

ZAMBIA LAND ALLIANCE

Civil Society Land Policy Review Committee

INITIAL POSITION PAPER ON THE DRAFT LAND POLICY

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Introduction

For most poor people in developing countries like Zambia, land remains the primary means for shelter, generating a livelihood as well as the main vehicle to invest, accumulate wealth and transfer it between generations. It affects, among others household's ability to engage in gainful economic activity (within and outside agriculture), both for subsistence and for the market, their social and economic status and often their collective identity, and their incentive to invest, and use their resource in a sustainable manner.

In view of the above, a land policy must be based on broad consultation among all stakeholders and should play an effective role to bring in the concerns from the grassroots, particularly the primary producers. Therefore, civil society welcomed the Government of Zambia's decision in August 2002 to consult the major stakeholders on land.

However, upon learning that the government was only going to hold consultations at provincial level, the Zambia Land Alliance, working with other concerned civil society organisations,¹ felt that this approach would disadvantage the majority of the main stakeholders, the villagers.

This realisation was precipitated at a one-day workshop in Lusaka organised by the Zambia Land Alliance, on 10th September 2002. The workshop gave birth to a consortium of over fifteen civil society organisations forming a Civil Society Land Policy Review Committee. The Committee's main objective was to ensure that the remote rural poor participate in the Government Draft Land Policy review process and present their views.

This paper therefore, contains the views not only of the Zambia Land Alliance, but of this consortium of Civil Society Organisations. The views, some of which are intended to be general at this stage, are based on our daily experiences in advocating for just land policies and laws that take into consideration the interests of the rural poor.

The paper presents an initial submission on the Draft Land Policy. The final submission will be made after these community consultations are completed in the course of 2003.

It is not the intention of the consortium to raise every issue on land. Civil society will go to six provinces to further consult rural communities on the draft land policy. The group's main emphasis is to raise those issues that most impact on the rural poor in Zambia. These are as follows:

1. Vestment of land,
2. Gender
3. Land tenure security
4. Land administration and
5. Land disputes resolution

¹ See appended list of committee member organisations.

1. Vestment of Land

As stated by the Draft Land Policy, ALL land in Zambia is vested in the hands of the President for and on behalf of the Zambian people. Vesting of all land in the President however, opens the administration system to abuse. For example, prior to general elections in 2001, the second Republican President ordered the Commissioner of Lands to give priority in issuance of title deeds to holders of mining houses (potential voters), in essence suspending issuance of title to others. This involved issuing title deeds to sitting tenants at a political rally on the Copperbelt province.

This is abuse in that there were numerous other cases of people that had been waiting for title deeds for years from the Commissioner of Lands, who, at the time of issuing title deeds to holders of mining houses, were discriminated against by the President because he did not see any political value in them.

Further, the second Republican President is alleged to have used his influence while in office to acquire land to build his institute located on the current disputed University of Zambia land without considering public interest. What all this means is that the public lose confidence in the land administration system.

Civil Society's Recommendation:

We recommend that all land be vested in the **state**, instead of the President. The Commissioner of Lands should still be a representative of the **state** in matters relating to land administration, such as allocation of land. Further, the agents who act on behalf of the Commissioner of lands should start at community/village level rather than just one traditional ruler.²

2. Draft Land Policy and Gender

This document claims in chapter three (3) (Situation Analysis) that '*current laws do not discriminate against anyone on the basis of gender.*' This claim is misleading because there are still customary laws and statutes in relation to land that in themselves are discriminatory.

In addition, the above statement overlooks the question of whether statutory law is discriminatory in its *effects*, rather than merely *on its face*. There is strong evidence that the law is discriminatory in its effects, since more than 90% of State Land is owned by men. This gender gap should be identified and quantified, and the underlying discriminatory practices also identified.

In addition, although the draft land policy mentions gender in its fourth chapter, the document is actually gender blind from its historical perspective of land tenure (chapter two), situation analysis (chapter three), the land policy (chapter four) and the chapter on institutional framework. These chapters do not analyse gender relations surrounding land ownership and control by men and women.

² See also section on land administration in this paper.

The present lack of any anti-discrimination legislation in this area is also not mention. If there is no anti-discriminatory legislation, this by default allows discrimination in administrative practice.

