



**ZAMBIA LAND ALLIANCE RECOMMENDATIONS TO THE
LAND AND ENVIRONMENT COMMITTEE OF THE
NATIONAL CONSTITUTIONAL CONFERENCE**

Contacts

The Executive Director
Zambia Land Alliance
4th Floor, Godfrey House
P.O Box 51156
Lusaka
Zambia

Tel: +260-1-222432 Tel/Fax: +260-1-237677

Email: land@coppernet.zm

Table of Contents

Table of Contents	1
1.0 Background	Error! Bookmark not defined.
2.0 The Constitution.....	3
3.0 Basis of land policy.....	4
3.1 Dual land tenure.....	4
3.2 Protection of land rights.....	4
3.3 Role of citizens	4
3.4 Conservation of forests and other biological resources	5
4.0 Dual Tenure	5
4.1 The Constitutional provision for the dual tenure system	5
5.0 State Land	5
5.1 Definition of state land.....	5
5.2 Reversion to customary land.....	6
5.3 Public Land	6
6.0 Customary land in Zambia.....	7
7.0 Vestment of land	8
8.0 Provision for non-Zambians to hold land in Zambia	9
9.0 Lands Commission.....	10
10. Legislation on Land	11
11. The proposed way forward	11
Annex 1: Proposed Land and Property Chapter	12

1.0 Background

Civil Society formed Zambia Land Alliance (ZLA) in 1997 to provide a platform for collective action and a consolidated voice concerning matters related to land administration, management and practice.

ZLA currently consists of a network representing hundreds of men and women; from rural and urban communities, community based organisations, civil society organisations, members, partners and international organisations. With this mandate, ZLA has conducted consultations country wide with citizens about citizens' concerns in relation to land and its administration and management. The main issues that emerged from these consultations were:

- i. concern over the neglect of customary land and the inferior legal status of customary land tenure**
- ii. concern over lack of accountability in the administration of land**

Other issues were also identified, and citizens themselves provided recommendation on how these concerns can be addressed. These recommendations have been articulated and consolidated by ZLA through a process of consultation and review with its members and partners. The recommendations therefore represent the voice of civil society in bringing forward important issues to be included in the Constitution.

In deciding the specific articles that need to be included in the new Constitution of Zambia being considered by the National Constitutional Conference (NCC), ZLA is guided by the following key principles:

- i. Access to land is a fundamental human right for all Zambians.
- ii. Land is a source of identity for the Zambian people and their cultural heritage is inherent in it.
- iii. Land is a primary resource and the basis for sustainable integral human development for all in Zambia; including the optimum sustainable usage of land for human settlement, industry, commerce, agriculture, forestry, mining and the protection of water bodies and the environment in the long term national interest.
- iv. Community participation in land management, land development and land use planning at all levels, as vital for rural and urban land development
- v. Government and Chiefs facilitating equitable and reasonable access to land within the context of agreed national and local land use plans
- vi. Zambia's boundaries must not be violated.
- vii. Land within the boundaries of Zambia belongs to the people of Zambia.
- viii. Land administration and management must be guided by transparency and accountability; and the process should be democratic and holistic.
- ix. Land management information must be promoted and disseminated
- x. Land administration and adjudication should be guided by justice.
- xi. There should be parity between customary land tenure and leasehold land tenure.

- xii. Customary land and its inhabitants must be protected.
- xiii. Customary land should not be converted to state land
- xiv. There should be intergenerational equity in accessing land.

2.0 The Constitution

The draft Constitution (Mungomba), which is under review by the National Constitutional Conference (NCC), addresses many of the concerns of ZLA. Especially the concern about governance of State land is to some extent addressed through the establishment of a Land Commission. However, the governance of customary land remains a serious concern, especially as the majority poor live in the rural areas under customary land administration. Therefore, as well as strong support for the establishment of a Lands Commission, Civil society, through ZLA, has some proposals on how to better protect land rights and strengthen customary land, its administration and the land rights of the people living in rural areas.

Firstly, in the Zambian Constitution, the following ideals must be promoted and no law should be made to undermine or cause to change, alter or remove or discard these ideals:

The upholding of dual land tenure system – [customary and lease hold tenure]

Customary land rights and administration should be strengthened and protected, and brought to parity, in recognition with the statutory land rights.

