Land Management in Zambia: Reflections on Policy and Practice

Submitted to the Parliamentary Committee on Agriculture, Lands and Natural Resources

by the Zambian Governance Foundation

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1.0 BACKGROUND

Documented and enforceable rights to land and natural resources, alongside clear and transparent administrative procedures, are important to incentivize secure, long-term productive investments for rural, peri-urban, and urban populations and for smallholder farmers and large business alike. Secure land and resource rights are fundamental across development sectors and are particularly important for vulnerable populations. Women often lack clear resource rights, limiting their economic options, and in the case of divorce or death of a spouse, women and their children are vulnerable to losing access to land and other family assets. In some cases, there has been resistance to allocate land to HIV+ positive and disabled individuals who are not perceived to be able to make long-term investments on the land, thus compounding their vulnerability. The documentation of rights (though not necessarily leasehold title) is a prerequisite for households to connect to many public services and is therefore critical to Zambia’s planning and development goals of expanding access to electricity, water, and sanitation in both rural and urban areas. In rural landscapes, secure access to agricultural, grazing, and forest lands, as well as water sources, is important for building resilient livelihoods and encouraging long-term investment by individual farmers. Communities who do not have rights to commercialize the forest or wildlife resources that surround their villages have few incentives to manage them sustainably. This brief describes key issues related to land management and associated opportunities for strengthening land tenure security across all sectors of the Zambian economy.

Land in Zambia falls under two parallel tenure regimes with the first one being the customary tenure, which is managed through largely oral processes by traditional authorities mainly through a hierarchy of chiefs, advisors and village headpersons under the 288 chiefs. The second system is known as the state leasehold tenure system, which operates through leaseholds of up to 99 years under the Ministry of Lands and Natural Resources (MLNR).

Historically, land in Zambia was perceived to be in abundance and widely available. However, changing demographics, a growing middle class, and increased allocation of land for investment opportunities are resulting in pockets of land scarcity and land conflict in some cases. These dynamics are compounded by a lack of documentation, transparency, and robust administration in both state land and customary land systems. As a result, land conflicts are common across the country among households, between households and traditional leaders, between government and traditional leaders, and between private enterprises and all of the above stakeholders.

2.0 CURRENT CHALLENGES IN THE CUSTOMARY AND STATE LAND SYSTEMS

The current national discourse on land issues largely focuses on the lack of transparency in land allocation and administration on both customary and state lands, which affects stakeholders from subsistence farmers to large investors. This ambiguity creates opportunities for some vested interests.

At independence, 94% of Zambia was under customary land, with state land largely restricted to municipalities, protected areas and forests, and areas bordering railroad lines. Since 1995, the Zambian legal framework has promoted the conversion of customary tenure to state-managed leaseholds tenure through a one way, non-reversible process. Over the past twenty years, conversion has been met with significant distrust by chiefs, many of whom see conversion as a means of diminishing the power of traditional authorities. On the other hand, government and the media have portrayed chiefs as “selling customary land.” These arguments reveal common challenges in the customary and state land systems namely:

- The lack of transparency in land allocation and decision-making within both the state and customary land systems.
- The state and customary land systems lack methods to share information with each other.
As a result, it is unknown how much land has been converted and who the main actors have been in this conversion process (smallholder farmers, traditional authorities, national or international investors). Estimates suggest that over 10% of Zambian land has been converted or is in the process of conversion (IAPRI). A large amount of this area is likely only partially converted to state land, as many land holders have gained approvals from traditional authorities and local councils (who believe the land to be converted), but have not completed all legally required procedures with the Ministry of Lands (who still believe the land to be under customary management) for a variety of reasons, including taxes, administrative fees, and lack of access to Ministry of Lands offices, which are confined to provincial capitals and a few cities. This lack of information on the status of land allows stakeholders to continue to place blame on others for land conflicts and disputes.

3.0 PROCESSES AND PROCEDURES IN LAND ACQUISITION AND LAND USE CONTROL MEASURES

Traditional authorities have long been responsible for allocating land within chiefdoms through a legally recognized customary administration system that includes chiefs, headpersons, and chiefs’ advisors (indunas). Structures exist for traditional authorities to vet applicants and subsequently allocate land, yet these processes are largely undocumented and are not downwardly accountable to local community members. Though traditional authorities currently lack transparency or tools to document and administer land, they possess a cultural legitimacy and a right to manage land on behalf of the President. Given the legitimacy and the strength of customary authorities in Zambian culture and the difficulty faced by central government in reaching stakeholders in rural lands, the active engagement of traditional institutions is indispensable in land administration.

