



**SUBMISSION TO THE PARLIAMENTARY COMMITTEE  
ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL  
GUIDANCE, GENDER MATTERS AND GOVERNANCE**

**“THE REVIEW OF THE OPERATIONS OF  
THE LANDS TRIBUNAL FOR ZAMBIA”**

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# *“The Review of the Operations of the Lands Tribunal for Zambia”*

## **1.0. INTRODUCTION**

Land in Zambia which, in the past was seen as sacred, spiritual and a basis of identity and a heritage for many of the indigenous societies, throughout the country, is now taken as a commodity that can be transacted for money. As a result, there is fierce competition out there. People holding customary land such as headpersons, some Chiefs and individuals are busy selling it to the highest bidder including foreigners whose status are either unknown or highly questionable. This practice of selling customary land has displaced many people, especially the vulnerable poor villagers who depend on it for their livelihoods. Their inability to defend their land rights against the rich and powerful in the Zambian society today has made them very vulnerable. In a number of cases many of them have become landless and villageless, because their villages have either been sold off or taken over by the expansion of new districts, leading to loss of identity of the displaced people.

Furthermore, the desire by some people to acquire for themselves a lot of land at the expense of others and those not yet born, have created conflicts among headpersons, Chiefs, ordinary people and the state. Those that have been given powers to administer land on behalf of the Zambians have on one hand been doing a good job trying to follow existing legal frameworks and procedures but on the down side of it, they have been abusing their authority by using underhand methods of administering land - favouring the rich rather than being objective and fair. This abuse of land administration cuts across all levels, customary land – local community level, and state land – national administration. -

## **2.0. Responding to the land Issues**

In responding to land conflicts, Zambia has over time developed various mechanisms at the level of traditional courts, local courts, subordinate, high courts and court of appeal. All these mechanisms are meant to prevent people from taking the law into their own hands. These mechanisms help to resolve any disagreement that people may have arising from land rights and land tenure. In addition to these mechanisms, the government in 1995, established a lands tribunal through the 1995 lands act in order to hear matters related to land disputes. In this memo, we write focusing on the following matters as requested

by the committee on legal affairs, human rights, national guidance, gender matters and governance:

- 2.1. The adequacy of the legal and policy framework governing the lands tribunal;
- 2.2. Effectiveness of the lands tribunal in adjudication over land disputes- focusing on widows and orphans;
- 2.3. Relevance of the lands tribunal in resolving land disputes in Zambia and;
- 2.4. Recommendations to the Committee

### **3.0. ADEQUACY OF THE LEGAL AND POLICY FRAMEWORK GOVERNING THE LAND TRIBUNAL**

#### **3.1. Legal and Policy Framework**

The lands tribunal is established by the lands act No. 29 of 1995 and the lands tribunal Act No 39 of 2010. The 1995 lands act under article 20, provides for the establishment of the tribunal and its composition. In article 22, the tribunal is given its powers and jurisdiction on all matters related to land disputes. The Lands Tribunal Act was primarily enacted to continue the existence of the tribunal that was already established in the 1995 lands act; to provide powers and functions of the tribunal and any other matters connected with or incidental to the lands tribunal. These two acts establishing the tribunal derives their authority from the Constitution especially article 252 and 253 which provides for the key principles that must be followed when administering both customary and state land.

The legal framework available in the current form is not adequate to empower the tribunal to effectively deal with land disputes that come before it. For example, article 10 provides for unpredictable venue of the siting of the tribunal as this is dependent on the choice of the Chairperson or in his/her absence, the vice. This means that the tribunal will never have a permanent location as it will be moving from one place to another according to the wish of the Chairperson. Clients who may need the services of the tribunal will find it difficult to locate their sittings.

Secondly, Zambia has no approved policy on matters of land, meanwhile issues and disputes related to land are growing each day. The current policy, that have taken more than ten years to put together, have not been approved by cabinet yet. In the absence of a policy framework, current acts, with their gaps and shortfalls, will continue to be implemented. This means that, some land disputes that are not adequately provided for, such as local communities and

their economy benefiting from any land investment, provided for in the Constitution under article 253 (d), will not be adequately resolved by the tribunal.