The Zambian people who are the *real owners* of the land shall participate fully in land governance and administration.

Protection of land rights for special interest groups; women, persons with disabilities, the youths and orphans shall be enhanced.

Protection of the commons – natural parks, water bodies, wetlands, river frontages, grazing land, dambos, watering points, and forests as a source of life support system, should override any other interests and consideration.

Protection of land of significant biological, cultural and/or hydro-geological importance (catchment areas, seepage points etc) should be enhanced.

Provision for rights of occupancy should be established and protected.

Development of land information system should be an integral part of land administration and should be available to members of the public at the local level.

Land delivery systems should be predictable, transparent and timely.

Land market should be regulated to protect the poor and private investments that promote the common good of all.

Land use planning and management should be localised and linked to governance

Provision and availability of planned and serviced areas should be the basis for affordable and decent housing.

Number and size of parcels of land an individual is allowed to hold (with a qualification on the number of grants an individual should receive from the State/President/ Lands Commission/local land committee) must be limited.

ZLA hereby submits civil society’s proposals and recommendations to the NCC for consideration. Note that the provisions in *underlined bold italics in green* are the inclusions that civil society through ZLA would like to see included in the final document to be called the Constitution of Zambia, while sections in strikethrough red are the sections that civil society would like to see deleted.

3.0 Basis of land policy

3.1 Dual land tenure

In the Mungomba draft Constitution, **section 327**, provides that the Constitution should be the basis for developing any future policies and land laws. ZLA proposes that this part of the Constitution should begin with the phrase:

Box 1. Recommendation on the Constitution as basis for developing policies

327. (1) *“Recognizing that Zambia has a dual tenure system, the land policy of Zambia shall ensure -”*

This emphasis is important because the Constitution is the supreme law of the land and therefore it needs to protect the principle of running these two land tenure systems. ZLA believes that this will guarantee continuity and promote peace and harmony among the people. Whatever government that will take over in future will be guided by this section to develop its own policy on land but will not attempt to abolish any of the two systems without changing the Constitution. So in order to avoid changes to the dual system principle, the Constitution ought to protect it and direct any formulation of laws and policies in that direction.

3.2 Protection of land rights

Considering that land rights are central to the enjoyment of human rights, it follows therefore that the Constitution should provide for the recognition and protection of rights at several levels. Whereas the land rights of land holders are secured and protected, there is no mention of other rights such as user rights especially within customary areas and also the recognition and protection of prescriptive rights of land occupiers.

Box 2. Recommendation on protection of land rights

Section 327 (1)
(c) Security of land rights for land holders, users and occupiers in good faith.

3.3 Role of citizens

It is increasingly being accepted by the public and governments around the world that citizens and their civil society organisations have important roles to play in both service delivery and governance. In relation to land polices and laws, civil society has roles to play in providing information to and sensitizing communities (leaders, men, women and special needs groups) on laws and practices, as well as a role to play in monitoring the implementation of the polices and laws.

Therefore, in the same section, (1) ZLA recommends that an extra point, (i) be added. This will read as follows:

Box 3. Recommendation on the role of citizens as key stakeholders in land

Section 327 (1)

Add (i) That citizens are key stakeholders and have a role to play in the formulation, implementation and monitoring of land policies and laws

3.4 Conservation of forests and other biological resources

In the same section concerning development of policies and laws, ZLA is of the view that there is need for the land policy to respond to environmental and other societal pressures on land by providing for agrarian and land reforms which provide land for the population, either through the customary system or through demarcating unused farms, as well as promoting programs aimed at intensifying land use. That in responding to human displacements due to mining or any other operations or forces of nature, or to make way for a growing population. Also that the fundamental need to protect forests and other biological resources will not be overlooked.

