

**Oxfam Zambia
Copperbelt Livelihoods Improvement Programme**

**Partners Land Workshop 29-30 March 2004
Mindolo Ecumenical Foundation
Kitwe-**

Final

REPORT OF THE PROCEEDINGS

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Executive Summary

The Copperbelt Province has for a long time been a major contributor to Zambia's economic development. Three decades ago, the rich mineral deposits fetched good prices and provided employment and good living standards to thousands through mining activities.

The prices of copper began to decline after the mid 1970s and affected the national economy. The impact was felt more on the Copperbelt whose economic life was dependent upon mining. Downsizing and privatisation became unavoidable as part of the process to save the economic activities of the mines. Privatisation resulted in the loss of thousands of jobs and deterioration in standards of living around the Copperbelt. Urban poverty increased to levels above 40% with mass retrenchments leaving thousands unemployed. Many Copperbelt residents have since turned to agriculture as an alternative source of livelihood followed by petty trading.

Agriculture as a means of livelihood is closely connected to the land and as such many of the problems that arise when land is in short supply such as illegal 'land invasions' and squatting have become a common occurrence among the poor on the Copperbelt. There is an apparent artificial shortage of land which is compounded by the fact that most land is held in the form of mining leases by private mining companies (since the mines privatisation in 2000) or by the state as forest conservation areas and by absentee landlords. This has contributed to the escalating numbers of squatters as landless peasant farmers look for land to cultivate. This situation is unsustainable and insecure in the long term for meaningful livelihoods expansion and will remain so if political will is not exhibited with regard to providing secure tenure to those that need land on the Copperbelt.

Two years ago government made a decision to seriously focus on the diversification of economic activities on the Copperbelt from dependence on copper to other areas. Three key areas were identified for the Copperbelt which include small scale mining, agriculture and tourism. All three activities are closely connected to the land and cannot be performed without clear strategies and implementation plans that recognise the key factor of the land and how it must be utilised to the advantage of the poor and the landless.

Oxfam's Copperbelt Livelihoods Improvement Programme (CLIP) has been working in three operation areas on the Copperbelt – Chingola, Kitwe and Mufulira. This work is mainly with poor households to try and improve their food security and access to assets. Land has been one of the areas of focus as it forms an important asset for households. Making it available and accessible to resource-poor households has shown its capacity to improve food and income levels. With the economic scenario not changing much, the dreams of many resource-poor households still remain unfulfilled in terms of poverty alleviation. The question then becomes one of how to ensure that the land which is the key resource in poverty alleviation is made available and that the bulk of poor households get access to it and engage productively in utilizing it for agriculture, tourism and small scale mining. A parallel issue, once access is assured, is one of ensuring security of tenure. In this respect, a need has arisen on the Copperbelt for a facility to act as broker between communities and key land stakeholders.

The workshop which is subject of this report was organised by Oxfam-CLIP to look into the issue of land and its availability and access to it by resource-poor households. This workshop was a follow-up to work that has been carried on in the last four years and was meant to bring together various land alliance partners working with Oxfam in land advocacy among small-scale farming communities. Many of the partners involved were newly formed community

based organisations (CBOs) focussing mainly on the area of land advocacy and information dissemination as well as promoting gender equality in all land matters for their members. The workshop took place over a period of two days at Mindolo Ecumenical Foundation in Kitwe. The third day saw the launch of the Copperbelt Land Rights Centre (CLRC) by the Deputy Minister for Lands at the Kitwe Civic Centre. The workshop was organised with the following aims in view:

General Objectives

- To revisit the work that had been done in the last four years around land and to take stock of the major achievements and constraints encountered.
- To give opportunity to grassroots land advocacy actors to look at the current land policy review document and bring out issues for a collective submission to the review technical team.
- To discuss the vision of the Copperbelt Diversification Programme and put together relevant issues to build into the programmes of the Copperbelt Land Rights Centre (CLRC) and the work of Oxfam in the districts of operation in Kitwe, Chingola and Mufulira.
- To develop a Copperbelt land strategy framework that can be implemented within the next three years.
- To document all deliberations into a report for ease of dissemination of the workshop proceedings.

