Institutional, administrative, and management aspects of land tenure in Zambia

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Introduction

All land in Zambia is vested in the president for and on behalf of the people. The president has delegated the powers of dealings in land to the commissioner of lands.

At independence Zambia inherited four categories of land, as follows:

State land and freehold land: 6.3 per cent (11.7m acres); reserves: 36.0 per cent (66.9m acres); trust land: 57.7 per cent (107.4m acres).

With the passage of the Land (Conversion of Titles) Act, 1975, freehold land became converted to statutory leasehold land with effect from 1 July 1975.

Historical Background

There are three distinct periods in the history of land rights in Zambia during this century. Up to 1928, any person, of whatever race, could "acquire, hold, encumber and dispose of land" anywhere in the country, excluding the then Barotseland. Complete control over all land (other than Barotseland) was vested in the British South Africa Company (later transferred to the Governor in 1924), which was authorized to assign tracts of land to Africans for tribal occupation. The company did not, in fact, assign land to African tribes. The company granted freehold titles to individual white settlers subject to the special protection of any African villages or kraals established on the land. No contract for encumbering or alienating African-owned land was valid unless it was approved by a magistrate.

After the British South African Company handed over the administration of the Territory to the British Government, various commissions were appointed to recommend what areas should be set aside as native reserves (in the North Charterland concessions in 1924, on the line-of-rail in 1926, and in the Tanganylka District in 1927). The native reserves were created in 1928 "for the sole and exclusive use" of indigenous Africans under customary forms of tenure.

The period 1928 to 1942 marked the second period of the history of land rights. During this time, the reserves became overcrowded and inadequate for the needs of the indigenous people. It was, therefore, necessary to consider setting aside further areas for their use, under customary systems of tenure.

In 1942, certain complete districts of the Territory were deemed to be trust land, vested in the secretary of state for the Colonies and set apart for the use or common benefit, direct or indirect, of indigenous Africans. A land commission was appointed to recommend what further areas should become trust land and virtually all the areas recommended by this land commission were formally constituted as trust land by Order-in-Council in 1947. The remaining areas of the Territory (that is, excluding Barotseland, the reserves, and the trust land areas) were then designated as Crown land "potentially or actually available for nonnative settlement on an economic basis and for mining development." There have been no major changes to the division of land in these various categories since 1947, although the size of the trust land estate has increased slightly at the expense of a decrease in the size of State land.

The Position Today

State Land

There have been different policies in regard to the alienation of land at different times, but always under the general provisions of English land law, as it applied in 1911. The current policy is to grant leases in the first instance, requiring the land to be beneficially occupied and developed.

The country's major mineral deposits are situated in the State land areas and, although there are millions of hectares of land of good agricultural potential outside the State land areas, the agricultural industry has become established and centred on State land. The State land areas have always had the advantage of better communications and a system of secure land titles, and they have, therefore, attracted virtually all the skills and investment necessary for the development of the country's resources.

Reserves and Trust lands

The distinguishing features between reserves and trust land areas relate to matters of detail rather than basic principle. The reserves are set aside in perpetuity for the sole and exclusive use of indigenous Zambians while the trust land areas are set aside in perpetuity for the use or common benefit, direct or indirect, of indigenous Zambians. The implication is that occupation of the reserves by people other than non-indigenous Zambians is more strictly controlled. In fact, leases for up to five years may be granted by the president in the reserves for missions, trading sites, hotel sites, tourist camps, and charitable purposes. In the trust land areas, rights of occupancy for up to 99 years may be granted by the president for virtually any purpose that might be of benefit to the local inhabitants. In all cases, consultation with the District Council must precede the grant of leases of rights of occupancy and in all instances the actual consent of the District Council is required.

In general, Zambians hold and use land in the reserves and trust land areas under

customary law and practice, and leases and rights of occupancy are seldom granted to indigenous persons. The nature of the normal right of a Zambian to land in the reserves and trust land area is a right to use land obtained from his tribe under customary law. In some cases, this right may be sold or inherited.

There are 7.6 million acres of land in the reserves and trust land areas reserved for forestry purposes and a further 1.8 million acres of land are permanently under water. This leaves over 133 million acres of reserve and trust land areas occupied under customary systems of tenue or Iying vacant. Although much of this land is poorly served by communications, is of low inherent fertility, and is infested with tsetse fly, there is, nevertheless, a vast agricultural potential that has scarcely been tapped.

Sales of Statutory Leasehold (formerly freehold) Land

Since independence, but before 1975, the prices of land escalated beyond the reach of ordinary citizens. The problem of escalation of prices of land has bedevilled many countries. In Zambia, the problem reached a climax in 1975, when the president discovered that an estate agent made a profit of K50,000 overnight for a piece of land of less than a quarter of an acre. This caused an outcry from the public. To solve the problem of speculation in land, the Land (Conversion of Titles) Act, 1975 (Act 20) was passed. The effect of the act is that no dealings in land can take place without the consent of the president, and land has no value except for unexhausted improvements thereon. This act has discouraged speculation in land. Before a transaction is effected, a qualified valuer values the property and consent is given, subject to the maximum price, among other things, as given by the valuation officer.

Institutions

The State

State land is held by individuals for 99 years or less and, in the case of statutory leaseholds, for 100 years from the 1 July 1975. Leases are granted by the president. The Commissioner of Lands Office is directly responsible for issue of the leases and ensuring that the conditions and the convenants are complied with.

