

# **Land Policy Options for Development and Poverty Reduction**

*Civil Society Views for Pro-poor Land Policies and Laws in Zambia*

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## **EXECUTIVE SUMMARY**

Zambia has since the year 2002 been formulating a Land Policy. The Ministry of Lands was mandated by Cabinet to undertake broad-based consultations in order to enrich the final document. These consultations were equally intended to ensure that the Land Policy, once approved and launched through a National Conference, would have wide acceptability among various stakeholders.

Civil society has been an active participant in the land policy review process through Zambia Land Alliance (ZLA). Specifically, ZLA was a member of the multi-stakeholder Land Policy Technical Committee which the Minister of Lands constituted to spearhead the consultation process as well as undertake various research and baseline studies on the current land administration and delivery system. Following a series of district and village level consultations, the Land Policy Technical Committee submitted a report on the outcomes of the consultations to Government in 2005. The second draft Land Policy was produced in October 2006 by the Ministry of Lands, but was first released to the public in June 2007. The draft policy document has been submitted to Cabinet for a consideration. It is important to note that while Government stated that the second draft Land Policy is just a working document and not a formal policy document until it has been finally agreed and adopted, there is no indication whether the National Conference originally agreed upon will be convened and used as a mechanism towards finalising the draft land policy.

### **Civil society's position on the draft land policy**

Civil Society established the ZLA in 1997. ZLA is a network of Non-Governmental Organisations, Faith-Based Organisations and Community Based Organisations with a common vision of achieving fair land policies and laws that take into account the interests of the poor. The network is distributed throughout Zambia and represents various interests, including the interests of women and the urban and rural poor, as well as covering various issues, such as agricultural, environmental, economic, democracy and human rights issues. ZLA thus provides a strong and well founded platform for collective action.

In August 2007, civil society, through a national consultative meeting, reviewed and considered the draft land policy (Oct 2006). During this meeting more than 50 civil society organisations, as well as some customary leaders attending, rejected the draft land policy as it stood, and mandated ZLA to prepare a position paper on various areas of concern as well as omissions. Some of the points raised in the Civil Society Position Paper (October 2007) include the following:

1. The land policy should be a clearly spelt out document, and one that inspires confidence in all stakeholders as authoritative, pro-poor, gender sensitive and citizens-driven
2. The vision statement in the draft land policy seemingly confines itself to Government's intentions and motivations for a land policy. The vision does not assume a national character and this is subsequently reflected in the type of policy measures proposed
3. General statements advanced in the rationale are often not backed by evidence. For instance, it is stated that converting customary land into leasehold would in itself reduce poverty. However, this contentious statement stands without any evidence to back it up
4. The rationale provided in the draft policy provides a clear indication that there is a bias in the policy toward strengthening state control over land.

5. Another concern of civil society is that the draft Land Policy leans heavily on the principle of privatisation of land. It is the contention of civil society that the concepts of supply and demand when applied to land will increase both social differentiation and poverty.

### **The Land Policy Options for Development and Poverty Reduction Paper**

ZLA was given the responsibility to develop this paper, entitled Land Policy Options for Development and Poverty Reduction, by its members and partners through the Civil Society Land Policy Review Committee and through a Land Policy Training Workshop conducted in October 2007. The Land Policy Options for Development and Poverty Reduction paper (hereinafter called the Policy Options Paper) provides an opportunity for civil society to address the gaps identified in the draft Land Policy (October 2006) as pointed out in the Civil Society Position Paper (October 2007), and to put forward the principles, ideals and values that civil society would like to see in the land policy.

The Policy Options Paper was developed hand in hand with partners and members, it has been reviewed by national, regional and international experts, and it has undergone a peer review process. The Policy Options Paper provides a broad civil society consensus and a basis for advocacy; the idea is ZLA will not only focus on influencing the process of drafting the land policy but will equally target other processes which are underway where land features prominently.

### **Context Setting for the Land Policy**

Land is a fundamental asset and the primary basis of livelihood for the majority of Zambians today. A high proportion of income, employment and export earnings are derived from agricultural production and other land based activities, such as mining, forestry and tourism. Especially rural people depend on land for growing food and relying on other land based natural resources for fuel, shelter, medicine, tools, fibre and fruits. Land also carries social, spiritual, political and cultural significance, being a source of identity and power within society as a whole.

Zambia is one of the poorest of the developing countries, and a good land policy would provide a framework for poverty reduction. Yet the World Bank Poverty and Social Impact Analysis on the Land Policy (2004) found that, due to its flaws, the draft Land Policy for Zambia would not contribute to poverty reduction. Civil society in Zambia came to the same conclusion, as testified in various papers and media programs promoted by ZLA in 2007.

### **Key challenges in current land administration and management in Zambia**

Zambia faces a number of challenges in its current land administration and management which need to be addressed in the new land policy. These challenges include *inter alia*:

- i. Centralised state control over land matters, patronage and corruption within Government, local authorities and customary authorities in land delivery, breakdown in land administration and land delivery procedures, and generally inadequate participation by communities in the governance of land and natural resources.
- ii. Multiplicity of laws and practices related to land administration and land management, inadequate environmental management, lack of viable land market regulation and disregard for land use planning;
- iii. Centralised, costly, discriminatory and inefficient land conflict resolution mechanisms

- iv. Discrimination against women, youth, people living with HIV/AIDS, the disabled and the poor in accessing and holding land, as well as gender and trans-generational discrimination in succession or transfer of land;
- v. Disparity in entitlement to defined, enforceable and transferable property rights, increased conflict over land, abandonment of agricultural land and increased urbanisation.

### **Civil society's policy options for the new land policy**

Through this Land Policy Options for Development and Poverty Reduction Paper, ZLA, on behalf of various civil society organisations, proposes a number of land policy options. The policy options presented below primarily aim at providing a framework for promoting development and reducing poverty through securing and protecting access and control over land for poor men and women, and putting in place democratic and transparent land administration systems.

#### ***Land Tenure Security***

- The land policy should take cognisance of informal/squatter settlements in urban areas and devise a mechanism for bringing about security of tenure for urban citizens.
- The land policy should introduce a moratorium on forced evictions and removals without provision of adequate alternative land and shelter or compensation over land in real market value terms.
- The land policy should make provision for due notice where evictions are inevitable.
- Government through the Constitution should recognize and grant equal status to land holders in both customary land and state land.

#### ***Public land***

- The land policy should create and designate public land. Public land will comprise that land which is neither held on title nor could be considered to be customary land.
- This category of land will be managed by the relevant local authorities according to agreed procedures and rules
- Income derived from this category of land should be shared equally between the state and the relevant local authority

#### ***Protected land***

- Government through an appropriate legal instrument should create a protected land category. This will be state land that has been set aside for purposes of protecting areas of significant biological or cultural significance and thus deserving of protection.
- Income derived from this category of land should be shared equally between the managing authority and the affected local communities, according to locally commonly agreed procedures and according to respective responsibilities of the managers of the said land.

#### ***Customary land***

- In order to enhance and develop customary land, there is need to develop separate legislation, and to provide in statute for community land, whose ownership will be in the community. Provision must be made for a clear framework and minimum standards for how customary land should be administered, for recognition, protection and registration of community rights to land and land based resources, taking into account multiple interests of land users, including women

- There must be provision to recognise the rights of landholders and users in customary tenure so that everyone, irrespective of social status, gender or origin can have similar rights to land.
- The rights of local communities to define the rules of access to and use of resources in their territories should be recognised and promoted, as long as they are consistent with the broader legal provisions, including gender equality. There is need to collaborate with traditional authorities and other land stakeholders to review holding practices, usages and legislations governing land holding, land acquisition, usage and delivery with a view to better protect land rights within customary tenure.
- Government should undertake to recognize mutually reinforcing customary mechanisms for land management and incorporate them into broad principles that facilitate development to customary land
- There should be provision for equal recognition of customary land holding and leasehold tenure land holding, to be accepted as collateral against a loan, on condition that the loaning institute is convinced that the mandatory accompanying business plan is viable
- Government should recognise and promote customary land dispute resolution, finding ways in which they can be recognised on a par with more formal land dispute mechanisms
- All grants of land holding within customary jurisdiction should be public with full participation of the community, including women, people with disability and any other interest groups
- Customary land allocations should not disadvantage women from enjoying agnatic land rights on the status of their gender and or marital status.
- The policy should ensure that before consent for customary land to convert to leasehold is granted there is consultation and consensus by all those to be affected by the said conversion. Ultimate authority to allow land to be given over for conversion will rest with the community.
- There is need to have a reverse clause for customary tenure that is converted to leasehold to revert to customary land should the purpose for which it was converted lapse or not materialise.

### ***Leasehold land***

- Ensure that land alienation is transparent, accountable, timely and decentralised to district level;
- Ensure that land records are available to the general public and decentralised to district level;
- Ensure that leasehold land is alienable and transmissible without discrimination on grounds of sex, age (for those that qualify), ethnicity or geographical origin, physical disability and/or social economic status;
- Establish an upper limit on the size of land an individual can hold by the use and location;
- Establish appropriate land taxation system that will serve as an incentive for optimal utilization of land, but also be a deterrent to land hoarding and speculation. This will require landholdings exceeding the set thresholds by use and category attracting higher taxes;
- There should be a limitation to one, by each land use category, of the number of direct grants from the President, or state agent, that an individual may receive; The term of lease for citizens should not exceed 50 years, renewable, and should be applicable to all state land;
- 50 year leases should be renewed on approval of business or land use plans for the plot in question. If not renewed, the reasons for refusal should be provided to the landholder, who will be compensated for the land and developments thereof; and
- For a Zambian company the process of acquiring land should be like it is for individuals except that companies should provide a feasible business plan detailing the utilisation of the land. Further, Zambian companies will hold land for a period not exceeding 30 years, renewable.

