

CUSTOMARY LAND ADMINISTRATION IN ZAMBIA

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1. INTRODUCTION

- Land, like the other factors of production (labour, Capital and Technology) is critical to promote development
- By Law All Land in Zambia is vested in the President, both State Land and Customary Land
- Zambia has 2 land tenure systems , namely Customary tenure and Statutory (Leasehold) tenure systems.
- 94% of land in Zambia falls under Customary tenure , while 6% of the Land is Stateland under leasehold tenure.(These have remained static from 1928 and 1947 in terms of zone classifications)
- The Lands Act recognizes a dual Land Tenure System.
- Customary Land is administered by the Chiefs using the African Customary Laws applicable to each Chiefdom, **SUBJECT TO** Zambian Laws and natural Justice.

Introduction Contd

- Because All Land is vested in the President, Government has a significant role to ensure that All Land (Including Customary Land) is administered in a way which benefits all
Zambians
- Section 5(3) of the Lands Act provides that
“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*”

HISTORICAL OVERVIEW OF THE ROLE OF CHIEFS IN LAND ALLOCATION

- Before the coming of European settlers in 1889, all land was administered by customary laws in all Chiefdoms
- With Zambia becoming a protectorate, settlers assumed powers over land, with both the BSA Co. and the Governor assuming powers to make dispositions and grants of Land

HISTORICAL OVERVIEW OF THE ROLE OF CHIEFS IN LAND ALLOCATION

- From 1889, 1911, 1924, 1928, 1947 and 1959 Orders in Council, through into the Zambia Independence Order, Land alienation and Administration focused on the White Settler – **Laws were pro-settler**
- Land(Conversion of Titles) Act 1975 and Lands Act 1995 both directly and indirectly provided for the continuation of customary tenure maintaining the need to consult before customary land is given out

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- Customary Tenure is uncoded or unwritten in nature: There is need to define Customary Tenure
- Section 7 and 8 of the Lands Act recognises Customary Tenure but it is not defined
- Zambia is a Unitary State with 73 languages
- Customary tenure is more restrictive in terms of application: The development of some areas into metropolitan Urban Centres has meant that customary tenure is not able to deal with specific complications especially affecting non-chiefdom subjects
 - **Examples of What is in practice that is not allowed by Law**
 - Selling Land by Chiefs (Not allowed by Law, section 3 of the lands Act says only the President should collect consideration), Since all land is vested in the Presidency
 - Giving Land over 250 Hectares (i.e. in the process of conversion) Land Circular No. 1 of 1985.
 - Allowing a person who is a non- Zambian/or investor to start utilizing the land without bothering to notify government authorities
 - Getting into a land Agreement with an Investor over Land this is outside the scope of customary tenure

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- Land Circular No. 1 of 1985 places a responsibility on Traditional leaders to grant consent for any allocation where the Investor/Applicant wishes to obtain a Lease or a title, without a deliberate policy
- Under the Lands Act 1995, the consent forms are in a prescribed form; This is mandatory and cannot be replaced by a letter or other form of granting the consent
- The siteplan **MUST** be duly endorsed by the Chief, the Council under which the Land is situated
- The person recognised as Chief, for purposes of Land allocation is a gazetted Chief

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- Land Circular Limits the size a Chief can recommend or give to an investor or applicant to 250 Hectares
- In cases where larger than 250 Ha is given, **Ministerial (250 – 1000ha) and Presidential Authority (1000ha+) is required**
- Need to consult Indunas; The Supreme Court has ruled – This has been difficult in most Chiefdoms

OTHER CHALLENGES OF CUSTOMARY LAND ADMINISTRATION IN ZAMBIA

- Threats of Forgeries and wrong date stamps on Consent Forms and Siteplans
- Protection of Pastoral/Communal Land and the need for servitudes (Easements and profits)
- Need for clarity on who should grant the Consent, **ONLY GAZETTED CHIEF** and not a Headman
- Cases of Displacement of Villagers
 - Villagers are protected by Law against displacement from their customary land
 - Need to know that such villagers can now complain legally against a traditional leader

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- Chiefdom Boundary Disputes and the need to work with government through the Office of the Surveyor General: Avoiding to give land beyond one's Jurisdiction
- Siteplan preparation complications; Scale and what is written
- Lands Tribunal Act is now law and will help all affected parties to seek redress; Both the traditional authorities and the subjects

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- **PROPOSED WAY FORWARD**

- **THERE IS NEED TO CHANGE THE LAWS AND ADDRESS THE VARIOUS CHALLENGES FACING ZAMBIANS.**
- **HENCE THE NEED IMPLEMENT WHAT THE PRESIDENT HAS GUIDED THAT SECURITY OF TENURE MUST BE PROTECTED FOR ALL CUSTOAMRY AREAS**
- **IN ADDITION, POLICY AND LEGISLATIVE ADJUSTMENTS WILL BE REQUIRED.**

5. CONCLUSION

- Land is Zambia's Heritage as; Development happens on land.
- There is a duty placed on the President under Section 5(3) of the Lands Act to administer Land in the interest of the Zambian People, hence the rules and regulations for Customary Land
- Chiefs are key to ensure the land is properly administered and all allocations follow laid down rules and regulations



THE END