

**CUSTOMARY LAND IN ZAMBIA-WHAT IS  
ITS SIGNIFICANCE ?**

**BY**

**SAM K. KALUNGIA**

**[ 2008 ]**

**CUSTOMARY LAND IN ZAMBIA – WHAT IS  
ITS SIGNIFICANCE?**

**BY**

**SAM K KALUNGIA [83157794]**

**UNZA**

**2008**

## **CERTIFICATION**

This essay entitled ‘ **Customary Land in Zambia –What is Its Significance?** ’ has been written by Mr. Sam K Kalungia in accordance with the requirements of the L410 Course in partial fulfillment of the Degree of Bachelor of Laws (LL.B) of the University of Zambia.


**The University of Zambia**

**School of Law**

**P.O. Box 32379**

**Lusaka**

**Supervisor: Mr. Fredrick S Mudenda**

**Signature:** .....

## DECLARATION

I hereby declare that this essay entitled : “ **Customary Land in Zambia – What is Its Significance?** ” is my own original work.

Dated: 11/02/2009

Sam K. Kalungia 

Computer No. 83157794

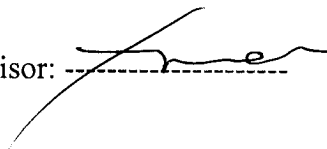
**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

**SUPERVISOR'S RECOMMENDATION**

I recommend that the obligatory essay entitled: "CUSTOMARY LAND IN ZAMBIA – WHAT IS ITS SIGNIFICANCE?" written by Sam K. Kalungia and supervised by Mr. F.S. Mudenda be accepted for examination under the L410 Course. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing obligatory essay.

Date: 12/02/09

Supervisor:  F.S. Mudenda.

# TABLE OF CONTENTS

|  |     |
|--|-----|
| ACKNOWLEDGEMENTS   | vi  |
| ABSTRACT   | vii |
| OBJECTIVES, METHODOLOGY AND LITERATURE REVIEW  | x   |
| <b>CHAPTER ONE</b>   |     |
| THE LINKAGE BETWEEN CUSTOMARY LAND AND STATE LAND  |     |
| 1.0. INTRODUCTION  | 1   |
| 2.0. RELATIONSHIP BETWEEN CUSTOMARY LAND AND STATE LAND IN<br>ZAMBIA.                        | 3   |
| <b>CHAPTER TWO</b>   |     |
| POSSESSION OF CUSTOMARY LAND WITHOUT ITS OWNERSHIP<br>IS A HINDERANCE                        |     |
| 1.0. ELEMENTS OF LAND OWNERSHIP UNDER LEASEHOLD TENURE IN<br>ZAMBIA.                         | 10  |
| 2.0. DO PEOPLE IN ZAMBIA LIVING IN CUSTOMARY AREAS OWN THE<br>CUSTOMARY LAND?                | 14  |
| <b>CHAPTER THREE</b>   |     |
| ASSESSING THE ECONOMIC IMPACT OF CONVERTING<br>CUSTOMARY LAND                                |     |
| 1.0. IS LAND COLLATERAL FOR BANK CREDIT A DEVELOPMENT PANACEA<br>FOR VILLAGERS INZAMBIA?     | 26  |
| 2.0. SOCIO-ECONOMIC IMPLICATIONS AND CONSEQUENCES OF<br>CONVERTING CUSTOMARY LAND IN ZAMBIA. | 32  |

|  |           |
|--|-----------|
| <b>CHAPTER FOUR</b>  |           |
| <b>EMPOWERMENT FOR CUSTOMARY LAND OWNERSHIP</b>  |           |
| 1.0. ALTERNATIVE APPROACHES OF EMPOWERING VILLAGERS IN ZAMBIA<br>IN ORDER FOR THEM TO PERFORM A MORE VIABLE ROLE TOWARDS<br>SUSTAINABLE DEVELOPMENT. | <b>38</b> |
| <b>CHAPTER FIVE</b>  |           |
| <b>SUMMING UP THE RURAL STIMULUS STRATEGY</b>  |           |
| 1.0. A CRITIQUE OF GRZ POLICY VIEWS ON CUSTOMARY LAND .  | <b>47</b> |
| 2.0. CONCLUSION  | <b>54</b> |
| 3.0. RECOMMENDATIONS   | <b>56</b> |
| <b>BIBLIOGRAPHY</b>  | <b>58</b> |

## **ACKNOWLEDGEMENTS**

I would like to convey my gratitude to various persons and institutions whose co-operation and assistance enabled me to accomplish this work. First, to the following commercial banks for giving me access to their information on bank credit matters: Barclays Bank Zambia Ltd, Cavmont Capital Bank Zambia Ltd, CitiBank Zambia Ltd, Finance Bank Zambia Ltd, Indo-Zambia Bank Ltd, Intermarket Banking Corporation Zambia Ltd, Investrust Bank Zambia Ltd and Standard Chartered Bank Zambia Plc.

Secondly, to Mr. Fredrick S. Mudenda who provided me with all the necessary guidance in his befitting capacity as my supervisor for the course.

Thirdly, to my immediate family members who endured my isolation to write the essay when they needed me to attend to some domestic responsibilities.

Any errors that the work may contain shall be attributed to me entirely.

Sam K. Kalungia

Lusaka.

Copy Right (c): Sam K.Kalungia / UNZA Law School.

## **ABSTRACT**

The study has established that customary land in Zambia is enormously significant because land is central to human existence and a large proportion of Zambians depend on it for their livelihood. Customary land in Zambia is the source of food and other necessities for human existence for the villagers whose entire spectrum of perceptions of life are rooted in the cultural configurations and heritage of rural activities. Further, the study has found that the land can be made more commercially productive without converting it to leasehold. Other African countries too recognize and uphold the significance of customary land because it prevents landlessness of their citizenry.

The ownership requirements of leasehold land preclude the financial capacity of villagers living on customary land. The existence of customary land tenure thus provides land sanctuary for a commercially weak segment of the citizenry who require free and permanent access to land because a citizen denied land has lost the basic means of sustaining his livelihood. In Zambia, as in other African countries, the concept of land ownership consists of not only communal interests in land but also concurrent interests, individual interests and successive or inheritable interests in the land. Thus, citizens of Zambia living on customary land truly own the land in perpetuity, subject to the statutory reservations against minerals, oil, gas or other valuable treasure reserves that may lie beneath their land.

The vesting of all land in Zambia in the President is only for administrative convenience and does not abrogate the ownership of customary land by the citizens of Zambia who

live in the customary areas. In the same vein the chiefs in Zambia do not own the customary land under their jurisdiction but merely administer the land on behalf of their subjects who actually own and utilize it in perpetuity for their living and for the prosperity of their tribal communities.

Customary land in Zambia at present has no bank collateral attributes because it has no developed structures on it. More over it is not prime land because it is situated far away from urban areas where banks exist. Therefore, it serves no purpose in the procurement of bank credit. This raises the need for government to designate a tailor-made financial credit institution to provide specific credit for prospective entrepreneurs living on customary land. The government has a further duty to provide necessary infrastructure and business extension services in customary areas to facilitate business development there.

Utilization of customary land by foreign investors may be encouraged but should not supplant or displace villagers from their land. Rather, the villagers should be integrated into the various forms of investments targeted for the customary areas.

Government land policy reviews must tap widely into public opinion and field research in order for the intended policy to reflect appropriate strategies consistent with the realities on the ground in the best interest of the poor people living in the villages. This essay thus posits a new persuasion in land development to carry forward a vision to empower villagers to harness their customary land.

Although the paper does not purport to posit any new theory, it nevertheless provides some insights that may stimulate further and broader research by others. In this respect, the author considers the work to be a useful contribution to the body of knowledge on land matters in Zambia.

The essay comprises five chapters and the first chapter is preceded by a review of relevant literature. The relationship between the two land tenure systems in Zambia is outlined in chapter one to set the tone for chapter two which examines the elements of land ownership under leasehold tenure. The chapter further analyses the African concept of land ownership. In chapter three the essay sets out to answer the question as to whether customary land has any collateral relevance to bank credit for village business development. It further examines the socio-economic implications and consequences that are likely to occur from rampant conversion of customary land in Zambia.

Chapter four considers economic empowerment possibilities for villagers living on customary land in Zambia. This is the central aspect of the essay regarding concerns of increased marginalization and vulnerability of villagers in their natural resource-rich habitat. Finally, chapter five responds to some commonly held misconceptions regarding customary land and its administration in Zambia. The chapter further provides useful and feasible recommendations, thereby designating the paper as an essay containing a practical vision.

## **OBJECTIVES, METHODOLOGY AND LITERATURE REVIEW**

### **STATEMENT OF THE RESEARCH PROBLEM AND OBJECTIVES OF THE STUDY**

The study was an inquiry into the question as to whether customary land as a parallel land tenure in Zambia is of any significance to the nation. In answering this question, the essay has focused on the real property relations of the villagers in Zambia and the concern for their economic plight in the event that they are dispossessed of their customary land.

The study was intended to achieve three objectives. First, to clarify whether it is rational to continue to have customary land tenure in Zambia. Second, to show what new role customary land can play to enhance development in Zambia. Third, to generate a topical paper in partial fulfillment of the requirements for a Bachelor of Laws degree of the University of Zambia. The paper thus provides justification for the continuance of customary land in Zambia.

### **METHODOLOGY**

The study was an evaluative research which relied partly on secondary data and partly on primary data. The author generated the primary data by means of a structured questionnaire and oral interviews conducted with professional staff of selected commercial banks and other professionals in the diplomatic fraternity. The two categories of data have been blended with the author's interpretations, inferences and assertions to give the paper a novel flavour in the realm of land law.

## LITERATURE REVIEW

The literature review provides an essential conceptual and theoretical framework of the subject matter. It coherently links into all the five chapters of the essay through logical cross-referencing.

### 1. WHAT IS CUSTOMARY LAND?

The author is looking at customary land beyond the spectacles of section 2 of the Lands Act<sup>1</sup>. Customary land is land under customary law and for which there is no requirement for paper title. Such land is also referred to as **folk land**<sup>2</sup>. Pursuant to the legal definition of land, the classical restrictions received from English Law as to land ownership regarding statutory control of all minerals, public waters (rivers, natural lakes and commercial man-made lakes), natural forests and commercial man-made forests, game animals and historical sites also apply to customary land in Zambia.

Like in several other African countries<sup>3</sup>, customary land in Zambia is thus an indigenous system of interests in land founded or evolving upon rules and practices by which persons living in their rural village habitat exercise and enjoy rights in land or in objects fixed immovably on land according to the customary practices prevailing in the particular area, as circumscribed by the tribal ethics of the area.

---

<sup>1</sup> In legal parlance land includes the subsoil, the minerals therein, the forests thereon and their wild life, the water thereon, the airspace above it and any structures built on the land.

<sup>2</sup> Garner A.B., (editor), (2004), Black's Law Dictionary, Thomson West, 8<sup>th</sup> ed., Dallas.

<sup>3</sup> See 3 below where examples are stated at page xv.

## 2. EXTENT OF CUSTOMARY LAND IN ZAMBIA AND POPULATION

### DOMICILED ON IT.

According to unrevised official data adopted from researches of several years ago in the colonial era, Zambia's territorial area is 752,614 square kilometers of which 94% (707,457 square kilometers) is believed to be customary land and the remaining 6% (45,157 square kilometers) is believed to be state land. When we look beyond these figures, however, a different picture emerges as we take into account the fact that National Parks and Game Management Areas<sup>4</sup> (totaling 225,600 square kilometers) form part of land in customary areas. Thus, customary land which is freely accessible to villagers in the various parts of Zambia is roughly 481,857 square kilometers or 64% as reflected in table 1 below:

**Table 1: Categories of Zambian land by size**

|  | Km <sup>2</sup> | Percentage (%) |
|--|-----------------|----------------|
| i) Customary land freely accessible to villagers : | 481,857         | 64             |
| ii) State land (land under lease hold):            | 45,157          | 6              |
| iii) National Parks:                               | 60,160          | 8              |
| iv) Game Management Areas:                         | 165,440         | 22             |
| <b>Total Zambian Territory</b>                     | <b>752,614</b>  | <b>100</b>     |

*Source: Constructed from data in Government Land Policy Paper of 2008*

The data in table 1 indicates that the land falling under the jurisdiction of chiefs in Zambia is roughly 64% (as 30% of it is reserved for special forests, wild life sanctuaries and natural historical sites under statutory power) and it accommodates roughly half of

---

<sup>4</sup> In Game Management areas the indigenous villagers are allowed to live alongside with the game animals therein so long as they do not pouch the animals whereas National Parks are exclusively for the game animals therein. In both sanctuaries the animals are protected under the Wild Life Act No. 12 of 1998.

the country's population<sup>5</sup>. It is therefore a fallacy to believe that customary land per se in Zambia is 94% of the country's territorial area.

### 3. A LEGAL PERSPECTIVE AND SOCIAL ANALYSIS ON CUSTOMARY

#### LAND IN ZAMBIA.

In pre-colonial era (prior to 1900) the indigenous people of this country (now called Zambia) owned and occupied land in the territory under the administration of their various chiefs and community elders according to their geo-ethnic and demographic distribution at the time. The entire country was customary land. Today there are 286 chiefs in Zambia as reflected in table 2 below.