### ***Persons Living with HIV/AIDS and with Disabilities***

- Access to information on land, this includes addressing the needs of the visually and hearing impaired through the use of appropriate media.
- Ensuring accessibility of land dealing institutions to even persons using mobility aids.
- Ensuring that persons with disability participate in decision making over land administration.
- Addressing the poverty situation that prevents persons with disability or living with HIV/AIDS from fully participating in the economy and property ownership.
- As a special case, protect the rights of people living with disabilities of HIV/AIDS, to hold on to their land even if they are unable to develop it.

### ***Women and land***

- To address the huge gender disparities in land holding Government should enact legislation to outlaw traditional practices that are an encumbrance to women's land ownership in some customs.
- Continue the affirmative action of ensuring that women receive 30%, as a minimum, of all new land allocations in state land.
- Put in place appropriate legislation to ensure the 30% provision of all land allocations are made exclusively to women, and that single mothers, widows and women in polygamous arrangements are considered as priority.
- The land registers at the Ministry responsible for land and any other statutory bodies that maintain land registers should have a provision for recording the sex of landholders, as a means of ensuring there is data on the land distribution/land ownership structure.
- Government should encourage joint registration of land rights for married couples as a means of protecting the same rights and the rights of families in the event of divorce or death of a partner.
- The policy needs to provide for spousal consent to disposal of land.
- Government should undertake to guarantee land inheritance rights of unmarried or married daughters, irrespective of the land tenure within which the land was held in.
- Women's land rights and customary systems require in depth research to document good and bad practices as a means of encouraging good practices and outlawing the bad ones.
- There is need for continued awareness raising campaigns on women's land rights.
- All land administration structures in both state and customary lands should have a fair representation of women, to ensure their participation in decision making over land matters.

### ***Children and youths***

- Government should create and enforce a strict inheritance system to ensure a person who serves as an administrator for an estate does not manage the estate in a manner that deprives the children of enjoying their rights to the estate or proceeding there from.
- In cases where orphaned children have no one who could serve as administrator, Government should allow for children in such circumstances to hold interests in land.
- Government should ensure that suitable areas are set aside in towns and cities for children to play on and to engage in sports and other recreational activities

### ***Inheritance and succession***

- Land rights can be acquired through inheritance, either through transmission of land rights from one person to another, or through transference of land rights from a dead person to a living
- Whilst its necessary to recognise the variances in customs with regard to inheritance of land and property, the Government has a duty to safe guard the land and property rights of orphans and

widow/widowers. As such there is need for Government to establish minimum standards with regard to inheritance of land and property which standards will apply both on state and customary land.

### ***Land and non-Zambians***

- For residential purposes, non-Zambians wishing to settle in Zambia should have acquired a residence status to qualify to hold land in Zambia, in which case they will hold land like Zambian citizens. The process of acquiring land for non-citizens should not be through direct grants by the President or his appointed agents but rather through transfer of rights from a citizen.
- Non Zambians requiring land for business investment purposes should access land on fulfilling all of the following conditions:
  - a) Through partnership with a Zambian
  - b) On acceptance of business plan, including an impact assessment
  - c) For a period not exceeding 30 years renewable, depending on utilisation

### ***Land redistribution***

- There is need to review the acreage an individual can hold on title under the various land use categories. Having set the minimum requirement, those landholdings for each of the land use categories by location exceeding the set threshold should attract higher taxes, or be expropriated on provision of appropriate and mutually acceptable compensation.
- Government should undertake to review land distribution with a view to allow for a more equitable distribution of land for human settlements and agriculture.
- In the spirit of equity, there has to be a provision for land redistribution for the many Zambians squatting on council and corporate land.

### ***Registration and deeds***

- Government should undertake to create and maintain a land registration system that will operate in an environment of professionalism, accountability and good governance. The land registration system should further operate in an environment which is accepted by the wider citizenry, that is to say, cost effective, timely and transparent.
- The Government should ensure a land registration that is predictable, that is to say should make deeds available within a stipulated time.
- The land registration system should adequately protect rights and permit those rights to be traded, efficiently, simply, quickly, securely and at low cost.
- The system should operate with no opportunity for political interference and/or corruption. All processes should be simple and transparent, and air tight.

### ***Mapping and survey***

- Mapping and surveys are a necessary function in as far as registration of secure land rights are concerned. To further derive the advantages of secure tenure Government should endeavor to promote the development of survey a specialized field.
- There is need for Government to ensure survey services are accessible as close to the people as possible, and at appropriate/affordable costs.
- Government should ensure regular updating of spatial maps to inform decision making and general management of human settlements and natural resources.
- The institutional set up for implementing the land policy should provide functional cooperation and coordination between surveying and mapping, the cadastre, the valuation, the physical planning and the land registration institutions.



### ***Land use planning***

- The Government should establish an appropriate strategy for sustainably managing population growth and other human land uses and development activities in urban and rural areas.
- The government should conduct and publish periodic land audits, so as to provide a basis for all land use planning, administration and decision making
- The Government should, through a consultative process develop land use plans in urban and peri-urban areas, to determine infrastructure development, and these plans should be available to the general public within the locality.
- There is need to develop collaborative participatory land use planning in the vicinity of proposed development programs or initiatives, so as to ensure that local communities still have access to resources necessary for their livelihood, and to ensure fair benefit sharing from these initiatives

### ***Land market operations***

- Government should provide for and create an environment within which the land markets can flourish and be a critical element of the land delivery system, but also a means of promoting economic development.
- There is need to conduct a comprehensive review of existing laws, rules and practices that have a bearing on land markets, identifying loopholes and ambiguities in order to define clear and enforceable statutes with corresponding penalties.
- Government should clarify and enforce laws and procedures governing the operation of the land market
- Government should strengthen valuation services as a necessary aspect of the land market.
- Operations of real estate agents should be strictly regulated;
- Operations of party cadres and any other unauthorised persons in land allocation should be made illegal with stiff punishment for defaulters.

### ***Land Dispute Resolution***

- Need for strengthening dispute resolution mechanisms besides the formal courts of law.
- There is need to consider strengthening the governance structure of the Lands Tribunal in order to secure independence as well as confidence by the public. There is need to revise the operations of the Lands Tribunal to allow for it to decide land cases in state land, not just involving a person in authority. Further, the Lands Tribunal should be decentralised
- Need to recognize and strengthen local dispute resolution mechanisms that are easily accessible and decisions made recognized within customary tenure, with recourse to appeal to the formal courts.

### ***Environmental management***

- Realising that land tenure arrangements to a great extent affect the management of the environment, it is necessary therefore that the management and protection of fauna and flora of biological significance should be provided for to take pre-eminence over all other land uses.

### ***Mining***

- Mining is one of the most important land uses, however, most often than not mining rights compete with surface land rights of individuals. Government should require and enforce

requirements for appropriate negotiated compensation IF individuals and communities will be unavoidably displaced by mining and other activities.

- The displacement should follow a phased approach to minimize the negative impact of the said displacement.
- Persons to be displaced should always be granted a choice of where they are to be relocated to.

#### **Integrated planning for land management**

- Need for Government to conduct an inventory of various land uses and promote an integrated planning process to inform management of the said land.
- Need for coordination and streamlining of various land administration functions of physical planning, valuation, registration, survey and land delivery.
- Benefit sharing/co-management of land and other natural resources with local communities.

#### ***Implementation Framework***

- To deliver on the land policy and its reform agenda, there is need for the creation of a Land Reform Unit to develop the implementation plan for the land policy, and also monitor and evaluate the implementation of the land policy.
- Government should create a Land Commission which will be a transparent, accountable and independent land allocation institution in state land. The functions of the Land Commission should be decentralized to the district level. The Commissioner of Lands will be one of the members of the Land Commission as head of Secretariat and not head of the Land Commission.
- The composition of the Land Commission should have a fair gender representation besides having the main land administration functions provided for, it should include civil society.
- The Government should also recognize and strengthen the role of traditional leaders in the administration of land.
- The Government should recognize the role of civil society as an indispensable partner in land policy implementation, dissemination of information and in land policy monitoring.
- International institutions and cooperating partners are important if land reform is to be a success. There is need to mobilize international institutions as a source of funding but equally important as reservoir of technical expertise.

#### **Way Forward**

Civil society would like to urge Government not to 'close the door' to further consultations on the land policy. Further, while recognising the urgency for a Land Policy, civil society appeals to Government to take the time that is needed to arrive at a commonly accepted and implementable land policy. As part of the process of arriving at a Land Policy that provides an effective framework for development and poverty reduction, civil society calls upon Government to facilitate the following:

1. Government should establish a mechanism to revise the current draft land policy so as to address the views of stakeholders. This will include the views of civil society and the views solicited during consultations
2. The completed draft Land Policy should be widely disseminated through the media, that is television, radio and newspapers, in both English and local languages. It should also be made available on the internet.
3. The completed draft Land Policy should be discussed at public meetings throughout the country, including districts and chiefdoms

4. A National Conference should be held to validate and agree on the content of the draft, and finalise the Land Policy

The final product will not only serve Government needs but all stakeholders. Civil society will use this Land Policy Options for Development and Poverty Reduction Paper in its continued advocacy work targeting the general public, traditional leaders, Government agencies among others.

# Land Policy Options for Development and Poverty Reduction

## 1.0 INTRODUCTION AND BACKGROUND

Zambia has since the year 2002 been engaged in developing a Land Policy, the first of its kind in the history of the country. After a period of consultation, the second draft was released for comment in 2007.

### 1.1. The land policy formulation process

The Government engaged in a land policy formulation process which was intended to strengthen a draft policy document (2002) that the Zambian Government had approved in principle. The Ministry of Lands, was mandated by Cabinet to undertake broad-based consultations in order to enrich the final Land Policy. These consultations were equally intended to ensure that the Land Policy, once approved through a National Conference, would have wider acceptability among various stakeholders, making it easier to implement and more effective.

