch.

**Mapping Services Branch** deals with services relating to the production and revision of national topographic maps and specialised mapping. It consists of three main sections:-

- (a) **the Photogrammetric Section** whose functions are planning aerial photography and mapping on a large scale from aerial photographs;
- (b) **the Reprographic Section** deals with the processing of aerial photographs at predetermined scales, the archiving of stat-filed copies of approved diagrams and plans for properties and reproduction of national maps; and
- (c) **the Cartographic Section** deals with the preparation, production and revision of national maps at various scales as well as the selling of these maps locally and internationally.

**The Survey Services Branch** deals with the establishment and maintenance of a reliable national control network for use in cadastral mapping engineering and other surveys. It consists of :-

- (a) **the Records Office** whose function is to secure and keep in good order all records of permanent control network stations across the country; and
- (b) **the Field Survey Headquarters** whose functions are to plan, co-ordinate and carry out surveys for the establishment, extension and maintenance of the network of national control stations in Zambia.

#### **5.1.4 LANDS AND DEEDS REGISTRY**

The principle function of the Lands and Deeds Department is to register ownership and real rights in and over immovable property in order to:

- (a) **provide security of title**
- (b) **ensure a complete record**
- (c) **provide easy access to information**
- (d) **ensure speedy registration of all documents lodged; and**
- (e) **be cost effective.**

The specific functions of the Department include:-

- (a) ensuring the registration of rights, interests and liabilities through assignments, mortgages, discharges, caveats, power of attorney, leases or deeds of arrangement;
- (b) maintaining of various registers i.e. the Land Register, Property Register, Miscellaneous Register, Water Register, Common Leasehold Register and Agricultural Charges;
- (c) issuing full title deeds and provisional certificates;
- (d) storing and maintaining records on the computer or on normal records that constitute the public register;
- (e) ensuring that revenue is collected from different categories of clients; and
- (f) providing direction for periodic verification of land disputes that arise out of inspection and re-entries.

#### **5.1.5 LANDS TRIBUNAL**

In addition to these Departments there is the Lands Tribunal, a statutory body of the Ministry of Lands whose objective is to arbitrate the disputes arising under the Lands Act.

#### **5.2 OFFICE OF THE VICE PRESIDENT**

The Office of the Vice President through the Department of Resettlement identifies land for Resettlement Schemes to resettle people particularly retirees and other urban residents in need of land to these designated areas so that they are given an opportunity to own land on title and secure their livelihood.. The Office of the Vice President will be required to work harmoniously

with the Ministry of Lands so that suitable areas are designated, planned, demarcated and developed appropriately.

### **5.3 MINISTRY OF LEGAL AFFAIRS**

Land holding entails legal procedures as enshrined in the various pieces of legislation and covenants. This Ministry, amongst other things, renders legal advice to the Ministry of Lands during the review of legislation for the drafting by the Ministry of Legal Affairs of the Laws whether substantive or subsidiary. The Ministry of Legal Affairs also attends to the legal cases where the Ministry of Lands is a party and attends to all agreements entered into by the Ministry of Lands with other Parties to enable the Government achieve its goals under this Policy.

### **5.4 MINISTRY OF LOCAL GOVERNMENT AND HOUSING**

The Ministry of Local Government and Housing is charged with the responsibility of assessing land for human resettlement, industrial and commercial development activities. Through the Department of Physical Planning and Housing and the respective Local Authorities the Ministry is responsible for the preparation of structural and regional plans to guide town and rural development. In addition City Municipal and District Councils are responsible for recommending applications for land. Consultations on land matters are held among the chiefs, Councils and the Ministry of Lands to ensure that land is not available for allocation but also to ensure that the customary rights of the local people are not infringed.

In addition, the Ministry through the Valuation Department advises the Ministry of Lands on property valuation and on any other matter pertaining to real estate management. The Valuation Department also utilises property data from the Lands and Deeds Registry of the Ministry of Lands to prepare valuation records.

