

Innovative Developments In Zambia Requirement for a Land Policy Document

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If a person wants to hold land on title in Zambia, the place to begin with is the Lands Act.

The Lands Act has been a very controversial piece of legislation since it was enacted in 1995. The policy under the Lands Act is one of vesting the Land in the office of President of the Republic to hold it for and on behalf of the people of Zambia. Section 5 is as follows:

(5) All land in Zambia shall, subject to this Act, or any other law be administered and controlled by the President for the use or common benefit, direct or indirect, of the people of Zambia.

All interests in Land in Zambia therefore derive their beginnings from the office of President. The issue that this state of affairs raised has been to do with whether this arrangement of vesting the Land in the office of President is beneficial to the people of Zambia.

A section of the stakeholders have felt that traditional lands and taken to extremes that all land should be vested in the chiefs.

The chiefs are the oldest authorities on the Land. And they appear to be in control of the greater percentage of the Landmass in Zambia. About 96 % of the total land mass of Zambia is traditional land. And this land is supposed to be under the Chiefs. It has therefore seemed logical that the Land should be vested in the Chiefs.

When the white settlers came in, they created a category of land and called it crown land. This is the land that they occupied, and is the land that is today referred to in the Lands Act as state land. This land was about 4% of the total landmass of Zambia. Advocates of vesting land in the chiefs taken to extremes have advocated that even the state lands should also revert and vest in the Chiefs.

Taking into account the concerns raised Government decided carry out nationwide consultations to build up consensus on how land will be administered in Zambia. The results of the consultations will form the Land policy document. This document is intended to be a one-stop place where any one can find out how the people of Zambia have decided to run their affairs in relation to land.

This is one innovative development in Zambia out of which other innovative developments in relation to land will spring from.

The office of President holds all Land in Zambia. It is only natural to expect that if a person wants to acquire land in Zambia he must apply for it

from the President. This is particularly true where one wants to hold Land on title as opposed to holding it under traditional tenure.

In that regard section 4 of the Lands Act reads

(4) Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure----

without taking into consideration the local customary law on land tenure which is not in conflict with this Act;

without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;

without consulting any other person or body whose interest might be affected by the grant; and

if an applicant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated.

Fear was expressed during the consultations that the office of President wields too much authority.

- q Concern was expressed that the office of President is not specialised and may be bound to make decisions that may be in conflict with professional opinion.

- q An irresponsible President may one day allocate all the Land to foreign investors. This would leave the indigenous peoples landless and can also breed racism.
- q An irresponsible President can give the land only to the rich and create a chasm between the haves and have not thus creating a good recipe for future conflicts.
- q It has also been said that this office does not have the capacity to satisfy the demand for Land.

But in practice the President has delegated his powers to make and execute grants and dispositions of land to the office of Commissioner of Lands who receives policy guidelines from the Minister responsible for land. This is contained under the Land circular Number 1 of 1985

Thus as an office, the Presidents powers to give land are very limited. In fact the only power that the President can directly exercise in relation to Land is only power to compulsorily acquire Land under the Lands Acquisition Act whenever this is in the Public interest. But the use of this power is not arbitrary. The affected persons must be compensated for the loss of their Lands.

The fears expressed about the President wielding too much power reveal that the Lands Act can be quite misleading in so far as it leads individuals to state house to have their land matters resolved. There is a

need to have a comprehensive document which will be user friendly in making the people of Zambia know how to acquire land on title by filling in the gaps left by legislation. Thus the consultative process has itself demonstrated the need of a land policy document.

There is also the need to carry out an education campaign so that the stakeholders can make a contribution from a point where they have knowledge as opposed to the situation where they contribute from what they perceive to be the facts. The fact that Land is the resource from which we get all our livelihood from the cradle to the grave justifies the problem that we may get into in letting the people know about their rights to land and letting them participate in deciding how it will be administered. Zambia has decided to take this course.

It is also noted that all the laws affecting land are not derived from one document. Different stakeholders are governed by different legislations. There are also different departments that deal with land. For example Land is surveyed under the Land Survey Act and by the Survey department. The Lands Act governs the Commissioner of Lands who heads the Lands Department. Land that is allocated by the Commissioner needs to be registered this must be done under the Land and deeds Registry Act under the Lands and Deeds Department. These divisions are not bad but may not be known by the people that they are supposed to serve. The Government intention is to simplify matters after the consultations with all the stakeholders, by coming up with a land policy document out of which any

person will readily see from one document what the Government policy is in relation to land.