Civil society has equally been an active participant in the land policy revision process. Civil Society Organisations in Zambia agree on the need and urgency for a comprehensive and inclusive land policy. Zambia Land Alliance (ZLA) has been the anchor of civil society involvement in this land policy revision process. Specifically, ZLA has been a member of the multi-stakeholder Land Policy Technical Committee which was formed by the Ministry of Lands to spearhead the consultation process as well as undertake various research and baseline studies on the current land administration and delivery system. Other members of the committee are drawn from Government and the private sector. Zambia Land Alliance is a network of Non-Governmental Organisations, Faith-Based Organisations and Community Based Organisations with a common vision of achieving fair land policies and laws that take into account the interests of the poor. The network comprises many partners, including eight member organisations, seven District Land Alliances spread throughout Zambia, concerned national and international organisations and traditional leaders. These all represent various interests, including women and children issues, social justice, vulnerable and minority groups and rural communities. ZLA thus provides a strong and well-founded platform for collective action committed to promoting equitable access and ownership of land by rural and urban poor, through lobbying and advocacy, networking, research and community partnership.

The land policy review consultation process started in 2002 with *District Stakeholder Meetings* held in two districts in each of the nine provinces of Zambia. These District Stakeholder Meetings were each attended by an average of sixty (60) participants on average and these were drawn from various interest groups in the districts. Further, in 2004, the Land Policy Technical Committee visited two (rural and urban) communities in each of the districts that had hosted the 2002 District Stakeholder Meetings. The consultations at community level involved holding open public meetings which usually were attended by an average of 150 men and women, including traditional leaders. These consultation activities were supplemented with written submissions from stakeholders sent to the Land Policy Technical Committee.

Ministry of Lands produced the second draft Land Policy in October 2006, which was finally released to the public in June 2007. The draft policy document has been submitted to Cabinet for consideration. Besides, the Ministry of Lands has distributed copies of the draft document to each district in every province. The Ministry of Lands initially also posted the document on its website ([www.ministryoflands.gov.zm](http://www.ministryoflands.gov.zm)) so that it could be accessed by the public. However, the link to the draft land policy on the website has since been removed. It is important to note that while

Government has stated that the second draft Land Policy is just a working document and not a formal policy document until it has been finally agreed and adopted, there is no indication whether the earlier planned National Conference initially agreed upon will be convened and used as a mechanism of finalising the draft land policy.

### **1.2. Role played by the Zambia Land Alliance in the Land Policy review process.**

Recognising the importance of a land policy for Zambia, ZLA managed through its participation on the Land Policy Technical Committee to influence the pace and depth of the consultation process. For instance, the Ministry of Lands initially opted to confine the baseline studies on land administration and the delivery system to only the (nine) provincial centres. However, ZLA successfully lobbied and raised funds for the extension of these studies. As a result joint consultations were done in two districts in each of the nine provinces, under the leadership of the Ministry of Lands. The premise for this extension of the studies was that views of the urban poor and the rural communities were extremely important and as such should adequately influence the final product.

To add depth to the views solicited, ZLA commissioned studies which analyse 1) the draft Land Policy, 2) the Fifth National Development Plan in relation to land, and 3) customary land administration in Zambia. Additionally, in February 2005, ZLA produced a booklet which was a compilation of views and recommendations made by rural and urban communities during the land policy review consultation process from 2002 – 2005. Further, and most importantly, the booklet was intended to be a tool for lobbying the Zambian Government to ensure that the views of the poor are included in the final land policy document. After the draft Land Policy was released in June 2007, ZLA convened a National Civil Society Consultative Meeting on the draft land policy from 21 – 22 August 2007, in order to bring civil society together and find common ground on the way forward in the process.

### **1.3. Key issues raised during the consultation process**

A number of pertinent issues were raised by various stakeholders during the district and village level consultations as well as from the written submissions made to the Technical committee. The following section highlights some of the key issues raised, particularly those that emphasise the need for the Land Policy to incorporate measures that are not only pro-poor but gender sensitive as well. Some of the issues raised are as follows:

- a) ***Vestment of land*** – Stakeholders consulted were concerned that vesting of all land, including customary land, in the custody and care of the Republican President on behalf of the people of Zambia, was giving one person/office too much power which could easily be abused. It was repeatedly argued that if the land of Zambia was to continue to be vested in the President, there needed to be checks and balances clearly stated in the Constitution and relevant legislation, to ensure that decisions made through the President addressed the interests of the people of Zambia.
- b) ***Customary versus leasehold tenure*** – The current system of converting customary land into state land as provided for in the Land Act of 1995, was not supported by some stakeholders. Especially the provision that only the Chief alone is required to ratify each conversion of customary land was pointed out as a flaw. It was observed that the practice had impacted negatively on rural communities where local people have been displaced from their land, losing their only resource and security, without little effective recourse to justice in law. Further, it was

submitted that while there was a provision to convert customary land to state land, there were no measures to re-convert state land back to customary land.

- c) **Land Administration** – A point raised by stakeholders on the issue of land administration was that although customary land tenure is legally recognised, Government does not provide traditional leaders with resources for managing land. It was also noted that Government does not have land administration structures in many parts of the country thus placing this responsibility with the traditional leaders.
- d) **Fairness in land administration** - Concern was raised by stakeholders on what they consider to be unequal access to land between the rich and the poor, non-Zambians and Zambians, women and men, youths and adults, as well as the able bodied and people with disabilities.
- e) **Corruption in land administration** – It was observed that in both state and customary land, land administrators are accepting bribes from investors to the disadvantage of the general public. This has continued to be a source of great concern to the public. Further, some stakeholders submitted that there was political interference in the allocation of land especially in urban areas which in most cases disadvantaged the urban poor and vulnerable women.
- f) **Land Disputes** – Stakeholders observed during the consultations that disputes over land were frequent. Disputes were between traditional leaders and Government, between traditional leaders themselves, within communities, between women and communities and between communities and external investors. In most cases, disputes have arisen due to unclear boundaries and claims of ownership. Further, stakeholders observed that Zambian laws do not recognise the authority of traditional courts and therefore do not respect decisions made under customary rules.
- g) **Land and Gender** – It was the contention of some stakeholders consulted that men and women do not have equal access to land, mainly on account of customary norms which disadvantage women in owning land. It was further observed that there were no clear guidelines on how to allocate the at least 30 per cent of available state land to women and other vulnerable groups as stated in the draft policy and other policies. Generally it was noted that even if women do access land for use, they do not have security of tenure to that land.

#### **1.4. Civil society's position on the draft land policy**

As a preamble, it is important to acknowledge that civil society, particularly through the ZLA, did participate in the Land Policy Review consultation process conducted between 2002 and 2004. ZLA was invited by Government to take part in the first research in 2002 and thereafter, in the District Stakeholder meetings held in the provinces. However, the point of departure emanates from the unfortunate turn of events where Government produced a draft Land Policy that left out valuable contributions from the public. Instead Government opted to include policy measures that are more favourable to the administration than the common person. This is the essence of the matter and it is this departure which makes it uncomfortable for civil society to accept the current (October 2006) draft land policy.

The position of civil society on the draft land policy was consolidated following a National Civil Society Consultative Meeting on the draft land policy held from 21 – 22 August 2007 in Lusaka and attended by more than 100 people representing 50 civil society organisations, as well as by concerned individuals and some Chiefs. The meeting mandated ZLA to prepare a position paper on

various areas of concern as well as omissions identified in the draft Land Policy (October 2006). Some of the points raised in this position paper are summarised as follows:

1. At the level of principle, civil society in Zambia agreed on the need and urgency for a comprehensive, inclusive and authoritative land policy. This is because land is the basis for all life and this is especially so for poor women and men in Zambia who depend on land for their livelihood. It is imperative therefore, that the land policy should be a clearly spelt out document and one that inspires confidence in all stakeholders as an authoritative, pro-poor, gender sensitive and citizens-driven policy document.
2. While the draft policy provides a vision, this vision was not reflected throughout the document. Most significantly, not even the objectives and policy measures reflect the proposed vision. Other concerns raised were that vision statement seemingly confines itself to Government's intentions and motivations for a land policy. The vision does not assume a national character and this is subsequently reflected in the type of policy measures proposed
3. General statements, often not backed by evidence, have been advanced as the rationale for the land policy. Civil society has expressed reservations about some of these statements and would like to see amendments made where appropriate. For instance, it is contended in the draft Land Policy that converting customary land into leasehold would in itself reduce poverty. However, this statement stands without any evidence to show how rural poverty will be reduced once the rural people obtain title for their customary land.
4. The rationale presented in the draft policy clearly indicates that there is a bias in the policy toward strengthening state control over land, while at the same time maintaining the status quo in land administration. Civil Society is particularly concerned that increased state control over land, especially over customary land, will mean that ordinary people, including the poor, women, youth and disabled, will not be able to access land for their livelihoods.
5. Another concern of civil society is that the draft Land Policy leans heavily on the principle of privatisation of land. It is the contention of civil society that the concepts of supply and demand when applied to land will increase social differentiation and poverty. Evidence which shows that Zambians are poorer now than they have been in the past, does exist and the reason for this increased social differentiation and poverty, has often been attributed to effects of a liberalised economy.

## **2.0 OVERVIEW OF THE LAND POLICY OPTIONS PAPER**

The need for an effective and responsive land policy cannot be overemphasised. While recognising that the draft land policy falls short of the expectations of many stakeholders, civil society, including some traditional leaders, would like to pursue all avenues possible to continue to advocate for a pro-poor land policy. Therefore, Zambia Land Alliance, together with its members and partners, has developed a strategy to advocate for a land policy which provides a well considered framework for promotion of development and poverty reduction in the country.

### **2.1. Objectives of the Land Policy Options for Development and Poverty Reduction Paper**

The purpose and aims of this paper is reflected in the following objectives:

- a) strengthen civil society's position on an ideal land policy
- b) provide Government and the general public with civil society's model for a just land policy
- c) provide Government and civil society with a paradigm as a basis for moving forward to negotiate a better land policy, in which issues of content are addressed.

### **2.2 The mandate for the Policy Options Paper**

ZLA was given the responsibility to develop this Land Policy Options for Development and Poverty Reduction paper (hereinafter called the Policy Options Paper) by its members and partners through the Civil Society Land Policy Review Committee and by the Land Policy Training Workshop conducted in October 2007. The Policy Options Paper provides an opportunity for civil society to address the gaps identified in the draft Land Policy (2006) as pointed out in the Civil Society Position Paper (October 2007) and to put forward the principles, ideals and values that civil society would like to see in the land policy.