**Table2: Distribution of Chiefs in Zambia by Province**

| Prov | Cent | C/Belt | Eastn | Luap | Lus | N/thn | N/W | S/thn | Wstn | T/tl       |
|------|------|--------|-------|------|-----|-------|-----|-------|------|------------|
| Chfs | 33   | 15     | 57    | 39   | 7   | 50    | 33  | 41    | 11   | <b>286</b> |

Source: House of Chiefs Research Unit.

Thus, each of the 286 chiefdoms distributed by district represents a customary area. By this criterion there are 286 customary areas in Zambia situated in 61 rural districts. These have evolved from pre-colonial period. Accordingly, customary law provided the legal mechanism for the alienation and administration of the land. Customary tenure in this country was thus not a creation of colonial rule because it evolved from and is rooted in the immemorial traditional settlements of the indigenous peoples of the territory. It was the first land tenure system to exist in the territory now called Zambia. Even if we apply

<sup>5</sup> This estimate is based on the following CSO demographic data for the year 2000:

**URBAN:** Lusaka (1,391,329) Copperbelt (1,581,221) Central (1,012,257) Southern (1,212,124) = **5,196,931**

**RURAL:** Northern (1,258,697) Western (765,088) Northwestern (583,350) Luapula (775,353) Eastern (1,306,173) = **4,688,661**

Kelsen's conception of law as a system of legal norms dependent on the basic norm, the change of names to reserve land and trust land under the laws of colonial regimes did not ouster the entire system of indigenous African land relations. Moreover, the Lands Act, 1995 abolished reserve land and trust land to restore and recognize customary areas as customary land under the jurisdiction of traditional chiefs.

The dawn of colonial era<sup>6</sup> introduced statutory tenure by designating the best areas of customary land as crown land for the exclusive occupation of white settlers and the location of their administrative and commercial infrastructure. Therefore, the colonial regime expropriated 6% of the land belonging to the indigenous people and thereupon removed the natives there from. It is thus another fallacy to believe that customary land in Zambia is a legacy of colonial rule. Rather, it is a legacy of traditional Zambian society.

Zambia's dual legal structure comprises customary law system and the general (modern) law system, the latter having evolved from the received English Law. The legal duality operates in tandem with the dual land tenure system. In both systems (of law and tenure ) the customary element is rooted in the indigenous practices of the people of Zambia whereas the statutory element has evolved from the colonial foundations. Thus; a perfect match exists between the legal system and the land tenure system whereby a corresponding element of each system is harmoniously fitted into the other to create an equilibrium (a point of co-function). To short-circuit the arrangement will cause an explosive dysfunction to the detriment of the society. This phenomenon is not a Zambian peculiarity but a common feature of most African nations whose prevailing practices are

---

<sup>6</sup> From 1889 to 1923 the country was administered by BSA Company of John Cecil Rhodes in liason with the British Crown and from 1924 to 23 October 1964 the British Crown instituted direct rule upon the relinquishing of BSA Company rule.

invariably intertwined with the colonial past. As Meek<sup>7</sup> and others found out, tribal land has continued to exist past colonial era (from pre-colonial time) in the following African countries, just to mention few: Malawi, Uganda, Nigeria, Ghana, Siera Leone Swaziland, Tanzania and Botwana.

In Zambia removal of customary land from the tenure system will result in the destruction of the country's cultural heritage because human culture thrives on land from which the people derive their livelihood. Consequently, social disorientation of rural inhabitants will ensue, resulting in excessive social frustration among several economically disoriented persons. In South Africa, for instance, the occurrence of urban xenophobic violence in 2008 may have been partly attributable to similar socio-economic frustrations as a consequence of inappropriate or unbalanced resource allocation and management (including land resource).

The foregoing hypothesis derives its credence from the psychological causes of social deviance in society. As Wallace (1956, 1970) found out, when the equilibrium of a socio-cultural system is disrupted by internal or external forces it becomes unable to meet the needs of its participants. Deviant behaviour consequently occurs in the frustrated persons, manifesting as crime, civil strife and other forms of social decadence which may crystallize into a new social code for the society. Thus, abrupt dismantling of long established cultural foundations by means of sweeping and rushed fundamental socio-economic transformations may negatively impact upon marginalized individuals by

---

<sup>7</sup> Meek, C.K., (1968), *Land Law and Custom in the Colonies*, Frank Cass & Co. Ltd., London.

triggering a catharsis of their frustration. Consequently, violent external reactions may be directed at the cause of the frustration or at a substitute (Carrol Herhert, 1967).

Furthermore, early prior experiences (including those acquired through cultural practices in the use of land) tend to leave permanent residues in individual persons. These may recur from time to time (Munn, 1966), thereby creating persistence in opposition to some well intended economically beneficial schemes. Thus, permanent cultural residues in the use of customary land by villagers will subsist in the rural areas. Consequently, as Spindler (1955, 1968) and Brunner (1956a) have observed, we find that where material and institutional change is more rapid than changes in the personality dispositions of individuals or groups of individuals, a campaign intended to achieve some desired behaviour change may become strongly rooted in the country's institutional framework without creating the desired behaviour change in the targeted sector of the society.

The gist of the foregoing elaboration is that the interaction of indigenous Zambian people domiciled in their rural habitat with the modern cash economy ought to evolve in an embracing manner within the tangible and intangible limits of their cultural fibers such that the total transformation of the socio-economic superstructure and substructure of the country should occur and carry with it all the Zambians on board. The net benefit of the process ought to be measured by the level of commercial empowerment accorded or to be accorded to the majority of Zambians, especially the marginalized (economically vulnerable) individuals<sup>8</sup>. To this end the caution to public administrators and policy advisors is that in our models of development total and overwhelming disruptions in our

---

<sup>8</sup> Except for those who indulge in voluntary impoverishment.

customary land are extreme measures which are likely to, inter alia, accelerate poverty multiplier effect on the majority of the rural population and their offspring.

The author's thread of reasoning in this discourse bears philosophical congruence to the proposition of Jeremy Bentham who posited in his utilitarian philosophical theory that the purpose of law is to regulate society in such a way that the majority of the members of society derive maximum benefit which will translate into their happiness. In this context, envisaged changes to Zambia's land policy and statutes governing land in the country ought to focus on strategies which will empower (and not disempower) marginalized rural Zambians in order to improve the use of their land. Grandiose strategies will, on the other hand, operate to displace vulnerable persons from their land to pave way for rapid construction of sky scrapers **by and for** foreign capital owners (some from countries where there is no more land to alienate) and very well to do local investors.

Fredrick S. Mudenda (2007) has pointed out and the 2008 Government Draft Land Policy Paper also reiterated that there is already a serious lack of supervisory capacity in the Zambian institutions charged with the administration of land. Therefore, without a corresponding improvement of such institutional governance capacity it will be disastrous to implement theoretical fantasies which promise to create development miracles in Zambia premised on abolition of customary land tenure in the country. Spontaneous conversion of the entire customary land in Zambia will create overwhelming supervisory workload for the already overburdened land administering institutions.

## CHAPTER ONE

### THE LINKAGE BETWEEN CUSTOMARY LAND AND STATE LAND

#### 1.0. INTRODUCTION

All things which are capable of growing do so incrementally. Even if the growth is disrupted, resumed growth will be incremental. Thus, the accumulation of knowledge, technology, equipment and all other acquisitions and creations in human existence is incremental. Clearly, the development<sup>1</sup> of human society is a gradual process and not a sudden occurrence. Therefore, the development of land and the society that subsists upon it is an incremental process, as evidenced by the gradual growth of towns. In Zambia, Lusaka, Ndola, Livingstone and other towns have gradually grown from small settlements in the colonial era to cities in more than forty years in the post-independence era. In China, Beijing and other cities have evolved from distant years before the fourteenth century. In America, too, Washington D.C. and other cities have taken several years to attain their present appearance.

In this sense, all products in human society are an embodiment of past inventions or innovations and prevailing practices. From this reasoning, three conclusions are discernible. First, a new product is invariably projected from what already exists in society. Second, some reflection of past structures and processes is inherent in the new creations. Third, products contain a history of the past.

---

<sup>1</sup>. In Zambian rural society full development requires a proper mix between the development of land as defined in section 22(a) of the Town and Country Planning Act, Cap 283 of the Laws of Zambia and the development of the villagers who subsist on the land and who comprise the labour factor towards achieving an optimal mix of all basic factors of production, namely: land, labour, capital and technology.

Thus, from time immemorial all societies have progressed from one stage of advancement to another, not by pulling down nor uprooting the entire existing structures, processes and systems across the entire society, but by creating and effecting qualitative incremental changes to the existing ones. Therefore, the development of customary land entails an infusion of new ideas and techniques into existing structures and systems therein.

In Zambia the development of customary land should proceed in this way by encompassing the improvement of the villagers on their land rather than merely focusing on the land in isolation of its inhabitants. National development for any proper democratic country should primarily be intended to improve and sustain the socio-economic well-being of its nationals because this is what the citizens expect of their government and their parliamentary representatives. Moreover, the **jus cogens** principle of self-determination does not permit indigenous people to be denied full participation in the political governance of their country. The village citizens of Zambia have a universal right to continue to uphold the traditional values of the country under the customary law limb of the Zambian legal system. Thus, the duality of land tenure in Zambia is a necessary characteristic of African governance system under the principle of self-determination. Therefore, the negative perception given to the land tenure duality in Zambia as expressed in the Fifth National Development Plan and Vision 2030 for Zambia ignores and contradicts the empowerment needs of indigenous rural Zambians.

The foregoing view provides justification for a welfare approach to the development of customary land in Zambia. It contemplates existence of a mutually beneficial relationship between customary land tenure and leasehold tenure. The nature of this relationship in the Zambian context is explained hereunder to open an evaluative enquiry into the significance of customary land<sup>2</sup> in Zambia.

## **2.0. RELATIONSHIP BETWEEN CUSTOMARY LAND AND STATE LAND IN ZAMBIA.**

It is necessary to analyze the relationship between customary land and state land because their interface creates effects which bear upon the social and economic activities of society. Knowing and identifying those effects will provide awareness of their implications. The relationship is partly created by the operation of the law and partly by the physical connectivity of the two categories of land tenure. The distinction between customary land and state land is created by law to provide different designations and names for the two types of tenure. It differentiates between the rights in land enjoyed by persons holding land in customary areas and by those holding it under leasehold tenure.

The first relationship is that the two categories of land in Zambia, though different in tenure, are in reality one land mass such that the effect of some social and economic activities carried out in one may inevitably spill over into the other. For instance, the creation of manufacturing industries and shopping malls in Zambian cities has attracted many villagers to live in town. To exemplify further, there is a very high incidence of human deaths in Lusaka, relative to its large population. Consequently, there is now

---

<sup>2</sup> The definition of land in general is provided on page ix of the essay whereas customary land and state land are defined in section 2 of the Lands Act, Cap 184 of the Laws of Zambia.

shortage of burial grounds in the city to necessitate extension of its burial grounds into surrounding customary areas in Chongwe and Katuba. These are social effects. In turn the rural-urban drift has led to excessive overcrowding, mass unemployment and declining food security for many idle households in town, among other implications. Further, the supply of much of the agricultural produce and building construction materials such as timber and aggregates like sand and gravel required for the needs of producers and consumers in the vast population of the townships in state land are sourced from customary areas. Thus, there also exist mutually beneficial commercial transactions between the two categories of land in Zambia. This is an economic effect.

In other ways the relationship between customary land and state land is created by the operation of some statutes which apply in common to the two categories of land tenure and the application of relevant Zambian case law. The following are the relevant statutes: the Lands Act<sup>3</sup>, the Lands Acquisition Act<sup>4</sup>, the Electricity Act<sup>5</sup>, the Zambia-Tanzania Pipeline Act<sup>6</sup>, the Tanzania-Zambia Railway Act<sup>7</sup>, the Town and Country Planning Act<sup>8</sup>, the Zambia Wild Life Act<sup>9</sup>, the Local Government Act<sup>10</sup>, the Forest Act<sup>11</sup>, the National Housing Authority Act<sup>12</sup> and the Water Act<sup>13</sup>. The legal relationship created between the two types of land tenure by the operation of these statutes is elaborated below.

---

<sup>3</sup> Cap 184 of the Laws of Zambia.  
<sup>4</sup> Cap 189 of the Laws of Zambia.  
<sup>5</sup> Cap 433 of the Laws of Zambia  
<sup>6</sup> Cap 455 of the Laws of Zambia  
<sup>7</sup> Cap 454 of the Laws of Zambia  
<sup>8</sup> Cap 283 of the Laws of Zambia.  
<sup>9</sup> No. 12 of 1998.  
<sup>10</sup> Cap 281 of the Laws of Zambia.  
<sup>11</sup> Cap 199 of the Laws of Zambia.  
<sup>12</sup> Cap 195 of the Laws of Zambia  
<sup>13</sup> Cap 198 of the Laws of Zambia.

The Lands Act is the main statute for the overall regulation of all land in Zambia. Thus, the existence of customary land in the country is protected by the law. Section 7(1) of the Lands Act recognizes the existence of customary land in Zambia. Further, section 8 of the Act provides for conversion of customary land to leasehold tenure. This is a fundamental relationship between the two types of tenure in that in due course more customary land will be transformed into leasehold. The arrangement thus provides for a gradual extension of the perimeters of state land. This has some merits, including the following: The land space for the cities and other towns in the country can be extended into the surrounding customary areas. This has begun to occur in Solwezi, for instance, where some portions of land in the customary area under Chief Kapijimpanga have been added to Solwezi town. Therefore, it provides for gradual commercialization of rural land.