When it specifically comes to dealing with customary Lands the powers of the President are restricted by the Lands Act. Customary Land tenure is recognized but persons who are in possession of traditional Lands are free to convert their holdings to land held on title. In that regard Section 8 of the Lands Act reads as follows:

8. (1) Notwithstanding section seven, after the commencement of this Act, any person who holds land under customary tenure may convert it into a leasehold tenure not exceeding ninety-nine years on application, in the manner prescribed, by way of----

a grant of leasehold by the President ;

any other title that the President may grant;

any other law.

(2)The conversion of rights from a customary tenure to a leasehold tenure shall have effect only after the approval of the chief and the local authorities in whose area the land to be converted is situated, and on the case of a game management area, and the Director of National Parks and Wildlife Service, the land to be converted shall have been identified by a plan showing the exact extent of the land to be converted.

(3)Except for a right which may arise under any other law in Zambia, no title, other than a right to the use and occupation of any land under customary tenure claimed by a person, shall be valid unless it has been confirmed by the Chief, and a lease granted by, the President.

The roles of the Chiefs, and Councils, and the identification of the land by a plan showing extent of the land to be converted have all been questioned by stakeholders.

The Chief's Consent

It was observed that the letter by the chief which authorises traditional land to be converted or allocated on title is personal as opposed to being an institutions letter and is therefore sometimes disowned by Chiefs succeeding in title. This has created problems for investors on traditional land. It was felt that the Chief's consent must have been also enduring given the enduring nature of Land,

Chiefs have sometimes appended their signature on the sight plans which they sometimes do not understand. This has sometimes resulted in they authorising more land to be given on title than intended. It was felt that there is a need for the allocation of land by Chiefs to take professional dimensions.

The institution of chief has also appeared to be biased against women and the youth. But these biases are ingrained in some customary beliefs. This shows a need for activity to counteract retrogressive customary beliefs.

It is customary to sometimes take a gift to their royal highnesses when going to visit them. But in some cases stakeholders complained that in the case of land these Royalties given to Chiefs have at times given the impression that the Chiefs are selling the Land. Some persons have been tempted to say that this is corruption. Some "purchaser" of Land from Chiefs have assumed powers of an owner of the land and have created problems for other users of the same land.

Other questions have been to do with being entitled to demand tax from the Lands within their Chiefdoms after all they are involved in Land administration and their chiefdoms should be able to be seen to benefit from whatever investment that they permit within their areas.

The foregoing has shown that the beneficiaries of the current Land administration where traditional land is concerned feel that it is still far from being satisfactory. It is necessary to be innovative and bring Land administration on traditional lands to terms with present day realities.

The Interview Of Applicant By The Council Continue?

For state land or traditional land to be allocated on title there must be a recommendation from the Council

Some stakeholders have said that interviews with Councils follow their meetings that sometimes take a long time.

Councils also have veracity for taking into account legally irrelevant considerations e.g. whether a woman is married or the political party of the applicant. Further their work is a duplication, in the case of traditional lands of what the Chiefs have already done in recommending an applicant, and of what the Commissioner of Lands will do thus needlessly elongating the process for one to acquire title on newly created lands.

Once the whole Council has deliberated, the Commissioner of Lands can technically overrule its decision. The Commissioner of Lands is authorised to substitute the Council's decision with his own.

Zambia has vast lands that still need to be developed. The system of making these lands available through the use of the chiefs and councils also appears to still need further development by making it shed off unnecessary procedures for it to satisfactorily deliver the Land.

Holding of Land

The end product of holding Land allocated by the President are title deeds. These consist of

- a lease agreement entered into between the Land owner and the Commissioner of Lands on behalf of the President.
- a numbered sketch plan or survey diagram approved by the Surveyor General in terms of the Land Survey Act, and
- title issued by the Registrar of Lands and Deeds, and

The holding of land under title deeds gives individual responsibility to the titleholder to develop it. It also enables the holder of such land to use the title deeds as collateral in borrowing money from money lending institutions.

But it has been argued that to have the land surveyed is an expensive exercise which an ordinary villager wanting to convert his holding to a holding on title can not afford. The system must be made affordable for the ordinary person for whom it is designed to serve.

As stated at the beginning the Lands Act has been a controversial piece of legislation out of which one cannot get a complete picture of how land is dealt with in Zambia. But we are in the process of coming up with a land policy document which is intended to give a comprehensive picture of how land in Zambia will be dealt with.