Specific Objectives

- To develop a clear land strategy framework for grassroots land advocacy engagement.
- To document the workshop proceedings in a report with clear and practical recommendations.
- To deliver a collective Oxfam-partner position document on the land policy review process.
- To gain a clear understanding of the Copperbelt Diversification Programme (CDP) and seek out possible linkages for the programming of Oxfam and partner activities around the opportunities and potential for poverty alleviation within the CDP for Copperbelt residents.

1 The Land Issue – an International Perspective

The keynote address was presented by Oxfam International Land Policy Adviser Dr. Robin Palmer.

Dr. Palmer indicated that the significance of land as an asset for the poor cannot be exaggerated in today's structurally adjusted, liberalised and globalised world. He lamented that despite a long track record in land reform and support of many organisations involved with the land, Oxfam GB's global livelihoods strategy hardly mentions land.

He noted that Africa's recent economic history has seen structural adjustment policies attack the bloated and unproductive bureaucracies and parastatals in many countries but the social impact prescriptions have left behind harsh and in many cases extreme social dilemmas.

In Zambia the huge loss of regular jobs in the urban areas has made it harder for people to engage in economic exchanges with rural kinfolk and many now engage in all kinds of livelihoods strategies in a desperate attempt to simply survive. In such a context access to land as a key asset for survival has become much more important.

Struggles over land take many different forms depending on a range of variables including economic development, political awareness, urbanisation, literacy, technology and the agricultural potential of soils. Dr. Palmer noted that in South Africa the ANC government has judged that it can afford to delay land reform as there is no immediate danger of revolt from the peasant classes whereas in Brazil, decades of political conflict have led to constitutional provisions that proclaim that land must perform a social function. In other words land cannot be left to lie idle in the legal hands of absentee landlords, neither producing anything nor providing jobs.

Dr. Palmer showed that the kinds of intervention and levels of support which the Oxfam family adopt vary in different countries depending on the political context. However, one consistent theme has been support to those who are marginalized socially, politically or economically in their own countries. In Central America and Asia, Oxfam has supported the land rights of indigenous peoples in the Andean countries of Bolivia and Peru, India and Indonesia. During apartheid in South Africa, Oxfam gave support to organisations resisting forced removals. In some parts of Africa, pastoralists are frequently marginalized and attacked for being backward and primitive.

In the course of researching a previous paper on 'Land Tenure Insecurity on the Copperbelt' (Palmer, Feeney & Hansungule, 1998), it was discovered that Department of Agriculture staff in Kitwe had not heard of the Land Circular No 1 of 1985 which was supposed to be the key document in streamlining land allocation procedures. This incident indicates how poor information flow can hamper the activities of bureaucratic officials sometimes within the same government department. Mozambique provides a good example of information dissemination on land in that key aspects of a new land law have been translated into local languages and are being disseminated using comics, audio cassettes, theatre, music and posters.

2 Concluding Remarks

Dr. Palmer showed that land is a deeply political issue which can be highly disputed and dangerous in certain contexts as seen from recent history in the Great Lakes region of Africa. The solutions that are arrived at in resolving land issues need to focus on long term horizons rather than short term expediency as there are no easy or quick fixes in issues of land. In the

Zambian context, the clumsy imposition of privatisation and liberalisation policies has left many vulnerable and much more poor than they were before.

Oxfam as an agency that is largely donor driven and the Department for International Development (DFID) of the UK government are both unable to adopt such long term horizons and it is up to individual governments to define priorities for long term land reform and stick to these for the sake of poverty alleviation and promotion of sustainable livelihoods.

Oxfam operations in the Southern Africa region have tended to concentrate more on rural livelihoods but urban issues are increasingly becoming more important. This has been the situation in Zambia but it is clear that a paradigm shift is beginning to take place.

3 A Regional Perspective

3.1.1 South Africa

In follow-up comments, Dr. Palmer made reference to discussions held in South Africa on the land situation there in which land reform was the topic of discussion. He indicated that the South African government is ignoring the issue altogether but it is likely to become contentious in future. As a consequence Oxfam in South Africa is having to redefine their program of operations.

