

“Land Is Life”

**REVIEWING, REFORMING AND REVITALIZING LAND
POLICIES:**

The need to engage various Stakeholders

**Experiences and Key Lessons Learnt from the Land Policy
Review Process in Zambia**

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1.0 Introduction

Land is an important primary resource that many of people depend on for their livelihood. It provides the means for shelter, food, socio-economic status, income and power for the survival of the majority people. Land is therefore, a critical resource necessary for the country's development and poverty reduction and this is the reason why Zambia Land Alliance champions its advocacy programmes with a motto '*Land is Life*'.

Reforms involving land have implications on the social, economic and political status of any given country and have varying levels of impacts among different stakeholders. As such, land policy reforms or reviews are vital means of securing the broader objectives of social, political and economic justice to achieve sustainable development.

To succeed in achieving this, governments with their mandate to formulate policies should build on and respond to the concerns of the various non-state actors or key players such as the civil society, private sector, traditional leaders including minorities and marginal groups. Adopting a coherent, legitimate and socially acceptable approach of policy review that offers diverse solutions to problems and concerns of various actors should follow this. This is because the various key players have different interests in the reforms and that land reforms affect them differently. Hence the need for their active participation in order to take into consideration the various interests and build consensus on conflicting interests.

In Zambia, the Government is currently reviewing the national land policy to address social, economic and political injustices associated with land delivery in the country. These injustices have been caused by different factors among them the historical factors, political changes and macro-economic policies adopted by the government.

This paper aims at sharing the experiences and lessons learnt in the multi-stakeholder land policy review process in Zambia spearheaded by the Ministry of Lands and Zambia Land Alliance, a consortium of NGOs that advocate for fair land policies and laws.

The paper begins by giving a brief overview of the historical perspectives of land policy reforms and review processes in Zambia. The paper also gives highlights of the current land policy review process, in terms of approach, roles of non-state actors and how the interests of various key stakeholders are being addressed. The paper also highlights some experiences, challenges and key lessons learned in the land policy review process in Zambia.

2.0 Brief Historical Perspectives of Land Policy Reforms in Zambia

2.1 *Pre-colonial Land Tenure*

Before Britain colonized Zambia, land was under the traditional leaders and was held communally according to families or clans. Land at this time was under the control of traditional leaders (tribal chiefs) who administered the land in accordance with their respective customary laws.

2.2 *Colonial Period*

The coming of colonialism saw the division of the country into three categories of land namely crown, reserve and trusts. The fertile and mineral rich land was set-aside as crown land meant for European settlers. This Crown land was administered under English Law, in which leasehold and freehold tenure systems were practiced. This constituted about 6% of the total land mass. However, trust land was set-aside for public purposes and was not administered on tribal basis. While reserve land was purely land set aside for indigenous people who traced their ancestry in particular areas within the country. The two land types constituted about 94% of total landmass of the country.

However, Zambia not being a settler colony it did not lose a lot of land to settlers like other countries in the region. Instead, Zambia was declared a British protectorate with limited settlement by colonialists¹.

2.3 *Post Colonial Period*

At independence in 1964, the country inherited this tenure system but in 1975, the country underwent land reforms, which did away with holding of land on freehold basis. More land was put on 99year lease title and over the progressive years the government acquired large tracts of land, which were designated as State Farms and National Parks. These reforms further reduced the size of customary land. At this time the law forbade selling of bare land. Only improvements on land could be sold. Land was not considered as a commodity to be alienated for private purposes but individuals had simply a right to use.

2.4 *Reforms under Multiparty State and Liberalized Market-Economy*

In the 1990s, the country experienced a major change in terms of the political and economic governance from a one-party state with socialist ideologies to a multi-party state with a liberalized market economy. This change was associated with massive privatization of parastatal companies and free entry of goods and services in the country. This economic change was associated with privatization of land ownership through a land Bill of 1993. However, this Bill was controversial in the sense that it was drafted by the top leadership without the consultation of the key stakeholders. The privatization of land was seen as a move that would disadvantage the majority poor people who have no