The policy options paper has been developed hand in hand with partners and members, has been reviewed by national, regional and international experts, and has undergone a peer review in Zambia. This paper can therefore confidently be said to represent civil society's thinking on which land policy options would best promote development and reduce poverty.

### **2.3 The intention of the policy options paper**

Civil society has decided on a policy options paper because it provides a broad strategy for advocacy. The rationale is that ZLA will not only focus on influencing the process of drafting the land policy, but will also target other processes which are underway where land features prominently. In this regard, it is intended that ZLA will, on behalf of civil society, use the Policy Options Paper to lobby the National Constitution Conference which will be sitting starting December 2007 to ensure that appropriate constitutional provisions are made on matters of land.

Another important ongoing process is the implementation of the Fifth National Development Plan (FNDP). A national land policy is of crucial importance to the economic development, poverty reduction and governance of the nation as a whole, as well as to the well being of individual citizens. It is clear that a comprehensive and well designed land policy will contribute to the success of the FNDP. Also, if the Government is to give poverty reduction priority over all else, there will be major implications for the design of rules and procedures that ensure the land tenure system operates in favour of the majority users, who in this case constitute the poorest in our society.



### 3.0 CONTEXT SETTING FOR POLICY DEVELOPMENT

This chapter explores what is happening at the national, continental and international level in terms of land policy needs and formulation, providing a conceptual framework on which to base policy proposals.

#### 3.1 Purpose and rationale for a poverty reduction approach to Land Policy formulation

Land is a fundamental asset and the primary basis of livelihood for the majority of Zambians today. A high proportion of income, employment and export earning is derived from agricultural production and other land based activities, such as mining, forestry and tourism. Especially rural people depend on land for growing food, and to some extent relying on other land based natural resources for fuel, shelter, medicine, tools, fibre and fruits. Land also carries social, spiritual, political and cultural significance, being a source of identity and power within society as a whole.

Zambia is one of the poorest of the developing countries, and a good land policy would provide a framework for poverty reduction. Yet the World Bank Poverty and Social Impact Analysis on the Land Policy (2004) found that, due to its flaws, the draft Land Policy for Zambia would not contribute to poverty reduction. Also ZLA elaborates civil society's concerns (Civil Society Position on Zambia's draft Land Policy, October 2007) that the current draft Land Policy (2006) fails to provide the required framework for poverty reduction and peaceful and stable development. Yet over time lessons have been learned about land policies in Africa, and some of these lessons could profitably be taken into consideration when developing a land policy for Zambia.

#### Box 1: Lessons Learned from Land Policies in Africa

- The overwhelming presence of the state in land matters has led to corruption and must change to make way for transparent and accountable systems of land administration and adjudication
- Alternative systems of land rights documentation are being explored and applied
- The legitimacy of customary land rights are increasingly being recognised as appropriate ways of strengthening governance of land and strengthening communities' rights to land
- Land administration institutions must be professional
- Land governance needs to be decentralised
- The commons must be safeguarded
- New paradigms supporting pastoralists management of pastoral lands should be adopted
- Attention must be paid to special interests in land, e.g people affected by AIDS
- Appropriate land dispute mechanisms are emerging
- Market assisted land reform remains problematic as interests in land differ and this approach often dispossess the vulnerable and weakens rights of communities to hereditary land, in turn leading to increasing levels of poverty
- New approaches to the resolution of land issues in post conflict situations are being tested
- Resources for land policy implementation must be mobilised for the success of a policy
- Stakeholders must be engaged at all levels
- Capacity building for land reform is crucial

*Source:- Land Policy in Africa: a Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods (draft). African Union, African Development Bank, Economic Commission for Africa*

Countries are defined by their land boundaries, and how this land is held and administered is a significant internal political issue. There is increasing pressure on Governments especially in developing countries, to come up with appropriate public policies on land management. Policy in this regard can be defined as “a purposive course of action taken by those in power in pursuit of certain goals or objectives.” A land policy should provide an outline of the course of action that can provide, or fail to provide, stability for economic and social development and peace within a country. A Land Policy therefore, should be a main concern of all citizens. As stated in the European Union Land Policy Guidelines:

*‘Ensuring a fair and secure distribution of rights to land lies at the heart of economic, social and political life. Decisions taken today regarding changes to land policy will have long term ramifications for how power is to be exercised and the opportunities and life chances for those yet to be born’ (Land Tenure Task Force, 2004:25)*

In addition to an appreciation of the significant political dimensions of a land policy, the International Land Coalition (ILC) points out that the knowledge or understanding that land rights can break the cycle of poverty and degradation of natural resources is not new. As far back as 1979, the World Conference on Agrarian Reform and Rural Development gained commitment from Governments that this understanding was global. Also that:

*‘>From the 1992 Earth Summit in Rio to the 2003 World Summit on Sustainable Development, heads of state and Governments have agreed, by acclamation, that access to land is basic to overcoming hunger and achieving environmentally sustained development’ (ILC, 2007).*

Specifically, ILC recognises that secure access to land for the rural poor is fundamental to overcoming poverty. In other words: **secure access to land helps to reduce poverty**. The land policy for Zambia, therefore, should provide a framework for a comprehensive and coordinated approach to achieving the following:

- Land as a basis for investment and economic development in both customary and state lands;
- Land as a means for reduction of poverty and inequalities;
- Land as a cultural heritage to be conserved for future generations;
- Better governance of land resources in both customary and state lands, and renewal of land institutions;
- Decentralised land management as a means to broaden and deepen democracy;
- Land as a means to address special interests, such as those of people living with HIV/AIDS, persons with disabilities and those of minority communities;
- Land policy and reform as a vehicle of integration at different levels; and
- Land policy in relation to environmental management and existing commitments.

It is clear that land plays such a complex role in any given society, and it is important to recognise for the purpose of policy formulation, that **land is more than just a commodity**. For many Zambians, it is an important part of their cultural self-identity and factor in their social relationships. The multiple dimensions of land require a careful and well-implemented land policy approach, with clearly defined land policy principles. The distribution and status of land and property rights will have a critical impact on economic and agricultural productivity as well as social and community

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<sup>1</sup> Sapru, R.K. (1994), ‘Public Policy: Formulation, Implementation and Evaluation.’ Sterling Publishers Private Ltd

relations, with long term consequences, either positive or negative, for political, social and economic development for the country.

### **3.3 Diversity of interests in land in Zambia**

The Land Policy in Africa document states that, *It is essential to note great diversity amongst the small scale land user group, the principle stakeholder group in Africa's land resources.* (AU, 2004). This advice also applies to Zambia, where the majority of the rural population hold land under customary law. Other significant stakeholder groups in Zambia are: large scale private sector investors, especially in mining, tourism and agriculture, who are interested in acquiring land for their business interests; the Government itself with an interest in revenue collection, infrastructure development and conservation; and the customary leadership with an interest in exerting or re-claiming power through land. Of special significance currently in Zambia is the rapid process of urbanisation, where by 2007 more than half of the population live in urban areas.

In addition to the issue of the differing interests of individual land holders, land issues in Zambia differ widely in relation to land use and different circumstances, such as population density, urban and rural settings, the specifics of local administration structures, land quality, proximity to other resources, markets, infrastructure, and so on. Obviously a blue-print solution cannot take into account the divergent interests and needs of people for development, the land use management requirements for specific areas, or the capacities and means of land administration and adjudication structures.

### **3.3 Challenges in current land administration and management in Zambia**

The following are some of the pertinent challenges that Zambia faces in its current land administration and management:

1. Centralised state control over land matters, patronage and corruption within Government, local authorities and customary authorities in land delivery, breakdown in land administration and land delivery procedures, and generally inadequate participation by communities in the governance of land and natural resources
2. Multiplicity of laws and practices related to land administration and land management, inadequate environmental management, lack of viable land market regulation and disregard for land use planning
3. Centralised, costly, discriminatory and inefficient land conflict resolution mechanisms
4. Discrimination against women, youth, the disabled and the poor in accessing and holding land, as well as gender and trans-generational discrimination in succession or transfer of land
5. Disparity in entitlement to defined, enforceable and transferable property rights, increased conflict over land, abandonment of agricultural land and increased urbanisation

### **3.4 Manifestations of the land problem**

Zambia has not had a Land Policy since independence. The lack of a comprehensive, relevant and pro-development Land Policy manifests itself in:

- a) The fragmentation of land administration through different laws, policies and practices,
- b) Disparity of rights in land tenure systems and consequently in ownership of land and property, and
- c) An increasing breakdown in the systems of land administration both within the customary and statutory systems.

Some of the results of the current situation in land administration and governance are increasing levels of poverty, increasing land speculation, disinheritance of individuals, squatting, evolution of a landless class, tenure insecurity, increasingly serious conflict over land and increasing corruption and patronage in land administration. This is evidenced in the environmental, social, economic and political problems faced by rural and urban people, especially the poor and particularly women, in Zambia today. The current situation regarding poverty and development in Zambia is described in the Fifth National Development Plan, 2006-2010, where the Government of Zambia has committed to address these problems and tackle the fundamental causes of poverty.

### **3.5 Priority areas that should be addressed in the Land Policy**

Poverty in Zambia is highest in the rural areas, where the individual's control over land is a major issue, and where access to land and natural resources is especially important for improving livelihoods of women and poorer groups and for providing household food security.

Recent economic trends have affected land tenure security for rural people in Zambia. For example, under present legislation holders of customary and statutory land do not enjoy equal rights, with statutory rights being superior to customary rights. This provides an opportunity for new powerful economic interests to convert land in customary areas to state land, in the process often displacing rural families, increasing poverty and discrimination, de-populating agricultural land, increasing urbanisation and squatting, and creating conflict at different levels. The Land Policy needs to redress the situation, in order to stabilise populations, reduce conflict, reduce poverty and increase peace, prosperity and the esteem of Government.