In addition, the arrangement prevents spontaneous displacement of villagers as there is still enough customary land nearby for the affected villagers to move to. Those who must move to alternative customary land will be few villagers at a time in a long time when further expansion of a town becomes imperative. It thus helps to preserve some land for future use<sup>14</sup>. However, some demerits of the arrangement have been advanced by some chiefs and villagers, as outlined below.

The Mun'gomba Constitutional Review Commission of 1983, on the basis of submissions received from some Zambian Chiefs and other villagers, recommended that the Lands Act should make provision that land held under leasehold tenure which was

---

<sup>14</sup> We cannot create new or additional land in Zambia.

previously held under customary tenure should revert to customary tenure on re-entry, voluntary surrender or compulsory acquisition. This view supports the contention by chiefs and other villagers that customary land should remain undepleted. The Chiefs were further opposed to the vesting of land under the President by section 3 of the Lands Act. They misunderstood the section as meaning that Land in Zambia belongs to (or is the property of) the President. In fact, the vesting clause only confers the President with authority to control land on behalf of the people of Zambia. In this respect the consent of the President is cardinal in the conversion of customary land.

The relationship created by the Lands Act has other effects as outlined below. One such effect is that section 3 of the Act obliges the President to authorize grant of land to foreigners. The concern related to this provision is that vast tracts of customary land will be lost to non-Zambians under the guise of investors because there is no legal restriction on the hectareage that a person could acquire. In this way, several villagers will be displaced from their land.

Another effect of the relationship is that land held under customary tenure can only be alienated to a non-villager if consent is obtained by the traditional chief from those whose interest in the land in question may be affected by such allocation. Failure to consult renders the grant of customary land null and void because it contravenes section 3(4) of the Lands Act. This was pronounced in **Still Water Farms Ltd v Mpongwe District Council and Others**<sup>15</sup> and also in **Siwale and Others v Siwale**<sup>16</sup>. The required approval

---

<sup>15</sup> Supreme Court Appeal No. 90/2001

<sup>16</sup> [1999] ZR 84

extends to the District Council of the area. In **Chenda and Another v Phiri and Another**<sup>17</sup>, the Supreme Court held that in accordance with section 3(4)(d) of the Lands Act, an applicant for a leasehold title in a customary area must obtain prior approval of the local authority.

Further, once customary land has been converted to leasehold, a chief has no control over the land and cannot thereafter withdraw the consent to convert. This principle was pronounced in the decision of the Supreme Court of Zambia in **Makwati v Senior Chieftainess Nkomesha**<sup>18</sup>.

The consent of the President in commercial transactions regarding land, as provided in section 5 of the Lands Act, has application also to customary land by operation of Zambian case law. In **Siulapwa v Namusika**<sup>19</sup>, the High Court held that the repealed 1975 Land (Conversion of Titles) Act<sup>20</sup> applied to land held under customary law. Thus, Presidential consent was extended to cover the sale of structures built on customary land. The effect of this precedent is that, subject to Presidential consent, persons holding land under customary tenure may sell their structures built on land in a customary area whenever they desire to dispose of such creations. This provides incentive for people to invest in customary areas without having to convert the land to leasehold tenure since they can sell their structures should they desire to leave the area.

---

<sup>17</sup> Supreme Court Appeal No. Lat/ 80/98

<sup>18</sup> Supreme Court Appeal No, Lat/60/97

<sup>19</sup> [1985] ZR 21

<sup>20</sup> This statute was repealed by the Lands Act, 1995. However, the case law based on it remains a binding court precedent.

Thus, in general, the relationship created between customary land and state land renders customary land subservient to state land in the sense that the Act provides a channel for increasing the stock of leasehold land by subtracting land from customary areas through a one way conversion system.

The inter-tenure relationship in Zambia is further reinforced by the operation of the law on compulsory acquisition of land under the principle of eminent domain. The general law relating to compulsory acquisition in Zambia is expressed in various statutes, namely: Article 16 of the Constitution of Zambia<sup>21</sup>, the Lands Acquisition Act (section 3), the Lands Act [section 3(1) and (2)] and other related statutes which give power to the state to compulsorily take possession of or acquire land, including customary land. Compulsory acquisition of customary land can only occur when the land is required for alternative use in public interest such as in the following circumstances: generation or transmission of electricity(under the Electricity Act), erecting an oil transmission or storage facility(under the Zambia-Tanzania Pipe Line Act), to open up a mine in which the government has shares or if a piece of land in a mineral-bearing customary area has been earmarked for a mine to be opened by a private investor (under section 3(2) of the Mines and Minerals Development Act<sup>22</sup>), construction of a railway line (under the Tanzania-Zambia Railway Act), establishment of a game sanctuary (under the Zambia Wild Life Act sections 10, 11 and 26), establishment of a new Boma (under the Town

---

<sup>21</sup> The constitution provides for protection from deprivation of property, which property is held to include land. It also provides for compensation (as does section 10 of the Lands Acquisition Act) for property compulsorily acquired.

<sup>22</sup> No.7 of 2008 of the Laws of Zambia

and Country Planning Act<sup>23</sup>, section 40(1) and Local Government Act, section 65), establishing a public forest sanctuary (under the Forest Act, sections 10 and 19), establishment of a public housing scheme (under the National Housing Authority Act, section 27) or restricting the use of a natural lake or river for the preservation of fish or certain threatened species of reptiles therein (under the Water Act).

Thus, acquisition of customary land by the state in such manner represents another channel for reducing the stock of customary land in Zambia from its private use by the villagers. Therefore, Zambia already has sufficient modality by which customary land in the country may be accessed for large scale modern development undertakings. In this respect, customary land in Zambia constitutes a vital reservoir of land for future use, including public projects. It is therefore evident that in Zambia the relationship created between customary land and leasehold land by statutes and Zambian common law principles generates effects of benefit to the nation.

---

<sup>23</sup> Ordinarily, the Town and Country Planning Act does not apply to customary land. However, the President may, by statutory order under section 48 (1) of the Act, apply all or any of the provisions of the Act to any customary area.

## **CHAPTER TWO**

### **POSSESSION OF CUSTOMARY LAND WITHOUT ITS OWNERSHIP IS A HINDERANCE AND DEPRIVATION**

#### **1.0. ELEMENTS OF LAND OWNERSHIP UNDER LEASEHOLD TENURE IN ZAMBIA**

The elements of land ownership under leasehold tenure in Zambia are the legal requirements necessary for one to sustain his ownership of statutory land. The elements are: cash price for the plot, the duration of the lease, survey services, title deed, ground rent, property rates and fulfillment of development clause. These are elaborated below.

##### **1.1. CASH PRICE FOR LEASEHOLD PLOT**

When leasehold plots are advertised several applicants, including foreigners who have a lot of money, compete for the land. Those Zambians without financial capacity fail to obtain the land. Thus, many poor Zambians may fail to obtain pieces of state land.

##### **1.2. LEASE DURATION**

The lease of statutory land granted to a person may be for fourteen years in the case of a provisional title, subject to renewal if the lessee satisfies the requirements during the fourteen years. The full duration of ninety- nine years for a normal lease may also be granted, subject to renewal.

##### **1.3. SURVEY SERVICES**

Where land granted under leasehold tenure is not fully surveyed and the lease is issued on the basis of an indicative sketch, a ninety- nine years lease cannot be granted because this requires the land to be fully surveyed and beacons placed in all essential areas of the land. An accompanying detailed diagram of the plot is made out, bearing an identification

number of the plot. Depending on the size and location of the plot, the survey fees may vary in several millions of kwacha money.

#### 1.4. TITLE DEED

The title deed for statutory land once issued by the Commissioner of Lands on the basis of correct and valid information thereby becomes evidence of the ownership of state land under leasehold tenure by the person whose name appears on the title deed. The land owner may be a human being or a corporate entity. In **Chilufya v Kangunda**<sup>1</sup> the Supreme Court held that in keeping with section 33 of the Lands and Deeds Registry Act<sup>2</sup> a certificate of title shall be conclusive evidence of land ownership as from the date of its issue and upon and after issue except where fraud was involved in obtaining the title<sup>3</sup>.

Where the title has changed hands by sale or by way of a gift, the transfer of the title must be evidenced by registering it under the name of the new owner within the required period of time. Thus, leasehold title is a valuable asset which may entitle its owner or holder to obtain bank credit. In Zambia, owners of customary land may obtain an official letter from the chief of the customary area, certifying that the bearer of the letter is the bona fide owner of the specified piece of customary land<sup>4</sup>. Such a document is, however, not a title deed.

---

<sup>1</sup> [1999] ZR, 166.

<sup>2</sup> Cap.185 of the Laws of Zambia.

<sup>3</sup> Fraud vitiates land title.

<sup>4</sup> In **Kamal Patel v Alan Lundama and Another**, 2008/HK/121, both defendants of Solwezi in April 2008 obtained a letter from Chief Kapijimpanga to evidence their ownership of pieces of customary land in Solwezi which had been subsequently alienated to Mukwa Lodge and Restaurant of Kitwe when the land became part of Solwezi township. The case was heard in chambers in the High Court at Kitwe before Justice Mukulwamutiyo on 4<sup>th</sup> April 2008 and some other subsequent dates. On the evidence of the letter from the Chief, the defendants were awarded four million kwacha and alternative land.

Although at common law a squatter who occupies another's statutory land for more than twelve years acquires the protection of the law which entitles him to remain on the land, section 34 and section 35 of the Lands and Deeds Registry Act have removed such protection from the squatter. In **Lumanyanda and Another v Chief Chamuka and Others**<sup>5</sup>, the Supreme Court held that once land has become the subject of title, no other person can acquire it by adverse claim or possession. In general, occupation of state land is regulated by statutory law. Section 9(1) of the Lands Act forbids unlawful occupation of vacant land and section 9(2) of the Act provides for eviction of such unlawful land occupier.

### 1.5. GROUND RENT

Section 14 of the Lands Act provides for the landowner under leasehold tenure to pay ground rent to the Ministry of Lands annually. Default of this payment may cause the land to be re-entered or repossessed. Late payment of ground rent also attaches a penalty expressed in money payable to Ministry of Lands as a percentage of the amount due. For instance, in an advertisement dated 14 August 2008 by Ministry of Lands in *The Post*<sup>6</sup> a reminder notice was made to owners of leasehold land to pay ground rent due as at 30 September 2008. The advertisement carried the following warning: **“Failure to settle the ground rent arrears amounts to a breach of the conditions and covenants and will trigger the process of repossession of properties”**.

---

<sup>5</sup> [1988/89] ZR., 194.

<sup>6</sup> Dated 3 October 2008 at p17.

## 1.6. FULFILLMENT OF DEVELOPMENT CLAUSE

Land ownership under leasehold tenure is subject to the operation of sections 31 to 33 of the Town and Country Planning Act which require the lessee to comply with the authorized nature of development for the statutory land so held. The non-compliance may be non-feasance of the authorized development within reasonable time or misfeasance of the authorized development or of some other enforcement measure issued by the Planning Authority. Similarly, section 15(1) of the Lands Acquisition Act<sup>7</sup> provides that repossessed bare land does not attach compensation for the dispossessed landowner. Thus, the owner of statutory land must possess or access by loan sufficient money to be able to fulfill the development requirement for the land so leased to him

## 1.7. PLANNING PERMISSION

Section 22 of the Town and Country Planning Act requires the landowner under leasehold tenure to obtain planning permission as the basis for him to carry out any development or subdivision of his land. This is the essence of statutory control in order to achieve orderly development of state land. The section further provides that material change from one use to another in respect of statutory land must be authorized by the Planning Authority. In **Malin v Municipal Council of Ndola and Another**<sup>8</sup>, for instance, planning permission to establish a day nursery school in a good class (low density) residential area was not granted because the school would constitute an interference with the adjoining neighbours' quiet enjoyment of their premises. Thus, all development and subdivision of statutory land must conform to the local authority land development plan. comprising the local plan by the Director of Planning at the District

---

<sup>7</sup> Cap 189 of the Laws of Zambia.

<sup>8</sup> [1965] ZR, 162.

Council and the structural plan issued by the Minister of Local Government. It costs much money to get architectural plans made out for the proposed development on statutory land.

### **1.8. PROPERTY RATES**

District councils in Zambia, pursuant to the Rating Act<sup>9</sup>, charge property rates as a tax on statutory land or building structures erected on statutory leasehold land in accordance with sections 6(1) and 24 of the Act, subject to the exceptions provided under its section 6(2). The tax, though targeted at the owner of the building structure, may be collected through the occupier(s) of the building or land in rateable areas. Failure to pay property rates attaches sanctions whereby bailiffs may be engaged to execute warrants of distress against the belongings of the occupier(s) of the land or building, pursuant to section 25(1) and (2) of the Rating Act. The goods so seized may be auctioned if the property rates are not settled within reasonable time. In the alternative the District Council may invoke section 25(3) of the Rating Act to issue a civil action to recover the outstanding rates.

### **2.0. DO PEOPLE IN ZAMBIA LIVING IN CUSTOMARY AREAS OWN THE CUSTOMARY LAND?**

#### **2.1. A PHILOSOPHICAL CONCEPTUALISATION OF OWNERSHIP AND POSSESSION.**

Ownership and possession need not exist together at all times because in real property relations the owner of the property may not be its occupier. In legal philosophy possession entails the following three cardinal considerations:

- (i) The relation between a person (human or corporate) and a thing.