3.1.2 Mozambique

Mozambique is putting in place a legal framework that will defend the rights of poor peasant farmers against politicians who might want to privatise the land and thereby undermine the land rights of the poor.

3.1.3 Zimbabwe

In Zimbabwe there is clearly a need to get information about the areas being taken over by new African owners as well as the resolution of tenure issues and compensation for white farmers.

3.1.4 Malawi

In Malawi there is currently a lot of lobbying going on around the development of a land policy. A draft document has been developed and is still being worked on. Oxfam in Malawi is currently working with communities in resettlement projects in the Shire highlands

3.1.5 Angola

In Angola, the issue of corruption has created massive problems for the government in the equitable administration of land. A civil society land alliance is pushing a pro-poor agenda while the USAID are pushing the privatisation agenda.

4 Oxfam and Land Issues on the Copperbelt

Over the last ten years Zambia has seen a change of economic, social and cultural context from the early years of independence. Oxfam's role as an intermediary NGO must be to design strategies for its country programme which will be relevant to current socio-economic conditions on a long-term basis. This requires a fundamental understanding of the long term nature of land issues in Zambia in general and the Copperbelt in particular and a level of commitment that will see to it that tangible results and improvements in livelihoods for those living off the land are achieved.

Oxfam recognises the fact that land as an asset covers the livelihoods of 80% of the local population in Zambia and that women form a majority of this percentage, a large part of whom are dependent on subsistence agriculture for their survival. This part of the population plays a critical role in informing the organisation's priorities in its efforts to deal with local realities. This requires Oxfam to work with some issues in the short to medium term in order to alleviate the suffering of the most vulnerable. To this end efforts have been made to galvanise grassroots organisations to begin to understand the nature of the land problem in their areas and to organise themselves to take necessary actions to improve their situations. Since donors are generally not keen to support long term projects it is necessary for Oxfam to work out a balance between the long term nature of some of these issues and the short to medium term needs on the Copperbelt and in Zambia in general.

The Copperbelt Livelihoods Improvement Programme (CLIP) run by Oxfam GB Zambia was initiated in the year 2000 at a time when the programme had no grassroots partners in the area of land advocacy. The four year period preceding this workshop presented the programme managers with some challenging tasks that included laying foundations for the development of locally based land alliance partners. In view of the gains achieved on the Copperbelt, Oxfam has begun consolidating this work so as to take it forward at a higher level.

The organisation also recognises that there is an artificial shortage of land on the Copperbelt caused by the manner in which land has been held for many decades under customary tenure and large leaseholds to the mining industry. A need has arisen, since the mines privatisation, to make more land available on terms that secure the tenure and in turn the livelihoods of poor and vulnerable families. This is vital in the fight to alleviate the poverty that has become a part of the social and economic landscape of the province. It is in view of this that the organisation has put effort into supporting the establishment of the Copperbelt Land Rights Centre (CLRC) which is to become a one-stop shop for all matters relating to land advocacy and the dissemination of information about land to poor and vulnerable households on the Copperbelt

5 Land Issues in Zambia

The workshop was taking place at a time when two major events affecting the land question in Zambia were also in progress. The Constitutional Review Commission (CRC) and the Land Policy Review process were both ongoing events at the time of the workshop. Both these events have provided the country with an unprecedented opportunity to go back to the drawing board on the issue of land and come up with a document that clearly defines the future direction of land policy in Zambia.

As seen from this workshop, the main issues included the place accorded to land in the constitution, women's access to land as well as that of vulnerable and other disadvantaged and

marginalized groups in society, the harmonisation of customary and statutory tenure, information dissemination and the continuing legacy of the 1995 Lands Act.

In Zambia, as in many other African societies customary tenure preceded statutory tenure. The unwritten nature of customary law has always put reliance upon memory registers rather than codified records systems. Codifying customary law can mean that the dynamic nature of customary society is tied down to codified concepts.

The systems of customary law that have evolved should be strengthened so that they are able to deal with the particular circumstances existing in the different ethnic areas concerned and codifying what already exists should leave room for dynamism.

Creating certainty in customary tenure may not necessarily entail the giving of title deeds. Kenya provides an excellent example of an African country where all the land is under title and yet this has created immense problems for the people. Traditional tenure allows for the communal use of land and continues with the pre-existing systems of land holding. Under the colonial system of tenure allowance was made for some titles to be offered in customary land under exceptional circumstances.