As traditional authorities are increasingly allocating land to individuals from outside the village or chiefdom structure, government and the media have accused chiefs of transferring large areas of land to foreign and national investors in exchange for lavish gifts, akin to “selling land.” Critics argue that chiefs are displacing their subjects, who do not have any documentation of their rights to specific pieces of land. The conversion process does require District Council and Ministry of Lands approval, and there are some minimal (though largely ineffective) procedures in the process to document that conversion does not undermine historical land rights (SI 89 of 1996, the Lands (Customary Tenure) (Conversion) Regulations).

The current land administration system, as well as the application of the Decentralization Act, is perceived by many as creating ambiguities between the roles and functions of traditional authorities over land and people within chiefdoms. While the Decentralization Act has placed more autonomy at the District level, to date, the engagement of the Districts has largely been focused on municipalities. Rather unfortunately, the District and Ward boundaries do not always overlap easily with Chiefdom boundaries, further complicating coordination of service provision in Chiefdoms. However, the Patriotic Front (PF) Manifesto recognizes this weakness and calls for the creation of Chiefs Councils at the District and Provincial levels to enhance coordination with government. The Decentralization Act, as well as the Urban and Regional Planning Act of 2015, also empower District Councils to play a substantive role in rural development issues, including land use and management. As Districts begin to play these roles and as municipalities expand their service delivery and management into peri-urban customary land, numerous conflicts have emerged. As decentralized capacities build, these conflicts will likely spread further into rural customary land and will continue to be conflict hotspots in peri-urban areas.

4.0 RESOURCE RIGHTS

Zambia’s framework for timber, wildlife and minerals largely discourages sustainable management of these resources, as the local customary landholders (households or communities) do not have commercial rights to these resources, yet they do have rights to their agricultural production if they remove trees and/or wildlife and replace these with crops and livestock. Emerging opportunities for communities to establish rights over forests are encouraging, and similar approaches should be explored with respect to wildlife conservancies.
In comparison to its neighbours, Zambia is behind with respect to community wildlife management. Namibia, for example has over 80 community conservancies with more than 15% of its population as members benefiting from these wildlife conservancies. Zambia’s wildlife management framework lacks adequate incentives for sustainable management. For example, its seven year hunting licenses are not renewable. This encourages operators: 1) to not take a longer-term view with respect to investment in the chiefdoms; and 2) to hunt to the absolute limit (if not beyond) of their quota as they will not benefit from increased populations in the area after seven years.

At the same time that Zambia examines how its legal framework around land creates incentives or disincentives for urban, peri-urban and rural development for the poor and vulnerable, private sector, and Zambia’s emerging middle class, there is a need to examine the legal framework around the resources on the land.

5.0 RECOMMENDATIONS:

Land Policy

The drafts of the National Land Policy have evolved dramatically in recent years and the most recent policy draft (seen during a pre-validation workshop) reflects a strong compromise between different stakeholder groups. This is a great achievement, but its adoption is still likely to cause controversy. There is a need for the public and key stakeholders to understand the evolution of the policy and the trade-offs that have been considered.

In order to be actionable and realize a document acceptable by all stakeholders, there is a need to:

1. Allow for stakeholders to provide comments and discuss the policy draft publicly over a reasonable amount of time. The Ministry of Lands may not wish to make dramatic changes to the policy, but it would be well received to allow for input and for the Ministry to produce a public document to describe why particularly policy positions have been taken.

2. Develop a list of those issues, which are technical in nature and need to be resolved through technology, consultants and contracting, and a list of issues, which are more political in nature and require decisions to be taken.

3. Structure programmes and activities as pieces of a puzzle, rather than a single “take it or leave it” overall puzzle, and build CSO, private sector, CP and government partnerships to contribute to the puzzle.