---

<sup>9</sup> No.12 of 1997 of the Laws of Zambia.

(ii) That the advantages assigned by law to the jural relation between the person and the thing is a matter of law (including customary law).

(iii) That the advantages so assigned by law also accrue to the person in relation to the thing.

As Dias<sup>10</sup> has acknowledged, ownership has a functional role in that the person's position and role in society circumscribe his relation to the thing deemed to be his own.

As already noted in the literature review, one of the limbs of Zambia's dual legal system is customary law. Thus, the jural relations between the villager and his land under customary law attach advantages not only to the land but also to the villager so asserting his rights to it as the owner. In Zambia this philosophical principle of ownership under customary law has been acknowledged in land ownership to express the nature of interest in customary tenure in the case of **Mwiinda v Gwaba**<sup>11</sup> to the effect that the owner of customary land holds it in perpetuity regardless of whether or not the land is in his possession at any material time.

In the **Mwiinda case**, the plaintiff villager, though not physically in his village at the time of litigation, was deemed and pronounced by the High Court to be the owner of the piece of land in question in Sikonga village. Accordingly, a permanent injunction was issued against the respondent headman, restraining him from further interfering with the plaintiff's land (except to harvest his crop and no more). The respondent village headman had sought to oust the plaintiff from his land in Sikonga village.

---

<sup>10</sup> Dias, R.W.M., (1985), *Jurisprudence*, Butterworths, 5<sup>th</sup> ed., London at pages.290 and 304

<sup>11</sup> [1974] ZR, 188.

## 2.2. THE AFRICAN CONCEPT OF LAND OWNERSHIP<sup>12</sup>

Elias (1956) has clarified that African customary law of land tenure has no conception of land holding comparable to the English idea of a fee simple absolute whereby all land in feudal England belonged to the crown alone such that every body else only held the land as a tenant of the King.

In Kenya<sup>13</sup> the persuasive study by Mze Jomo Kenyatta (1938) in respect of traditional Kikuyu land has revealed that Africans as evidenced by the practices of the Kikuyu tribe held individual ownership of land even though such land owners occasionally permitted other persons in the community to use their land for, inter alia, collection of firewood, mushrooms, wild fruits and honey. African title to traditional land is acquired informally. It has been established that such title is more than of usufructuary right because it is not only a right of use of the land but is also a right of possession or ownership.

According to Professor Bentsi-Enchill<sup>14</sup>, the African chief is not the absolute owner of customary land but is merely a trustee administering the land on behalf of the subjects who hold the user rights to the land. In Zambia, Professor Ndulo's study has clarified that the role of chiefs in Zambian customary land tenure is two-fold, namely: the power to control the land and the power to allocate it to the subjects who in turn exercise the ownership and user interests. Thus, Zambian chiefs do not own land per se. They merely

---

<sup>12</sup> The learned author, F.S.Mudenda, in his book: *Land Law in Zambia* (2007) at pages 759 to 782 has provided a well reasoned account of this subject matter.

<sup>13</sup> Mze Jomo Kenyatta (1938), *Facing Mount Kenya* at page 21 observes that: "According to the Gikuyu customary law of land tenure, every family unit had a land right of one form or another. While the whole tribe defended collectively the boundary of their territory, every inch of land within it had its owner".

<sup>14</sup> Bentsi-Enchill, K., (1964), *Ghana Land Law*, Sweet and Maxwell, London.

control it for its proper distribution to the subjects of the chieftdom for their individual perpetual ownership. This is the same way in which the President of Zambia holds land on behalf of the people of Zambia.

Elias has further clarified that the nature of African interests in their customary land is very wide in its scope as expressed by the term 'corporate in nature'. He has noted that the corporate nature of African conception of customary land comprises communal interests, concurrent interests, individual interests and successive or inheritable interests. Thus, African customary tenure in this respect carries a similarity to the fee simple in that the interests therein continue to manifest in perpetuity. As such, customary land belongs to the living as much as it does to the unborn and the dead. Each individual in the village community enjoys security of tenure, as exemplified in the case of **Mwiinda v Gwaba**.

A study conducted in Barotseland by a colonial officer<sup>15</sup> found that land administered by the Lozi paramount chief was in fact individually owned by the chief's subjects and that even though such land was occasionally accessed by other persons for their use, it did not make the individuals to whom the land was allocated cease to be the private owners of the land. Thus, the findings of the study are congruent with those of Professor Ndulo that chiefs play the role of administering customary land as a control function whereas the subjects exercise the user function. This view has also been acknowledged by a group of four contemporary chiefs<sup>16</sup> who were interviewed on Zambia National Broadcasting Corporation Television on 26 April 2008 between 13.00 and 14.00 hours. It was

---

<sup>15</sup> By the name of CMN White, with reference to the authority cited by F.S. Mudenda (2007), *ibid* at p768.

<sup>16</sup> The group comprised Senior Chief Shakubila (Mumbwa), Chief Mumena (Solwezi West), Chief Nzamane (Chipata) and Chief Shaibila (Mkushi).

acknowledged that chiefs do not own the customary land under their jurisdiction. Chief Mumena was very emphatic on this point.

As already noted in the review of literature, customary land rights are not peculiar to Zambia but are a common feature in African countries. To emphasize and exemplify this assertion, we draw from the contemporary customary land systems of two neighbouring countries, namely: Tanzania and Botswana. There are no chiefs in Tanzania<sup>17</sup>. Thus, the Tanzanian customary land system has been brought in to exemplify the point that customary land can still exist in the absence of the institution of chiefs.

### 2.2.1. CUSTOMARY LAND SYSTEM IN TANZANIA

All land in Tanzania is under the state authority. However, the village resettlement scheme (Ujamaa<sup>18</sup> villages) of 1970s in Tanzania did not remove customary land tenure there. Customary land in Tanzania is divided into twenty-six regions for administrative convenience. Centralized land control is preferred in Tanzania because regional land control and planning system had tended to conflict with national land control strategies.

---

<sup>17</sup> This was established in an interview made by the author with a senior diplomat at the Tanzania High Commission in Lusaka on 30<sup>th</sup> July 2008. The accuracy of this information has been confirmed against various documented sources such as Shao (1992), Hatch (1972), Shorter (1972), Abrahams (1981) and Austen (1968). All the said authorities confirm that chiefs existed in Tanzania in pre-colonial and colonial periods. According to Abrahams (1981) at p256 President Nyerere in his scheme of African Socialism made his TANU Party Officials the control mechanism of the reorganized village collectives (Ujama Villages) and the process thereby destroyed the customary leadership of chiefs in Tanzania. Thus, chiefs ceased to exist in Tanzania with the end of colonial rule to prevent divided loyalty in rural areas. Hatch (1972) at pages 107 and 108 notes that Nyerere was himself a son of one of the eight chiefs of the Zanaki tribe (East of Lake Victoria) with the chief's 18<sup>th</sup> wife.

<sup>18</sup> Ujamaa is a Swahili word denoting solidarity in family relationships in pursuit of social welfare [per Swahili-English Dictionary, (2001)].

Like in Zambia, villagers in Tanzania live on customary land where they enjoy full rights of ownership and possession of the land in perpetuity. Ten adjacent villages in Tanzania constitute a **cell** headed by a cell leader. The customary land control system runs on a hierarchy from the cell to the district through to the region. Thus, direct government control is exercised upon the village administrative structures through the cell leaders whereas in Zambia chiefs exercise authority over the villagers.

Acquisition of traditional land in Tanzania is by residence in the customary areas, similar to the Zambian scenario. All citizens of Tanzania are entitled to free ownership of land in customary areas, again similar to Zambia. Thus in Zambia, too, the existence of customary land does not depend on the existence of chiefs. Rather, chiefs in Zambia are a means of controlling and safeguarding customary land for the villagers because rulers exist to provide protection for the governed. This view is founded on the philosophical principles of John Locke and Jean Jacques Rousseau whose doctrine of social contract emphasizes that the state and its governing machinery must offer protection to the citizens and their property in exchange for their mandate conferred on the government to govern, legislate and adjudicate.

### **2.2.2. CUSTOMARY LAND SYSTEM IN BOTSWANA**

The Botswana system of customary land, on the other hand, represents a uniquely interesting model which guarantees security of land tenure to every citizen of

Botswana<sup>19</sup>. Like Zambia, Botswana has two land tenure systems, namely: state land and customary land. There, customary land is categorized into four different usages, namely:

- (a) Customary land for farming (**Masimo**)-fields up to 200 metres by 200 metres per plot.
- (b) Customary land for keeping cattle (**Morake**).
- (c) Customary land for dwelling houses (**Gae**) – up to 40 metres by 40 metres per plot.
- (d) Customary land for business development.

In Botswana customary land is designated for the citizens of the country except in the areas designated for business development where some foreign investors may be permitted with the blessing of the chiefs. Although all land in Botswana is administered by the state, customary land there is regarded to belong to the citizens.

#### (I) Administration of the Customary Land

All land in Botswana is administered by the **Botswana Land Board**. The Chairman of the Land Board is answerable to the Minister of Land. Thus, the government of Botswana supervises land administration through the Land Board, unlike in Zambia where government control over land is exercised directly through a line ministry.

Chiefs<sup>20</sup> in Botswana (**Kgosi**) live on customary land and exercise their jurisdiction on it through the Land Board. Every village there has a **customary council** which advises the

---

<sup>19</sup> The information on the customary land system in Botswana was partly obtained from an interview with a senior diplomat at the Botswana High Commission in Lusaka on 30<sup>th</sup> July 2008 and partly from the work of Professor Schapera (1938), *A Hand Book of Tswana Law and Custom*.

<sup>20</sup> Professor Schapera (1938) notes that the hierarchy of the structure of the Tswana tribal system locates its insignia of customary authority and tribal unity in the chiefs as the heads of the royal families imbued with customary prestige and privilege in their respective tribes. The established customary chain of command thereon percolates to the lowest ranks of customary power and influence within the respective tribes.

chiefs on customary matters, including land issues. Thus, all persons including villagers seeking to be allocated customary land must apply to the Land Board. All **botswana** working in town also have permanent bases in their respective villages such that there is and there shall be **no** landless citizen of Botswana.

## (II) **Acquisition and ownership of Customary Land in Botswana**<sup>21</sup>

The procedure for acquiring customary land in Botswana starts with the submission of an application made out to the village customary council for consideration, specifying the category of customary land required. The council upon assessment states its comments and forwards the application to the area chief for consideration. If satisfied, the chief recommends and sends the application to the Land Board for consideration and approval.

Any one person may acquire directly through the Land Board only up to three pieces of customary land. However, any more customary land required in excess of this may be purchased from another person because there is no restriction as to the number of plots that a citizen may purchase. Some people are thus bound to have more pieces of customary land than others. The villager can build any type of housing structure on his land in the dwelling area. Thus, there is no statutory control over the nature of housing structures in customary areas because low- income people cannot be compelled to build complex houses.

---

<sup>21</sup> Ibid.

The owner of customary land in Botswana may dispose of his structures built on the land and go to settle in a different place, subject to the approval of the chief and village council in the areas.

Ownership of customary land in Botswana is evidenced by a certificate of title. Such a title document differs from the one for the ownership of state land. The features of the certificate of customary land title include: the name of the landowner, the size of the plot, its location, category and purpose of its usage.

Ownership of land in a customary area in Botswana guarantees the owner permanent title to the land inheritable by his heirs. This is protected by law, as exemplified in a Botswana High Court case<sup>22</sup> of 2006. In that case, the court nullified the eviction of Kalahari Bushmen settlers by the government from their long-occupied land in central Kalahari Game Reserve. The High Court held that the Bushmen settlers had been illegally or improperly removed from their land. This decision is similar to the constitutional provision in Zambia that any justifiable removal of a person from his land must attach adequate compensation<sup>23</sup> This principle is highly espoused in the Zambian courts. In **Goswani v Commissioner of Lands**<sup>24</sup> the Supreme Court of Zambia stated that the Constitution of Zambia does not countenance deprivation of property belonging to anyone without compensation. It is therefore clear that the right to ownership and protection of personal property, including land, is a universally recognized practice.

---

<sup>22</sup> Times of Zambia, 24 April 2008 at p4.

<sup>23</sup> Article 16(1) of the Constitution of Zambia, Cap 1 of the Laws of Zambia.

<sup>24</sup> [2001] ZR, 31.

Like in Zambia, the ownership of land in Botswana is subject to statutory reservations regarding minerals that may exist in the land because all natural resources are public wealth administered by government.

The owner of customary land in Botswana does not pay ground rent, like in Zambia, and his title is for perpetual ownership. The usage of every piece of customary land allocated there must conform to the declared usage. Any desired change of land use must be authorized by the Land Board. Thus, while the citizen enjoys free and perpetual access to land in customary areas, the authorities regulate the usage to which the land is put. The intention for this is to encourage orderly development in rural areas.

Structures built on customary land in Botswana cannot be sold to foreigners. Moreover, bare land in a customary area cannot be sold at all. These measures are intended to have customary land remain the property of **batswana** (local people). Thus, all indigenous persons there are protected from becoming landless as a matter of government responsibility<sup>25</sup>. For this reason burial grounds for local people in Botswana are in their villages because a village in Botswana is the cherished home for all **batswana**, the living, the unborn and the dead alike.