¹ Machina H, '*Land Policy and Administration in Zambia*' A paper presented to the MS-Zambia Annual Workshops, Lake Kariba Inns, Siavonga, Zambia, 1-5th February 2005

capacity to purchase land or access it through the laborious and expensive land delivery system of the government. Therefore, the traditional leaders, civil society and other key stakeholders rejected the Bill, arguing that once it is turned into law it would disadvantage the majority poor people and undermine the authority of traditional leaders with regard to administration of customary land. However, the government quietly proceeded and took the same Bill to Parliament and turned it into law in 1995. This is the same law that is still in effect called 'Lands Act, 1995'. The government pushed this law partly because it was succumbing to World Bank demands². Under this law only two-land tenure systems are recognized namely Customary and statutory tenure systems. Traditional leaders administer the former tenure system using unwritten customary law. Official statistics estimate customary land to be about 94% of the country's land mass. The later is administered by the state using English Law and is said to form 6.0% of the total landmass of the country. However, these statistics have not been reviewed since 1950s. much of customary land has actually been converted to leasehold.

3.0 The Current Land Policy Review In Zambia

The current land policy review begun in 1993 at a national conference on Land Policy and Legal Reforms where a number of recommendations were presented. Since then, there has been a heated debate and controversy, which saw the withdrawal of the initial Lands Bill from parliament but was later passed into law in 1995.

Since, the Lands Act of 1995 was passed hurriedly in parliament, without broad-based consultations with key actors, the law has not received support from the concerned and affected groups hence it has been very difficult for the government to implement this law.

For this reason the government through the Ministry of Lands, initiated a countrywide land policy review consultation process with various key stakeholders. This came as a directive from cabinet office in view of the concerns from the public about this land law. The Ministry drafted a land policy document that is being used as a working document for consultations. The review consultations focuses on the appropriate scope, content and institutional arrangement for the land policy and legal framework in Zambia.

Some contentious issues under this law include the continued vestment of all land in Zambia in the Republic President and the desire by government to convert part of customary land to state land to meet increased demand for land under state land.

To contribute to this process some civil society organizations came together and formed a Civil Society Land Policy Review Committee under Zambia Land Alliance (ZLA). The aim of ZLA was to advocate for fair land policies and laws that protect the interest of the poor communities and marginalized social groups such as women in both rural and urban areas. The alliance has been in existence since 1997 and is currently engaged with government in a joint partnership to review the land policies and laws through a broad

² Hansungule, M. (2001) *The Lands Act 1995: An obstacle or Instrument of Development*. Paper prepared for the Zambia Land Alliance

based consultation process. The partnership of civil society and government in this process has enabled the poor people and marginalized groups from remote areas to freely participate and present their views on the land policy. The broad-based consultation process is the first of its kind in Zambia to address the various interests and concerns of stakeholders.

The joint partnership of civil society and government has not only facilitated the participation of the poor and marginalized groups, but it also enabled the consultation of other key actors such as the traditional leaders (traditional chiefs), community based organizations, farmer groups, private sector, professional associations and other government institutions.

The approach of consultations ranged from community level workshops involving ordinary villagers, (traditional leaders) chiefs workshops, district stakeholders workshops (involving representatives of civil society groups, government departments farmers association, church etc) to national level workshops. The International Land Coalition (ILC) and other cooperating partners facilitated these consultations. Strategic visits were also used to target particular areas experiencing unique or specific land issues that would enrich the consultations. Furthermore, strategic consultations involving specific groups such as organizations representing women's interests, people with disabilities, HIV/AIDS groups, youths etc. were also conducted. Other strategic consultations involved the private sector, Land Experts (Researchers, Private Consultants, Academia etc), Professional Associations of Lawyers, Surveyors and Planners. These strategic consultations were designed to capture specific interests and concerns affecting these key actors in land administration.