The following have been identified as areas of priority by the Zambian civil society which need to be considered in developing a national land policy for Zambia:

#### ***1. Protection of land rights, as a first priority***

- a) There needs to be equal status before the law provided to holders of customary and statutory land and property rights, so as to protect tenure rights and prevent one form of tenure taking precedence over the other
- b) The rights of local communities to define the rules of access to and use of resources in their territories should be recognised, as they are consistent with the broader legal provisions, including gender equality
- c) Intra-generational equity, including the transfer of rights and property through customary norms
- d) Gender equity through women's land ownership; through spousal family consent to land disposals; through provision of joint spousal title; through strengthening efforts to end discrimination in inheritance and matrimonial property in law and in customary practice
- e) Attention paid to people with special land needs, such as those with disabilities or affected by HIV/AIDS
- f) Moratorium on forced evictions and removals without provision of adequate alternative land and shelter, or compensation over land in real market value terms
- g) Constitutional and legal enshrinement of responsibilities of the state and customary authorities in matters of land management, with checks and balances on abuse and recourse to appeal
- h) Recognition and strengthening of alternative dispute and conflict resolution mechanisms
- i) Introduction of negotiation mechanisms for resolving multi-stakeholder arrangements of management, access, use, benefit and control of common property resources, including those wholly or partially held by the state or allocated to the private sector.

## ***2. Transparency and accountability in land management***

- a) Fair and transparent rules on land expropriation by the state, whether from leasehold land or customary land, and payment of compensation
- b) Commitment to good use and equitable distribution of public land resources
- c) Transparent rules and procedures for investors to access land, with form of tenure and duration of lease appropriate to the proposed investment and submitted business plan
- d) Provisions for monitoring and promoting efficient productive use of privately held land, including tax based sanctions and incentives
- e) Transparent system of land taxation and use of revenues generated
- f) Opportunities for civil society consultation and participation in implementing and monitoring the land policy, and for public debate in land policy review and law making

## ***3. Improvements in land administration***

- a) Establishing programs for improvements in the coverage of land registration and information systems, to include programs at local level to record individual and collective rights customary rights, and rights derived through customary transactions
- b) Provisions to place leasehold land administration at lowest administration level feasible and development of improved land delivery services, reductions in delays and improvements in volume of registration of land transactions
- c) Provisions for representation of stakeholders in land management and allocation decisions in both customary and statutory land tenure systems
- d) Pricing of land services such as survey, valuation, registration etc at reasonable levels in accordance with land values.

## ***4. Improvements in land access and delivery***

- a) Strengthen access to land for vulnerable groups (women, orphans, persons with disabilities and people affected by AIDS and the poor) and provide guidelines for enforcing the land rights for these vulnerable groups. This should be accompanied by sensitisation on their land rights and land acquisition procedures.
- b) Provision for restitution of historical grievances in land, which must be clearly identified, and a mechanism that is implementable must be worked out
- c) Provision of reversion of leasehold land to customary land on failure to implement the planned land use or on expiry and non-renewal of lease.

## ***5. Sustainable land use***

- a) Participatory land use planning in both rural and urban areas as a means to come to local verifiable agreement on how land should be used, and how benefits should be shared
- b) Information sharing with conservation area adjacent communities on rules and regulations concerning the conservation area
- c) Provision for sharing of benefits from conservation or sustainable land use between the state and the affected or participating communities.

## ***6. Justice in land administration and adjudication***

- a) Democratic and holistic administration and adjudication of land disputes

- b) Decentralisation of land adjudication to lowest level appropriate to the land tenure system in question

## **4.0 POLICY OPTIONS**

**T**he development of the land policy for Zambia should be based on the understanding that land is more than just an economic commodity or productive resource, that can be traded in, but that land more importantly is also a source of identity for people, a source of livelihood and has social and cultural values.

Customary land in particular combines several factors i.e. of individual and family production, private human settlement whilst still playing a role as community property, a capital asset, a heritage and a source of identity. This makes customary land complex and its management has to be well thought out and implemented with due caution, lest it disadvantages the persons who hold rights to it. The current situation where disparities exist in terms of rights between customary land where the majority poor and vulnerable live, and stateland where the majority leaseholders who are well off, must be addressed so as to reduce conflict and abuse of power. In Zambia a situation exists where the land rights of those that live under customary tenure are considered inferior to those that hold leaseholds. For land to contribute to poverty reduction there is need for a land policy that is balanced and looks at the productive aspects as well as social, cultural and economic aspects.

### **4.1. Approach to addressing the land problem in Zambia**

A number of challenges that Zambia faces in terms of land administration, land access etc, have historical origins. It is important therefore, that the land policy, sufficiently addresses some of the root causes of the land problems in Zambia. The land policy should reflect multiple dimensions of land administration and management which include the following:

- Political Aspects: e.g. colonial interference with the indigenous system and post colonial development, historical injustices in land, centralised Government structures
- Economic Aspects: e.g. economic trends, social and economic differentiation, population growth, increasing urbanisation and the liberalisation of the economy
- Legal Aspects: e.g. the development of a land legislation based on western law to protect leasehold tenure, the neglect of indigenous systems of justice in land, constitutional issues related to land, gender, property, diverse legislation for land
- Social/cultural aspects: e.g. the change in concept of land as heritage and identity to land as property or commodity, gender and land, land as a productive resource

Against this background, civil society proposes the following policy options and these particularly are aimed at addressing the gaps noted in the draft land policy. The policy options are presented under each specific heading and these build on the background highlighted in the introduction and context setting sections.

### **4.2. Land Tenure**

The land administration system in Zambia is one where those that do not hold title to land are considered to be squatters contrary to the Common Law provision for prescriptive rights. The land policy, under development, does not equally address the issue of land rights for those that live in informal/squatter settlements, which comprise the highest number of households in urban areas. To enhance the land tenure security for those that live in informal settlements, the majority of whom are poor, there is need for the proposed policy options below.

### **Policy Options for Land Tenure**

1. The land policy should take cognisance of informal/squatter settlements in urban areas and devise a mechanism for bringing about security of tenure even for those that occupy squatter/informal settlements without undermining the rights of others, justice and the rule of law, equity;
2. The land policy should introduce a moratorium on forced evictions and removals without provision of adequate alternative land and shelter, or compensation over land in real market value terms without undermining the rights of others, justice, equity and the rule of law;
3. The land policy should make provision for due notice where evictions are inevitable; and
4. Government through the Constitution should recognize and grant equal protection of rights to both customary land and state land;

### **4.3. Public land**

Within state land, currently, there is only a provision for land to be held as leasehold or freehold in exceptional cases. However, there is more to state land than leasehold lands. All land on which public facilities are situated as well as unallocated state land should comprise public land. This is because in true meaning of leasehold land there has to be a lease, and where there is none such land is not provided for in the legislation and its administration unclear. The draft land policy for Zambia does not provide for public land, but rather reserve land which is narrow in scope as it only deals with land on which are public facilities such as roads, and other social facilities but not unallocated state land. It's from this perspective that the following policy options are provided.

### **Policy options – Public Land**

1. The land policy should create and designate public land. Public land will comprise that land which is neither held on title nor could be considered to be customary land;
2. This category of land will be managed by the relevant local authorities, where possible, according to agreed procedures and rules; and
3. Income derived from this category of land should be shared equally between the State and the relevant local community.

### **4.4. Protected land**

Currently, it's unclear whether national parks and forests are in state land or customary land. The draft land policy does not in anyway help clear the confusion as regards the tenure status of protected land (game parks and forest reserves). To help clear this uncertainty there is need to set aside such land. The land once identified/designated as protected land could be granted to an appropriate public institution for purposes of managing.

### **Policy Options – Protected Land**

1. Government through an appropriate legal instrument should create a protected land category. This will be state land that has been set aside for purposes of protecting areas of biological or cultural significance as well as land for recreational purposes in towns, such as parks and play areas, and thus deserving of protection; and
2. Income deriving from this category of land should be shared equally between the managing authority and the affected local communities, according to locally commonly agreed procedures and according to respective responsibilities of the managers of the said land.



#### **4.5. Customary land**

Customary land is a valuable source of identity, pride and social cohesion in Zambia. At the same time, there is great diversity amongst customary land users, the principle stakeholder group in Zambia's land resources. Any Government that desires to build national unity and strengthen national pride must learn to embrace the diversity of customary practices and provide cohesion through specific legislation to protect and strengthen customary land.

Up until recently, customary land tenure systems in rural areas have been conceptualised as backward, insecure and inconsistent with modern life and should therefore be replaced by 'modern' private type of land holding typified by leasehold. This concept was first promoted by Colonial administrators for reasons of appropriating land from the local people for the colonial effort. The concept has remained largely unchallenged until recently, and has been adopted by successive post independence Governments as a means of acquiring cheap land for 'development'. The result is that there is disparity in land rights between customary and leasehold, and as a consequence, customary land holders rights are undermined.

While recognising and listing weaknesses in customary land administration, the current draft Land Policy (2006) does not provide any guidelines on how strengthen customary land system. Instead the draft Policy document proposes measures to promote conversion of customary land to state land. The rationale of the policy is that more should be done to let all citizens be given title to their land, and that market forces should drive how land is administered and managed. However, there is no evidence that providing rural citizens with land titles will have the desired result of reducing rural poverty. On the contrary, evidence from other African countries shows that where privatisation of land has been promoted by state policies, there is a growing landless class of poor men and women. Therefore, going the route of privatising all customary land might actually only work to rule out small scale farmers from land ownership. This by itself is an insecurity of tenure. Land titling is neither the best way of increasing tenure security nor does it necessarily lead to greater productivity.

Experience shows that customary tenure has usually proved to be very dynamic and secure, adapting over time to present needs. In addition, customary land tenure mechanisms provide land holders with a range of goods and services over and beyond their actual land holding (such as access to fuel, water, grazing, medical plants, shelter, soil conservation and so on). Civil society therefore considers that it is important to ensure entitlement to defined, enforceable and transferable property rights, which cater for the social, economic and cultural requirements of specific communities, within the broader provisions of the law.

