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The role of the Lands Tribunal in handling land disputes in general and traditional land in particular

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1.0 Introduction

The Zambia Land Alliance (ZLA) is a network of civil society organisations working with rural and urban poor communities in promoting their land rights. The alliance was formed in 1997 and has since then been working with communities because the organisation is convinced that land is a key resource for poor people's livelihoods. Land is a source of food security, business ventures, and a source of identity for many people in Zambia. As such, the Land Alliance has been working through its member organisations countrywide with a motto '*Land is Life*'.

ZLA would like to thank the Committee on Agriculture and Lands of the National Assembly for recognising us as one of the key stakeholders in land in general and in traditional land in particular, through the Committee's invitation to submit this memorandum.

Our submissions on this important subject are as follows:

2.0 The Role of the Lands Tribunal in Handing Land Disputes

Our understanding of the Lands Tribunal is that it is an institution that was created under the Lands Act of 1995 as an alternative dispute resolution mechanism with the objective of achieving speedy, low cost, flexible and efficient means of settling disputes that arise over land. The Tribunal was established with the view that Courts face congested workloads and that it is very expensive to pursue cases in courts. Most people facing evictions are desperately poor and are unable to mobilise funds to hire lawyers to argue their cases for them.

3.0 Jurisdiction of Lands Tribunal

Section 15 of the Land Act of 1995 states that:

(1) Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.

(2) In this section "person in authority" means the President, the Minister or the Registrar.

Section 22 states that the Lands Tribunal shall have jurisdiction to:

(a) "inquire into and make awards and decisions in any dispute relating to land under this Act"

(c) Generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under this Act, of any person or the Government.

These provisions therefore indicate that the operations of the Lands Tribunal shall be restricted to land under the Lands Act of 1995 - that is, statutory or leasehold land. As elaborated below, the Act itself provides for a very limited jurisdiction for the Tribunal. The Tribunal does not have jurisdiction to handle disputes on customary land. The guiding spirit behind the functions of the Lands Tribunal is that it would provide an alternative to the High Court. In other words, the alternative land dispute resolution mechanism is seen to be the Lands Tribunal. This again is limited with regard to customary (traditional) land.

4.0 Implications of the above

We see the Lands Act itself as being discriminatory to the poor people in a number of respects. First, language used in the Act with terms such as “Chairman”, “he” connotes that the Chairperson of the Tribunal shall and must always be male. It is therefore important to review the Act in order to make the language gender neutral.

Secondly, the Act provides in Section 25, that a person may appear before the Tribunal either in person or "through a legal practitioner at his own expense". The right to legal representation in the constitution is a basic human right. Given that most disputes are between individuals and the State, it is very unfair for the Act to deny the individual the right to be represented before the Tribunal at the expense of the State.

In addition, the Tribunal does not have powers to cancel or repossess a title deed. Instead, the Tribunal only recommends to the Commissioner of Lands for action. This is a contradiction to the spirit behind establishing the tribunal to operate at the same level of the High Court.

5.0 Operations of the Lands Tribunal

An important characteristic worth mentioning here is that the Lands Tribunal is supposed to be a circuit court operating in an informal way. This in itself is important for the poor as it would enable access to the justice system.

However, the idea of a Tribunal as a middle-course justice system has been destroyed by the Lands Act 1995 itself. As pointed out, the idea was to have a cheap, simple and efficient mechanism for the resolution of disputes. In practice the Tribunal rarely travels to handle cases outside Lusaka. For example, there are enormous land disputes in rural; areas and in particular resettlement schemes.

Consequently, many people that have disputes feel intimidated to appear before the Tribunal because it sits only in Lusaka and is still formal in operations.¹ The Tribunal has not gone to sit outside Lusaka for over three years now. This discriminates against rural people and makes the Tribunal an alien institution in the eyes of the poor. The poor in other provinces are denied from having their land disputes resolved through this mechanism.

Further, the jurisdiction of the Tribunal is too limited. The Tribunal does not handle cases on customary land. Our experience with communities is that poor people who hold land under customary tenure have also been experiencing land disputes. These people have been resolving disputes in various informal ways. However, most of these people are ignorant about the existing land policies, laws and procedures in land administration. They do not have basic information regarding these documents.

6.0 Composition of the Tribunal

The Lands Tribunal is supposed to have nine active members as follows:

- (a) a Chairman who shall be qualified to be a judge of the High Court;
- (b) a Deputy Chairman who shall be qualified to be appointed as a judge of the High Court;
- (c) an advocate from the Attorney-General's Chambers;
- (d) a registered town planner;
- (e) a registered land surveyor;
- (f) a registered valuation surveyor; and
- (g) not more than three persons from the public and private sectors.

First, the composition is too limited and is not representative of the general public. For instance, the church and civil society organisations working in land matters are not represented. For some time now however, the Tribunal has had only seven active members. The question that arises from this scenario is: why can't the Minister Responsible for appointing members to the tribunal do so? Where the members of the Tribunal are fewer than the required number, it certainly reduces the number of cases that the Tribunal is supposed to handle in a given period of time.