4.0 Engaging Various Stakeholders in Land Policy and Legal Reforms

It is government's responsibility to develop land policies, and put in place relevant legislation and institutions responsible for the administration of procedures as specified in the policy and legal frameworks. However, governmental institutions, the private sector, civil society, local communities and donors represent some of the key actors in land policy reforms from the level of designing reform processes, implementation, monitoring and evaluation of policies. These actors have specific interests in land, as either direct users or indirect users. It is therefore, prudent for Governments to engage with these actors to benefit from their views, by providing a platform or an enabling environment for them to discuss or debate proposed changes to policy, the effects and benefits of such changes. The need to engage the various actors outlined above include the following:

4.1 Building Consensus on Critical Land Policy Issues

Land policy issues are multidisciplinary and cross-sectoral involving different institutions both governmental and non-governmental as well as social groups with divergent views, interests and concerns. Therefore, building consensus on critical policy issues and the desired reforms that meets the various interests and concerns of stakeholders is

imperative. To ensure that reforms are successful on the ground, they need to respond to the diverse interests of stakeholders. Building consensus and reaching a common understanding among the key actors is possible through engagement of the actors in continuous debates, discussions and consultations on policy reforms.

In Zambia, policy reforms in the 1990s did not receive public support because the reform process did not provide for consensus building on critical issues affecting key actors. For example some traditional leaders (chiefs) do not agree with a number of policy provisions in the current policy and have rejected it. Therefore, after, the policy consultations at lower levels are completed the final policy document will be adopted by a national conference of key stakeholders for the purpose of consensus building on critical divergent views.

4.2 Creating a Transparent and Accountable Reform Process

Successful policy reforms also largely depend on how transparent and accountable the policy reform process is. Policy reforms that are exclusive of key actors such as civil society groups and marginalized groups such as the poor communities are bound to fail. As such reforms would not respond to the needs of these groups. Therefore, collective engagement of various key stakeholders in a participatory manner helps to create transparency and therefore legitimizing the reform process.

The policy review consultation process in Zambia has revealed that the public has little faith in government conducting and spearheading consultations alone without the involvement of other key stakeholders. This is so because past reform processes did not include the views and concerns of other key actors despite them given an opportunity to submit their views. Therefore, the partnership of government with other key actors has enabled the process to gain transparency and recognition. However, this partnership was not easy to achieve, civil society had to lobby for inclusion in the Government's Technical Committee mandated to spearhead the consultations. This was done for strategic reasons, to ensure that that interests and concerns of the poor groups are included in the final analysis. To ensure increased accountability civil society has been collecting, documenting and disseminating the various views of the stakeholders in various forms such as video documentation, booklet and brochures besides the official government 's national consultation report.

4.3 Providing Information and Field Experiences

The various actors represent useful sources of information and a wide range of experiences that would help set priorities for policy reforms; shape policies and legal reforms in terms of scope, content and approach. Through policy reform debates and consultations, the various actors in Zambia have helped government to identify priorities and critical land policy issues that need to be addressed in the reform process.

The government's earlier planned approach to the review process in Zambia did not provide for the participation of local communities in the consultations but only government technocrats and a few representatives of civil society organizations at a higher level (provincial level). Through the joint partnership of civil society and

government in the land review process, civil society lobbied and influenced the land policy review approach to favour increased participation of poor, less powerful and remotely located communities and marginalized groups such as women who are normally excluded in policy formulation processes. Local communities provide very useful sources of information and daily life experiences that would greatly enrich policy review consultation processes. For any policy to be practical and meaningful it has to respond to the needs and vast experiences of local communities who are affected by such policy changes.

4.4 *Creating Public Awareness*

It is absolutely important for the general public especially poor women and men to be aware of new laws and procedures introduced in policy reforms, if they are to benefit from them. In the land policy review process in Zambia it has been evident that grassroots communities and the general public have inadequate and in some cases lack information on the policy review process as well as current policy and legal issues surrounding land. This created serious information gaps between the Technical Committee (comprising both civil society and government officials) spearheading the consultations and the local communities. The committee had to take up a lot of time to explain what the current laws including procedures in land administration are and the intentions of government as regards land reforms.

Therefore, civil society and other actors such as the private sector are helpful in creating awareness on the various land issues in order to narrow the information gap with communities. One way civil society in Zambia helped to create awareness on the land reforms, existing policies and laws was to develop a comprehensive information dissemination strategy that involved publicizing the land policy document in the print and electronic media. The policy and laws were further simplified and translated into major local languages for distribution to the general public. Other approaches involved direct community sensitization workshops and conducting Community Radio and Television discussion programmes on the land policy and reforms.