Chiefs

Although under the present law there is a distinction between the reserves and trust lands, for practical purposes the distinction does not exist. The chiefs alienate land to villagers for their personal use and occupation. The land is regulated by customary laws which differ from one community to the other.

The villager holds land in perpetuity. In the case of death, the land is inherited under the customary law prevailing in the community. The chiefs have powers to set aside certain land for specific purposes such as burial grounds, grazing areas, and other related uses. In the administration of the community land, the chief is guided and assisted by the head of the village, who is familiar with the villagers and knows and appreciates their individual needs. As far as the villagers are concerned, the commissioner of lands has no control over the use and occupation of the land belonging to the community.

District Council

Over the last 20 years or so, there have been settlements of people in and around the urban areas. These settlements are on State land. The settlers are squatters without any title to land; they have no security whatsoever in law. To alleviate the plight of the settlers and to improve the appearance of the areas concerned, the Government passed the Statutory Housing (Improvement Areas) Act, 1974.

Under the act, if the area has been declared an improvement area by the minister responsible for district councils, the commissioner of lands issues title to the council concerned. The council is then authorized to issue occupancy licences and leases for land in these areas. The security of tenure is as good as leases issued by the commissioner of lands. The occupancy licences and leases confer title that can be pledged to raise capital for the improvement of the premises so charged.

Administration and Management

The district councils, which are planning authorities, decide the purposes for which land will be developed in their respective areas. They decide what areas will be developed for residential, commercial, industrial, and recreational purposes.

Any other land which is not covered by these planning authorities is administered by the Town and Country Planning Department. The planning authorities send the approved plans to the commissioner of lands, who asks the surveyor-general to number and survey the land. The commissioner of lands then allocates land to various developers. The allocation can be given to applicants who have responded to advertisements, to developers who have been recommended to the commissioner of lands by the district councils, and to persons who have directly applied to the commissioner of lands.

As for agricultural land, there are scheduled and other farms. The scheduled farms are declared under the Agricultural Land Act. The scheduled farms are controlled by the Agricultural Lands Board. These farms cannot be without the approval of the board, and they are expected to be run on the basis of good husbandry and management. Before land is alienated, the board ensures that the prospective lessees have the necessary know-how and capital to manage the farms efficiently. In cases where the applicants do not qualify, the board members can still allow land to be alienated if satisfied that a suitable farm manager will be employed. The emphasis is on productive farming and proper utilization of land.

For other farms, alienation is made by the commissioner of lands. There are also settlement schemes for encouraging peasants to develop land. The Land Use Division in the Ministry of Agriculture and Water Development has started schemes, such as dairy farms, under which the ministry is developing farms and then allocating them to individuals who have proven capable of running them after an initial trial period. The tenants are then granted leases by the commissioner of lands.

Recently, the Government has embarked on a programme of rural development, code-named "Operation Food Production Programme." It is envisaged that there will be 18 farms of 20,000 hectares each in the nine provinces. These farms will be developed

mostly with foreign aid under the supervision of the National Commission for Development and Planning. They will be reserved solely for Government use. Presently, the status of most of the land is either reserve or trust land, but upon acquisition it will be declared State land.

In the last few years, enterprising individuals have formed Family Farms Limited. The purpose of the company is to acquire large tracts of land, obtain money, and develop the land on an individual basis. Once the land has been developed, individual farmers are given rights of occupancy on a parcel of land.

To ensure proper utilization of land and compliance with conditions and convenants, the officers in the commissioner of lands' office undertake regular inspections. Where the officers find that land is not developed or used according to the terms of the lease, they submit reports to the commissioner of lands, who instructs his legal officer to initiate re-entry proceedings. These procedures relate to State land and statutory leaseholds. As a supplement to the above, the Lands Acquisition Act (Cap. 296) was passed to enable the president to acquire land from absentee landlords. The land must be undeveloped and unutilized and, above all, it must be in the public interest to acquire it.

A Future Land Policy

The burning question today in Africa or, for that matter, in any developing country where the means of livelihood for the masses is land, is whether the State should facilitate dealings in land where before they were protected, or continue as before. The problem the country faces is not only to develop rural areas but to also provide services such as education, medical facilities, and recreation, so that the quality of the lives of the people in these areas may be enhanced. As the economy of the country becomes complex, there can be no doubt, and it must be recognized, that the State must provide the administrative infrastructure for the economic and social services necessary for the development of the economy. To do this, it must provide simple, quick, and cheap methods by which dealings in land can take place.

The creation of the reserves and the trust land areas was designed to protect indigenous Zambians from losing their customary land rights as a result of the possible wide application of more sophisticated systems of tenure. The concept that these areas should be for the exclusive use of indigenous Zambians has been closely adhered to and there is no doubt that the policy has been successful in that rural people have enjoyed a large measure of protection of their customary land practices.

On the other hand, the restrictions imposed as protective measures in the reserves and trust areas have tended to inhibit development in these areas and to delay the emergence of the subsistence cultivator as an economic farmer, benefiting both himself and the local and national economies.

It is patently obvious that the system of tenure in the State land areas has overwhelming advantages in that it provides an indefeasible title, a negotiable title, and a title that can be pledged to raise capital as well as provides for the succession of title. Certain restrictions on tenure are imposed by laws enacted by the Government. Such restrictions are in the national interest rather than in any local interest, and they may always be readily

ascertained.

It is desirable, in the interest of both the individual and the country, that these advantages be extended to the tenure of reserve lands and trust lands. At the same time, it must be recognized that rural people are generally conservative in thought and changes might, therefore, have to be gradual so that confidence is not undermined.