Further, the Lands Act does not provide for affirmative action to ensure that women are adequately represented on the Tribunal. Instead the Act is neutral in language and ignores the disadvantaged position that women have

¹ Note that the Lands Tribunal even have a Court Martial.

suffered for centuries in terms of land rights. Moreover, according to the Registrar of the Tribunal, 90 per cent of the cases resolved by the Tribunal are brought by men. This implies that the Tribunal is just benefiting men at the expense of women.²

7.0 Funding to the Tribunal

The lands Tribunal receives only an average of nine million Kwacha (K9,000,000) per month. To handle a number of cases at a time, the Tribunal requires at least eleven (11) days, each costing an average of six million Kwacha (K6,000,000) for a day's sitting to cover logistical costs, meals and allowances for the members. With the huge public demand for its services, the Lands Tribunal should ideally be sitting every month. If they were to do that using the current facilities it means what they are currently funded translates into only 14 percent of what the tribunal requires.³ For the last seven years, the Lands Tribunal has only handled a total of 458 cases. On average the Tribunal has handled 65 cases per year and only 5 cases per month.

Cases handled by the Lands Tribunal (1996-2002)

Year	Number of Cases
1996	25
1997	59
1998	89
1999	101
2000	47
2001	72
2002	65
Total	458

It is evident that this funding is inadequate for the operations of the Tribunal. As a coping strategy, the Tribunal has resorted to waiting until about three months for the funds to accumulate before it can sit to hear cases. The waiting period results in denial of justice of the people with land disputes.

Further, it is sad to note that the Lands Tribunal, with its important role of resolving land disputes, is usually under funded. This is why the Tribunal cannot perform its functions to the satisfaction of the majority of the public. Under-funding of an institution such as this one is an indication of lack of political will. The implication of the Tribunal's failure to visit districts outside Lusaka where it is most required implies that owners of land under

² The statistics at the Tribunal were not arranged according to gender.

³ K9,000,000 divided by K6,000,000 per day for eleven days.

disputes are prevented from developing their land. This further prevents them from coming out of poverty.

8.0 Operations at the Secretariat

The on-going Land Policy consultations which have been spearheaded by the Ministry of Lands in partnership with the Zambia Land Alliance showed that many people all over the country do not know about the existence of the Lands Tribunal. This is partly because the Tribunal does not publicise its operations.

Secondly, a Registrar heads Secretariat of the Lands Tribunal. However the Law does not provide for a professional assistant to the Registrar. This overloads the Registrar with work. Evidently, the current Registrar has never gone on leave, which in itself is a demoralising factor.

Furthermore, the Tribunal does not have a training programme for its staff. Land disputes are usually complex and sensitive in nature. With the changing environments everyday, there is need for staff, especially the Registrar who in practice offers advice to the public on land disputes in the absence of members of the Tribunal, to undergo refresher training in various dispute resolution mechanism.

The Tribunal does not have a court reporter. Instead it relies on Court Reporters from the High Court. First this depletes the merger resources that the Tribunal has at its disposal. Moreover, the Tribunal needs to be up to date with technology instead on using old typewriters for their 'court' reports.

As stated earlier, low funding levels of the Lands Tribunal affects its operations. Currently, the Tribunal does not have offices of its own. Instead it rents at Mulungushi Conference Centre at a cost of seven hundred and fifty thousand (K750,000) Kwacha per month. This is unsustainable. As a result the Tribunal has not been able to pay rental areas since the year 2000.

9.0 Conclusion and Recommendations

The Lands Tribunal is an important institution in Zambia's development process. As more and more land is being privatised disputes will continue to arise. As such there is need for resolution mechanisms that should counter this challenge.

Our recommendations therefore are as follows:

1. The Government needs to urgently finalise the Draft Land Policy in order to pave way for a review of land related laws, particularly the Lands Act of 1995.
2. The Lands Act of 1995 should be reviewed in order to:
 - Change the language in the Act to make it gender neutral in line with the National Gender policy. The Act should substitute terms like “Chairman” with “Chairperson” and “he” with “he/she”.
 - Ensure that at least half of the members of the Tribunal are women.
 - Expand the jurisdiction of the Lands Tribunal to cancel or uphold title deeds whenever necessary instead of recommending to the Commissioner of Lands.
 - The Tribunal’s jurisdiction should be expanded to include traditional land, especially for cases involving chiefdoms.
 - Increase the number of professionals at the level of the Registrar to at least three in order to relieve pressure on his work. These officers would also be providing advice to the public on a daily basis and reduce the number of cases that require attention of members of the Lands Tribunal.
 - Have a Tribunal court reporter rather than relying on the ones from the High Court.
 - Increase the composition of the Tribunal to include interest groups such as the church and civil society organisations working in land matters.
3. Promote decentralisation of operations of the Lands Tribunal so as to enable the poor women and men access justice with regard to their land rights. The Tribunal should start working with poor communities and civil society organisations that are using traditional and informal mechanisms of dispute resolution. For example, the Tribunal could be providing training and information to traditional leaders, councillors, community based organisations and resettlement scheme management, on dispute resolution mechanism as they relate to existing land laws.
4. Further, the Tribunal should publicise its existence and operations so that people know about and use it.

5. The Tribunal should improve on documentation of information to meet the needs of various users. The information should be arranged according to women and men (gender).
6. There is need to strengthen traditional structures by giving them formal legitimacy and by establishing mechanisms of appeal which will also provide a balance to the power of the chiefs.
7. There is a need to build capacity of the Tribunal through training in efficient and effective land dispute resolution mechanism, providing advice to the public, Information, Communication and Technology, for staff in order to bring them to up to date with modern technology. For example, links could be created with the Norwegian Land Consolidation Court, which plays a similar role in a very cost effective way.
8. As an immediate step, the Government needs to provide office accommodation for the Tribunal so that they do not use the limited finances to pay for office rent. The office for the tribunal should be user friendly to the ordinary members of the public.
9. Finally, Government should increase funding to the Lands Tribunal to enable it carry out its operations and enable many poor people access justice.