4.5 *Facilitating Policy Debates and Consultations*

Since the land policy review process in Zambia has been slow partly because government lacks adequate resources to undertake a countrywide and broad based or multi-stakeholder consultations, civil society has been facilitating debates and consultations on the land reform, either separately or jointly with the Ministry of Lands. This has greatly helped the government in terms of reaching a greater population and capture diverse views on the policy. However, civil society's emphasis on facilitating these debates and consultations has been on the involvement or participation of poor, less powerful communities and marginalized social groups who are usually excluded from policy review processes and are greatly impacted by land policy reforms.

4.6 *Monitoring the Implementation of Reforms*

The private sector, civil society groups and local communities should not only contribute to designing policy. They must also be involved in monitoring and reviewing the policy changes and performance of the introduced land policies and legal reforms. This can be through research and increased contact with local communities who are usually affected by such changes. Monitoring and evaluation of policy implementation, is a vital element for improving the efficiency and effectiveness policy.

Civil society through the Zambia Land Alliance in Zambia has established an information database of land cases and injustices emanating from different communities across the country. This information is useful in monitoring trends and effects of particular policy changes as well as the implementation of the policy. This information also forms a basis for advocacy of specific policy issues by civil society.

4.7 *Securing Resources for Policy Reforms*

Conducting a comprehensive land policy review can be very costly and time-consuming exercise. Governments in most African countries do not have adequate resources that are required to move these processes at the desired pace and to produce desired results. Therefore, other actors such as donors are critical in providing the necessary support to drive these reforms forward for as long as they are cautious and show neutrality without forcing pace or showing particular interest in the nature of reforms. In the past, many donors have been reluctant to fund land reforms due to their high sensitivity and political nature. Instead most donors tended to direct their support towards non-sensitive areas such as providing technical support in the area of land information systems management. However, lately donors have seen the need to help address critical land issues as they have an implication on the country's' development. Donors can also help fund research work and institutional capacity building necessary for efficient and effective land reforms. Most importantly political will on the part of government is essential in ensuring that adequate resources are secured to support these policy reforms.

A number of cooperating partners in Zambia have helped to fund some land policy review consultations debates, workshops and information dissemination activities. This has greatly helped the government to move the land policy review process forward since it has been moving at a slow pace mainly due to lack of sufficient political will and adequate funds to undertake the process.

5.0 *Summary of Experiences, Challenges and Lessons Learnt*

- a) There is generally lack of consultations of local communities in the policy formulation and reform processes. Most policies developed in the country did not benefit from the rich experiences and information resulting from the participation of local communities;
- b) Local communities are greatly affected by the practices in the current land policy and legal framework. For example, quite a number of poor local communities visited near

common waterfronts such as the Zambezi River in Zambia deprived off their water rights by excluding them from accessing the river. This is happening because investors who have been allocated land along the riverfront have fenced off their land;

- c) Gathering views through land policy review consultations should ensure representativeness of key stakeholders. This is essential for the process and the product to gain legitimacy and avoid accusations. During consultations on the land policy in Zambia, the public (especially rural communities) expressed confidence that the consultation process would yield desirable results due to the partnership between government and civil society as this increased transparency and accountability in the whole process. In a number of cases, participants expressed mistrust of government as to whether their views would actually be incorporated in the final land policy document. But the presence of civil society representatives on the Land Policy Review Committee built confidence the process;
- d) There can be no blueprint approach to land policy review. The approach may vary depending on the objectives, economic, social, political and historical background, the institutional framework, and the critical issues to be addressed. Therefore, the choice of the approach should be based on consultations with key stakeholders for purposes of consensus building and creating a sense of ownership of the review process. However, many stakeholders favoured a participatory consultation process in the Zambian case because it provides for transparency and creates a sense of ownership of the process and product by stakeholders. The approach used in the Zambian case enabled the poor, less powerful communities and ordinary villagers to share their experiences directly with Ministry of Lands technocrats. The direct interaction of villagers and government technocrats in decision-making and policy formulation in a participatory manner rarely happens.
- e) Civil society partnership with the Ministry of Lands in undertaking land policy review consultations has enabled the advancement of the needs and interests of the poor local communities and women with regard to access, ownership and control of land. The success of this is seen in the inclusion of critical issues affecting poor communities in the national verbatim and analysis reports of the policy consultations, which would be used as the basis for upgrading or redrafting the final land policy. The lesson in this case is that it is easier to influence policy changes and advance interests from within than from outside the system;
- f) The partnership also provided diversity of expertise from the government's side with regard to technical land issues that arose during the consultations. However, civil society's strengths lied in their vast experience of interactions with local communities, which helped enrich the consultation process.
- g) Civil society experienced overwhelming support in facilitation of community consultation workshops by government officers in Districts and Communities without difficulties or suspicion due to the sensitize nature of land matters. This was because civil society was working in partnership with the Ministry of Lands.