Chiefs in Botswana play the role of advising parliament in that all proposals for law must first be discussed by the chiefs before being taken to parliament. This arrangement ensures that all laws, including those to regulate land are consistent with the cherished

---

<sup>25</sup> With a land mass of 582,000 sq km and a population of 1.5m people Botswana's average population density works out to roughly three persons per sq km and so their land model is a good approach towards an orderly utilization of land.

values of the society. In legal philosophy this approach has been espoused by Jhering, Erlich, Roscoe Pound and Savigny among other philosophers who emphasized that law is conditioned by values espoused in the evolution of the particular society.

### (III) SIGNIFICANCE OF CUSTOMARY LAND SYSTEM IN BOTSWANA

First, the head of state has no direct involvement in the alienation and administration of the land. This means that no single individual in Botswana can influence the allocation of customary land other than by collective decisions in the hierarchy from the village council to the chiefs through to the Land Board. Arbitrary political influences are thereby minimized, if not excluded, from the process. Since **batswana** town dwellers have also a base in the village, there cannot be any landless citizen of Botswana.

Secondly, since burial grounds for the locals are in their respective village areas the amount of state land devoted to burial functions for non-locals is small. Thus, much of the state land is left for productive use as urban investments accumulate. Thirdly, the system helps to create strong linkages between urban investments and the rural base in order to downplay the adverse effects of rural-urban development dichotomy and thereby minimize urban-to rural drift tendencies. Fourthly, the citizens of Botswana are accorded freedom to change areas of residence without any risk of becoming landless in the process. Fifthly, foreign investors can access land for business development in customary areas without ousting the locals from their customary land. Sixthly, since customary land belongs to the indigenous people, government cannot arbitrarily remove villagers without the consent of the village council or the chief of the area without compensation, as exemplified by the court decision in the case of the Bushmen of the Kalahari area.

In the foregoing foreign examples of customary land systems drawn from Tanzania and Botswana, the key attributes are that:

(a) Land in customary areas is available to all citizens to be held freely by them and their heirs in perpetuity.

(b) The primary concern is to prevent any citizens from becoming landless.

(c) That foreign investments in the customary areas should accommodate the interests of the village inhabitants.

Clearly, the African concept of land ownership is founded on universally accepted principles which seek to create and uphold an egalitarian society in the rural areas.

Considering the numerous foregoing illustrations, the question as to whether people in Zambia living in customary areas own the land is thereby answered in the affirmative.

The elements of land ownership under leasehold tenure as discussed in the first section of this chapter have been applied in chapter three to reveal and underscore the socio-economic implications and consequences of seeking to convert all customary land in the country. This chapter has thus set the tone for the commencement of chapter three.

## **CHAPTER THREE**

### **ASSESSING THE ECONOMIC IMPACT OF CONVERTING CUSTOMARY**

#### **LAND**

##### **1.0. IS LAND COLLATERAL FOR BANK CREDIT A DEVELOPMENT PANACEA FOR VILLAGERS IN ZAMBIA?**

There is a common presumption that bank credit confers business development and that owners of land automatically qualify to borrow from commercial banks. On the basis of this belief it is further presumed that once customary land is converted to leasehold tenure, its owners will access bank loans with which to initiate business projects and subsequently improve their wellbeing and that of their communities. In order to establish whether such a blanket presumption has any relevance to villagers living on customary land a structured questionnaire was administered to eight selected banks. This was supplemented with oral interviews. Accordingly, a sample of ten commercial banks was randomly selected from a total of thirteen commercial banks domiciled in Zambia. The respondents were credit managers or officers at the head offices of the banks. Eight banks responded, representing a critical mass of 80% response rate. The results summarized herein are therefore adequately representative of the banking sector in Zambia.

The sample was a mix of indigenous commercial banks and foreign owned ones. Most foreign owned commercial banks are risk averse whereas the local ones are pro-risk. Risk averse banks are highly cautious about exposure to credit risk and so they tend to be highly selective in their choice of borrowers. Their clientele are largely corporate entities and some employees of their corporate account holders. Consequently, they work within

very limited lending portfolios. On the other hand, pro-risk banks regardless of higher risk exposure nonetheless operate within broad lending portfolios.

Zambia's banking sector is characterized by low banking penetration (ratio of deposits to GDP) at 19% in 2006 in contrast with Botswana at 40% and Tanzania at 21%<sup>1</sup>. This is largely due to the sharp dichotomy between the urban sector and the rural sector mainly attributable to lack of infrastructure in the rural sector. Against this background, the credit market in Zambia comprises a bankable sector and an unbankable sector. The bankable sector consists of commercially viable business and personal salaried entities whereas the unbankable sector comprises commercially unviable entities. Most individuals living in customary areas in Zambia belong to the unbankable sector.

All foreign banks and some indigenous ones interviewed were primarily concerned with making a profit and minimizing exposure to risk in their credit transactions. Since they are not widely represented in the country, they are thus not concerned with any clientele located far off in the countryside as in the customary areas because their loans there would be too costly to recover. Their clientele are thus within the bankable sector. These banks are therefore not relevant to any poverty-reduction strategies concerning persons in the customary areas.

All banks interviewed stated that land only constitutes collateral for credit if it has sufficient development on it. Generally, bare land is not accepted as collateral except for

---

<sup>1</sup> These figures are from Stockbrokers Zambia Ltd as compiled by the Zambia National Commercial Bank in their Prospectus of September 2008.

one bank which stated that it would accept bare land if it was prime land situated in an urban area where demand for land is so high that in the event of payment default by the borrower the pledged land can then be sold off to settle the amount owed to the bank. In customary areas much of the land is bare. Therefore, the villagers who own it are not only disadvantaged by the long distance from the banks but also by the fact that their customary land does not possess development structures to qualify as collateral nor does it lie in prime areas that would attract quick sale of bare land.

One of the foreign banks gives unsecured personal loans for which the only collateral requirement is to have the borrower obtain life insurance policy<sup>2</sup> against the loan such that in the event of his death before repaying the loan or part of it, the insurance company will settle the amount owed to the bank by the deceased borrower. This approach fits well with villagers on customary land who may not have any collateral receivables to pledge against financial credit. The idea can thus be applied by any financial institution(s) that may offer to assist village individuals to commence sustainable business ventures.

This study focuses on two categories of bank credit, namely: personal loans and corporate loans. Corporate entities are further divided into small scale, medium scale and large companies. It was observed that small and medium companies are usually grouped together as infant business entities for loan and promotion purposes in order for them to be accorded concessionary interest rates<sup>3</sup>. For each of these categories, obtaining a bank

---

<sup>2</sup> For instance, for a loan amount of K18.5m the life cover is only K526,000 (or 2% of the loan amount) deducted from the loan amount.

<sup>3</sup> The commonly used acronym SMEs to refer to small and medium scale enterprises serves to evidence the fact that the two enterprise categories though possessing different investment portfolio thresholds are

loan is not an automatic process because stringent assessment criteria are applied pursuant to central bank regulations. The intention for regulating bank credit is to ensure that the banks do not over-lend or else they will burst. Accordingly, personal loans must be secured or backed with sustainable monthly income.

The fact that only few banks permit non-account holders to obtain credit from them means that villagers whose long term assets are only bare customary land and probably some domesticated animals (live stock) removes the villagers from opportunities of accessing bank credit for business projects. Being without any means with which to start any viable business, villagers are therefore commercially marginalized and seasonally vulnerable to food insecurity caused by weather adversities of drought or excess flooding.

Some banks do not permit newly created enterprises to borrow money from them because such enterprises lack business experience and proven track record of financial management. Thus, newly created enterprises represent a high risk factor to which many banks are unwilling to expose themselves. This means that villagers living on customary land have very limited or no chances of accessing **seed money** from banks with which to initiate or grow any new business entities. Other banks do not segment their lending according to categories of borrowers. They select their borrowers purely on the merits of their capability to pay back the loan in scheduled time. This approach further

---

often regarded as one group of infant enterprises in contrast with large scale enterprises for the purpose of according them concessionary borrowing interest rates with financial institutions. This is the case at Barclays Bank head office where SMEs loans are accessed under a common interest rate under a department specific to SMEs and separate from large companies which borrow at ordinary rates. This approach has also been acknowledged by Thomas, H., et al, (1991) on strategies for SMEs promotion and by World Bank (1996) in Seminar Proceedings on Poverty Reduction Programs in Uganda.

disadvantages villagers living on customary land because they do not have regular income. Further, agricultural borrowers are regarded as high risk clients because of climate change factor which may adversely affect agricultural yields unpredictably such that the resulting crop failure may lead to payment default.

The default rates for all banks interviewed ranged from 1% to 5% in general. Risk-averse banks had very low default rates of 1% to 2% whereas the pro-risk ones had higher default rates ranging from 3% to 5%. The credit default factor justifies measures for banks to limit their scope of lending. In this respect, it is the author's opinion that commercial banks in Zambia are doing the best they can as business entities to strike a balance between assisting clients to generate more bankable business and creating profits to sustain their operations.

Some banks charge reasonable average interest rate margins of around 8% above base rate, varying according to the scale of lending for the borrower. Larger borrowing often attaches lower lending rates. For the banks interviewed lending rates varied from 17% to 36% (base rate plus mark-up). It is thus plausible to suggest that villagers living on undeveloped customary land require a tailor-made credit system created under statute which will grant exceptions against central bank credit regulations to lend far outside the normal limits. However, the tolerance should not be so wide as to create a credit crisis in the country. In the USA<sup>4</sup> massive unsecured bank loans have resulted in a country wide failure by many borrowers to settle their mortgages. The negative impact of this on the American economy and the country's social welfare is feared to disturb the superpower

---

<sup>4</sup> According to the Voice of America Television broadcasts beamed in Zambia in September 2008.

economy which is already in its early stage of a recession (economic slow-down) The negative financial effects have already spread to other countries. Thus, bank credit in general has to be limited to safe margins.

Clearly, the findings of this field investigation do not confirm the hypothesis that bank credit is a panacea for villagers to remove their poverty. Therefore, the question as to whether land collateral will provide a means for villagers to obtain bank credit with which to initiate sustainable business ventures is answered in the negative because the success achievable from borrowed money largely depends on its effective application by the borrower and on the nature of the project. Thus, it cannot be determined off the cuff whether any particular borrowing will automatically yield any benefits for the borrower in particular and for the community at large. Besides, villagers living on customary land are not eligible for bank credit under normal circumstances in Zambia.

Over the years tailor-made credit institutions set up in Zambia to finance rural development have been short-lived because their operational efficacy was not assessed before establishing them. The Credit Organization of Zambia was established in the late 1960s after attainment of independence but it died in the 1970s. Thereafter Lima Bank was set up but it also died in the 1980s as evidenced by old records at the Registrar of Companies. From these examples several lessons may be learnt as outlined below.

First, a tailor-made credit scheme requires prior empirical research to ascertain its viability chances. Secondly, the necessary infrastructural pre-requisites in the target rural areas must be in place. Thirdly, prior social counseling work by teams of social workers

and development experts is required to help to prepare and change the mindset of the villagers to get them to appreciate the suggested vision for the rural development strategy. Essentially this should be packaged into the first phase of the scheme. Fourthly, continuous monitoring and evaluation of the scheme should be included in the package. Thus, the reference to the bad performance of the Credit Organization of Zambia and Lima Bank is merely intended to emphasize a caution against adopting an impulsive approach. In stead, a methodical and analytical approach is required. A mere conference resolution for land policy advocating for indiscriminate conversion of customary land to attract foreign investors overnight is an impulsive decision not founded on methodical and analytical approach.

## **2.0. SOCIO-ECONOMIC IMPLICATIONS AND CONSEQUENCES OF CONVERTING CUSTOMARY LAND IN ZAMBIA**

This section applies the elements discussed in chapter one and chapter two of the essay. The purpose for this is that the study should not merely define things but also reveal those things and show their likely consequences.

First, the vulnerability of customary landowners in Zambia under section 8 of the Lands Act which exposes customary land to the risk of permanent conversion may be analogous to the vulnerability of fish living in a drying out lake whose water is being pumped out. In due course all the customary land, piece by piece, will be converted to statutory land through the provision in section 8 of the Lands Act. Thus the threat to the security of tenure of customary land in Zambia lies, not in the customary system that administers the land, but in the provision under section 8 of the Lands Act. This justifies the concerns of

chiefs and other villagers as expressed in chapter 24 of the Mun'gomba Constitutional Review Commission<sup>5</sup> report. The likely consequence of this circumstance is favourable to investors, particularly those from densely populated industrialized countries where bare land has already run out. For the dispossessed and displaced *Zambian* villagers, however, they will have lost their sustainable source of livelihood and then begin to face the tormenting effects of disrupted living because they have to relocate from the land so taken away. They may keep on relocating in this manner from one place to another over time until there is no more customary land to occupy. In this condition, no amount of compensation will atone the consequential suffering born by the dispossessed and displaced victim villagers.

Secondly, the fixed duration of leasehold land means that the villager's perpetual ownership of his converted customary land is curtailed because its ownership status has changed from perpetual ownership to its new conditions under leasehold for which the villager lacks financial capacity. This is contrary to Article 16(1) of the Constitution of Zambia which guarantees all persons the right to own property (including land) and to have it protected under Article 17(1) of the constitution.