The issue of absentee landlords is a particular area of concern due to the large numbers of landless peasant farmers. The new constitution for Zambia needs to consider the need for land to play a social function in mitigating the effects of poverty rather than that land should be held by speculative interests at the detriment of development and equitable distribution. This situation needs to be addressed as it withholds land from the needy and vulnerable.

Submissions to the Constitutional Review Commission (CRC) with respect to land need to focus on the need to compel absentee landowners to give up land that is not fully utilised or occupied. Members of civil society can play an important role by making presentations that focus on this issue to the CRC.

5.1 Information Dissemination

Even though it is a legal requirement that available land parcels be advertised in the national press by the local authorities and other government agencies dealing in land, this is not being followed to the letter. It was generally felt that there is a lack of information on land issues in the country. This is more so when it concerns the poor, the illiterate and other disadvantaged groups as the available information is rarely communicated to these groups in a format that they can easily understand.

Since the enactment of the 1995 Lands Act there has been only one national land conference. It continues to be evident that there are still a lot of problem areas that members of the public, political parties and civil society need to have resolved. Another national conference on the land issue as the country begins the process of drawing up a new constitution would create further awareness and help towards creating a general consensus around land. This is highlighted further by the Indaba organised by government in October 2003 which was meant to draw consensus on a wide range of issues among political parties, civil society and the general public. This forum discussed a number of pertinent issues in the political sphere but failed to tackle the land issue. This indicates that there is a need for the government to create a consensus around land issues.

Information dissemination with respect to land (availability and allocation procedures) particularly for the poor can play a vital role in the fight against poverty. The decision to set up a Land Rights Centre on the Copperbelt has been influenced to a large extent by the lack of

information in the public domain on issues of land. This is happening at a time when the land question has become very critical for many Copperbelt residents. It is the view of Oxfam and its community based partners that this institution will fill a gap that has existed between poor communities and the machinery of government in land administration.

In addressing this issue, representatives of relevant government departments dealing in land indicated that information on land administration and allocation procedures is generally available at the Ministry of Lands and the Department of Resettlement in the Office of the Vice President. The problem identified in the workshop with respect to information showed that the dissemination strategies being used did not place sufficient focus on the poor and on placing information in the public domain away from government offices that in many cases are centralised and out of reach of the poor. There is no deliberate policy on the part of government to disseminate the information that is available. It is assumed that land information is available in the relevant government offices and that would-be users of the information can access it from there. Another point raised in the area of information dissemination is the importance of targeting the correct recipients. A deliberate policy aimed at finding out who needs what information and then to provide it in the languages that the majority use would be a useful start.

The Land Circular No.1 of 1985 which lays down the procedures to be followed in land allocation was directed at permanent secretaries and local councils. The information contained in the circular is of an administrative nature and therefore not generally disseminated to people who need to know about procedures for land alienation. Councils as agents of the Commissioner of Lands are mandated with responsibility to evaluate applicants for land and recommend suitable candidates to the Commissioner. When recommendations are sent to the Commissioner of Lands, councils will have checked beforehand to ensure that the land applied for is vacant and available. But they also have the responsibility to ensure that land does not remain vacant and unutilised after it has been alienated.

5.2 Gender balance in land allocation

Gender balanced allocation procedures which place priority upon women's access to land ownership and control can empower women to produce more food and improve family food security. In keeping with the government policy provision to balance this traditionally imbalanced sphere, the Department of Resettlement has been practicing gender balanced allocation of land and has so far allocated at least 60% of land in resettlement projects to women applicants. The Lands Department in the Ministry of Lands is also effecting this policy. The Draft Land Policy provision that 30% of all land allocations should go to female applicants is being put into effect by setting aside this number, but also allowing women applicants to compete on a level field with men for the remaining 70%. This is seen as the best way to address the traditional imbalances that women have had to deal with in this area for many decades.