- h) Depending on the circumstances, it is however, necessary that civil society is not seen to take the lead in the review process since policy review is government's mandate, otherwise this would undermine the partnership arrangement.
- i) The challenge faced in the partnership was inadequate capacity by a number of civil society organizations to actively engage in technical land policy issues. This is partly because very few civil society organizations are actually involved in land issues as their core business or have specific programmes to do with land. Therefore, there is need to build capacity of civil society to actively and effectively participate in land policy review process.
- j) Given the diversity of actors and interests, policy review should aim to provide a wide range of solutions, which can be tailored to the needs and interests of different stakeholders and local circumstances. However, the challenge is how to reconcile or harmonize conflicting interests of the various actors as well as to ensure that government is committed towards responding to the comments received;
- k) Civil society and other key actors in land reforms are useful in ensuring that land policy reforms are efficient and effective in meeting the needs of various stakeholders through participating in the design, monitoring and implementation of the land policy reforms;
- l) Land policy reforms must be based on a clear understanding and analysis of the problems to be addressed. This can be done through sharing field experiences, conducting debates and field research on critical land policy issues;
- m) To have meaningful input or to address concerns of marginalized and special groups such as women, people living with disabilities, youths etc there is need to use an approach that would enhance their participation in reforms e.g. many African traditions do not allow women to talk or argue in the public before men. To address this, consultation workshops in Zambia, especially in communities where such African traditions are strong involved grouping of women in one group so that they could discuss the reforms freely.
- n) Land policy reforms should not be addressed in isolation from other development policies and laws given their cross-sectoral implications. Therefore, significant land policy changes should be followed by review of other land related policies and laws to avoid conflicts;
- o) Information dissemination to all the key stakeholders is very critical in reviewing or revitalizing land policies. Policy reviews require the development of a comprehensive information dissemination strategy that facilitates continuous flow of information to stakeholders. Different stakeholders require information at different times and also in specific formats e.g. local communities require simplified and translated versions of land policies and laws as opposed to the technical or legal language, which is difficult for them to understand.

- p) It was also generally observed that the majority participants in the consultation workshops were not knowledgeable about land policy and legal issues. This meant spending a lot of time explaining these issues. Therefore, consultations of this nature require investing a lot of time in creating public awareness on policies and legal issues to enable the public debate and contribute to the review processes with an informed background.
- q) It is important to ensure that financial resources required to undertake land reforms are secured. Failure to secure adequate financial resources to fund the land review process affects the pace and quality of the reforms. A lot of people in Zambia have been complaining that the land policy review process has been moving at a very slow pace yet there are current practices in land delivery that are disadvantaging the local communities. The people have been arguing that if the process delays further the current injustices in land delivery may worsen before they are addressed in the final policy and law. This slow pace has been largely due to government's lack of political will and adequate resources to undertake these reforms.

6.0 Conclusion

In concluding the paper it is worth mentioning that the land policy review consultations have been successful in involving the various actors in setting priorities, identify critical policy issues and guide on the scope and content of the policy. The challenge remains in the harmonization of the various interests of these actors.

However, the process has moved to an advanced stage. In order to finalize the process, there is need to undertake comparative studies to learn from experiences and best practices on the various land issues from other countries in the region. A national stakeholders conference will be the last stage in the finalization and adoption of the policy document before submission to cabinet. The finalization of the policy review process will be followed by the review of the legal framework to ensure that the law is adjusted to conform to the new policy.