To improve equity and promote productivity in customary areas, the land policy must strengthen access to land and increase security of related rights. Rights are secure if they are not contested without reason and if contestations arise, these should be confirmed by established and accepted system of dispute resolution. Security of tenure is a question of institutions and enforcement, rather than a function of the nature of the rights themselves. Its therefore not true to assume land is only secure when its held on title.

While it is true that customary land tenure has in some cases limited productivity, other factors that are equally important inhibitors of agricultural productivity in customary land include unreasonable crop prices, lack of access to inputs, unavailability of credit, and the organisation of markets and processing.

Currently, those that live in rural areas are dependent on agriculture and form the poorest proportion of the population. As a result towns and cities appear to be magnets of hope, but in the process bringing about development of squatter and other informal settlements. Rural – urban migration brings about tremendous pressure on urban land delivery and social services provision in the process increasing urban poverty. Addressing poverty both in urban and rural areas requires addressing conditions which hinder development and security in rural areas.

**Policy options – Customary Land**

1. In order to enhance and develop customary land, there is need to develop legislation and to provide in statute for community land, whose ownership will be in the community. Provision must be made in the principal Lands Act, for a clear framework and minimum standards for how customary land should be administered and for recognition, protection and registration of community rights to land and land based resources taking into account multiple interests of all land users, including women;
2. There must be provision to recognise the boundaries and rights of landholders and users in customary tenure so that everyone, irrespective of social status, gender or origin can have similar rights to land. This will ensure that private, family and group rights to land are protected;
3. The rights of local communities to define the rules of access to and use of resources in their territories should be recognised, as long as they are consistent with the broader legal provisions, including gender equality. There is need to collaborate with traditional authorities and other land stakeholders to review holding practices, usages and legislations governing land holding, land acquisition, usage, delivery and records with a view to better protect land rights within customary tenure;
4. Government should undertake to recognize and incorporate mutually reinforcing customary mechanisms for land management and incorporate them into broad principles that will protect rights to land and facilitate development to customary land;
5. There should be provision for equal recognition of customary land holding and leasehold tenure land holding, to be accepted as collateral against a loan, on condition that the loaning institute is convinced that the mandatory accompanying business plan is viable;
6. Government should recognise and promote customary land dispute resolution, finding ways in which they can be recognised on a par with more formal land dispute mechanisms;
7. All grants of land holding within customary jurisdiction should be public and have the full participation of the community, including women, persons with disability and any other interest groups.
8. Customary land transactions and land adjudication should be characterised by participatory processes and Government should undertake to develop minimum standards on how customary land should be administered;
9. Customary land allocations should not disadvantage women from enjoying land rights from their father's side on the status of their gender and or marital status;
10. The policy should ensure that before consent for customary land to convert to leasehold is granted there is consultation and consensus by all those to be affected by the said conversion. The ultimate authority to allow land to be given over for conversion will rest with the community; and
11. There is need to have a reverse clause for customary land that is converted to leasehold to revert to customary land status should the purpose for which it was converted lapse or not materialise.

#### 4.6. Leasehold land

Land is a very important, scarce and finite resource. It follows, therefore, that it ought to be more equitably shared with a view to provide an opportunity to as many qualifying persons as possible to own (hold) land.

Despite the limited amount of land especially in urban centres there are still cases where politically connected individuals can receive multiple grants of land within the same land use category, at times at the same time, which in practice disadvantages more deserving individuals. Currently there are four types of title provided for in Zambia *viz.* 10 year Land Record Card, 14 year lease for un-surveyed land, 25 year Land Occupancy Licence and 99 year leasehold Title. The various titles offer varying rights and are differently admissible as collateral. There is need to equalise these rights and ensure all land on title can participate in the land market.

State land is administered by the Commissioner of Lands as an agent of the President. The manner in which the Commissioner of Lands and Local Authorities administer land lacks transparency and accountability. Equally the process of land administration is highly bureaucratic, unpredictable and costly. The hallmark of any functional land administration system is one at the minimum that adequately protects rights and allows those rights to be traded/transferred if appropriate efficiently, simply, quickly, securely and at low cost.

Another feature of a successful land administration system is that it ought to be trusted by the general populace, protects the majority of land rights, provides security of tenure for the vast majority land holders and is extensively used.

If, for whatever reasons, the above two criteria are not met the land administration system has fundamental problems. The letter and spirit of the current draft land policy (October 2006) is one which maintains the status quo despite the evident and admitted failures.

#### **Policy Options – Leasehold land**

1. Ensure that land alienation is transparent, accountable and timely and decentralised to the district level;
2. Ensure that land records are available to the general public and decentralise records to the district level;
3. Ensure that leasehold land is alienable and transmissible without discrimination on grounds of sex, age, ethnicity or geographical origin, physical disability and/or social economic status;
4. Establish an upper limit on the size of land an individual can hold by use and location;
5. Establish appropriate land taxation system that will serve as an incentive to encourage optimal utilization of land, but also be a deterrent to land hoarding and speculation. This will require landholdings exceeding the set thresholds by use and category attracting higher taxes;
6. There should be a limitation to one, by each land use category, the number of direct grants from the President or state agents that an individual should be allowed to receive; The term of lease for citizens should not exceed 50 years, renewable, and should be applicable to all state land;
7. 50 year leases should be renewed on approval of business or land use plans for the plot in question. If not renewed, the reasons for refusal should be provided to the landholder, who will be compensated for the land and developments thereof; and
8. For a Zambian company the process of acquiring land should be like it is for individuals

except that companies should provide a feasible business plan detailing the utilisation of the land. Further, Zambian companies will hold land for a period not exceeding 30 years, renewable depending on utilisation over the initial lease period.

#### **4.7. Persons with Disability**

Persons with disabilities or those living with HIV/AIDS constitute a special group, and their interests to land are diverse and complicated. However, considering the importance of land to livelihood, it follows therefore that, the needs of persons with disabilities should be considered and provided for. The idea should not necessarily stigmatise disability but rather there is ample consideration and inclusion of the land needs of persons with disabilities considering they form part of the poorest portion of the population, mainly due to their disability and lack of economic opportunities.

As the draft land policy does not adequately address the issues of disability vis-à-vis land access and ownership, Government should undertake to recognize and protect the rights of persons with disability vis-à-vis land ownership. This recognition and protection should extend to people living with HIV/AIDS. As persons with disabilities constitute a special group, its imperative that their varied interests are fully recognized and provided for and these include:

##### **Policy options –Persons with Disabilities**

1. Access to information on land, this includes addressing the needs of the visually and hearing impaired through the use of appropriate media;
2. Ensuring accessibility of land dealing institutions to even persons using mobility aids.
3. Ensuring that persons with disability participate in decision making over land administration;
4. Addressing the poverty situation that prevents persons with disability or living with HIV/AIDS from fully participating in the economy and property ownership; and
5. As a special case, protect the rights of persons with disabilities and persons living with HIV/AIDS, to hold on to their land even if they are unable to develop it.

#### **4.8. Women and land**

Some cultures and traditions continue to support male inheritance of land. Within state land, women are generally disadvantaged due to their low participation in the formal economy and general lack of capacity to receive grants in land from the Commissioner of Lands and their plight is worse off in the land market.

An equally important reason for women's limited land ownership is lack of awareness on land ownership procedures and that women are not sufficiently represented in institutions that deal with land. Women's rights under communal ownership are also not clearly defined and this allows men in some cases to dispossess women of family land.

While the draft land policy provides for affirmative actions, which is a good thing, there is need to follow up the policy provision with implementation. It is from that understanding that the following policy options are here suggested:

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**Policy options – Women and Land**

1. To address the huge gender disparities in land holding and the impact this has on families, Government should enact legislation to outlaw traditional practices that are an encumbrance to women's land ownership in some customs;
2. Continue the affirmative action of ensuring that women receive 30%, as a minimum, of all new land allocations in state land;
3. Put in place appropriate legislation to ensure the 30% provision of all land allocations are made exclusively to women and that single mothers, widows and women in polygamous arrangements ought to be considered as a priority;
4. The land registers at the Ministry responsible for land and any other statutory bodies that maintain land registers should be detailed enough by among others having a provision for recording the sex of landholders, as a means of ensuring there is data on the land distribution/land ownership structure by men and women in Zambia;
5. Government should encourage joint registration of land rights for married couples as a means of protecting the same rights in the event of divorce or death of a partner.
6. The policy needs to provide for spousal consent to disposal of land.
7. Government should undertake to guarantee land inheritance rights of unmarried or married daughters, irrespective of the land tenure within which the land was held in;
8. Women's land rights and customary systems require in depth research to document good and bad practices as a means of encouraging good practices and outlawing the bad ones;
9. Also there is need for continued sensitisation and awareness raising campaigns on women's land rights; and
10. All land administration structures in both state and customary lands should have a fair representation of women to ensure their participation in decision making over land matters.

**4.9. Children and youths**

The Zambian population is very young with a median age of only 17 years. It's only right that a fair proportion of the population are not prevented from participating in the economic affairs of the country because they do not qualify to hold land.

It has also been noted that with more than half of Zambia's population living in towns, there are no suitable public areas in towns for children to play and develop social skills and healthy habits. Often land that was set aside for children has been taken for other purposes, leaving the children with no option than to loiter in the streets. This issue has not been addressed in the draft Land Policy (2006).

In the instance of orphaned minors, there are cases where administrators of the deceased's estate have either coerced children to agree to the sale of an estate or even altogether deprive children of their inheritance. To help put a stop to the scourge there is need for legalisation and regulation of administrators' conduct. In the advent of HIV/AIDS there is an emergence of child headed households and these children despite the huge responsibility they bear are not allowed to hold land title. Even in customary land, although children may hold land, in some cases the rights of children to their family land may be abused.