In order for this Policy to achieve its intended goals, the Ministry of Local Government and Housing through the Local Authorities and Traditional Leaders should assist in identifying land for allocation and suitable applicants for that land.

### **5.5 MINISTRY OF AGRICULTURE AND CO-OPERATIVES**

The Ministry of Agriculture and Co-operatives through the Land Husbandry Section, is responsible for identifying, planning, demarcating and recommending land for agricultural purposes. This Ministry also monitors land user charges. Given the crucial role the Ministry of Agriculture and Co-operatives plays in land use planning it will assist in identifying and opening up suitable land for agricultural use to sustain Agricultural industry.

### **5.6 MINISTRY OF WORKS AND SUPPLY**

The Ministry of Works and Supply is responsible for the administration and maintenance of all Government property throughout the country.

### **5.7 MINISTRY OF COMMERCE, TRADE & INDUSTRY**

The Investment Centre under the Ministry of Commerce, Trade and Industry co-operates with the Ministry of Lands in identifying suitable land for various development projects. The Ministry

will facilitate the speedy registration of Companies to assist prospective investors to acquire land for various investments. Therefore, strengthened co-operation between the two ministries is required to ensure an efficient land delivery service.

## **5.8 MINISTRY OF TOURISM, ENVIRONMENT & NATURAL RESOURCES**

The Department of National Parks and Wild Life Services under the Ministry of Tourism, Environment and Natural Resources gives concessions on land in Areas demarcated as Game Management Areas and National Parks. The Department, through the Protected Areas Planning Unit prepares development plans with the use of land information produced by the Ministry of Lands and also regulates the development of tourism enterprises in the country.

The Ministry assists entrepreneurs in the identification of land suitable for Tourism purposes including land in Game Management Areas.

The Ministry of Tourism, Environment and Natural Resources provides advice to the Ministry of Lands on the suitability of land for specific purposes such as natural resource conservation and for the protection of the environment.

This Ministry will therefore be expected to continue providing information necessary for land use planning for sustainable development. The Ministry of Lands will endeavour to strengthen its working relationship with the Ministry of Tourism, Environment and Natural Resources to ensure that land being made available for various developmental activities takes into account environmental considerations.

## **5.9 LOCAL COMMUNITIES**

The Local Communities constitute the lowest levels of governance groups. It is the Government's intention to design policies in a manner beneficial to the Local Communities. The Local Communities, including Community-based Organisations, shall collaborate closely with Government on the formulation of Land Policy and in the implementation of Policy for the benefit of all.

## **5.10 THE PRIVATE SECTOR**

The Private Sector, notably, individuals, bodies and organisations conducting business on or related to land shall be considered as partners in the implementation of this Policy, and are expected to contribute to the development of this nation through the sustainable use of the land.

## **5.11 NON GOVERNMENTAL ORGANISATIONS**

Non governmental Organisations play a very important role as a link between Government and the Civil Society and will assist Government to interpret and disseminate the Land Policy to the public and shall be expected to play an active role in the implementation of this Policy.

## **5.12 EDUCATION & RESEARCH INSTITUTIONS**

Education and Research Institutions shall provide knowledge, trained human resources and provide information on appropriate land management practices.

### **5.13 CO-OPERATING PARTNERS**

Co-operating Partners are recognised as development partners due to the assistance rendered in capacity building and in the provision of other resources.

## **CHAPTER SIX**

### **6.0 FUNDING**

This Policy needs to be implemented with urgency. Therefore it is crucial for Government to mobilise resources and commitment from the public, traditional leaders and the private sector dealing in the land related enterprises.

The following sources of funding are envisaged to support activities necessary for the realisation of the objectives of this Policy:

- (a) adequate budgetary provision from the Treasury to the Ministry of Lands and other stakeholders;
- (b) revenue collected through periodically reviewed statutory fees, ground rent and charges for various land and survey services;
- (c) the Land Development Fund to assist in land development projects through Local Authorities.

