

The Draft Zambian Land Policy (1999)

Comments and Proposals to the Review Committee

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Ephraim K Munshifwa¹
P.O Box 403734
Gaborone Botswana
Email: emunshifwa@gov.bw

¹ The contributor is a Zambian national currently working as a Senior Lands Officers in Gaborone Botswana for the Botswana Government, Department of Lands. The views expressed in this document are entirely of the contributor and has nothing whatsoever to do with the employers.

1. Introduction.

There seems to be something amiss with the process to get to this Draft Land Policy. The Honorable Minister of Lands informs us that this policy reform process started before 1993 as it was presented at the National Conference held at Mulungushi International Conference Centre from 19th to 23rd July 1993. From 1993 to date (January 2003), consultative meetings have been held in order to ensure that the Policy addresses all issues relating to land delivery. The question one would want addressed is, when was this draft policy document compiled? In 1999 or in 1993? If it started in 1993, why has it just been published now, that is 21 November 2002, in *Zambian Daily Mail Newspaper*? It does not show seriousness if the purpose of this consultation is to try and conclude a land policy formulation process which was started almost 10 years ago.

What would make sense is that this policy formed the basis for the enactment of the Land Act of 1995. If that is the case, why then is it still a draft document? It appears that government failed to finalize this policy document way back in the 1990s but still went ahead and enacted the Land Act of 1995, which was also badly done. The government should therefore have the audacity to notify us of this botched land policy formulation process so that we are able to make informative contributions to the whole process.

Having gone through the Draft Policy, it is my view that this document contains very little, hence the reasons for no adopting it way back in the 1990s. Therefore instead of going by the headings in the Draft Policy, this commentary has opted to deal with issues which should be the concern of the Review Committee and New Deal government.

2. Land Delivery System and Accessibility to Land

Despite a lot of talk about land delivery and accessibility, the Land Policy document does not seem to critically analyze what land delivery entails. After briefly describing the procedure on how to acquire land in customary areas, it concludes by saying that 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.”*

And in Chapter five on the Institution Framework, where more information linking to the resolution of problems encountered in the customary system should have been provided, the document merely describes the functions of each Ministries or organizations. The document thus misrepresents everything on the land delivery system in the country.

Indeed many studies have found that despite Zambia having a lot of arable land, only a small portion of this land is cultivated. Further

studies have also revealed that accessibility to farmland is a serious constraint on food production in Zambia. Why? It is because of the inadequacy of the land delivery system. Although the customary system is inadequate the solution is not in converting all customary land to state land. In fact the delivery of state land itself by the Department of Land in the urban areas is also inadequate. So if the Department cannot currently cope with the demand on a smaller portion of state land how would it cope if the whole country is “converted’ to state land?

Therefore the solution is in modernizing the customary land delivery system. In fact the whole land delivery system should normally involve the acquisition of land (in cases where land is not immediately available), land use planning, cadastral surveying, servicing (provisions of infrastructure and other services) and finally disposal or allocation and development control. This of course is an expensive exercise and finally makes the resultant product (plots) expensive and unaffordable by the low income group. Hence, the failure by councils and government to provide fully serviced plots in urban areas.

However, for rural areas specifically, government does not need to go through the entire process as this would make land expensive for the rural poor who should be the focus of this policy. The solution is to improve the institutions dealing with rural land. The current system where the Chief is the sole allocating authority is inadequate. However, instead of converting customary land to state land, the President can alternatively grant leasehold interests to customary areas with the Chiefs as the custodian of that land. The current system does not legally recognize the tribes as owners of customary land. Chiefs would then be able to give out subleases to investors in their areas and all proceeds would then remain in the rural areas. This was done before in urban areas, by granting head leases to Councils who in turn sublet this land to individuals through the Housing (Statutory and Improvements Areas) Act of 1975. The fact that these subleases may be registered with the Registrar of Deeds should not in any way result in the loss of control over land by Chiefs as they would still retain the reversionary rights.

The second option would be more radical. The President, could through parliament, pass an Act for the establishment of Rural Land Management Authorities (RULAMAs) under which all customary land could then be vested. (Details on RULAMAs can be read in my paper on “Rural Land Management and Productivity in Zambia: The Need for Institutional and Land Tenure Reforms” on <http://www.oxfam.org.uk/landrights/Zaminsref.doc>).