In the current situation, where children often head households or are expected to be independent of families at an early age, there is urgent need for positive action. Further to lowering the age at which children can own land in their own right, as provided for in the draft land policy, there is need for:

**Policy options – Children and Youth**

1. Government should create and enforce a strict inheritance system to ensure a person who serves as an administrator for an estate does not manage the estate in a manner that deprives the children of enjoying their rights to the estate or proceeding there from;
2. In cases where orphaned children have no one who could serve as administrator, Government should allow for children in such circumstances to hold interests in land. Equally, Government could undertake to securing land for them, for example by establishing ‘a friend of the child’ in the form of a Government agent which will hold the rights on behalf of the child or children
3. Government should ensure that suitable areas are set aside in towns and cities for children to play on and to engage in sports and other recreational activities

**4.10. Inheritance and succession**

The need to establish minimum standards to guide inheritance matters is necessary considering that some customary laws discriminate against women and children. This is a major contributor to poverty and destitution of widows and orphans on the death of a household head, usually a male.

Considering that land is inexhaustible, inheritance is one of the major avenues through which land rights transfer from one person to the other. As there is currently a huge disparity between men and women in as far as land ownership is concerned, its important that inheritance is one of the means used to promote and ensure gender equality in land holding. This is not adequately provided for in the draft land policy, and as such the following considered options are provided:

**Policy options – Inheritance and Succession**

1. Land rights can be acquired through inheritance, which entails the transmission of land rights from one living person to another or through transference of land rights of a dead person to someone alive. There are two basic scenarios with regard to inheritance of land rights from a dead person, that is to say, testate (where there is a will) and intestate (where there is no will). However, the Intestate Succession Act exempts customary land from being subjected to prescribed conditions and shares. This then implies there are different conditions for the inheritance of land within state land and customary tenure; and
2. Whilst it is necessary to recognise the variances in customs with regard to inheritance of land and property, the Government has a duty to safe guard the land and property rights of families, orphans and widow/widowers. As such there is need for Government to establish minimum standards with regard to inheritance of land and property which standards will apply both on state and customary land.

**4.11. Land and non-Zambians**

The main argument for non-Zambians accessing land only in partnership with a Zambian is to allow Zambians participate in wealth creation and development of the country. Previously the land ownership in Zambia was open to both citizens and non-citizens, alike. There clearly has to be a distinction in as far as enjoyment of land rights are concerned between citizens and non-citizens.



Zambia is one of those few countries where it actually could prove much easier for a qualifying non-Zambian to acquire land from the Commissioner of Lands than would a Zambian. As the draft land policy is not explicit about this matter, it is important that the following options are considered.

**Policy options – Land and Non-Zambians**

1. For residential purposes, non-Zambians wishing to settle in Zambia should have acquired a residence status to qualify to hold land in Zambia, in which case they will hold land like Zambian citizens. The process of acquiring land for non-citizens should not be through direct grants by the President or his/her appointed agents but rather through transfer of rights from a citizen; and
2. Non-Zambians requiring land for business investment purposes should access land on fulfilling all of the following conditions:
  - a. Through partnership with a Zambian
  - b. On acceptance of business plan, including an Environmental Impact Assessment
  - c. For a period not exceeding 30 years renewable, depending on utilisation over the initial lease period.

**4.12. Land redistribution**

The idea of large landholdings attracting premium taxes is meant to ensure as much land as is possible is put to productive use, and the taxes therefore serve as a deterrent to holding land for speculation. The other aspects are that those with more land than they require might opt to let go of the excess, which land can be redistributed.

Currently social groupings such as women, persons with disabilities and youths are left out of land ownership. The case for women is especially bad, as while women are the major providers of agricultural labour, yet they lack ownership and control of the land they labour on. There are many within informal settlements that have put up housing infrastructure for over 20 years and yet they remain without secure tenure for the pieces of land they occupy. The disadvantage about this is that even fairly good structures that are put up cannot participate in the economy as the properties are considered insecure.

The draft land policy does not even provide for land redistribution, nor recognize that there is inequality in land distribution, which situation ought to be addressed.

**Policy options – Land Redistribution**

1. There is need to review the acreage an individual can hold on title under the various land use categories. Having set the minimum requirement, those landholdings for each of the land use categories by location exceeding the set threshold should attract higher taxes, or be expropriated on provision of appropriate and mutually acceptable compensation;
2. Government should undertake to review land distribution with a view to allow for a more equitable distribution of land for human settlements and agriculture; and
3. In the spirit of equity, there has to be a provision for land redistribution for the many Zambians squatting on council and private land.

#### **4.13. Registration and deeds**

Considering that land registration and deeds are an indispensable component of a land market, they need to be operated in such a manner they are trusted by the general populace and should provide protection for the majority of land rights, provide security of tenure to land holders and be extensively used. If these criteria are not met then there is a fundamental problem with the system, and should undergo a radical reform. In addition to land registration and deeds provided for in the draft land policy, the following are proposed:

##### **Policy options – Registration and Deeds**

1. Government should undertake to create and maintain a land registration system that will operate in an environment of professionalism, accountability and good governance. The land registration system should further operate in an environment which is accepted by the wider citizenry, that is to say, cost effective, timely and transparent;
2. The Government should ensure a land registration that is predictable, that is to say should make deeds available within a stipulated time;
3. The land registration system should adequately protect rights and permit those rights to be traded, efficiently, simply, quickly, securely and at low cost; and
4. The system should operate with no opportunity for political interference and/or corruption. All processes should be simple and transparent, and sealed against corrupt practices.

#### **4.14. Mapping and survey**

Mapping and surveying are an important aspect of facilitating sustainable development, land markets, social justice, institutional reform, poverty eradication, environmental management and addressing income disparities. Mapping and surveying should be provided for and adequately financed to ensure timely and cost efficient registration of land rights.

Cadastral surveying and mapping support the establishment and functioning of a spatial cadastre, which provides for the manner in which the population relates to land.

Mapping is quite an expensive exercise to undertake and thus most likely not to be undertaken by individuals or even the private sector to produce, and yet they are very important for sustainable environmental and natural resources management.

##### **Policy options – Mapping and Survey**

1. Mapping and surveys are a necessary function in as far as registration of secure land rights are concerned. To further derive the advantages of secure tenure Government should endeavour to promote the development of survey as a specialized field;
2. There is need for Government to ensure survey services are accessible as close to the people as possible, and at appropriate/affordable costs;
3. Government should ensure regular updating of spatial maps to inform decision making and general management of human settlements and natural resources; and
4. The institutional set up for implementing the land policy should provide functional cooperation and coordination between surveying and mapping, the cadastre, the valuation, the physical planning and the land registration institutions.



#### 4.15. Land use planning

With the understanding that sustainable development means development that effectively incorporates economic, social, political, conservation and resource management factors in decision-making for development, it's only right that development and land management are supported by holistic planning. The challenge of balancing competing land needs and tensions in land use decision making requires access to accurate and relevant information in a readily interactive form.

Currently Zambia, has seen the unfortunate situation of not only unplanned/squatter settlements but also encroachment into protected areas. This in part points to failures in the land delivery system, but more so lack of forward planning for various human land uses.

In the absence of appropriate land use plans, the development of unplanned development and conflict from various land uses such as mining, conservation, human settlement and industrial and commercial are likely results. There are persons that held agricultural land and have since started subdividing their land holdings and offloading the same on the market as residential lots.

Proper land use planning will allow for a well coordinated development of urban, peri-urban and rural areas in terms of housing, commercial, mining, industrial and infrastructure for development and human well being, as well as for conservation for future generations and for tourism. It is from this perspective that the following policy options are provided:

##### **Policy options – Land Use Planning**

1. The Government should put in place an appropriate strategy for sustainably managing population growth and other human land uses and development activities in urban and rural areas;
2. The government should conduct and publish periodic land audits, to provide a basis for planning and decision making
3. The Government should, through a consultative process develop land use plans in urban and peri-urban areas, to determine infrastructure development, and these plans should be available to the general public within the locality; and
4. There is need to develop collaborative participatory land use planning in the vicinity of proposed development programs or initiatives, so as to ensure that local communities still have access to resources necessary for their livelihood, and to ensure fair benefit sharing from these initiatives.

#### 4.16. Land market operations

Zambia has an operational land market which, unfortunately is characterised by illegality and racketeering. This then calls for Government to set in and bring sanity and trust to this very important aspect of the economy.

##### **Policy options – Land market operations**

Government should provide for and create an environment within which the land markets can flourish and be a critical element of the land delivery system, but also a means of promoting economic development;

1. Further, Government should clarify and enforce laws and procedures governing the operations of the land market;
2. There is need to conduct a comprehensive review of existing laws and rules that have a

bearing on the operations of the land market, identify ambiguities and loopholes in order to define clear, enforceable statutes with corresponding penalties;

3. Government should strengthen valuation services as a necessary aspect of the operation of the land market;
4. Operations of real estate agents should be strictly regulated; and
5. Operations of party cadres and any other unauthorised persons in land allocation should be made illegal with stiff punishment for defaulters.

#### **4.17. Land Dispute Resolution**

Resolution of disputes over land has a bearing on governance and social stability, as well as upon tenure security. Addressing conflicting claims is necessary for registration of land rights, to avoid repeated challenges and disputes. An alternative dispute resolution mechanism is necessary to allow even the poor to access justice, as the formal courts are often overburdened, inaccessible to rural people, intimidating, and have a poor understanding of local land rights. In view of this, there is need to recognise and strengthen alternative local dispute mechanisms based on local structures and practices.

It should also be remembered that, despite constitutional provisions, all citizens are not equal in practice before the law, due to inadequate information, limited resources, and poor contacts within the administrative system. If the poor majority are to be the primary beneficiaries of the land tenure reform, the design of institutions for managing land rights must take this into account. Poorer groups will have more effective access to such procedures where they receive clear information about how the system is meant to operate, and where the bodies responsible are located close by, working in local languages, accepting oral evidence to support claims before granting title, and operating with low user fees. An effective and responsive judiciary system which is accessible to poor and marginalised people is therefore a crucial component of successful, pro-poor land reform. Without such a system the legality and credibility of land reform and ultimately its success, would be irreparably undermined.