## **Appendix 4 Land Policy Conference Recommendations July 1993**

1. The Lands and Deeds Registry Act should be amended to confer broad discretion on the Registrar to accept and certify any economic and appropriate parcel description as adequate for the purpose of registration.
2. All 14-year leases should be automatically converted to 99-year leases, by law and without ground survey.
3. All future leases of State Land outside agricultural settlement schemes and urban squatter upgrading schemes should be offered at public auction. Within these exceptions, clear criteria for selection must be developed.
4. In order to facilitate the operation of a market in leasehold rights, the requirements for government consent to transactions, including subdivisions, should be eliminated, with the possible exception of lease assignments to non-Zambians.
5. Development conditions should be eliminated from leases and reliance placed instead upon economic disincentives for holding land idle, such as ground rents.
6. If in some cases development conditions are still considered necessary, they should only require a specific investment of construction in the short term, for instance five years. The development condition should be considered met if notice of default is not given by the ministry or other relevant authority such as a municipality within that period. Default should be punished by fines rather than by retaking the land. Beyond that time, only a prohibition of abandonment should apply, and in that case a retaking should be subject to compensation for land improvements.
7. Further increases in ground rents should be considered as the economic value of land becomes clearer through the auction process. Penalties should be imposed for late payment for ground rents.
8. The MOL, given its limited staff and facilities, should carefully consider the economic and financial impacts of the allocation of its staff to particular tasks and to particular regions and tenure sectors.
9. Using these criteria, the highest priority should be getting land and titles into the hands of cultivators within the State Land Sector.
10. Within the State Land, first priority should be given to reallocation of the land of State Farms and parastatal holdings, second to resettlement schemes, and third to private holdings. If a land identification committee or similar body is created to identify land for investors, it should for the first several years focus its attention on the State Lands and these particular areas.

11. In terms of resolving titling difficulties for land already allocated, the resettlement sector deserves special attention. A crash programme for dealing with this sector should be considered and put forward for donor funding.
12. For selected areas of considerable commercial development in Reserve and Trust Lands,<sup>22</sup> the ministry should seek to develop a procedure for systematic titling of all holdings, along the lines of that incorporated in the repealed Lands (Adjudication of Titles) Act, 1962.
13. There is need to create a Policy Analysis and Studies Unit directly under the permanent Secretary's Office of the MOL.
14. There is need to rethink the present structure of the ministry's senior management to reflect a broader concept of the ministry.
15. There is need to redesign the land allocation committee and the office of the commissioner.
16. The most critical aspect of decentralization is the transfer of responsibility for urban lands to municipalities.
17. Regional and provincial offices of the ministry should be fully integrated, with a single officer in charge, rather than divided into departments with separate lines of authority running to Lusaka.
18. The regional office of the ministry in Ndola should be primarily a Lands and Deeds Registry, while decentralization of other Lands Department and Survey Department activities should be provincial level.
19. The final decision on all leases for under 250 hectares should be delegated to provincial level. Auctions should be held at provincial level, though advertised nationally. The ministry's provincial office should issue both in-principle and final offers, be responsible for sketch maps, and collaborate with the relevant planning authority. A master parcel map would need to be maintained at provincial level to permit checking of possible overlaps and numbering of the parcel. The numbering system would need to reflect location by province and district.
20. Delegation of authority to make final offers for leases to the district is technically feasible. This would require the posting at that level of a district lands officer. When resources allow, the ministry should begin to build cadre on a pilot basis.
21. For the time being, the roles played by councils and chiefs should remain as they are but should be studied to determine whether alternative institutional arrangements exist, which require a more collaborative mode between the council and the chiefs.