Applying the reasoning in Kelson's theory of the hierarchy of norms, it follows that since the Constitution in Zambia embodies the will of the citizens it is the **grundnorm** in the country's legal system. Therefore, any lesser statute representing a lesser norm dependent on the constitution cannot be permitted to deprive or terminate the perpetual ownership entitlement of the villager to his customary land. Thus, the termination of perpetual

---

<sup>5</sup> See also an earlier reference to this in chapter one at page 6 of this essay. .

ownership of customary land by converting it to leasehold runs into conflict with the avowed and hallowed entitlement of the villager under customary law to own and utilize in perpetuity his customary land. In this respect, the title for traditional land is derived from the essence of the ownership of the land.

Thirdly, survey services are a requirement for the acquisition of leasehold land title. Therefore, when customary land is converted to leasehold the landowner is required to pay survey fees for the process of submitting survey diagrams to obtain leasehold title. For instance, Ministry of Lands in a letter dated 3 October 2008 to<sup>6</sup> one Mr. Elalio Chabala Chishimikwa threatened to withdraw from him stand No.20573 Lusaka for failing to submit survey diagrams for it since he was offered the plot in January 2003. Thus, a villager without adequate income cannot afford to pay the survey fees, meaning that he is automatically eliminated from the opportunity to own land in his own country. Similarly, many villagers will lose their customary land in this way if it is converted.

Fourthly, the ownership of statutory land is evidenced by a title deed, as held in *Chilufya v Kangunda*<sup>7</sup>. When customary land is converted to leasehold, the derived customary title of the villager is thereby ousted. The process involved in obtaining title is not only costly but also strict and protracted. Most illiterate and semi-illiterate villagers will therefore fail to appreciate the significance of taking the trouble to secure title deeds for their converted land. In addition, they do not have sufficient money to pay for all the things involved in obtaining leasehold title. Consequently, other more informed and well

---

<sup>6</sup> The Post No.4379 dated 13 October 2008 at page 22.

<sup>7</sup> (1999) ZR 166.

to do persons will take advantage of the situation and buy off the converted customary land.

Fifthly, since the owner of statutory land must pay ground rent every year the low income villager whose land has been converted to leasehold will not afford to pay the amount. Consequently, his land will be up for repossession. Sixthly, owners of statutory land who fail to develop it within reasonable time stand to lose their plots. For instance, Ministry of Lands in a letter<sup>8</sup> dated 2 October 2008 threatened to withdraw their offer for farm No. 215a/D/90 to one Muchenga Sofiti of Kalundu for failing to develop the land since 1995. Therefore, the low income villager whose land is converted will fail to raise sufficient money to fulfill the development requirement. Consequently, the land will be repossessed.

Seventhly, in order to obtain planning permission for statutory land the owner must submit professionally done architectural drawings of the development structure(s) to be built on the land. The low income villager whose customary land has been converted will fail to raise enough money to pay for the architectural drawings. Consequently, he will not obtain planning permission and his land will be repossessed for lack of proper development. Eighthly, the exorbitant cost of leasehold plots will not be affordable for the low- income villagers if customary land is converted to leasehold tenure.

Lastly, the existence of the institution of chiefs in Zambia has over the years been on the credence of customary land tenure. The incidence and increase in urbanization in the

---

<sup>8</sup> The Post, 13 October 2008 at page x .[page 10 but written in Roman numeral]

country has resulted in the extinction of some chiefdoms and relocation of others altogether. In the present day Kitwe, chief Nkana lost a part of his area when part of his customary area became present day Kitwe city. Similarly, the chiefdom of the Soli people (Nkomesha) relocated to Chongwe and the senior village headman Lusaaka relocated to Katuba area when the present day Lusaka city's urbanization process began. In Southern Province, too, the chiefdom of Mukuni relocated further towards the Zambezi river to give way to what has become Livingstone city. Thus, the institution of chiefs in Zambia owes its existence to customary land<sup>9</sup>. The present 286 chiefdoms<sup>10</sup> existing in 61 rural districts in Zambia can therefore diminish with further urbanization because once a chief's entire customary area has been transformed into an urban area the chiefdom and its tribal culture will sink into atrophy.

In Zambia today traditional ceremonies, dubbed as ethno-tourism, under the domain of chiefs attract a lot of tourists and have become an annual source of income for various groups of people in Zambia. Thus, ethno-tourism has become national treasure which we cannot afford to lose with conversion of all customary land in Zambia.

The thrust of the foregoing implications and consequences of converting all customary land in Zambia is that customary land in the country will become too expensive for the villagers to own and utilize. Consequently, the country will eventually be plunged into a vicious feudal-like system where wealthy landed persons will be the **mesne** landlords of

---

<sup>9</sup> In chapter two it is shown that customary land can exist without the institution of chiefs as in the example of Tanzania.

<sup>10</sup> This information was sourced from the House of Chiefs Research Unit and a list of all gazetted chiefs in Zambia is available.

several landless persons who will only be able to access land on exorbitant rent and exploitative conditions from landed people. This would be contrary to the utilitarian expectation per Jeremy Bentham that government must facilitate the attainment of the greatest benefits and pleasure for the possible largest number of the country's citizens. In India, the cast system created a socially and commercially destitute group of landless persons called untouchables. This should never arise in Zambia by indirectly denying land to low-income villagers. All urban landless Zambians can thus be attracted back into their respective customary areas to become more productive through a programme of local integration<sup>11</sup> by creating strong commercial linkages between the urban economy and the rural economy.

It is the proposition of the author that the fundamental principle underlying customary land development in Zambia should be, not to take over customary land, but to use the land in conjunction with the people who own it in order to develop both the land and its owners. The task of developing customary land together with its owners is achievable by providing incentives to both the villagers and the urban entrepreneurs to forge close business collaboration to work together. The villagers have land and unskilled labour whereas the urban entrepreneurs have capital and business knowledge. Together they can harness these resources for their mutual benefit. In chapter four the author thus elaborates on the various ways in which the villagers can be encouraged to enter into business contracts with urban capital owners commonly known as investors.

---

<sup>11</sup> Zambia should not only strive to achieve regional integration with other countries but also create local integration between its urban economy and rural economy in order to spread modern technology into the village economy.

## CHAPTER FOUR

### EMPOWERMENT FOR CUSTOMARY LAND OWNERSHIP

#### 1.0. ALTERNATIVE APPROACHES FOR EMPOWERING VILLAGERS IN ZAMBIA IN ORDER FOR THEM TO PERFORM A MORE VIABLE ROLE TOWARDS SUSTAINABLE DEVELOPMENT

The author holds the view that converting all customary land to leasehold tenure in Zambia will create much more poverty for a much larger number of people in the country than what is prevailing because a large proportion of Zambians living in the rural areas will be displaced and misplaced from their rural land. Rather, it is suggested that villagers should be regarded as the most disadvantaged and vulnerable people in Zambia who deserve to be assisted more to improve their livelihood. Many people in Zambia have deserted their villages and drifted to towns where they have created illegal settlements on statutory land already allocated to other persons<sup>1</sup>. The major reason for this is that the provision of good roads, telecommunications, electricity and other amenities in Zambia is concentrated in the urban areas. These provide conducive environment for business enterprises, but they are not provided in rural areas in the country. The absence of social infrastructure and amenities on rural land thus pushes out people from customary areas. This phenomenon is undesirable and preventable.

The author's conception of the causes of rural poverty in customary areas is that it revolves around three fundamental factors which are connected as in a triangle. First, the poor people themselves do not strive hard to achieve a better life and so they are

---

<sup>1</sup> The matter regarding squatters who had occupied land already alienated to the Catholic Church in N'gombe area and were subsequently evicted to live in tents at Mazyopa in Lusaka is illustrative of the scourge of illegal settlements on state land in Zambia.

precariously perched at the apex of the poverty triangle. Secondly, those who have succeeded well in business have insulated themselves against the poor people<sup>2</sup> and yet they need them so badly to buy their products. This is not surprising because one of the human limitations, as pointed out by Professor Hart in legal philosophy in his theory of the minimum content of law is that human beings have limited altruism, meaning that by nature humans are selfish. Ideally, the urban business entrepreneurs should be attracted to pool their business resources (collaborate) with the owners of customary land in order to foster business growth in customary areas as a strategy for local market expansion.

Thirdly, lack of appropriate state intervention is another factor. This occurs both as misfeasance by government agents when inappropriate measures are implemented in rural areas and as non-feasance by government when no poverty alleviation steps are taken to assist villagers. The fact that poverty levels among villagers in customary areas have remained unabated since independence is an indication that the state has not taken appropriate remedial measures. Thus, the role of government is the most deterministic in the poverty reduction process. For instance, inappropriate government interventions in Zimbabwe<sup>3</sup> in 2007/2008 caused the country's economy to plunge into abnormally high inflation, very serious shortages of essential commodities and food insecurity. On the other hand President Paul Kagame's appropriate government intervention measures in Rwanda<sup>4</sup> helped to end the civil war there and transformed the country into one that creates business opportunities and inspires citizens to improve their livelihoods. Between

---

<sup>2</sup> The author refers to this phenomenon as social polarization.

<sup>3</sup> BBC Radio reports and Voice of America Television interview beamed in October 2008.

<sup>4</sup> The author visited Rwanda in 2003 on a market research mission for cement while working for Lafarge Tanzania at Mbeya Cement Company Ltd. This information is supported by the work of Professor Lemarchand (1970) who has documented the origins and dimensions of the ethnic conflicts in Rwanda.

rural poverty and urban poverty, the difference is that rural people are poor while they possess idle arable land which they ought to utilize as their means of production. On the other hand, the urban poor have no means of production at all except if they were to return to their customary areas where agricultural land is freely available. Thus, government would have an easier task to alleviate rural poverty by assisting villagers to harness their customary land. Therefore, appropriate state interventions in Zambia can assist villagers in customary areas to transform their land into a highly productive resource, especially in the agricultural domain. On this premise the author here below advances some propositions which he believes can help to positively turn around the rural scenario in Zambia.

#### 1.1. CUSTOMARY LAND TITLE DOCUMENT

In Zambia there is no formal document to evidence a villager's ownership of customary land. A chief may issue a letter to that effect only when requested by his subject so to do. In chapter two it is shown that the Botswana land system issues a **pro bono** title document to evidence customary land ownership. In Zambia such a document would help not only to evidence the villager's ownership of a piece of customary land but also to prompt the land owner to make viable commercial use of the land and to tender it as consideration in business contracts with investment counterparts. Such a title document, however, will have features different from those of a leasehold title deed. Faced with a rapidly rising population<sup>5</sup> and consequential land demand pressure. Zambia has thus an

---

<sup>5</sup> Notwithstanding the prevalence of the HIV/AIDS pandemic, Zambia's population has a high growth momentum, as depicted by CSO demographic data: Under 15 years =48%; 15-34 years =33%; 35-54 years =12.7%; 55-69 years =4.6%; 70-79 years =1.3%; 80 years and above =0.4%. These percentages were computed by the author from CSO data of 2000 Census of Population and Housing - Analytical Report, Vol.10, November .2003, Lusaka.

imperative to create an arrangement through the chiefs for issuing customary land title in order to protect its citizens from becoming landless in later years.

Although commercial banks in Zambia are reluctant to accept customary land as bank credit collateral, generating a title document for the ownership of customary land will serve as a land record for future reference in litigation matters involving customary land. Further, the document will preserve vital information for the benefit of heirs to customary land whose parents or other descendants who owned the land may have died when the heir was still too young to make reasonable claim over the land. Thus, multiple allocation of customary land by certain chiefs will be avoided. In **Still Water Farms Ltd v Mpongwe District Council and Others**<sup>6</sup> a dispute over ownership of customary land in Ndola rural arose because the deceased Chief Lesa had allocated customary land to the 3<sup>rd</sup> and 4<sup>th</sup> defendant villagers around 1979 whereas the appellant company also claimed that the current chief Lesa had granted the land to it in 1996. Such a dispute would have been solved easily or avoided if the defendant villagers held any documentary proof of allocation by the deceased Chief Lesa. Therefore, the author cherishes the proposition that the perpetual ownership of customary land in Zambia should be evidenced by a document of customary title duly recorded in a customary register at the chief's palace.

The features of the proposed customary land title document should include: the name of the land owner and his heirs, the date of issue of the title, the signature or thumb print of the landowner and that of the chief and the location of the land. The chief's register of customary land will also serve as his/her general register of subjects under his/her

---

<sup>6</sup> Supra.

jurisdiction. Through this system the chief will be able to monitor and control any influx or exodus of subjects in his customary area.

Foreign missionaries who may be granted permanent residence in the country, seeking to establish a school or hospital in customary areas for the benefit of the villagers, should automatically become subjects of the chief to be treated just like any other subjects such that the land allocated to them remains customary land under the jurisdiction of the chief. Thus, foreigners permitted to establish farms on any vacant piece of customary land should do so under customary title so that customary land continues to exist and to develop as such. This proposition also entails appropriate amendments to the statutes that prescribe conversion of customary land to leasehold, including section 8 of the Lands Act.

### **1.2. FEEDER ROADS AND OTHER INFRASTRUCTURE**

A fundamental requirement for the development of customary land is the provision of infrastructure for transport services, telecommunications, social services and electricity supply. Road infrastructure will provide easy and convenient transportation of produce and products to market and delivery of production inputs from urban sources.