5.3 Political will in land administration

Political direction plays an important role in the administration of land because land being the means by which societies advance themselves is a source of power and wealth in all kinds of societies. It has been demonstrated that there are many contentious issues in the Zambian political system and the land issue is no exception. The failure of the Indaba called by government reach agreement on the land issue demonstrates the inherent difficulties in tackling this issue. Within the current Parliament, there seems to be little consensus on the land issue as only two MPs out of one hundred and fifty have submitted views on land issues to the Parliamentary Liaison Committee.

This lack of direction in the political arena is coupled with the absence of a clearly coordinated legal framework among institutions administering the land. This indicates that a need exists for legal reform to bring into line all legislation and institutions related to the land in a robust framework without overlaps. The current system whereby different land parcels are dealt with under different legal frameworks (even where the land in question may lie side by side) creates the impression that there is a hierarchy of titles and that some forms of tenure are less secure. This is a recipe for insecurity particularly among the poor who themselves feel they cannot fully invest where they have no security of tenure but it also puts them at a disadvantage in that they have to work harder to negotiate with financial houses who must be convinced that they are dealing with viable investments before they can risk their funds.

The legal framework related to land must provide adequate safeguards for all but in particular must protect the most vulnerable from marginalisation and exploitation and make them feel that they have a stake in the development of their shelter.

6 Land Policy Review Process

The first draft land policy document postdating the Kaunda era was put together in 1996. Very little public consultation was undertaken when the Ministry of Lands produced this first draft, and the document remained very much an internal affair at the Ministry. When a decision was made to review the policy document, the Zambia Land Alliance (ZLA) partnered with the Ministry of Lands to disseminate the land policy document. With assistance from donor agencies, ZLA provided logistical support for government officials to consult with the general public on the draft land policy. However, the policy as drafted at present is too general as it does not address the real issues of land and its management in Zambia.

To be viable, the document needs to take into account issues of land use, intensity of use and future planning and the relationship between customary and statutory tenure particularly in those areas where there is an interface between the two kinds of land. The allocation of large parcels of land near urban areas for commercial farming, game ranching and other such uses closes off the land for many generations and is likely to cause problems as city populations expand and put pressure upon the available land. Planning for the future and the implications of current land use planning to the future of land use around urban areas needs to be included in the policy draft. In this context it is necessary that the Land Policy Technical Review team works through all the problems currently besetting the land sphere in Zambia to resolve the current impasse and particularly in relation to customary land. This is necessary to create an atmosphere that is neutral and within which all can be allowed equitable access to the available land resource.

In this particular respect civil society has played a key role through the Zambia Land Alliance in facilitating for government to be able to collect views from the general public. Empowering civil society to be a key actor in such processes is a vital part of good governance and government should not see civil society as a rival but rather as an ally in the process of national development.

Public input to the land policy review process has not only consisted of workshops open to the public. Special interest groups have also been brought together to debate the issue. Since traditional leaders form a particularly vital part of the land question, the government has held two workshops at Baluba Motel (a venue between Ndola and Kitwe) for traditional leaders in the Copperbelt region to contribute their views to this process. In addition the Constitutional Review Commission which is taking submissions at the time of writing provides another forum

through which citizens can provide government with proposals on the land policy review. Citizens who have not been able to participate in any of these processes can still contribute to the development of the land policy by sending their views to the land policy review Technical Committee.

In the draft land policy itself, the issue of HIV/AIDS for those who are infected and those who are affected has not been adequately addressed. This issue presents certain dilemmas for a very broad spectrum of the Zambian society and to leave it out of such an important document is a grave injustice to those who are its victims. The draft land policy must give priority in equitable distribution to infected and affected persons, orphaned and vulnerable children in much the same way as for other ordinary citizens.

Under customary tenure, the village headman plays the role of guardian of the land for all under his charge. The draft land policy has not provided for village headmen to allocate 30% of the land under their charge to women. The village level is the one area where traditional norms and practices are very hard to break down. The notion that land is allocated to men and that women use it as allotted to them under their husbands or other male relatives is one that has permeated traditional societies for many centuries and is responsible for the gender imbalances that reveal themselves in other areas of our society.

