



## **ZAMBIA LAND ALLIANCE**

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*“Land is Life”*

### **Submissions to Constitutional Review Commission**

**By**

**Zambia Land Alliance**

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## **1.0 Introduction**

The Zambia Land Alliance (ZLA) is a network of civil society organisations working with and advocating for land rights of the poor. The Alliance was formed in 1997 following the Zambian Government's land reform processes which started in the early 1990s.

In 2002, civil society organisations<sup>1</sup> through Zambia Land Alliance came together and formed the Civil Society Land Policy Review Committee. While working under the Zambia Land Alliance, the committee's main purpose was to spearhead civil society's participation and input into the review of the Draft National Land Policy being undertaken by the Ministry of Lands. This committee embarked on a series of consultations from 3<sup>rd</sup> September 2004 to 19<sup>th</sup> November 2004 and held meetings at the Offices of the Zambia Land Alliance located at 4<sup>th</sup> Floor of Godfrey House, Longolongo road, Lusaka, for the purposes of coming up with these submissions. We now make our submissions as follows:

## **2.0 SPECIFIC SUBMISSIONS:**

### **2.1 Land as a Right**

We, the Civil Society Land Policy Review Committee of the Zambia Land Alliance believe through our experience, that land is the primary resource that ensures sustainable livelihoods for most poor men and women in Zambia. The poor depend on land for food, as a place to sleep on or somewhere to conduct a small business on. Land is also their source of identify, social status, and power. Land also provides an opportunity for employment and is also the best security against poverty. To us, land is what technology or market shares are to the industrialized nations. Land is our wealth and every government's common good intentions must be to equitably distribute its wealth among its people.

It is for this noble reason that the Zambia Land Alliance attaches great importance to land advocacy, with a motto "*land is life*". We therefore would like the next Zambian constitution to promote equitable and efficient distribution of this important resource.

The current constitution does not adequately protect the poor on customary land. In addition, the constitution does not promote equity in

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<sup>1</sup> See list at the end of this submission.

access, control and ownership of land. This is evident in many cases where people have been displaced from their ancestral land to pave way for rich people who used their influence to acquire the same land with the backing of the law. Such land holders prevent communities from accessing products and services that were previously obtained from the allocated land such as medicines, firewood, grazing their animals, hunting and holding ceremonies. Thus there is conflict over use of resources between communities and investors. Further, poor people are being deprived of their rights to access water resources because rich people have acquired land along major rivers and fenced it off.

Further, we acknowledge that the current constitution recognises one's rights to land under Article 16 - "property rights". We recognize that the right to hold property which includes land (our issue of focus) is a fundamental human right. We however observe that this provision is not only inadequate but is also put in technical language that is difficult for the ordinary person to understand. In addition, Article 16 has such a broad sweep that it subsumes 'land' within 'property'.

Regarding evictions of poor people, may we refer the distinguished Commission to the **South African Constitution**, which in Article 26(3) prevents any person from arbitrary eviction from their land. We further observe that some individuals and companies leave their land idle for too long while the poor do not have land for survival. The poor are forced to live on such pieces of land for many years without being disturbed, but are later forcedly evicted from such land.

**To this effect we submit to this Commission that the new Constitution provides an explicit clause in the Bill of Rights with a focus on land to make this very distinct as core to sustainable development. In doing so the constitution must clearly state that every Zambian citizen has a right to land and further state the mechanism under which this provision will be regulated to ensure equitable distribution of land so that this resource does not fall in the hands of few individuals at the expense of the poor majority.**

**Additionally, we demand that there be a clause in the constitution which states that "a law shall be passed to provide and ensure equitable access and distribution of land to the Zambian citizens."**

**Furthermore, the constitution should provide for the right of occupancy and protection for people who have lived on a piece of land undisturbed for ten (10) years or more.**

## 2.2 Women's Rights to Land

Distinguished Commissioners, it is clear that in both customary and formal tenure system, women are marginalised in accessing, owning and controlling land in Zambia. Records at the Deeds Registry of the Ministry of Lands confirm the patriarchal nature and pattern of men's dominance in land ownership in Zambia. This continues to happen despite women being the main producers of food on the land.

Moreover, although human rights are recognised, and respected in the Constitution, our constitution does not provide for affirmative action to address the needs of women, people with disabilities, HIV/AIDS infected people, and other disadvantaged groups with regard to land. Instead, while seeking to protect women's rights, Article 23 of our constitution does not absolutely prohibit discrimination. It allows discrimination in the private sphere on the basis of marital status, sex and distribution of resources. Further, discriminatory customary and personal laws such as those relating to marriage, divorce, burial and devolution of property are allowed. Therefore since most customary laws are discriminatory against women, women do not enjoy the benefits of this clause.