Box 4. Recommendation on coping with population growth and environmental effect

Section 327 (1)

Add (j) That population growth and environmental effects are catered for through agrarian and land reform

4.0 Dual Tenure

4.1 The Constitutional provision for the dual tenure system

On land tenure, the Constitution shall provide for the dual land tenure system. There is no need for parliament to enact a law to make this provision. This way, customary land tenure system shall be protected in order to protect communities on the land from those who might want to convert customary land to lease holds. Therefore ZLA recommends that this section below should stand as is:

Box5. Recommendation on Constitutional provision for dual tenure in Zambia

Section 328

All land in Zambia shall be classified as customary, state land or such other classification as provided by *this Constitution*. ~~or under an Act of Parliament, and shall be delimited in accordance with an Act of Parliament.~~

5.0 State Land

5.1 Definition of state land

ZLA agrees with some of the definitions of State Land under section 329 (1). However, points d, f, g and h are too wide in scope. For example, as it stands in the draft Constitution (f) state land would apply to all the land in Zambia. ZLA sees a need to ensure controls, checks and balances on how land can be classified or declared state land, so as to protect the interests of land holders in both customary and leasehold lands against arbitrary decision by Government. Therefore, under section 329 (1), points (d) (g) and (h) should be deleted.

Instead the proposal outlined below specifies that important uses of land should be declared by an Act of Parliament.

Box 6. Recommendation on declaration of State Land

Section 329 (1); proposed deletion of (d) and amendment of (f) to read as provided below:

(f) (Addition) Land designated as having special biological, environmental or National significance as may be determined by or under an Act of Parliament.

5.2 Reversion to customary land

During consultations with communities and leaders, it was repeatedly reiterated that land which had been converted from customary land to state land, should revert back to customary land once the use for which the land had been converted was no longer in effect. It was argued that in this way, rural communities would continue to benefit from the land. It was also argued that rural communities would be more willing to give investors the use of land for time bound periods, if they know the land would revert back to the community once the agreed period of time had lapsed.

ZLA therefore recommends that when land is no longer being used for the use for which it was converted, it should revert back to the status it had before it was converted.

Box 7. Recommendation on reversion of un-utilized state land to customary land

Section 329, proposed new point 3:

(3) (Addition) State land that is no longer being used for its intended use should revert to customary land from which it was originally converted

5.3 Public Land

Land in Zambia is administered under two jurisdictions, these being customary and leasehold tenures. Under customary tenure land rights are provided for under communal rights and limited private land rights. For land under leasehold tenure, rights are administered as private and holders have exclusive rights.

Currently within state land, there is only a provision for land to be held as leasehold (or freehold in exceptional cases). However, there is more to state land than leasehold lands. All land on which public facilities are sited as well as unallocated state land should comprise public land. This is because in true meaning of leasehold land there has to be a lease, and where there is none, such land is not provided for in the legislation and its administration unclear.

As there is more to land rights under state land than private/exclusive rights, there is thus need within the Zambian state land administration system to provide for rights in land that are not of a private nature. ZLA therefore recommends that a special category of land under state land, to be called Public Land, be established to cater for this need.

Box 8. Recommendations to provide for Public Land

Section 329, proposed new points 4 & 5

(4) (Addition) This Constitution provides the recognition of public land as may be provided for by an Act of Parliament.

Public land may be defined as;

(a) Land which is designated as public or common good, such as land on which are public institutions, roads, water bodies – rivers, lakes, river frontages, roads, wetlands, human refuge.

(b) Land for leisure that includes sports grounds such as play parks, natural parks or any other such land.

(c) Land which is neither held on title nor could be considered to be customary land.

(5) (Addition) Parliament shall provide guidelines upon which public land may be alienated and managed.

6.0 Customary land in Zambia

ZLA is concerned over the present status of customary land, primarily because customary land is home to the rural population of Zambia, where the majority poor live. Currently land under customary tenure provides most of the food in the country. In addition, customary land tenure mechanisms provide land holders with a range of goods and services over and beyond their actual land holding (such as access to fuel, water, grazing, medical plants, shelter and so on). Despite the acknowledged productivity of customary land, it has a long history of neglect in Zambia, and has been sidelined in development. Furthermore, holders of customary land have limited legal protection of their land rights.

To protect and equalise the rights of Zambian citizens, ZLA advocates that there must be parity between customary land tenure and leasehold tenure. From this it follows that customary land rights and the customary land administration system must be strengthened and protected by law. ZLA has therefore the following specific recommendations: At present the chiefs enjoy legal recognition in their capacity as traditional leaders, but do not have legal rights, as an institution, to administer land. This means that customary land, under their custodianship, is weakly protected. Because of this, and in recognition of the need to tackle poverty levels in rural areas, the traditional institutions should be given legal powers to administer land through transparent, accountable and well-structured arrangements accessible at a local level. At the same time, to strengthen a democratic customary land administration, there is need to develop, in a participatory way, basic guidelines to be applied nationwide, that spell out the minimum standards for administration of customary land.