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<sup>22</sup> i.e. now 'Customary Land', post Land Act 1995



22. The process for initial leasing of land could be shortened at the district level by altering the provision of Circular No 1 to allow a subcommittee of the council to act finally in approving a lease without require the matter to go before the full council. A special lands subcommittee should be created for this purpose. The powers of the subcommittee and the criteria that they are to use in approving an application should be set out in law, possibly as part of a revision of the Conversion Act.<sup>23</sup>
23. The master map now maintained in Folios in the Lands Department should be turned over to the Survey Department so that checking the parcel for conflicting allocations and numbering the parcel could be done as one process.
24. Offers in principle should be eliminated. A final offer should be made initially, to be accepted by the payment of fees.
25. The process could be further expedited by making the final offer the lease itself. On its return, signed by the applicant, with the necessary fees, it could be signed by the commissioner, registered and sent back to the applicant with the title deed in one mailing.
26. Personnel, vehicles, and budget now devoted by the Ministry of Agriculture to the preparation of sketch maps to support applications for leaseholds should be transferred to the provincial offices of the MOL. Serious consideration should be given to transferring to the MOL the entire Land Use Planning operation of the Ministry of Agriculture and the Evaluation Section of the Housing Conglomerate.
27. Rural Councils and municipal councils should be made responsible for the collection of all ground rents in towns and on State Lands and should be able to retain a portion of those rents, perhaps half, for local development projects in return for providing this service. It would also be useful to explore how chiefs might collect ground rents in their areas of Trust and Reserve lands and similarly retain a portion of those rents for local development projects.
28. There is need for the ministry to develop an effective program of training and public information concerning land policy generally and titling specifically. This implies the creation of a training and information unit within the ministry.
29. In framing land policy for trust and Reserve areas, there is need for a frank admission that abuse of the titling process for land-grabbing is not just a potential problem. It has taken place, permitted by inadequate safeguards within the ministry's land allocation system. The 250 hectare limit from Circular No 1 should be enacted in law for farms; clear criteria should be created for exceptions to this limit; and the approval of such exceptions be entrusted to a national board consisting of respected figures.

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<sup>23</sup> The revision of the Conversion Act, namely the Lands Act 1995, ducked this issue and proposed the matter should be detailed in the regulations but this was never done. Circular No 1 of 1985 still applies.

30. For Trust and Reserve areas, the supply of titles and land delivery for outside investors, though an important element, should be secondary to the development of a viable strategy for protecting and enhancing the land rights of local farmers and communities.
31. The recognition of value in land should be an element in this policy as it is in State Lands. Government (and donors) must recognize customary property rights and should pay compensation for land taken for development by others.<sup>24</sup>
32. There should be a systematic review of leaseholds or parcels in the Trust and Reserve Lands 50 hectares or larger held by government, and over 100 hectares held by private individuals or companies. Where this land is unused, government should consider retaking it and returning it to local communities unless the communities can agree with the ministry on some other use for the land.
33. Broad local consultations should be undertaken by the ministry to help it think through the future of tenure in the Trust and Reserve areas.
34. The ministry should consider further work on systematic titling activities in some quite limited Trust and Reserve areas with good market access where a lack of title may be a binding constraint on investment.
35. A program of studies should be undertaken in several carefully selected areas to explore new approaches to customary tenure and local organization for the administration of land.
36. A comprehensive study of the terms of access by women to productive resources should be carried out.
37. A study should be carried out to determine the relationship between the rapid expansion of cultivated land in the last decade and the expansion of the leasehold system.

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<sup>24</sup> This was duly taken into account by the Lands Act 1995.

## **Appendix 5 Administrative Circular No 1, 1985**

### **PROCEDURE ON ALIENATION**

#### **INTRODUCTION**

This Circular is intended to lay down general policy guidelines regarding the procedure all District Councils are expected to follow in the administration and allocation of land.

2. Your attention is drawn to the fact that all land in Zambia is vested absolutely in His Excellency the President who holds it in perpetuity for and on behalf of the people of Zambia. The powers of His Excellency the President to administer land are spelt out in the various legislations some of which are; The Zambia (State Land and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 and 1964 and the Land (Conversion of Titles) Act No. 20 of 1975 as amended. His Excellency the President has delegated the day-to-day administration of land matters to the public officer for the time being holding the office or executing the duties of Commissioner of Lands. Under Statutory Instrument No. 7 of 1964 and Gazette Notice No. 1345 of 1975, the Commissioner of Lands is empowered by the President to make grants or dispositions of land to any person subject to the special or general directions of the Minister responsible for land matters.