7 Genesis of the 1995 Lands Act.

The Movement for Multi-Party Democracy (MMD) organised the first land conference in 1994 under the chairmanship of Dr. Remmy Mushota who was chairman of the MMD Land Committee at the time. This first workshop was funded by the World Bank and papers from United National Independence Party (UNIP), the Surveyors Institute of Zambia (SIZ), Dr. Mushota himself and a number of selected chiefs were read at the conference.

The general theme of the conference divided the participants into two camps. One camp was in favour of attaching economic value to land. In a paper read by the President of the Surveyors Institute of Zambia (SIZ), it was suggested that a process of land auctioning be started whereby parcels of land could be auctioned to the highest bidder. The churches, UNIP, and other speakers provided a counter argument which called for caution in dealings in land. The conference agreed on the basic premise of the need to move forward, but no agreement was reached on a common framework on how to deal with the issues that had arisen.

In 1995, efforts were made to draft the provisions of the MMD manifesto into law. However, the public refused to accept the initial draft of the bill. The draft was minimal in terms of the changes proposed to the existing law but the public reaction was adverse because most people reacted against the methodology used to introduce the changes rather than the content of the draft bill itself. This was principally because the level of public consultation was inadequate and little effort was made to bring all the actors on board. The Republican President withdrew the public process but did not actually withdraw government's intention to pass the bill into law as the World Bank had set this as one of the conditionalities the country needed to meet in order to continue accessing financial assistance from the institution. To pass the bill into law the President reintroduced it to Parliament without further consultation just before the House was to go on recess and it was passed without much debate.

Since the law was passed there has been no attempt to systematically document the public reactions to the process that brought the Lands Act of 1995 into being. It is necessary to do this as a way of learning from previous experience. It is also worth noting that since the law was

passed a number of evictions have been perpetrated against some communities and in some cases have included the destruction of houses and loss of personal property.

In addition to the need to document cases of eviction, it is also necessary to document the amount of land that is being taken up by foreign investors. This is an issue of concern in that a lot of land has been taken up by foreign investors and in some cases local people are facing difficulties as a result of these land allocations as they are systematically removed or required to move away from land that they have occupied for many decades as well as the loss of access to common property resources. To avoid future problems it is necessary to undertake an audit of all land allocations to foreign investors so as to get a clearer picture of the situation on the ground.

8 Constitutional Review Process

The Zambian constitution is currently being reviewed by a panel of citizens from all walks of life appointed by the Republican President. The terms of reference of the CRC include, among others, the following which are of particular relevance:

- to examine and recommend the elimination of provisions which are discriminatory in the constitution;
- to examine and recommend to what extent issues of gender equality should be addressed in the Zambian Constitution.

It is noteworthy that the terms of reference say nothing about the CRC examining and making recommendations regarding the place of land in the Zambian constitution. The Zambian Constitution as it stands at present does not give explicit recognition to the land. In view of the importance of the land question in Zambia and as exemplified by recent events in the region, it is clear that the land issue cannot be left to be construed from the property clause which is too general. The fight for independence was a fight for the land rights of the indigenous people of this country. Recent evidence in the great Lakes Region, parts of Eastern Europe and the continuing conflicts in the Middle East indicate that the land issue is an emotive one and one over which nations and peoples go to war to protect their sovereign rights to land. The impression often created that Zambia has a lot of land may be the reason for this complacency in dealing with the issue of land. However, the growth of both urban and rural populations, the ever growing rural-urban drift, the influx of investors in the wake of the liberalisation and privatisation policies of the current government, recent problems in the land reform policies of neighbouring countries and the demise of the middle class following the mines privatisation have led to pressure on available land resources in Zambia. All these are indicators that Zambia is headed for a crisis in its land management if nothing is done to address the issue in a more realistic manner.

8.1 Need for a twofold approach to land in the Zambian constitution.

The Zambian Constitution needs a clause that commits the state to the equitable distribution of land to ensure that every citizen has equal access in addition to giving explicit recognition to the land so as to convert it from being invisible to being visible. In other words it must differentiate between property in general and land in particular.

A good example of such an application of legal principle can be found in the South African constitution which addresses the past legacy of social problems under apartheid and makes

reference to a particular point in time after which all those who lost land under apartheid can apply for restitution of their land.