The second paragraph under 3.6 ('Gender Issues, People with Special needs and Disadvantaged Groups') that reads

'This policy seeks to redress 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'

is unacceptable to women in Zambia since it seems to imply that being female is a physical or biological disadvantage. In addition, the strategy stated to achieve the above objective also seem to rub salt to the injury by stating thus *'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'*. This strategy is not only ambiguous but also actually seems actually to be an admission that there has been in the past, a lapse in implanting the ministry's policy in allocating 30% of land that had been demarcated to women.

Furthermore, although the chapter on *institutional framework* comprises close to half the entire policy document, there is no mention of gender issues. More specifically, there is no mention of how the gender oriented objective and strategy, mentioned previously in the document, are to be implemented. There is no mention of any involvement of the Gender and Development Division of Cabinet Office, or the various women's civil society organizations or the Law Development Commission.

The mention of non-governmental organizations playing an important role as a link...is not enough to address gender discrimination.

Finally, reform of land law to remove discriminatory practices would need concerted efforts by several government Ministries. But although the participation of several ministries is outlined in changing the system of land allocation, there is absolutely no information on how these same ministries will be working together on the enormous task of removing gender discrimination in the allocation of land.

Civil Society's Recommendation:

The final land policy needs to mainstream gender in all its chapters. The document must indicate how, for example, women have been historically disadvantaged in owning, accessing and controlling land, both under statutory and customary arrangements. The situation analysis should also go deeper in analysing current position of women and men in land issues before stating the objectives and strategies on how to address these. It must then clearly state how the relevant institutions will tackle these imbalances to bring about gender equality. The document should commit Government to fight gender discrimination in the entire land administration system.

Since women produce most of the food in Zambia, it is important that the current policy statement be amended from 30 % to **50% of land to be demarcated and allocated to women**. Another percentage (perhaps 10%) from the remaining 50%

could then be allocated to vulnerable groups with special needs. Further, the final Land Policy should link with the National Gender Policy so as to avoid contradictions.

3. Land Tenure security

Both the current Draft Land Policy and the Lands Act of 1995 do not adequately protect the poor on customary land. This is evidenced by cases where many rural people have been displaced from their ancestral land to pave way to rich people who have used their influence to acquire land with the backing of the law. Further, the draft Land Policy is oriented towards the rich going to obtain land in customary areas under title deeds. For example, regarding customary tenure, the document inadequately and ambiguously states that:

‘when the customary tenure system is examined against leasehold tenure, customary tenure has severe limitations. While the rights of holding land under both leasehold and customary law are recognised in the law, persons holding land under customary law [until] recently could not use their land as collateral. In addition, the security of tenure under customary law is impaired by the fact that there is often no proper physical description of boundaries and therefore, the land is prone to encroachment and disputes.’

Unfortunately, the Draft Land Policy ignores the several advantages the customary tenure system offers to majority poor Zambians living in rural areas and to urban dwellers planning to migrate to rural areas. Customary tenure system serves such people in many ways some of which are stated below:

- a) It currently provides the ‘social security’ for not only the rural poor but even for the urban poor who decide to go to rural areas to subsist on land. Poor people in Zambia are able to grow their own food through easy accessibility of land provided by the customary tenure system.
- b) It also provides the **only** ‘social security’ for retired public workers (such as civil servants) whose retirement packages cannot provide even their basic needs in particular shelter and food. The system also indirectly provides other basic needs namely health and education.
- c) Customary system provides for easy access to land. The system is not subject to laborious procedures before an application for it can be considered. All that is required is to simply visit the village head and in some cultures, the chief as well. In that way, the system has contributed to increased agricultural activities in provinces with higher rainfall in that resource poor persons can move from provinces that have agricultural land scarcity such as the Southern Province to those that still have plenty such as the Northern Province.
- d) It is under this system that measures to encourage sustainable use of land (if certain measures to ensure individual security on land are put in place) would be more enforceable than under leasehold.

- e) The system also allows for the practice of customary values. The group can exploit the land “assigned” to individuals for medicines, firewood and animal grazing purposes during off-season.
- f) There is no separate requirement to secure survey and planning permission once land has been granted. A holder is at liberty to build a house today, demolish it tomorrow and build another one of the type s/he wishes.
- g) There is no payment of land taxes. Previously, chiefs used to be entitled to receive tributes from landholders in their areas. Today, any such demand is corruption and criminal. Taxes are levied by Parliament and even though some chiefs and headmen charge especially non-locals some tribute or even "taxes", this is an illegal practice. A holder of customary land is not liable to pay rates for the buildings, ground rent for the house, municipal levies to the local authority or any fee to cover the "cost" of allocation.
- h) Customary land holding allows for the practice of customary values. The group can exploit the land "assigned" to an individual for medicines, firewood, grazing purposes during off season, hunting, holding group ceremonies, etc.
- i) Further, customary system is less costly to maintain and administer in environments with low population density such as the case in Zambian rural areas, limited access to infrastructure and markets, and limited capacity at local level.