3. Pursuant to the policy of decentralisation and the principle of participatory democracy it was decided that District Councils should participate in the administration of land. To this effect, all District Councils will be responsible, for and on behalf of the Commissioner of Lands, in the processing of applications, selecting of suitable candidates and making recommendations as may be decided upon by them. Such recommendations will be invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.

4. Accordingly, the following procedures have been laid down and it will be appreciated if you shall ensure that the provisions of this Circular are strictly adhered to.

#### **A. PREPARATION OF LAYOUT PLANS**

- (i) The planning of stands for various uses is the responsibility of the appropriate planning authority of the area concerned. Once a chosen area has been properly planned, the planning authority shall forward the approved layout plans to the Commissioner of Lands for scrutiny as to the availability of the land.
- (ii) Upon being satisfied that the layout plans are in order, the Commissioner of Lands shall request the Surveyor-General to number and survey (or authorise private survey) the stands.
- (iii) Thereafter, a copy of the layout plan showing the order of numbering, shall be sent back to the District Council and the planning authority concerned.

## **B. ALLOCATION OF STANDS**

- (i) Stands recommended for allocation to the Commissioner of Lands will be assumed to have been fully serviced by the District Council concerned. If the stands are not serviced, the District Council shall give reasons for its inability to provide the necessary services before the recommendations can be considered.
- (ii) Before stands are recommended, the District Council concerned may advertise them in the national press inviting prospective developers to make applications to the District Council in the form appended hereto and numbered as Annexure A.
- (iii) On receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make its recommendations in writing to the Commissioner of Lands giving reasons in support of the recommendations in any case where there may have been more than one applicant for any particular stand, or where an applicant is recommended for more than one stand.
- (iv) On receipt of the recommendation(s) from the District Council(s), the Commissioner of Lands shall consider such recommendation(s) and may make offer(s) to the successful applicant(s), sending copies of such offer(s) to the District Council(s) concerned.
- (v) Where the District Council is not the planning authority, an applicant whose recommendation has been approved by the Commissioner of Lands shall be directed, in a letter of offer in principle, to apply for and obtain planning permission from the relevant planning authority before a lease can be granted.
- (vi) If the District Council is aggrieved by the decision of the Commissioner of Lands, the matter shall be referred to the Minister of Lands and Natural Resources within a period of thirty days from the date the decision of the Commissioner of Lands is known, who will consider and decide on the appeal. The Minister's decision on such an appeal shall be final.
- (vii) No District Council shall have authority in any case to permit, authorise or suffer to permit or authorise any intending developer to enter upon or occupy any stand unless and until such developer shall have first received the letter of offer, paid lease fees and the development charges, and has obtained planning permission from the relevant planning authority.
- (viii) Prior to the preparation of the direct lease, the District Council concerned shall inform the Commissioner of Lands the minimum building clause to be inserted in the lease.
- (ix) Prompt written notification of the relevant particulars upon the issue of a certificate of title shall be given by the Commissioner of Lands to the District Council concerned.

## **C. UNSCHEDULED AGRICULTURAL LANDS**

- (i) Any State Land required for agricultural use shall be notified to the Commissioner of Lands so that its status and availability can be determined.

Once the Commissioner of Lands is satisfied that the land in question is available the Department of Agriculture in consultation with the District Council shall be requested to plan the area into suitable agricultural units. The layout plans duly approved by both the Department of Agriculture and the District Council concerned shall be submitted to the Commissioner of Lands for survey and numbering.