Box 9. Recommendations on strengthening Customary Land

Section 330 (Customary Land), should be amended to allow for the following provisions:

Point (2) (c) should read “ancestral land traditionally held, used or occupied by an ethnic community”.

An additional point, 3 should read as follows:

(3) Customary institutions shall administer land under their authority in a transparent and accountable way

Point (4) should be amended as follows: (4) Customary land should not be alienated or otherwise used until the approval of the (add) *local community*, Chief and local authority on whose land is situated has first been obtained, and (add) *shall* be provided for by or under an Act of Parliament.

Point (5) should add as shown: An approval under clause 4 shall be given after extensive and thorough consultations with the local community and shall not be given upon demand or under duress or threats to the local authority. (add) *Approval for alienation shall not be unreasonably withheld.*

Point (7) should be amended to protect customary land through legislation, as follows: (7) Parliament shall enact legislation to provide mechanisms for (delete) ~~administration of customary land~~ (add) *customary institutions to administer land in well structured arrangements at local level*

This framework provides for systems of customary land administration to be developed at local level, in line with specific local needs, aspirations and norms for land administration, yet at the same time provides minimum standards which are national in character. Once land tenure security for rural citizens is enhanced in this way, ZLA is confident that rural people will be able to attract and establish bigger investments in their land and infrastructure, thus bringing about development and wealth to rural areas.

Box 10. Recommendation on strengthening role of customary institutions

Under 331, ZLA has the following recommended addition as point 5

331 (5) (Addition) *Customary land shall be administered by the customary authority with full participation of the local community through transparent, accountable, well structured and engendered arrangements.*

Other recommendations on strengthening customary land tenure and administration are found in this document, but as an integrated part of other main areas of concern. Refer to Box 5 for recommendations on providing equal footing with other land categories through the Constitution. Refer to Box 15 for recommendations on Constitutional provision for legislation to strengthen and legitimise customary land administration.

7.0 Vestment of land

The Zambian Laws vest land in the President, for and on behalf of the people of Zambia. This position up until now has been considered troublesome to ZLA due mainly to the potential abuse of authority by those charged with responsibility to hold all Zambian land on behalf of and for the people of Zambians.

However, there has been a rethinking on the subject of vestment in part due to the current developments in the overall land administration situation in Zambia. For one, there is a need to separate power among the various Government arms. The function of land alienation falls under the executive, but should by all means not be left to one person regardless of how well adjusted and popularly granted that function. The proposal in the Mungomba Draft Constitution for a Lands Commission, as the institution that will alienate land, instead of the

Commissioner of Lands who currently exercises delegated authority from the President, is one way of reducing the likelihood of abuse of the vestment clause.

ZLA has no problem with land vesting in the President, provided that does not give a right to the person of President to alienate land to anyone, whether a citizen or non-Zambian. The function of land alienation, in light of democratic governance and the attendant principles of transparency and accountability demand that the function of land alienation be handled by a popular body such as the proposed Lands Commission.

For point (3), ZLA does not recommend that the President or his/her agent has powers to alienate land to non-citizens; rather ZLA recommends that non-citizens acquire land through partnership with Zambian citizens (see section in this document for further argument)

In (4), ZLA assumes that the local authority only has the posers to oversee land administration in the district

To ensure that Customary Land is accorded the same attention by the Constitution as the other categories of land, point (5) should be added. It is therefore recommended as follows:

Box 11. Recommendations on vesting of land

Section 331, Vesting of Land.

- (1) Land in Zambia is vested in the President and is held by the President in trust for and on behalf of the people of Zambia
- (2) All land in Zambia shall be administered and controlled for the use or common benefit, direct or indirect, of the people of Zambia.
- (3) Subject to clause (3), ~~the President shall through~~ the Lands Commission, Chiefs or local authorities, shall on behalf of the President, alienate land to citizens ~~or to non-citizens~~, as prescribed by this Constitution and by an Act of Parliament.
- (4) Land situated in a district shall be ~~overseen~~ administered by the local authority.
- (5) (Addition) Customary land shall be administered by the customary authority with full participation of the local community through transparent, accountable, well structured and engendered arrangements.