### **3.2. Gaps in the legal and Policy Framework**

As stated, there is no policy framework guiding the work of the tribunal at the moment. The existing draft land policy, which has not yet been approved by Cabinet introduces other dispute resolution mechanisms not recognised in the current laws governing the work of the tribunal. The draft policy suggests the enhancement of land disputes resolutions using paralegals and customary dispute resolution mechanisms. So, the absence of a policy is a big gap that needs quick response.

Secondly, the appointment of the members of the tribunal by the Minister does not guarantee security of tenure for the members. This becomes a serious problem if the appointing authority have a land dispute with a citizen, especially the poor. The tribunal will feel obliged to reward their master, thereby act in an impartial manner when dealing with such cases.

The other gap in the current laws is that terms and conditions of service for the members of the tribunal are not provided for in the law. In other words, the two acts do not guide the minister, who is the appointing authority, how remuneration will be done. Such a situation leaves too much room for people to inappropriately utilize public resources allocated to the tribunal.

Furthermore, key forms and documents necessary for the documentation of cases and the filling in of cases by the complainants to the tribunal are not clearly provided for as **schedules** on the two acts, especially the lands act. Forms currently being used are not part of the acts and are left to the decision of the Chief Justice who in article 18 (b) is given powers to prescribe forms to be used by the tribunal on any matter.

### **4.0. EFFECTIVENESS OF THE LANDS TRIBUNAL IN ADJUDICATION OVER LAND DISPUTES- FOCUS ON WIDOWS AND ORPHANS**

The lands tribunal in the current form, according to the experience of Caritas Zambia and the paralegals that have been involved in land matters, has been effective in adjudication over land disputes involving widows and orphans. For instance, cases that came to paralegal desks from Mungule area where widows and orphans were threatened with eviction, were taken to the tribunal. The tribunal dealt with these disputes fairly by examining the evidence that were provided before it and, in the end, the widows and orphans were protected from losing the land.

There are other cases that were resolved fairly by the tribunal where headpersons were involved in selling land that belonged to people without their consent and approval. These transactions were reversed and the owners were able to claim back their land.

The only challenge is that the tribunal is mostly found in Lusaka and if they move to other towns, this is normally in provincial capitals. This situation hinders the poor people, who are usually widows and orphans from accessing the services of the tribunal.

## **5.0. RELEVANCE OF THE LANDS TRIBUNAL IN RESOLVING LAND DISPUTES IN ZAMBIA**

The lands tribunal is relevant in resolving land disputes in Zambia because it is a user-friendly court that does not operate in a strictly formal way. Many poor people are discouraged by the operations of courts, especially the higher courts that demand a lot of payments in addition to the demand of having an attorney every time a case comes before it. The fact that the tribunal does not demand for a representation, makes it cheaper for the poor people to use.

Secondly, the tribunal is necessary and relevant because land disputes are in a number of cases complicated and need decisions made from a team of adjudicators as opposed to a single judge presiding over a dispute and passing judgement according to his/her own judgement regardless of bias that may be apparent during the trial process of the case.

## **6.0. RECOMMENDATIONS**

Having examined the provisions in the lands Act and the Lands Tribunal act, we make the following recommendations:

- a) The draft land policy which provides for enhanced land dispute mechanism at all levels and the recognition of paralegals, be approved and put in action without delay. This will trigger the review and repeal of the 1995 lands act.
- b) The tribunal and lands act should be amended to change the selection and choice of membership to the tribunal. Instead of the Minister and the tribunal itself selecting the members, a call for application should be done so that all who respond to the call to become members of the tribunal could be put to public scrutiny. Any one who fails this public reality and ethical check should never be allowed to be a member of the tribunal. This way the tribunal can be really independent and will freely carry out its duties knowing that their allegiance is to the people, rather than a single appointing authority.