- (ii) Once the District Council is in possession of information from the Commissioner of Lands regarding the numbered farms or small-holdings the procedure outlined in paragraph 4B(ii) (iii) (iv) and (vi) above shall apply. And the application form to be completed by the applicants shall be as per Annexure 'C'.
- (iii) No District Council shall have authority in any case to permit, authorise, or suffer to permit, or authorise any intending developer, to enter upon or occupy any agricultural farm or small-holding unless and until such developer shall have first received the letter of offer and has paid the lease fees.

#### **D. RESERVES AND TRUST LANDS**

- (i) In the Reserves and Trust Lands, the powers of the President, in making grants or dispositions of land, are limited by the requirement to consult the local authorities affected by such grants or dispositions of land.
- (ii) Local authority, in the Orders, has been administratively understood to mean the Chief and the District council. This means, therefore, that the consents of the Chiefs and District Councils shall continue to be the basis for any approval of applications for land in the Reserves and Trust Lands.
- (iii) As has been the practice before, to ensure that a local authority has been consulted, the Commissioner of Lands will insist that each recommendation is accompanied by the following:
  - (a) written consent of the chief under his hand;
  - (b) extracts of the minutes of the Committee of the Council responsible for land matters embodying the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary;
  - (c) extracts of the minutes of the full Council with the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary.
  - (d) four copies of the approved layout plan showing the site applied for, duly endorsed and stamped by the Chief, Chairman of the Council and the District Executive Secretary.
- (iv) The preparation of the layout plan showing the area applied for, should be done by persons possessed with the cartographic know-how. At Annexure 'B' of this circular is a model layout plan which provides the necessary details for an acceptable layout plan.
- (v) It has been decided, for the time being, not to allocate more than 250 hectares of land for farming purposes in the Reserves and Trust Land areas. The District

Councils are, therefore, advised not to recommend alienation of land on title in such areas in excess of 250 (two hundred and fifty) hectares as such recommendations would be difficult to consider.

- (vi) In each case recommended to the Commissioner of Lands, the recommending authority shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights have not been affected by the approval of the application.

#### **E. APPLICATION FOR LAND BY NON-ZAMBIANS**

- (i) You are now aware that under the Land (Conversion of Titles) (Amendment) (No. 2) Act of 1985 no land can be alienated to a person who is not a Zambia. However, under the same Amendment, a non-Zambian can be granted a piece of land if his application has been approved in writing by His Excellency the President.
- (ii) To obtain the approval of His Excellency the President, a non-Zambian wishing to own a piece of land will be required, in the first place, to submit his application to the District Council concerned for scrutiny. In considering the application, the District council will be at liberty to solicit for as much information as possibly from the applicant about the intended development.
- (iii) When recommending the application to the Commissioner of Lands, the District Council shall be required to give full back-up information in support of or against the applicant in addition to the following:
  - (a) extracts of the minutes of the Committee of the Council responsible for land matters, embodying the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and the District Executive Secretary;
  - (b) extracts of the minutes of the full Council, with the relevant resolution and showing who attended the meeting, duly authenticated by the Chairman of the Council and the District Executive Secretary; and
  - (c) four copies of the approved layout plan, showing the site applied for, duly stamped and endorsed by the Chairman of the Council and the District Executive Secretary where the site has not been numbered.

5. *Consultations* – Development projects of great significance both to the district and the nation, shall be referred to the Provincial Authority for guidance before communicating the decision to the Commissioner of Lands.

6. *Decentralisation of Lands Department* – Necessary plans to further decentralise the various aspects of land administration and alienation to the Provincial Headquarters have been made. These plans will be operational as soon as funds are available.

7. *Reserved Powers* – The Minister responsible for lands shall have the right in any case or cases or with respect to any category or categories of land, to modify, vary, suspend or

dispense with the procedure outline above or any aspect of same as he may see fit in the circumstances.