Problems with title deeds in customary areas

In short, **leasehold tenure** (or simply title deeds) has major limitations to the poor, some of which are that:

- a) It has **cost implications**, e.g. lease charges, costs of survey, costs of land planning, rates, municipal charges, etc. The villagers cannot afford these.
- b) Methods of acquisition are subject to extensive bureaucracy, which are often abused by influential people at the expense of the poor.
- c) Once used as collateral, it is subject to loss in the event of non-payment of mortgage or charge. With perpetual high interest in a country like Zambia, this proposal is not workable for the poor.
- d) A holder of the lease can dispose it to a non-family member in a will at the expense of other family members. Where such land is sold off, for example, which has been common among land speculators over the past seven years, the local communities do not get any benefit.
- e) It requires an efficient land administration system. At the moment and for some time to come, the Ministry of Lands may have no capacity to administer the proportion of land in Zambia that is currently on title.

Civil Society’s Recommendations

In the light of the above, both the draft land policy and the Lands Act of 1995 should be reviewed to protect the poor on customary land with consideration of the following:

In relation to the over ambitious aim to promote title deeds in rural areas, the policy should consider leasing of land under customary tenure system directly without first converting such land to the state land. Such lands must continue to be in the hands of traditional rulers without the local communities losing their customary rights to the leased land. Failure to do this could perpetuate whole selling of agricultural land by speculators to the rich minority, as has been the experience in the last seven (7) years under the 1995 Lands Act (see also below).

4. Land Administration

The current land administration is too cumbersome, long, and costly to the average poor. Further, there is considerable ambiguity among many stakeholders in land, including in the Ministry of Lands, over terms used in the draft Land Policy and in the administration system in relation to customary land such as “Vestment of Land”, “Land Administrator”, “Custodian” or “Owner of land”.

Civil Society’s Recommendations

- a) Ambiguous terms need to be clearly explained and simplified if the final land policy is to be understood and have ownership by the people of Zambia.
- b) The Government should decentralize the operations of the department of lands to bring its services closer to the people in various parts of the country. The Government can do this by establishing offices of the Lands Commissioner in all Provincial headquarters. The land administration procedures should be simple and backed by local capacity.
- c) Procedures for de-gazetting forests should be shortened to address anxieties among squatters in forest areas. In particular the Forestry Act should provide for de-gazetting of forests by the Minister, subject to advice by stakeholders, rather than the President, as at present.
- d) The Lands Act of 1995 and other relevant statutes should contain time limits within which internal processes relating to numbering, surveying, demarcation, titling etc should be completed.
- e) The land policy and law should have a provision to compel the Ministry of Lands, the Lands Tribunal, Councils, and other stakeholders in land to disseminate information about land availability, location and acquisition procedures to the public. Once land has been taken, information should be provided to that effect. To this end, a Resource Centre where the public can acquire information on matters related to land administration in Zambia should be established.
- f) The Ministry of Lands should design and put in place a monitoring system for land allocation, distribution, and utilization to enable those that have land account for the chunks of land they own. This system will also avoid a situation of allocating land to only those people with money.
- g) The Ministry of Lands should carry out periodic investigations to ascertain whether the rights of traditional resource users are being adequately protected.

- h) Leasing of land that is under customary tenure system should be done at village/community level and not at national level. The answer does not lie in turning customary land into state land but rather in giving democratic local authorities/community leaders powers to lease land to individuals and institutions. The leased land will still be under customary tenure system and will remain under the control of a chief/chieftainess. Local communities should not lose their customary rights over such lands. Where it requires “big projects” such as mining, construction of bridges, etc., the Government in conjunction with local communities can offer special longer leases.
- i) Local authorities/councils should form land management committees comprising various stakeholders (Ministry of Lands, Civil Society representing the general public, the Church, Political Parties, and Chiefs, etc.) to ensure that land is allocated on the first come first served basis.
- j) The lease period should be reduced from the current 99 years to a level to be determined by this consultation process. The advantage of shorter lease period is that it will reinforce compliance to the laid down state rules. People who have been getting land and have been displacing people have been allowed to continue for 100 years under the present period.
- k) However, land held under customary tenure system and intended for big investment should only be converted into state land **after** wide consultations with the community in the earmarked area.
- l) There is need for the establishment of village land committees and village land tribunals at that level. Such committees elected by local communities should be the ones to sign the required documents such as the letter of consent for land seekers, after wide consultations with affected communities.