- c) The tribunal should progressively establish permanent structures at all the provincial centres and later expand to all districts.
- d) The tribunal should not use circuit meetings to hear cases. Such a system reduces the chances of them being available to the people, especially the poor.
- e) Currently, as far as we know, appeals to the tribunal are referred to the high court. We propose that all appeals go to the court of appeal.
- f) Terms and conditions of service for the members of the tribunal should be provided for in the Act.
- g) The systematic registration and conversion of customary land rights to leasehold tenure has the potential to increase the number of land disputes especially in rural areas. Accompanying measures to improve the customary land dispute resolution systems and mechanism, is urgently needed.

For most of the land disputes, mediation is required to ease access to justice through the judiciary and other alternative dispute resolution mechanisms at local level. A fast track mechanism for speedy resolutions and disposal of land disputes is needed. The Government should support measures to:

- (i) Establish mechanisms for prevention and resolution of conflicts during formalization of customary land rights at local level.
- (ii) Review the status and jurisdiction of the Lands Tribunal with a view of transforming it into a special Lands Court System;
- (iii) Promote mediation as an alternative land dispute resolution.
- (iv) Support CSOs to build capacity of paralegals (advice and mediation) to effectively manage land disputes.
- (v) Work with Chiefs to enhance customary systems of dispute handling to promote equitable justice and to complement and support the lands tribunal.
- (vi) Build capacity of customary authorities in negotiation skills to enable them better represent community interests.
- (vii) Fees payable to the tribunal for filling in should be made easier to pay and should not be raised beyond the reach of the widows and orphans.

## 7.0. CONCLUSION

We conclude by raising issues of concern that the lands tribunal needs to pay attention to apart from dealing with disputes that the people bring to it.

**The Selling of Customary land:** Caritas Zambia is disturbed that land these days is being sold like “tomatoes”. Adverts are all over the place for customary land sales, yet there is no law in Zambia that permits the selling of customary land. According to section 4(1) of the lands act, it states that, “**where a person has a right of use and occupation of land under customary law and wishes to convert such right to leasehold tenure, no consideration shall be paid for such conversion**”. This simply means that, no money shall be paid for such a conversion. Secondly and most importantly, the selling of customary land distorts the culture of villages and Chiefdoms. Villages that sell their land lose their identity too.

**Destruction of Biodiversity and the Environment:** “The earth is our common home”. We are extremely worried that the nature and type of development that Zambia is pursuing is not sustainable and a danger to the eco-system, biodiversity and the entire environment. Human settlements especially around towns are haphazard springing up and clearing all manner of vegetation and trees. In a number of cases, there is serious change of land use from agriculture to housing estates. This is a serious threat to food security in the long term. If all farm land in the country is turned into super markets, housing units, hotels etc, Zambia will have to unfortunately survive on food imports for a long time. Time to change this is now, before it is too late.

Uncontrolled acquisition of land leads to encroachment of ecologically sensitive areas, environmental degradation and deterioration of natural resources. We are afraid, in Zambia this is happening at an alarming rate. Take for example, the only small forest that was left in the city of Lusaka to act as carbon sink for the numerous cars producing CO<sub>2</sub> every day, which was situated near the Chilenje Munument. Where has those beautiful trees gone? Unfortunately, they were cut down to pave way for a completely different project unrelated to the original idea-protection of nature. What this means is that, the amount of CO<sub>2</sub> in Lusaka will begin to increase over time there by increasing temperatures and contributing to climate change effects.

We are sad that institutions that are mandated to protect the environment in Zambia have not lived up to our expectations in this regard. They seem to possess limited capacity to carry out their mandate and enforce rules that are already there to protect the environment and monitor all developments and stop those likely to have serious negative environmental impacts. We are left to wonder why people are allowed to build houses and other development in in

forest reserves, wetlands, and water recharge areas. We further question where the regulatory institutions are when river frontiers, and wetlands are being fenced off in total disregard of the law. We wonder if the people entrusted with responsibility are at all concerned when for instant public land meant for schools, health and recreation are, given away for other unrelated uses without due consideration of the education, health and recreational needs of the population. **These are issues the tribunal should be interested in to protect widows and orphans.**