The policy should then consider the fact that since access to land for the rural poor is a problem, how would it ensure that the land we

have in abundance is re-distributed to the Zambian citizens. This should be the focus of the land delivery system.

3. Title Deeds on Customary Land

There seems to be more emphasis on the obtaining of title deeds on rural land. In fact under Chapter 4 of the Draft Policy, sensitizing of the public on procedures and advantages of holding land on title, is shown as one of the strategies. It is my view that the Review Committee should be more creative and not restrict itself to the norms. It is normally taken that customary land tenure lacks security and that until land is fully surveyed and registered with the Registrar of Deeds, it cannot provide sufficient security. That is not entirely correct. This notion is partly due to the fact that “title” to land is always looked at in terms of having a title deed, which can only be issued by the Commissioner of Lands. In the issuing of such title the Commissioner has to comply with such Acts as the Deeds Registry and the Land Surveying Acts, which are restrictive. It is however still possible to issue “legal title” on customary land without having to get to cadastral surveying and the Commissioner. This could be done through the improvement of customary law, supported by an Act of parliament. Under this Act legal title can be issued on customary land.

In fact in the recent Draft Report on “Land Policy for Pro-Poor Development” by the World Bank, it has been acknowledged by many scholars, researchers and NGOs that insecurity on customary tenure tends to be over exaggerated. That report also shows countries which had embarked on surveying and titling of the whole country but has not yielded the envisaged results. It also showed that sometimes there is a misconception that customary land tenure implies communal land use. These two are totally different. Private use of land does exist in customary land tenure systems just like communal use also exists.

So the solution is not to have all rural land surveyed and title deeds issued, but to have the customary land rights sufficiently codified, documented and legally supported. Currently there is no security of tenure on customary land because most of the users do not even have “inferior title” to show that they have user rights on that land. A lot of agricultural land in Zambia is used as bush gardens (amabala) whether in the villages or peri-urban areas. Therefore, anyone with any “title” can evict the villagers off that land and they would have no recourse to the law as they would not have any proof of ownership or rights of use.

Therefore the task of government should be to find a middle ground or an hybrid system, as some would prefer to call it, were certain customary qualities could be retained and improved upon while also increasing security of tenure on rural land. The Botswana Land Board System of managing tribal land is one hybrid system.

In fact what we further need to realized is that it is not only farmland where documentation of ownership is required, proof of ownership is also required for houses and shops in our villages. As the situation currently stands, most villagers are squatters as they have no legal title on such plots. One would argue that villagers have never needed legal title on residential plots in the villages because they have lived there for many years. Is this sufficient argument? It is this same situation which lead white settlers to grab all the land that they found “unoccupied”.

4. Vestment of Land

Though briefly discussed earlier, the emphasis in this commentary is that we do not need to convert our customary land to state land. In fact we should be going the opposite direction by ensuring that ownership of customary land is returned to the rural communities. The history of vesting land into the Governor for the Crown before independence in 1964 and into the President after independence is very clear. The time for politicking has therefore long passed and it is now time to ensure that our people own the land they now live on and not just being perceived to own it. Although land is vested in the President, the communities have no power over it. Others view the idea of giving land back to the communities as being open to abuse were ward chairmen, councilors and all lower level officers would start allocating land illegally. In fact in the absence of a properly set up system as the situation now stands, the procedures are more prone to abuse.

Therefore let us re-look at the vesting of all land in the President. The current system hoodwinks the Chiefs into believing that they are in control on rural land. This is because before anybody can be allocated land in a customary area, the Chief or Chieftainess has to write a letter of consent addressed to the Council Secretary within that District. However, at this stage the letter is just a recommendation which could be approved or rejected by the Commissioner of Lands. The Commissioner of Lands then issues terms and conditions on which that land could be occupied. So who allocates land in customary areas? The Commissioner of Lands, of course.

In fact vesting of land in the President without mechanisms to distribute this land to those who need to use it is tantamount to land banking. The government should therefore come up with a program to ensure that land is re-distributed.

5. Land Market

Land markets can function for sales or rentals. At the last review, it was thought that since conversion of customary allocations were permitted under the Land Act of 1995, this would result in the creation of a land market on which these rights would be traded.