8. Provision for non-Zambians to hold land in Zambia

Zambia is rich in natural resources; yet Zambia is one of the poorest countries in the world. Especially rural citizens experience high levels of poverty and low levels of education. There is need for investment in developing human resources so that the country can maximise on its abundant natural resources and bring the population out of the poverty currently experienced. Meanwhile most investment to exploit the country's natural resources (especially mining, agriculture and tourism/wildlife related activities) is carried out by non-Zambians. At the same time market forces are rapidly changing the way in which land is used and accessed. This situation creates high costs associated with land acquisition, including corruption and patronage while principles of equity in land administration are missing.

However, ZLA acknowledges that, with proper regulation, Zambia has the potential to benefit from authentic and legitimate foreign investment. At present the mining, construction, tourism and large-scale commercial agricultural sectors are attracting foreign investment. The interests of the different investments require guarantees of secure land tenure. There is a strong feeling in Zambia that foreigners should never be given outright ownership of land; rather that the use to

which the land will be put should be the guiding principle for how long land is allocated for investment purposes. There is also strong feeling that foreign investment should both directly (through partnership with a Zambian) and indirectly (through taxation) benefit Zambians. Also that any investment in rural areas (for example in customary areas) should include agreements negotiated with local communities, so that benefits can accrue directly to the local community.

ZLA therefore recommends that the Constitution of Zambia provide for land to be held by non-citizens under section **Land Tenure, 332**, where the proposed addition outlined below replaces points (3) and (4) in the draft Constitution.

Box 12. Recommendation on land held by non-Zambians

Section 332, should make provision for

- 4) Parliament shall enact legislation to provide for the categories of non-citizens that may hold land and the conditions under which they may do so.

(Addition) including the following:

- a) A person who is not a citizen of Zambia shall never be allocated a direct grant of land.
- b) For residential purposes, non-Zambians shall have residence status and shall acquire land through transfer of leasehold rights or through negotiation in customary land.
- c) Non Zambians requiring land for non-residential purposes should access land on fulfilling all of the following conditions:
 - Through partnership with a Zambian
 - On acceptable investment plan and environmental impact assessment
 - With communities involved in the terms for investment

9. Lands Commission

The establishment of a Lands Commission will not only be a more democratic, transparent and accountable way of administering land, but will also contribute to the reduction in corruption in the land sector. However, ZLA has concerns that have been raised over some of the provisions in the draft Constitution that relate to the proposed Lands Commission.

Box 13. Recommendations on the composition of the Lands Commission

335 (2) (Addition) In the appointment of a Lands Commission, consideration shall be made for equitable gender representation

Another issue concerning the Lands Commission is related to the functions that the Commission will need to undertake. Although the Lands Commission may be deemed to have the mandate to contribute towards the formulation of land policies, ZLA argues that it is not necessary for the Lands Commission to formulate and recommend to the Government a national Lands Policy. Neither is it necessary for the Commission to advise the national and local Governments on a policy framework for the development of selected areas of Zambia and to ensure that the development of customary land is in accordance with the development plan for the area. The reason for removing these functions from the Lands Commission is because policy making is mainly a function of Ministries, and the

Commission should only be accorded the authority to monitor and oversee that these functions are properly and democratically undertaken by the Ministry of Lands and other relevant authorities.

Box 14. Recommendations on the mandate of the Lands Commission

332. The functions of the Lands Commission shall include the following:

(a) administer, manage and alienate land on behalf of the President for **(Addition)***the people of Zambia*

~~(b) (delete) Formulate and recommend to Government a national lands policy~~

(b) (replace with) *Monitor and have oversight responsibilities over the formulation of land policies and laws for Zambia*

~~(c) (delete) Advise the government and local authorities on a policy framework for the development of selected areas of Zambia to ensure that the development of customary land is in accordance with the development plan of the area~~

~~(g) (delete) monitor and have oversight responsibilities over land use planning throughout the country~~

10. Legislation on Land

Considering the several provisions and recommendations made through this paper, it is necessary to amend (d) below to read as here provided, and to provide for the inclusion of (h), (i), and (j) as shown below.