National Land Titling Programme

Recognizing that the systematic titling of state land is a major priority of the current government, but that 1) existing processes and human capacities within the MLNR are not equipped to handle the volume of documentation expected and 2) technical and financial assistance is required to carry out the process in the desired timeline, there is a need for a number of steps to be taken:

1. Examine status of existing documentation
2. Prioritize areas for systematic titling
3. Develop work flows for titling programme on different types of land
4. Amend processes within the MLNR for issuing titles
5. Amend legislation, statutory instruments and regulations and internal processes, including through the following:
   a. Reduce survey accuracy in rural areas
   b. Allow for orthophotos to be used to register boundaries
c. Move to general boundary principles, whereby fixed boundaries are only surveyed and beaconed on demand or in specifically planned areas, and general boundaries are used in all other cases

6. Ensure safeguards

7. Eliminate fees for systematic titling

8. Coordinate with Cooperating Partners on other financing mechanisms to support implementation

9. Simplify the procedure for first time registration of land, including reducing or eliminating the fee associated with acquiring a title, which acts as a barrier.

**Land Administration**

Before embarking on full scale national titling, ensure that the Ministry of Lands has systems in place to manage the full set of new data, rights and responsibilities associated with millions of new titles. The process of systematic titling, which can be done through a project based approach, is significantly different from the day-to-day administration of multiplying by 20 the amount of transactions both annual payments and sales that may occur.

**Revenue Generation**

1. Improve the ease of collecting ground rates through collaboration with service providers, such as banks and mobile money stations

2. Consider revising ground rates particularly for high-value residential plots

3. Consider contracting out collection of ground rents through a revenue share mechanism with private companies and use mobile tools for tracking compliance

**Customary Land Documentation and Community Land and Resource Rights**

1. Promote the documentation of customary land rights at a household and family level through the use of customary land certificates.

2. Promote recognition of community rights to forests through finalizing the Statutory Instrument for Community Forestry.

3. Integrate customary land documentation information into National Spatial Data Infrastructure

4. Institute a registry for customary land rights to be available at the national level but managed at the chiefdom and district levels

5. Provide training to chiefs, indunas and headpersons on their rights and responsibilities related to land.

**Wildlife Rights**

1. To increase populations of wildlife in game management areas: Consider renewable hunting concessions (beyond seven years) to encourage long-term sustainable management of wildlife populations. Make concession renewal contingent on stable or increasing wildlife stocks

2. To increase private ranching for game meat, consider eliminating annual fees or license on game animals raised for meat, and treat them as livestock are treated

3. To increase opportunities for community game ranching, particularly on grassland areas, revise wildlife regulations to open up opportunities for unfenced game ranching for animal species such as antelopes

**Large-scale Investments**
1. To reduce levels of conflict and displacement that emerge around large-scale land investments: Pilot guidelines for responsible investment in large-scale agriculture that seek to identify legitimate stakeholders prior to alienation or leasehold and follow international best practices on relocation or compensation associated with the investments

2. Prior to establishment of farm-blocks, resettlement areas, development of multi-purpose zones, carry out a land documentation and land-use planning exercise to better understand the existing rights to land and resources

Peri-urban Land
1. Place the de-gazetting of national forests under strict review
2. Engage in land use planning exercise in cooperation with chiefs and local communities to understand
3. Develop guidelines around development and expansion of council land
4. Allow customary landholders to register their land and receive market value

Urban Land
1. Eliminate provisions in local government that allow council members to pay themselves in land
2. Engage urban planning and land tenure experts to fully develop a programme of action to address urban land tenure issues, particularly related to different types of land in urban areas from residential to commercial to informal settlements

Coordination between Ministries
Ministry of Local Government and the Ministry of Housing and Infrastructure Development each have an immense amount of information that would be of value to share and coordinate on. If the National Titling Programme is to be successful, it will require the sharing of data and collaboration between local councils, line ministries and MLNR. This requires both political and technical cooperation. This is particularly important with respect to launching the provincial and district Land Commissions, as envisioned under the new Constitution and forthcoming policies

Access to Information, Relationships and Capacities
1. At the same time that government is embarking on a land audit and other approaches to understand the status of Zambia’s land uses and land classifications, there is a need to make this information available to districts and chiefdoms across the country to support planning in rural areas and promote rational planning as Zambia’s district centers are created and expand naturally.
2. However, access to information alone is not adequate, mechanisms to train key stakeholders in Zambia on their rights and responsibilities related to land and the checks and balances therein need to be explored. This includes supporting Chiefdom training for new Chiefs for example at Chalimbana local government school. Creating bridges between traditional leaders and local and national government is crucial.
3. As much as creating relationships among government levels and chiefs is important, it is equally important to support chiefs to learn from one another, to share policy and to represent one another. The recreation of the House of Chiefs is admirable, but there is need to share information from the House back to the provinces and districts.