5. Land Disputes Resolution

The current dispute resolution mechanisms especially through the **Lands Tribunal** are far inadequate, too centralized (only currently sits in Lusaka) and is grossly under funded. Rural people do not even know the existence of the Lands Tribunal and even if they did, they cannot access it. Further, the Lands tribunal is too formal and technical in its operations and therefore intimidating to the rural poor person.

Civil Society’s Recommendations

There is need to identify and improve upon existing land dispute resolution mechanisms and build upon those. The Lands Tribunal should simply link together with such mechanisms, which in turn will be more effective and less costly.

ZAMBIA LAND ALLIANCE

Members of the Land Policy Review Committee

1. Zambia Land Alliance (ZLA)
2. Africa Renaissance Committee (ARC)
3. Catholic Commission for Justice and Peace (CCJP)
4. Community Based Natural Resource Management and Sustainable Development (CONASA)
5. Environmental Conservation Association of Zambia (ECAZ)
6. Green Living Movement (GLM)
7. Integrated Rural Development initiative (IRUDI)
8. National Association for Peasant and Small-Scale Farmers (NAPSSF)
9. Operation Young Vote (OYV)
10. PANOS Southern Africa
11. Programme Against Malnutrition (PAM)
12. Steadfast Action Foundation (SAF)
13. Transparency International-Zambia (TIZ)
14. Women for Change (WFC)
15. Women in Law in Southern Africa (WLSA)
16. Zambia Alliance of Women (ZAW)
17. Zambia Association for Research and Development (ZARD)
18. Zambia Civic Education Association (ZCEA)

ZAMBIA LAND ALLIANCE

"Land is Life"

What the Zambia Land Alliance is...

Zambia Land Alliance is a network of NGOs involved in advocacy and land awareness. The alliance began as a committee in 1997 to coordinate activities of member NGO's. The formation of the Land Alliance was necessitated by the Zambian Government's Land Reform process initiated in the 1990's.

Vision

The Vision of the Zambia Land Alliance is *"A Zambia in which the rural poor have secured access and ownership of land for development."*

Mission

The Land Alliance is a platform for collective action committed to promote equitable access and secured ownership of land by the rural poor, through, lobbying and advocacy, networking, research and community participation.

Strategic Objectives

The goal of the Zambia Land Alliance is to contribute towards equitable access and ownership of land by poor rural families. This goal serves as a signal for the immediate objectives, which are:

- To lobby and advocate for policy and laws that are inclusive of the rural poor most of whom depend on land for their livelihood;
- To conduct research on land related laws and policies, and investigate and document the effects on equitable access and ownership of land;
- To raise awareness on land issues, and;
- To network and collaborate with national, regional and international bodies to share experience and promote mutual learning, debates and discussions on the future courses of action on land issues as they relate to poor rural families.

Activities

The Zambia Land Alliance is led by a Secretariat whose functions include:

- Coordinating member NGO land advocacy programmes;
- Networking with Government, cooperating partners, NGO's and the communities themselves so far as to influence fair land reforms;
- Gather information on land dispossessions in Zambia and advocating for accountable and transparent land administration;
- Publishing land disputes and demanding land reforms through lobbying for change of some sections of the 1995 Land Act in order to promote secure land ownership for the poor;

Creating Alliances in provinces and districts so as to promote a common purpose in land advocacy

Currently the alliance is working with other civil society organisations to enable rural communities participate in the ongoing National Land Policy Review. What the Alliance does not do. The Zambia Land Alliance does not provide land to those who need it. Its role is to share information with the public and lobby and advocate for just land laws and policies for the poor. The Land Alliance's projects are carried out by member organisations.

Values

The Alliance believes in the following values;

- Rural poor people's participation
- Accountability
- Commitment
- Self-reliance
- Equity and fairness
- Justice and human dignity
- Impartiality

For Details Contact:

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