### **1.3. CO-OPERATIVE SOCIETIES**

The failure of co-operative societies in Zambia under the Kaunda government is not a reflection of weaknesses of co-operatives as an approach to rural business enterprises. Rather, it is a reflection of violation by government of the Rhochadale co-operative

principles such as democratic control and autonomous corporate governance<sup>7</sup>. The Co-operative Societies Act<sup>8</sup> was not given its proper effect. Subsequently, the Chiluba government unfortunately removed co-operatives from the country's business spheres under the free market economic dispensation when in fact the democratic principles of co-operatives should have blended well into the country's overall democratic fundamentals. Co-operatives should have been the basis of privatization such that the former employees of privatized parastatal companies should have been financially empowered to convert those companies into co-operatives in order to enhance local participation in business development. In this respect government intervention was partly flawed to the extent of excluding the co-operative system from the free market strategy.

This time around, a proper revival of the co-operative movement in the rural sector will help to inculcate business acumen among villagers in customary areas. Working in groups of at least ten, the villagers will be taught and encouraged to effectively utilize their customary land and move forward to a better life. Abundant village resources such as timber, arable land for crop farming, honey and several other items freely available to owners of customary land will provide a dynamic base for establishing producer co-operatives. Livestock restocking and several other resources on customary land have not been viably harnessed. The notion in Zambia that only foreign investors can develop rural areas is wrong and misleading.

---

<sup>7</sup> John Mwanakatwe, (1994), End of Kaunda Era, at page 123.

<sup>8</sup> No. 20 of 1998 of the Laws of Zambia.

#### **1.4. PARTNERSHIP ENTERPRISES**

For villagers preferring to do business in smaller groups of at least two persons (up to twenty) and to maximize the profitability of their investments, they can be taught and encouraged to form partnerships. To impart knowledge of and help villagers to form partnerships entails decentralizing the **PACRO**<sup>9</sup> office to provinces and districts to give technical information for the provision of guidance and processing services for newly created partnerships in customary areas. Trading and service enterprises dealing in transportation and marketing of village produce and products to urban markets as well as carrying urban products to rural outlets may conveniently be handled by such small investor groups. In this arena of business partnerships, many established urban business persons may have chance to integrate their business interests with the owners of customary land in order to tap new business opportunities in the rural areas.

#### **1.5. SOLE PROPRIETORS**

For the villagers desiring to work alone or to employ family members, sole proprietorship enterprises may be preferred if they are empowered. Above all, the variety of business enterprises which the villagers in customary areas have potential to establish will help to create business competition, stabilize prices there and provide wider consumer choices. In due course, the most enterprising village groups and individuals will begin to work ahead of others and start to employ fellow villagers there, setting a stage for the emergence of commercially active and viable rural areas. Some banks may also open branches there in due course. This is how towns of today in Zambia began. Lusaka began

---

<sup>9</sup> PACRO is the acronym for Patents and Companies Registration Office which deals with the registration of patents and business associations under the Registration of Business Names Act, Cap 389 of the Laws of Zambia.

as a railway siding. Unlike Lusaka, however, land in those newly urbanizing customary areas will still be owned by the indigenous people and the chiefs can still exist under modified cultural practices.

#### **1.6. EDUCATIONAL SERVICES**

In due course, private schools and more government learning institutions will be established there to increase literacy levels, reckoning and general academic competences among the villagers in order to enhance infusion of new technologies into their business enterprises.

#### **1.7. URBAN-RURAL BUSINESS INTEGRATION**

Where foreign or local urban investors are granted land to operate business in selected customary areas, the indigenous owners of the land should be encouraged to become partners in those investments in order to prevent displacement of the indigenous people and to empower local land owners to influence business development in the country. In this way, rural people will acquire and adapt foreign technologies to local usages in customary areas.

Where the owners of a piece of customary land are compelled to vacate their land to allow an investor to open a mine on the land, the local owners in addition to being resettled on alternative customary land should also be allocated some shares in the investment and be employed to work there too. In this way owners of customary land will become integral participants in the harnessing of the natural resources on their land. Such land should also remain under customary tenure while allowing the investment to proceed in perpetuity. Appropriate statutory amendments can be made to facilitate this vision.

## OVERVIEW

The foregoing is an account of what should ideally happen in customary areas where huge business potential awaits to be turned into wealth with proper incentives for benefits which must squarely accrue to owners of customary land. Thus, it is possible to positively change the scenario in customary areas to improve the well-being of the villagers by assisting them to utilize their land. Government support in this respect is a critical factor to provide the necessary infrastructural requirements there, commence the initial business campaign there through a team of rural business experts and to provide financial empowerment for the village landowners through tailor-made institutions.

The desired business co-operation between the nascent rural entrepreneurs and the established urban business entities can be nurtured through appropriate investment promotion seminars and tours between the two groups. Relevant Non-Governmental Organizations can also play a big role in assisting the two groups of business minds to share business experiences.

The core point established in this chapter is that for more than forty years in Zambia villagers living on customary land have not been assisted to viably utilize their land and through it to meaningfully contribute to national development. This view is intended to inspire a new and better strategy for land use and development in Zambia.

## CHAPTER FIVE

### SUMMING UP THE RURAL STIMULUS STRATEGY

#### 1.0. A CRITIQUE OF GOVERNMENT POLICY VIEWS ON CUSTOMARY LAND

The Government Draft Land Policy Paper of 2008 contained seven issues relevant to customary land in Zambia, as outlined below.

- 1.1. That customary land tenure in Zambia is a representation of colonial legacy.
- 1.2. That Zambia's customary land tenure in its present form does not offer sufficient protection for the care of disabled persons, gender equality, and resource conservation as provided for in the Constitution of Zambia.
- 1.3. That there is no security of tenure in customary land in Zambia.
- 1.4. That customary land tenure is generally communal in nature.
- 1.5. That there are no guidelines on the role and functions of traditional and local authorities in the administration of customary land in Zambia.
- 1.6. That there is lack of popular participation by the local people in customary land alienation decisions in Zambia.
- 1.7. That lack of provision for registration of rights of land holders under customary tenure in Zambia is an impediment to rural development in the country.

The author regards these assertions to be rebuttable and accordingly makes a critique on each one of them in this chapter. This will help to correct some erroneous and misleading notions held by some people concerning customary land in Zambia.

First, the argument that customary land tenure in Zambia is a representation of colonial legacy has already been put to rest in the literature review where it is clarified that customary tenure in this country was not created by the colonial government. Rather, it

evolved from and is rooted in the immemorial traditional settlements of the indigenous tribes of this country. It was thus the first land tenure to exist in the country well before the creation of state land tenure by the colonial government. In this respect, it is state land tenure which is a representation of colonial legacy.

Secondly, the assertion that customary land tenure in Zambia in its present form does not offer sufficient protection for the care of disabled persons, gender equality and resource conservation as provided for in the Constitution of Zambia lacks merit. As already stated in chapters one and two, customary land in Zambia is recognized and protected under section 7 of the Lands Act and that ownership of customary land is perpetual and acquired through prolonged residence in the village. The case of **Mwiinda v Gwaba**<sup>1</sup> provides judicial authority for this. Thus, a villager enjoys free and perpetual title to his customary land. On this basis all persons living on customary land, regardless of whether male or female, able bodied or disabled, automatically own the land in perpetuity.

Thus, there is no landless person in any customary area in Zambia because all Zambians living in customary areas own the land. Rather, there are a lot of landless persons under state land tenure. In the urban centres in Zambia many local people live as squatters or persons occupying unauthorized land or land belonging to other persons. Other landless Zambians in the cities of the country live at rubbish dumps, some at bus stations and yet others in some drainage curvatures or under big trees by the road side because life is impersonal in urban areas. All squatters in urban areas are trespassers on statutory land and some of them have deserted their land in their respective customary areas. Thus, state

---

<sup>1</sup> [1974], ZR, 184.

land is exclusively for those who own it, unlike customary land which the owners can allow other members of the community to utilize it for firewood, mushrooms, honey and such other forest products.

Moreover, much of the statutory land in urban areas is up for construction purposes. Game animals have no room there except on a small number of ranches and zoos owned by individuals or companies. It is on customary land that all game reserves, game management areas, special forest areas and historical sites have been created in Zambia under statutory protection. It is thus misleading to argue that there is no sufficient protection for resource conservation on customary land.

Besides, gender discrimination is no longer a prominent attitude in Zambia. It has been reduced to a notion which is not founded on prevailing reality. For instance, some of the chiefdoms in Zambia are headed by females. Of the 286 chiefdoms in Zambia, fifteen of them are headed by females, as reflected in table three<sup>2</sup>.

**Table 3: Distribution of female traditional rulers in Zambia (F/T/Rs)**

| Prov   | Cent | C/b | Eastn | Luap | Lusk | Nthn | N/W | Sthn | Wt | T/tal |
|--------|------|-----|-------|------|------|------|-----|------|----|-------|
| F/T/Rs | 2    | 2   | 1     | 2    | 2    | 1    | 2   | 1    | 2  | 15    |

Source: House of Chiefs Research Unit.

Thus, every province in Zambia has at least a female traditional ruler. This evidence fortifies the view that contemporary Zambian traditional society espouses gender representation.

<sup>2</sup> The numbers may continue to vary upwards in due course with prevailing gender neutrality awareness campaign.

Thirdly, regarding security of tenure it has been clarified in chapter two that the only threat against security of tenure on customary land is that created by the operation of section 8 of the Lands Act which permits conversion of customary land into leasehold tenure. However, section 3(4)(a) to (d) of the Lands Act and the operation of Zambian case law have provided safeguards against arbitrary alienation of customary land to non-villagers and its conversion. In **Siwale and Others v Siwale**<sup>3</sup> it was held that failure to consult any person or body whose interest might be affected by the grant of customary land before its alienation will render the grant invalid, pursuant to section 3(4)(c) of the Lands Act. A similar decision was held in **Chenda and Another v Phiri and Another**<sup>4</sup> that failure to obtain approval of the relevant local authority renders the grant of customary land invalid, pursuant to section 3(4)(d) of the Lands Act. Further, in **Still Water Farms Ltd v Mpongwe District Council and Others**<sup>5</sup> the Supreme Court held that land under customary tenure can only be alienated if consent is obtained by the traditional chief from those whose interest may be affected by the requested alienation of the customary land. These matters have earlier on been alluded to in chapter one in the analysis of the relationship between customary land and statutory land.

Nevertheless, the statutory threat upon land tenure is not unique to customary land. It also applies to leasehold tenure. Land held under leasehold tenure is subject to compulsory acquisition under section 3 of the Lands Acquisition Act<sup>6</sup> where the lessee has not fulfilled the development clause or has defaulted to pay ground rent or where the land is

---

<sup>3</sup> [1999] ZR, 84

<sup>4</sup> Lat/80/98

<sup>5</sup> Supreme Court Appeal No.90/2001

<sup>6</sup> Cap.189 of the Laws of Zambia.

required for alternative use in public interest. Thus, breach of the leasehold covenant, as exemplified in chapter two may render statutory land liable to compulsory acquisition. In Zambia compulsory acquisition only applies to customary land where the land is required for alternative use in public interest. In this respect, statutory tenure is in fact less secure than customary tenure in the country.

Fourthly, regarding the nature of customary land ownership it has been clarified in chapter two that the ownership of customary land is not only communal but also contains concurrent interests, individual interests and successive or inheritable interests. Therefore, the perception that customary land has only communal interests is wrong.

Fifthly, it is not true that there are no guidelines on the role and functions of traditional and local authorities in the administration of customary land. Section 3(4)(a) to (d) of the Lands Act which has already been referred to in this and other chapters provides the following requirements:

- (a) That the grant of customary land should not be in conflict with the local customary law.
- (b) That the chief<sup>7</sup> as well as the local district council authority should be consulted before alienating the customary land.
- (c) That any other persons or body whose interests might be affected by the grant of the customary land in question must be consulted.

---

<sup>7</sup> The chief's opinion as to whether a piece of customary land should be granted on leasehold to a person from outside the customary area will normally be based on advice given to him by his subjects and the village headmen in the area who are his functionaries.

(d) That express approval or consent by the chief as well as the local authority has been obtained for the grant of the customary land.

These requirements are also consistent with what is stipulated in Circular No.1 of 1985 and its amended version of 15 April 1992. The circular requires the local authority to attach to its recommendation minutes of the land matters committee of the council on the matter, full council minutes containing the resolution on the matter and four copies of the approved lay-out plan of the site as evidence needed by the Commissioner of Lands.

Failure to observe these requirements renders the grant invalid<sup>8</sup>. Thus, section 3(4)(a) to (d) of the Lands Act provides strict guidelines on the role and functions of chiefs and local authorities in respect of customary land alienation.

Further, as clarified by Chief Mumena<sup>9</sup> in an interview on Zambia National Broadcasting Corporation Television, chiefs have a well-settled common customary procedure to follow in the alienation of customary land. The chief sits with his traditional council to consider land allocation to a new settler or an investor in the customary area. Upon approval of the request, the chief then presents his written consent to the district council authority where the land is situated. A village headman or any ordinary villager has no authority to grant customary land. Thus, there exist both statutory and customary guidelines regarding alienation of customary land in Zambia, subject to the operation of both customary and statutory law. Therefore, there is a broader spectrum of consultation in the alienation of customary land.