As it stands, the Zambian Constitution protects the rights of those who already have land. The state cannot repossess land without notice and it is a legal requirement that once notice has been served the one being dispossessed is given the right to object to the states intentions. The state is then legally obliged to take notice of the objections and once the land is compulsorily acquired to pay compensation to the legal owner of the land. If these procedures are adhered to, the state cannot be accused of violating individual rights and freedoms under the constitution. Under these legal safeguards, the state can repossess any piece of land as long as such repossession is in the public interest. The protection clause does not make provision for the equitable distribution of land. It protects the rights of those who already own land but does nothing to ensure that the landless have a right of equitable access to the land.

The issues that must be inquired into at this stage concern the following:

- What is the government's motivation in dealing with the issue of land policy this time round since the same MMD government introduced the Lands Act 1995. Is it an admission of failure in as far as the Lands Act 1995 is concerned?
- What benefits has the Lands Act 1995 introduced to the country and what has the country lost in the interim period in terms of opportunity to move forward?
- The customary system of land ownership is still the dominant tenure system in the country while the modern system of tenure covers a very small proportion of the total land area. In reality traditional tenure is a system of freehold subject to few limitations as it recognises only one instance in which land can be taken away and that is where the occupant has clearly indicated that they are no longer in use and occupation of the land. The implications of this need to be inquired into.
- There is a concentration on solving problems in areas governed by statutory tenure while very little knowledge exists on the traditional systems of tenure. The country is overstressing one system at expense of the other. The implications of this for the future of land policy need to be examined.

9 Challenges for the Future

It is 40 years since Zambia became independent and yet it is clear that there are more problems in the area of land policy now than ever before. It is beyond dispute that the country needs a national convention on land to prepare a document that represents the views of all citizens. The land policy review process has begun to take this forward but a further step may be the tabling of its findings before a national convention which can then chart the way forward with a clear consensus from all sections of Zambian society. To pave the way for this, a number of issues need to be tackled in which civil society organisations can take the lead.

- Simple teaching manuals in local languages must be developed that include records of land related cases for use in paralegal education programs. This is the best way in which to demystify the issue of land for the poor and illiterate.
- Increase the capacity of all to engage in land related issues by way of an understanding of land law and customary law. The principles of equitable tenure in customary practice are positive and need to be understood and applied to the modern system.

- Civil society should take the issue of land rights to the people out doors through radio talk shows, village meetings, mobile cinema/video shows, drama etc.
- Government and civil society should engage village councillors and chiefs to break down traditional gender imbalances by educating them with regard to practices based on gender equality.
- Circular No 1 of 1985 gives 250 hectares as the maximum amount of land that can be allocated in customary land but this is not declared to be an absolute maximum. In light of the growing population and demand for land, this ceiling needs to be re-examined.
- The role of the president and ministers in land administration should be clearly spelled out. The requirement that the president must approve land allocations to foreigners is a clear call to corrupt practices and abuse of the procedure. Civil servants who are permanent officers of government should be left to deal with these issues.
- Local communities must be allowed to benefit from investments in their areas instead of all taxes going to the national treasury.

10 Conclusion

This workshop provided opportunity to Oxfam and its land partners to look back to the work that has been undertaken in the last four years in strengthening local capacity at grassroots level to undertake land advocacy activities for communities in the peri-urban areas of Kitwe, Chingola, and Mufulira. It was agreed that a strategic framework be developed under the themes **“Ensuring the equitable distribution of land”** and **“Ensuring the protection of land rights under statutory and customary tenure”**. This outcome of the workshop was to be implemented through a working committee made up of representatives from the National Land Alliance and the local land alliances on the Copperbelt as well as the Copperbelt Land Rights Centre and Oxfam.

The workshop culminated in the launch of the Copperbelt Land Rights Centre at the Kitwe Civic Centre which occasion was graced by the Deputy Minister of Lands Hon. Dr. Sipula Kabanje. The launch included the handover of a Toyota four-wheel drive vehicle to the Coordinator of DECOP which organisation is temporarily housing the Copperbelt Land Rights Centre. The work of developing the strategic framework for land issues on the Copperbelt was continued in the weeks following the launch. It is expected to generate a plan of action for the next three years which will include the operationalisation of the activities of the Land Rights Centre.