F. CHELA,  
*Minister of Lands and Natural Resources*

cc The Rt Hon. Prime Minister  
cc Hon. Chairman of the Rural Development Committee  
cc Administrative Secretary, Freedom House  
cc All Hon. Members of the Central Committee in charge of provinces.  
cc Hon. Minister, Ministry of Decentralisation, Lusaka.  
cc Hon. Minister, Ministry of Agriculture and Water Development, Lusaka.  
cc Hon. Minister, Ministry of Legal Affairs, Lusaka.  
cc All Chairmen of District Councils.





## Appendix 6 Terms of Reference

### Terms of Reference/ Scope of Work

#### BRIEFING ON LAND TENURE, LAND USE AND LAND REFORM IN ZAMBIA

##### Background

1. Zambia's PRSP identifies agriculture as the engine of growth for Zambia. With the decline of the copper industry and few alternatives, the government of Zambia has placed a renewed emphasis on developing the agricultural sector as the vehicle for economic growth and for enhancing the lives of the poor.

2. Zambia has significant agricultural potential: abundant under-utilised land and a high land to population ratio (only 14% of the 42 million hectares of arable land that is potentially available is currently actually used for agricultural production). Poverty statistics also point to agriculture as a prime livelihood strategy for most of Zambia's poor: more than 50% of Zambia's population of ± 10 million is rural, and 83% of rural people are poor, compared to 56% in urban areas. Any policy that strengthens and builds on poor people's current livelihood options must include agriculture

3. DFID has not engaged in the agricultural sector in Zambia for some years. However, in line with its commitment to supporting the government of Zambia's priorities as described in the PRSP, DFID Zambia is currently examining options for a renewed engagement in the sector to inform its new Country Assistance Plan. Two brief scoping missions have taken place to assess opportunities. Refer to reports from these missions for recommendations.

4. Land tenure and the proposed land reform plans of the GoZ will clearly have important implications for the agricultural sector in Zambia. DFID Zambia requires a briefing which assesses the current state of land tenure, land use and land reform plans in Zambia. The briefing will identify any critical issues which will need to be assessed further if DFID decides to offer support in some form to the agricultural sector.

##### The Terms of Reference

5. DFID Zambia requires a deeper understanding of land tenure, land use and the proposed land reform plans of the GoZ. Key tasks will include:

- As far as possible, provide an overview of current patterns of land ownership and land use patterns in Zambia (disaggregated by gender, income group, geography etc)
- Provide a brief overview of the current legislative and policy environment underpinning land tenure and land use in Zambia. Within this overview, outline the historical and political context underpinning these arrangements.

- Provide an overview of the institutional arrangements governing land policy in Zambia. This should include roles and responsibilities of government departments (at all tiers), civil society groups, private sector groups, labour groups and the relationships between these groups
- Through discussions with key stakeholders, assess how the current legislation and policies are regarded and the predominant perceptions of what should change.
- A consultation process on land issues is underway in Zambia. Provide an overview of the proposals for land reform, the critical areas of contention and assess how the current consultation process is proceeding (how is it being managed; who is being consulted and how; critical issues emerging etc)
- Assess the opportunities and constraints presented by current government plans on land to the proposed commercialisation of agriculture (through farm blocs etc)
- Assess the opportunities and constraints presented by current government policies and plans/proposed reforms on land to poor (including those infected/affected by HIV/AIDS) and small farmers
- How has the government integrated HIV/AIDS, gender and environmental sustainability into their current policies and proposed reforms?
- Provide an overview of current donor support on land issues, identifying key gaps.
- Based on the above assessment, input into the political economy study on agricultural commissioned by DFID Zambia.

#### Timeframe and outputs

6. This study will be carried out over a 12-day period from 18 November and finalised by end December 2002. The researcher will produce a concise report of no more than 25 pages (plus supporting annexures) with an executive summary of no more than 4 pages. S/he will provide a draft input into the political economy of agriculture study running concurrently with this study and comment on the draft political economy report (expected early December 02).

#### Reporting arrangements

6. The consultant will report to Morgan Mumbwatasai (DFID Zambia) and Beth Arthy (DFID CSA).