However this has not happened due mainly to the many uncertainties in land rights on rural land. Government is therefore an important actor in the establishment of these markets. Tradable commodities should be created which can then be transferred on the land market. Transferability of land rights is the key element in the operations of the market. The question is whether there are regulatory structures sufficiently developed in rural areas to allow for the operation of a land market? Not at all! In fact the only right transferable on the market in the rural areas is a lease issued by the Commissioner of Lands. What irony!

6. Gender Issues

Allocation of land especially to women and the vulnerable group has also come to the fore in recent years. In fact studies have shown that most of the food in rural areas is grown by women. Therefore any policy reform should realize the contribution this group is making toward food production and eventual reduction of poverty in the rural areas. The Draft Policy therefore proposes that 30% of the land should be set aside to allocate to this group while the “Initial Position Paper on the Draft Land Policy” by the Civil Society Land Policy Review Committee puts this at 50%.

While I do not have a problem with these percentages, I find it difficult to see how this would be implemented, especially in rural areas. It is assumed that there will be an orderly way that land will be demarcated and then 30% or 50% allocated to women. My view is that a long term solution would be to devise a system which would give equal opportunities to both men and women. For instance, in some systems married women need consent from their husbands in the application for land while the men do not need consent from their wives. Furthermore in the traditional systems of Zambia, women were never given any meaningful positions in society. In fact, even now the elders who normally assist the Chief (tainess) in land allocation in villages are men. Therefore if the institutional structures are developed in the rural areas, for instance as proposed in my paper on Rural Land Management Authorities, more women representation on such Boards should then be encouraged.

Furthermore in order to accommodate more women and the vulnerable groups, the land allocation procedures should be clear. This would mean for instance that application forms should be standardized, simple, clear and gender neutral such that anyone would be able to apply. Further more operations of either the Department of Land or the Rural Land Management Authorities should be decentralized so that their offices are easily accessible.

7. Allocation to Foreigners

There is a serious debate currently going on in Africa on ownership of land by foreign nationals. This has been amplified by the recent

occurrences in Zimbabwe. These happenings have brought a number of issues to the fore. For instance, the effect of the land reforms in Zimbabwe has been the movement of white farmers from Zimbabwe to other countries within the region, including Zambia, in a bid to find alternative farmland. Since as a country we are also experiencing food problems, these white farmers have been welcomed and allowed to “choose” where they want to locate. A few months ago, the Vice President was reported as having confirmed that about 125 white farmers were in Mbala area carrying out soil investigations in areas where they wanted to be. The question one should always keep in mind is, after we have admitted these white farmers, allowed them to choose these huge fertile tracts of land so that they can help in the growing of food, what next? For many years, most of the rural population in Zambia subsists on farming and this will continue to be so for many years to come as forecasts show that the majority of the population will still be in rural areas in the next 15 years.

My caution is therefore that government should start the act of balancing immediately. Let us not think that since we have a food crisis now, people will be happy to allow huge tracts of fertile land to go uncontrollably to foreigners as long as they are helping in growing food. In fact the current trend in the region is of re-distributing land to citizens. Examples of such abound. Zimbabwe is a well-known story to all as they try to implement their controversial land re-distribution program. Namibia and Malawi have just concluded policies to limit the amount of land going to foreign investors. In fact, in Malawi all freeholders of land have been asked either to change their citizenship or to lose such land. Botswana is also on the same path of ensuring that very little land gets to foreigners and whatever little gets to them is used productively. South Africa is currently debating the Communal Land Rights Bill of 2002 whose objective is to re-distribute land especially in the former Bantustans where land ownership was skewed. While these programs may be tailored differently from country to country, a common thread runs through them, which is distribution of land to citizens and limitation of the amount of land going to foreign nationals. These governments have therefore taken deliberate steps to avoid future problems of landlessness by its citizens and redress the current imbalances.