---

<sup>8</sup> Mudenda, F.S., *Land Law in Zambia* (2007) at pages 410 – 413.

<sup>9</sup> See footnote No.11 in chapter two.

Sixthly, it is alleged that there is lack of popular participation by the local people in customary land alienation decisions. This is gross misdirection of thought. The word popular in reference to a procedure amenable to the interests of the majority of the community connotes the exercise of democratic principles in the alienation of customary land. In Zambia democratic governance entails decision-making through representatives. The customary procedure outlined above for the alienation of customary land involves chiefs sitting with their traditional councils as representatives to decide on customary land matters. Decisions are made in the interest of the tribal community. This is a reflection of popular traditional democratic governance. It is in no way less popular than the statutory land alienation system. Therefore, the traditional land alienation system in Zambia is as democratic as it should be because it involves a large spectrum of decision-makers.

Seventhly, the requirement for registration of leasehold land under the Lands and Deeds Registry Act is intended to keep a record and to secure publicity of documents which purport to guarantee interest in land or land transfer or interest in land lease, permit of occupation for land on fulfillment of a development clause or permit of occupation for more than one year on a charge or mortgage or bills of sale. As per judicial decision in **Chilufya v Kangunda**<sup>10</sup> that a title is conclusive evidence of land ownership unless the title was obtained by fraud, failure to register the document within specified time<sup>11</sup> may render the document void subject to court's discretion for time extension to register out of time. However, registration does not cure defects in the document because the registered

---

<sup>10</sup> [1999], ZR, 166.

<sup>11</sup> Within Lusaka: 30 days; elsewhere in Zambia: 90 days and outside Zambia: one year.

document will stand on its own merits or fall on its own demerits. In **White v Westerman and Others**<sup>12</sup> it was held that a certificate of title is required before registration of an interest in land.

The complication of non-registration of interest in land relates to the opportunity to utilize registered title as bank credit collateral. However, the study has found out that most banks in Zambia do not accept bare land as credit collateral. Few other banks may only accept bare land if it is prime land in an area where land is in very high demand as a precaution against payment default. It has thus been clarified that customary land is not ideal collateral for bank credit in Zambia because all the 61 rural districts in which the 286 customary areas are distributed are well outside the perimeters of the towns in which commercial banks in the country are situated. The banks are reluctant to extend credit services that far. Therefore, the assertion that lack of provision for registration of rights of landholders under customary tenure is an impediment to rural development is not informed by the criteria used by commercial banks to select their borrowers.

## **2.0. CONCLUSION**

The study has highlighted the need to rethink and reform land development strategies in Zambia from the mere primacy of land as a resource to an integrated approach which seeks to develop the land together with its owners. The core value of the study lies in its focus to inspire government and other agencies to assist villagers living on customary land to become the key players in the envisaged development of their land. As Professor

---

<sup>12</sup> [1983] ZR, 135.

Joseph Stiglitz<sup>13</sup> has aptly stated, a proper development strategy is one that contains an appropriate mix of the basic factors of production, namely: land, labour, financial capital and technology. Thus, efforts which concentrate on seeking to develop some factors of production to the exclusion of other factors are futile because such approach will result in non-development. The owners of customary land constitute a factor of production to be integrated into the envisaged development process.

The fundamental causes of poverty identified by the author are: the poor people themselves, the persons already in successful business and inappropriate government interventions in poverty-reduction attempts. Thus, government only becomes a poverty facilitator if its poverty-reduction measures are inappropriate or neglects to intervene in the needy sector. From this thread of reasoning, the author has placed three fundamental beacons of rural poverty reduction in the following areas:

- (a) To change the mindset of the villagers in order to render them development-oriented.
- (b) To induce the already successful business entities to mutually interface with the villagers seeking to initiate business enterprises.
- (c) Government role to create commercial infrastructure in customary areas and provide business technical guidance.

Rural poverty will be easier to tackle than urban poverty because land in customary areas is available for the poor owners to utilize. The task for the government in this process is enormous and critical. It requires, inter alia, to make a start by rolling out a detailed rural strategy and then attracting into it the good will of donors, Non-Governmental

---

<sup>13</sup> In *Frontiers of Development Economics - The Future in Perspective*, The World Bank, Oxford, (2002).

Organizations and the private sector. This is the new land development vision which the study seeks to persuade others to perceive, appreciate and propagate because the best for Zambia has not yet been done.

### 3.0. RECOMMENDATIONS

The author, recognizing that customary land in Zambia is regulated by both customary law and statutory law and being concerned with the significance of customary land in the country, hereby recommends the following propositions:

**3.1.** Restructure the Citizens Economic Empowerment Commission to reflect the following core departments to play a facilitation role in the new rural development vision.

**(a). Department for Rural Infrastructure Development and Rural Entrepreneurship Extension Services** to operationalize the laying of basic infrastructure in customary areas and provide advisory extension services to potential, emergent and existing rural entrepreneurs. A lot of donor assistance, Non-Governmental Organizations support and Public-Private-Partnerships should be attracted into the rural funding needs of the Citizens Economic Empowerment Commission to build its financial, manpower (technical) and physical capacity to take development where there is idle land. Further, the Small and Medium Scale Enterprises funding initiatives under the Zambia Development Agency should also be extended to the village business initiatives in the customary areas in collaboration with the Citizens Economic Empowerment Commission.

**(b). Credit Department** comprising Rural Credit Section and Urban Credit Section. The Rural Credit Section shall be responsible for financing village business projects in customary areas under concessionary credit terms for the borrowers. The 12% interest

rate being charged by the Citizens Economic Empowerment Commission on its business loans is not a concessionary rate for emergent village entrepreneurs.

**(c ). General Administration Department** to carry out general administration and manpower control of the Citizens Economic Empowerment Commission.

**3.2.** Government should empower chiefdoms to establish within the chief's palace a Customary Land Administration Office to execute **pro bono** customary land title document with features less formal than the leasehold title. Such title document will not be admitted under the Lands and Deeds Registry Act because it will only be relevant for the chief's register and to provide the customary land owner with clear evidence of his customary land ownership. This proposition is not similar to what is suggested under the Government Draft Land Policy of 2008, namely that customary land should be converted to leasehold for the purpose of having it registered under the Lands and Deeds Registry Act.

**3.3.** As a further incentive for rural business entrepreneurship in customary areas, a special tax rebate on business income and capital equipment for use in customary areas should be created by government. This entails granting more generous tax incentives than what is provided under the second schedule part IV 7 (f) (ii), pursuant to section 15 of the Income Tax (Amendment) Act<sup>14</sup> 2008.

**3.4.** The Ministry of Agriculture and Co-operatives should revitalize its rural offices in order to re-launch a better organized revival of co-operatives in customary areas. The services of Provincial and District Agricultural Extension Officers will equally be necessary to work alongside with the Department of Co-operatives to train agricultural entrepreneurs and assist them to work in groups within their customary areas.

---

<sup>14</sup> No. 1 of 2008 of the Laws of Zambia.

## BIBLIOGRAPHY

### BOOKS

- Abrahams, R.G., (1981), *The Nyamwezi Today, A Tanzanian People in the 1970s*, Cambridge University Press, Cambridge.
- African Conference on Local Courts and Customary Law – Record of Proceedings of the Conference held in Dar-es-Salaam, Tanganyika, 8<sup>th</sup> September 1963 – 18<sup>th</sup> September 1963.
- Austen, A. R., (1968), *North West Tanzania Under German and British Rule*, Yale University Press, New York.
- Banberger, A., et al, (World Bank), (1996), *The Design and Management of Poverty Reduction Programs and Projects in Anglophone Africa- Proceedings of a Seminar Sponsored Jointly by the Economic Development Institute of the World Bank and the Uganda Management Institute.*
- Bedenheimer, E., (1974), *Jurisprudence – The Philosophy and Method of the Law*, Universal Law Publishing Co. Pvt Ltd, New Delhi, (Revised 5<sup>th</sup> Reprint, 2006).
- Bentsi-Enchill, K., (1964), *Ghana Land Law*, Sweet & Maxwell, London.
- Dias, R.W.M., (1985), *Jurisprudence*, Butterworths, 5<sup>th</sup> ed., London.
- Elias, T.O., (1956), *The Nature of African Land Law*, Manchester University Press, Manchester.
- Garner, A.B., (ed.), (2004), *Black's Law Dictionary*, Thomson West, 8<sup>th</sup> ed., Dallas.
- Hatch, J., (1972), *Tanzania – A Profile*, Pall Mall Press, London.

- Hornby, A.S., (2000), Oxford Advanced Learner's Dictionary of Current English, 6<sup>th</sup> ed., Oxford University Press, Oxford.
- Kenyatta, J., (1956), Facing Mount Kenya – The Tribal Life of the Gikuyu, Secker and Warburg, London.
- Lemarchand, R., (1970), Rwanda and Burundi, Pall Mall Press, London.
- Levine, A.R., (1973), Culture, Behaviour and Personality, Aldine Publishing Company, Chicago.
- Mango, S.K., (1987), Abnormal Psychology, Sterling Publishers Pvt. Ltd., New Delhi.
- Mann, N.L., (1966), Psychology, 5<sup>th</sup> edition
- Meier, G.M.& Stiglitz, J.F. (eds.), (2002), Frontiers of Development Economics - The Future in Perspective, World Bank/Oxford University Press.
- Meek, C.K., (1968), Land Law and Custom in the Colonies, Frank Cass and Co. Ltd., 2<sup>nd</sup> edition, London.
- Mudenda, F.S., (2007), Land Law in Zambia, Cases and Materials, UNZA Press, Lusaka.
- Mvunga, M.P., (1977), Land Law and Policy in Zambia, PHD Thesis.
- Mwanakatwe, J., (1994), End of Kaunda Era, Multimedia Publications, Creda Press, Lusaka.
- Schapera, I., (1938), A Hand Book of Tswana Law and Custom, Oxford University Press, Oxford.
- Shorter, A., (1972), Chiefship in Western Tanzania – A Political History of the Kimbu, Clarendon Press, Oxford.
- Thomas, H., et al, (eds.), (1991), Small Scale Production Strategies for Industrial Restructuring, IT Publications, London.

## **REPORTS AND OTHER DOCUMENTS**

GRZ, Draft Land Policy, 2008.

GRZ, The Fifth National Development Plan, 2006-2010, Government Printer, Lusaka.

GRZ, National Assembly Debates, August 1994.

GRZ, The Mun'gomba Constitutional Review Commission Report, June 2005.

CSO, Zambia: 2000 Census of Population and Housing- Analytical Report, Vol 10,  
November 2003, Lusaka.

UN Habitat (Clariss Augustinus), (2007), How to Develop a Pro-poor Land Policy  
- Process, Guide and Lessons, Nairobi.

## **NEWSPAPERS AND PERIODICALS**

The Post, 3 October,2008.

The Post, 13 October 2008 , No.4379.

Times of Zambia, 24 April 2008.

Zambia National Commercial Bank Prospectus, 22 September, 2008.

Botswana Bajanala, volume 2, 2008, Gaborone.

## **ELECTRONIC MEDIA**

Voice of America Television broadcast beamed in Zambia in September 2008.

Zambia National Broadcasting Corporation Television broadcast on 26<sup>th</sup> April  
2008.

## TABLE OF CASES

- Chenda and Another v Phiri and Another, Supreme Court Appeal No.Lat/80/98.
- Chilufya v Kangunda [1999] , ZR, 166.
- Goswani v Commissioner of Lands [2001] , ZR, 31.
- Kamal Patel v Alan Lundama and Another, 2008/HK/121.
- Lumanyanda and Another v Chief Chamuka and Another [1988/89] , ZR, 194.
- Makwati v Senior Chieftainess Nkomesha, Supreme Court Appeal No.Lat/60/97.
- Malin v Municipal Council of Ndola and Another [1965] , ZR, 162.
- Mwiinda v Gwaba [1974] , ZR, 188.
- Siulapwa v Namusika [1985] ,ZR, 21.
- Siwale and Others v Siwale [1999] , ZR, 84.
- Still Water Farms Ltd v Mpongwe District Council and Others, Supreme Court Appeal  
No.90/2001
- White v Westerman and Others [1983] , ZR, 135.

## TABLE OF STATUTES

- The Constitution of Zambia, Cap1 of the Laws of Zambia.
- The Co-operatives Act, No.20 of 1998.
- The Electricity Act, Cap 433 of the Laws of Zambia.
- The Forest Act, Cap 199 of the Laws of Zambia.
- The Income Tax (Amendment) Act, No 1 of 2008 of the Laws of Zambia.
- The Lands Act, Cap 184 of the Laws of Zambia.
- The Lands Acquisition Act, Cap 189 of the Laws of Zambia.

The Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia.

The Local Government Act, Cap 281 of the Laws of Zambia.

The Mines and Minerals Development Act, No.7 of 2008 of the Laws of Zambia.

The National Housing Authority Act, Cap 195 of the Laws of Zambia.

The Rating Act, No.12 of 1997 of the Laws of Zambia.

The Registration of Business Names Act, Cap389 of the Laws of Zambia.

The Tanzania-Zambia Railway Act, Cap 454 of the Laws of Zambia.

The Town and Country Planning Act, Cap 283 of the Laws of Zambia.

The Water Act, Cap 198 of the Laws of Zambia.

The Zambia-Tanzania Pipeline Act, Cap 455 of the Laws of Zambia.

The Zambia Wildlife Act, No.12 of 1998.