Access to fair legal process is a basic requirement and expectation of every Zambian, and the state needs to guarantee the rights and assets of every citizen, also the poorest. However, Zambia is a vast country and formal courts of law are difficult to access for the rural communities scattered throughout the country, both in terms of distance and language. A good land policy would recognise and put in measures to deliberately strengthen mechanisms and techniques for resolving disputes over land based on local structures and practices, so as to make justice in land accessible to rural people, especially women and vulnerable groups. This may require amendment to the constitution and other legal instruments.

#### **Policy options – Land Dispute Resolution**

1. Need to strengthen dispute resolution mechanisms besides the formal courts of law.
2. There is need to consider strengthening the governance structure of the Lands Tribunal in order to secure independence and confidence by the public. There is need to revise the operations of the Lands Tribunal to allow for it to decide land cases in state land, not just involving a person in authority. The operations of the Lands Tribunal should be decentralised to ensure it's more easily accessible; and
3. Need to recognize and strengthen local dispute resolution mechanisms that are easily accessible and recognize and uphold decisions made within customary tenure, with possibility of recourse to appeal to the formal courts.

#### **4.18. Integrated land administration**

Throughout consultations it was reiterated that land is the basis of life. Yet, although the draft Policy (2006) promises a holistic approach, it fails to situate the policy in relation to other contemporary national policies and legislation or international conventions, or to explain how to integrate the administration of land with other land users and uses.

Clearly the administration and management of land is linked administratively, politically, culturally, socially, and economically to other actors and factors in land. To achieve sustained development and poverty reduction there is therefore need to develop a framework that provides for the holistic integration of land and land administration issues. This calls for an innovative approach, which puts land at the centre, or places land administration as the apex institution when it comes to matters concerning land management and land use. Also, to arrive at an integrated approach to land and land management and administration, it may be necessary to appropriately amend various relevant national legal instruments and practices, and domesticate relevant international conventions.

##### **Policy Options**

##### **Environmental management**

- i. Realising that land tenure arrangements affect the management of the environment, it is necessary that the management and protection of fauna and flora of biological significance should be provided for to take pre-eminence over other land uses.

##### **Mining**

- i. Mining is one of the most important land uses, however, most often than not mining rights compete with the surface land rights of individuals. Government should require and enforce requirements for appropriate negotiated compensation IF individuals and communities will be unavoidably displaced by mining activities. Further, there is need for resettlement plans in all the environmental impact assessments carried out for mining ventures;
- ii. The displacement should follow a phased approach to minimize the negative impact of the said displacement; and
- iii. Persons to be displaced should always be granted a choice of where they are to be relocated to.

##### **Integrated planning for land management**

- i. Need for Government to conduct an inventory or audit of various land uses and promote an integrated planning process to inform management of the said land;
- ii. Need for coordination and streamlining of various land administration functions of physical planning, valuation, registration, survey and land delivery; and
- iii. Benefit sharing/co-management of land and other natural resources with local communities.

## **5.0. IMPLEMENTATION FRAMEWORK**

**A** number of concerns were raised by various stakeholders on the current institutional framework for land administration. Generally, the view was that the institutional framework is centralised and simply not responsive to the various land tenure systems in Zambia.

Despite these concerns, the draft Land Policy (October 2006) does not provide any implementation strategy, but simply states that, although Government will adopt a strategy that involves stakeholders, implementation measures will call for the ministry responsible for land to enforce land laws and regulations. Although policies often do not provide details on how they are to be implemented, the policy as a minimum needs to explain how the implementation is to be achieved, even if only to delegate the responsibility of developing an implementation plan to the relevant authorities. The following therefore are some policy options which could be considered in implementing the Land Policy in Zambia.

### **5.1 Institutional set up**

#### **Policy options**

- i. To deliver on the land policy and its reform agenda, there is need for the creation of a Land Reform Unit to develop the implementation plan for the land policy, and also monitor and evaluate the implementation of the land policy.
- ii. Government should create a Land Commission which will be a transparent, accountable and independent land allocation institution in state land. The functions of the Land Commission should be decentralized to the district level. The Commissioner of Lands will be one of the members of the Land Commission as head of Secretariat and not head of the Land Commission.
- iii. The composition of the Land Commission should have a fair gender representation besides having the main land administration functions provided for, it should include civil society.
- iv. The Government should also recognize and strengthen the role of traditional leaders in the administration of land.
- v. The Government should recognize the role of civil society as an indispensable partner in the land policy information dissemination and implementation.
- vi. International institutions and cooperating partners are important and necessary if land reform is to be a success. There is need to mobilize international institutions as a source of funding but equally important as reservoir of technical expertise.

## **6.0 CONCLUSION**

The Policy Options Paper clearly indicates that there are alternative methods of dealing with the challenges cited in land administration and management in Zambia. Civil society would be like to urge Government not to 'close the door' to further consultations on the land policy.

Furthermore, although civil society recognises that Government is under pressure to come up with a Land Policy, civil society urges Government to recognise that the process should take as long as it takes to reach a commonly accepted Land Policy that provides an effective framework for poverty reduction and peaceful and stable economic and social development. Government should therefore be committed to a process that includes involvement of major stakeholders in negotiation, including the private sector, international donors and lending institutions, civil society, Government institutions and local Government administration, legal institutions, and last but not least, the customary leadership. The final product will not only serve Government needs but also the needs of all stakeholders.

As part of the process of arriving at an effective and implementable land policy, civil society calls upon Government to facilitate the following as a minimum requirement:

1. Government should establish a mechanism to revise the current draft land policy so as to address the views of stakeholders. This will include the views of civil society and the views solicited during consultations
2. The completed draft Land Policy should be widely disseminated through the media, that is television, radio and newspapers, in both English and local languages. It should also be made available on the internet.
3. The completed draft Land Policy should be discussed at public meetings throughout the country, including districts and chiefdoms
4. A National Conference should be held to validate and agree on the content of the draft, and finalise the Land Policy

Civil society will use this Policy Options Paper in its continued advocacy work targeting the general public, traditional leaders, Government agencies among others. Civil society will remain committed in its advocacy for a land policy that is balanced and adequately addresses the needs of all people, especially the poor and marginalised.

## Sources:

This paper has been formulated through consultation with a wide range of sources, from literature, to popular participation in the process, peer review, consultative meetings and workshops. These sources are acknowledged below under headings literature and contributions.

## Literature consulted

- Adams, Martin and Palmer, Robin (2007), *Independent Review of Land Issues, Volume III, Eastern and Southern Africa, 2006 – 2007*.
- African Union, African Development Bank & Economic Commission for Africa (draft), *Land Policy in Africa: a framework to strengthen land rights, enhance productivity and secure livelihoods*. ECA
- Cutola, Lorenzo (editor) (2007), *Changes in 'Customary' Land Tenure Systems in Africa*, International Institute for Environment and Development (IIED)
- EU Task Force on Land Tenure (2004), *EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries*. EU
- Government of Kenya, *National Land Policy*
- Government of Malawi, *National Land Policy*
- Lund, Odgaard & Sjaastad (2006), *Land Rights and Land Conflicts in Africa: a review of issues and experiences*. Danish Institute for International Studies, Copenhagen
- McAuslan, Patrik (2007), *Improving Tenure Security for the Poor in Africa*. FAO/ LEP Working Paper # 8
- Okoth-Ogendo, HWO (2006) *Formalising 'Informal' Systems: the problematique in land rights reform in Africa*. Thematic survey paper for the High Level Commission on Legal Empowerment of the Poor
- Palmer, Robin (2007), *Literature Review of Governance and Secure Access to Land*. DFID
- Peters, Pauline (2007 - draft), *Social Conflict Over Access and Transfer of Land in Malawi: disjunctures between practice and land reform*
- Republic of Zambia, *Chapter 184, The Lands Act 1995*
- Republic of Zambia, Ministry of Lands, *Draft Land Administration and Management Policy October 2006*
- Sapru, R.K. (1994), *'Public Policy: Formulation, Implementation and Evaluation.'* Sterling Publishers Private
- Transparency International (2005), *State of Corruption (in Zambia) Report - 2004*
- Wiley, Liz Alden (2006), *Land Rights Reform and Governance in Africa: how to make it work in the 21<sup>st</sup> century?* United Nations Development Program, New York
- Zambia Land Alliance (2007), *Civil Society Position on the Draft Land Policy of 2006*
- Zambia Land Alliance (2007), *Report on the National Civil Society Consultative Meeting on the Draft Land Policy (2006), held at Cresta Golf View, Lusaka, 21 – 22 August 2007*
- Zambia Land Alliance (2007), *Analysis of the Draft Land Policy of 2006*, by Prof. Michelo Hansungule
- Zambia Land Alliance (2007), *Analysis of the Fifth National Development Plan*, by Prof Hansungule
- Zambia Land Alliance (2007 - draft), *Status report on land administration in Mansa, Chipata, Monze, and Mongu Districts*, by Hansungule, Mundia, Mwandawanda, Mwanza and Sorensen
- Zambia Land Alliance (2005), *Booklet on Communities' Views on the Land Policy*, Lusaka.

## **Contributions to this paper:**

Zambia Land Alliance would like to thank all the men and women who contributed towards developing this Land Policy Options Paper. The names of individuals and organisations which directly contributed toward formulating and editing this paper are listed below. In addition there are countless hundreds of people who contributed to this paper indirectly. These indirect contributions came from all the men and women who made their comments to the draft land policy in the consultation meetings and in workshops, radio programs, television programs, public forums, and public meetings hosted through ZLA and the District Land Alliances (Chipata, Gwembe, Kitwe, Chingola, Petauke, Mansa and Monze).

These comments and contributions form the knowledge base upon which this paper was generated, and provided ZLA with a foundation for the arguments presented.

Contributors to this Policy Options Paper are listed and acknowledged in alphabetical order below:

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- Chiefs/Traditional leaders
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- House of Chiefs - Zambia
- Integrated Rural Development Initiative
- International Land Coalition
- Kenya Land Alliance
- Land-net, Malawi
- Law and Development Association
- Transparency International - Zambia
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