11 Recommendations

Property Rights:

Recognizing that the right to hold property which includes land is a fundamental human right, the constitution in relation to land rights must set out in general and non-exclusive terms, provisions that ensure protection of the current generation and those owning property. The provisions must further provide for the needs of future generations. The Bill of Rights must have a separate provision on land that does not hide it under property rights.

Women’s Rights:

While a woman may have the legal right to inherit property, this may remain merely on paper if the claim is not recognized as socially legitimate or if the law is not enforced. There is a distinction between ownership and effective control. While it is sometimes assumed incorrectly

that legal ownership carries with it the right of control in all its senses, in fact, legal ownership may be accompanied by restrictions on disposal, where a married woman needs her husband's consent to alienate the land she legally owns. There is need to distinguish between rights vested in individuals and those vested in women. The case may be even deeper where customary law is in effect.

The social and economic implications of this are far reaching. It is important to recognise that, although human rights are recognised, and respected in the Constitution, Zambia must go a step further in ensuring that women's rights are respected. As it is apparent that our cultural heritage in this regard has a greater influence on the position of women in society, our concern is with women having effective and independent rights in land, effective rights being rights not just in law but also in practice; and independent rights being rights that women enjoy in their own capacity and independent of those enjoyed by men.

- Article 23 in the constitution is not adequate to provide further protection for women but must ensure it cannot be twisted to disadvantage women especially where customary law is concerned.
- A separate provision for gender rights be made in the bill of rights.
- The 30% access for women to land must be upheld, or raised, to correct the status quo. Specific measures need to be put in place to ensure this. A further proposal is that 10% be given to special cases, over and above the 30%.

Vestment and administration of land:

All land in Zambia be vested in the state and the people of Zambia in perpetuity and this be recognised and enshrined in the supreme law of the land.

National Land Council:

A national land council be established whose features should be the following:

- **Composition**
 - Members drawn from a wide spectrum of stakeholders and appointed by parliament
 - The following must be represented
 1. Child headed households
 2. Persons with disabilities
 3. Youth groups
 4. Female headed households
 5. Traditional leaders
 6. Commercial and industrial sector
 7. Civil society
- **Powers and duties**
 - To advise the minister and assist the community in general with regard to matters concerning sustainable land ownership and access on an equitable basis.
 - Monitor compliance with the constitution and other policy regulatory frameworks.
 - Exercise any other powers conferred to it by the minister in accordance with the terms of reference.
 - Facilitate constitution of Lands Tribunal for ratification by parliament at national level/ and full council at local level.
 - Monitor utilisation of land development funds ensuring it supports the neediest.

- Facilitate recruitment of Commissioner of Lands in consultation with parliamentary land committee.

Local land council boards

Following on the decentralization policy, the devolution and deconcentration of powers from central to local administrations must be upheld. In line with this, **local land council boards** which should be regulated through a statute in both customary and state land should be established, whose composition should be as above

Conversion of customary land to leasehold land.

The current law provides that customary tenure can be converted to leasehold tenure, upon an application to the chief, under whose jurisdiction the land lies. Having sought and received permission, the land is converted to leasehold tenure, and thereby reverts to the state. The mechanism is straightforward, however, once the land has been converted to leasehold, no mechanism exists to convert it back to customary land should the need arise. This in effect, means that all land that is converted, shall forever remain within the domain of leasehold tenure, thus depriving future generations of customary land, which is a birth right. Our submission therefore to the distinguished commission is that the constitution must have a clause that states that all land within customary land once repossessed must be re-converted back to customary land in order to maintain the customary tenure system.

- The conversion of customary land to lease hold tenure for investors, or other applicants, must be prohibited, and instead, a new system of licensing be instituted, which gives the said applicant a period of tenure, upon the expiration of which, it reverts to the people. This must also be on the premise that developments that take place must begin within the area where the land is situated, and employment creation be guaranteed.
- A clause be provided in the constitution that clearly distinguishes individual investors from corporate investors when alienating land to these two different investors with regard to hectarage.
- A clause be further provided in the constitution that upholds individual rights to own land from the age of 18 and above. Those who are under the age of 18 have the right to own land in trust.