The question one would ask is whether as a country we are thinking on similar lines or are we preoccupied in ensuring that sufficient food is grown in the country by whoever can do so? If we are thinking on similar lines, what institutional structures do we have in the rural areas to ensure that government policy is implemented as intended? In fact if you allow farmers to take their pick, as we are doing now, how do you guide them in the direction you want to go as a country? Remember if you do not know where you want to go, any road will take you there. Foreign investors should be given a choice in a controlled environment. Government should take the initiative to carry

out an inventory of the assets, which the country possesses, before inviting these foreign investors. This inventory should include details of farming blocks or areas, soil types, crops that can be grown, irrigation potential, etc. This document should then be used as a marketing brochure to foreign investors, showing them what land the country has for them, what crops we expect them to grow and how we expect them to work together with the rural communities in out-grower schemes. Foreign investors should then be able to “choose” from within these farm blocks with a clear understanding of government objectives.

The current situation is not very encouraging. By the government allowing these white Zimbabwean farmers to go around the country testing soils and selecting where they want to be, government is delegating its role of facilitation to foreigners who will end up with the most fertile land in the country. Furthermore in the absence of a deliberate policy program, it will be very difficult to monitor how much land gets to these white farmers. In fact a number of people have even argued that most of these farmers do not even grow maize as they opt for other high income earner crops like tobacco, flowers, etc, which we cannot eat. We are therefore allowing the same process that the colonizers used to deprive African farmers of fertile land to be used today, but this time around on a voluntary basis.

I am not in anyway advocating that foreign investors should not be encouraged and engaged in farming. What I am merely saying is that if lessons we see around the region and elsewhere in the world is anything to go by, this process should be closely monitored and managed to avoid problems of landlessness of our citizens in future. In order to manage and control this process, institutional structures are needed in our rural areas, as I have stated earlier.

8. Dispute Resolution

Dispute resolution especially on customary land is very crucial to the cleaning up of land administration in Zambia. Of course there are a lot of boundary disputes between Chiefs and amongst its subjects because of the inadequacies of the current institutional structure. Currently no documents exist in rural Zambia to show who owns what. That is why even the inclusion of clauses in the Land Act of 1995 that land allocated through customary law is recognized does not help much in the absence of “customary” documents to show “customary” allocations. Most customary laws are not in written form, therefore even its allocation is not in any written form. This is the major weakness of the customary system. In such a system, disputes will be the order of the day which even the Land Tribunal, established under the Land Act, would not be able to resolve.

As mentioned earlier, codify and document these allocations and have a legally recognized and constituted institution issue these documents at local level, then the work of the Tribunal would be lightened.

Furthermore if institutional structures are laid out at local level, this tribunal could then sit at specified dates at the major local centers in the districts to resolve disputes. The current system of the tribunal is not accessible to the rural poor.

9. Land Management Information System

The improvement in the land information system has come out as a dominant objective in the Draft Policy. Management of information relating to land is very important but is not the ultimate solution. This information has to be created by land administration systems. This information may relate to available tracks of land, development plans with their land uses, ownership details, available plots, etc. Since institutions have to generate and maintain this information, that should be the starting point, as noted earlier. With a good land administration system in the country, the land information system then becomes more meaningful as it would improve record keeping on which management decisions can then be based.

10. Concluding Remarks

The Draft Policy appears too simplified. More efforts should be put in the development of this document to ensure that all concerns are included. For instance, while itemizing the overall policy objectives, specific objectives and the strategies, this documents has left out the most important components, the HOWs and WHENs. It does not show HOW the government hopes to resolve the current problems in land administration and WHEN. In fact the document paints a picture that all is well on state land as it is directly managed by Department of Lands. The truth is that the whole land administration system in Zambia needs a serious examination. There are many cases of corruption at the Department of Lands, land being allocated by councilors and other politicians in the urban areas, delays in the production of title deeds, double allocation of plots, non availability of plots in all towns and many others. These issues have not been brought out in the Draft Policy. Conversely, the Draft Policy shows that there are a lot of problems on customary land and that the only solution is to convert to state land.

Furthermore, Land Policy should be able to identify the crucial role it plays in agricultural production and rural poverty. Land Policy should then be able to reconcile and establish linkages with the objectives of the National Development Plans and the Poverty Reduction Strategy. Only then would land policy be playing a meaningful role in national development.

The amendment of the Land Act of 1995 should then proceed after the completion of this policy formulation process for those provisions which need legal backing. In conclusion one would want to see that issues of urban and rural land are dealt with independently so that rural issues are not crowded in urban issues as was the case with the Land Act of 1995.