May we request this distinguished Commission to take a leaf from the **Namibian Constitution** on this important issue of women's rights. **Article 23 (3)** of the Namibian Constitution clearly states thus: "*... it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.*"

Further, **Article 7 (4)** of the **South African Constitution** categorically puts it that "*No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*"

**Our submissions to this Commission therefore are that:**

- **Article 23, clause (4)(c) and (d) of the current constitution must be repealed to ensure there is no discriminatory clause that can be twisted to disadvantage women.**
- **A separate provision for rights of women be made in the Bill of Rights.**
- **In order to correct the current gender imbalance in accessing, owning and controlling land, the Constitution must provide for**

**affirmative action – measures that encourage women’s access, ownership and control over land, and participation in decision making processes.**

- **We urge this distinguished Commission to take a leaf on the Namibian, the Ugandan and the South African Constitutions as these elaborate more on women’s rights.**

### **2.3 Vestment and administration of land**

Distinguished Commissioners, ALL land in Zambia is vested in the hands of the President for and on behalf of the people of Zambia. The Commissioner of Lands acts on behalf of the President in implementing this provision. However, vesting of ALL land in the President, opens the administration system to abuse and to the disadvantage of the people whom the laws purport to protect.

If we may refer the distinguished Commission to the **Ugandan constitution** over this matter. The Ugandan Constitution in **Chapter 237 (1)** clearly states that *“Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.”*

**In this regard, we submit to this Commission that all land in Zambia be vested in the state in perpetuity. We wish to further propose that there be a provision to establish a National Land Council to deal with matters of land, with district and community/village committees as its agents. This is in line with Zambia’s Decentralisation Policy.**

**Further, the National Land Council should comprise representatives of persons with disabilities, youth groups, child headed households, people living with HIV/AIDS, women’s movement, traditional leaders, Parliament, private sector, academic institutions, the church, relevant Government departments and any other relevant institutions.**

### **2.4 Conversion of customary land to leasehold tenure**

Distinguished Commissioners, the current land law (the Lands Act, 1995) provides for conversion of customary land to leasehold tenure, upon written consent from the chief under whose jurisdiction the land lies. However, once the land has been converted to leasehold tenure, no mechanism exists to convert it back to customary tenure 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. Further, allowing only one person (the Chief/Chieftainess) to consent conversion of land opens that to abuse.

Further, some institutions and individuals have too much land and they continue to acquire more at the expense of others. There is no limit as to how much land they should acquire.

Additionally, many young people are denied land because they are below 21 years old, the minimum age for qualification. This is so despite the major role that many young people are playing today in looking after families. Further, it must be noted that the majority of people in Zambia are youths.

**We submit therefore are that:**

- **The conversion of customary land to leasehold tenure must only happen with the express consent of all adult women and men in a particular community at a decision taken in a public meeting whose minutes are publicly available.**
- **Second, the new constitution must provide for passing of a law that limits the size and number of parcels of land each individual or institution should have.**
- **We further submit that a clause be provided in the constitution that upholds individual rights to own land at an appropriate age less than 21 years. This will facilitate young people to own land in that with the coming of HIV/AIDS, more and more are currently looking after families.**

## **2.5 Land and the Environment**

Distinguished Commissioners, most practices in the agricultural, mining, forestry and tourism industries in Zambia today do not promote environmental protection hence lead to land degradation.

**We submit that our constitution provides for Parliament to enact a law that provides for measures intended to protect and conserve the natural environment from destruction through pollution and unsustainable land use practices for the benefit of both the current and future generations. The law should further promote a broad based participatory framework in which the state, private sector and**

**communities are involved in partnership in the management of land and the environment.**

## **2.6 Land Information**

Distinguished commissioners, the current land administration system is not transparent and accountable enough to the public. Procedures for acquiring land are too long, cumbersome, complicated and costly to the poor. Many people do not know where to go when they want to acquire land or have their dispute resolved. They are not told who has been offered land because relevant government institutions do not provide such information.

1. Catholic Commission for Justice Development and Peace (CCJDP)
2. Community Based Natural Resource Management and Sustainable Development (CONASA)
3. Environmental Conservation Association of Zambia (ECAZ)
4. Green Living Movement (GLM)
5. Integrated Rural Development initiative (IRUDI)
6. Land and Development Association (LADA)
7. National Association for Peasant and Small-Scale Farmers (NAPSSF)
8. PANOS Southern Africa
9. Programme Against Malnutrition (PAM)
10. Steadfast Action Foundation (SAF)
11. Transparency International-Zambia (TIZ)
12. Women for Change (WFC)
13. Women in Law in Southern Africa (WLSA)
14. Zambia Alliance of Women (ZAW)
15. Zambia Association for Research and Development (ZARD)
16. Zambia Civic Education Association (ZCEA)
17. Zambia Land Alliance (ZLA) – Coordinating body