Box 15. Recommendations on legislation to be enacted by Parliament

Section 338 (Legislation on Land), should make provision for including the following under the existing heading **'Parliament shall enact legislation to'** -

(d) Regulate the manner in which land may be converted from one category to another, (Addition) *and provide for land and agrarian reform as the need arises*

(Additions h, i, j)

(b) *ensure customary land rights are equal in recognition to leasehold rights*

(i) *protect the land rights of groups with special needs, as shall be defined by an Act of Parliament.*

(j) *Set out minimum nationwide standards for the administration of customary land*

11. The proposed way forward

The recommendations set out in this paper reflect the considered and consolidated views of civil society on the need to strengthen and amend the draft Constitution currently under review.

Civil society will use this paper to develop a campaign to lobby and advocate for a new national Constitution for Zambia which, by including recommendations on land from civil society, will stand the test of time.

Annex 1: Proposed Land and Property Chapter

Introduction

This chapter on land is developed from the Mungomba Draft Constitution (2006). Note that the provisions with bold italics highlighted in green/grey background are the inclusions that the CSO through ZLA would like to see included in the final document to be called the Constitution of Zambia. The sections in strikethrough red are the sections that CSO would like to see removed or replaced.

The arguments for the proposed changes are presented in the first part of this document and should be referred to in conjunction with the proposals for change presented here. The changes proposed are intended to strengthen the draft Constitution, so that a final Constitution is developed which will bring development to Zambia and reduce the poverty of her people, and thereby stand the test of time.

327. (1) **(Addition) Recognizing that Zambia has a dual land tenure system,** the land policy of Zambia shall ensure –
- (a) Equitable access to land and associated resources;
 - (b) Equitable access and ownership of land by women;
 - (c) Security of land rights for land holders, **(Addition) users and occupiers in good faith;**
 - (d) **(Addition) That citizens, as the key stakeholder in land, have a role to play in the formulation, implementation and monitoring of Land Policies;**
 - (e) Sustainable and productive management of land resources;
 - (f) Transparent and cost effective administration of land;
 - (g) Sound conservation and protection of ecologically sensitive areas;
 - (h) Cost effective and efficient settlement of land disputes;
 - (i) That river frontages, islands and lakeshores are not leased, fenced or sold;
 - (j) **(Addition) that agrarian and land reforms respond to population growth and other societal and environmental effects.**

328 All land in Zambia shall be classified as customary land, state land, **(addition) public land** or such other classification as may be provided by **(addition) this Constitution** ~~or under an Act of Parliament, and shall be delimited in accordance with an Act of Parliament.~~

- 329 (1) State land is –
- (a) Land held by any person under leasehold tenure;
 - (b) Land which at the commencement of this Constitution was unalienated State land as defined by an Act of Parliament;
 - (c) Land lawfully held, used or occupied by any government Ministry, department, agency or local authority;

~~(d) Land on or under which minerals are found as specified under law;~~
(e) Land in respect of which no heir can by ordinary legal process be identified;
~~(f) Land occupied by, or through which, any natural resource passes including gazetted or declared forests, game reserves, and water catchment areas, rivers and other natural flowing water resources, national parks, animal sanctuaries and specially protected areas;~~ **(Addition) Land designated as having special biological, environmental or National significance as may be determined by or under an Act of Parliament.**

~~(g) Any land not classified as customary land under this Constitution; and~~

~~(h) Any other land declared as State land by an Act of Parliament.~~

(2) State land shall not be alienated or otherwise used except in terms of legislation specifying the nature and terms of that alienation or use.

(3) (Addition) State land that is no longer being used for its intended use should revert to customary land from which it was originally converted.

(4) (Addition) This Constitution provides the recognition of public land as may be provided for by an Act of Parliament. Public land is;

(d) Land which is designated as public or common good, such as land on which are public institutions, roads, water bodies – rivers, lakes, river frontages, roads, wetlands and human refuge.

(e) Land for leisure that includes sports grounds such as play parks, natural parks or any other such land.

(5) (Addition) Parliament shall provide guidelines upon which public land may be alienated and managed.

330. (1) Customary land is land held by communities identified on the basis of tribe, residence or community of interest.

(2) For the purposes of clause (1), customary land includes –

(a) Land customarily held, managed or used by specific communities as community forests, grazing areas or shrines;

(b) Land lawfully alienated to a specific community by any process of law;

(c) Ancestral lands, land traditionally held, (addition) **used or occupied** by an ethnic community; and

(d) Any other land declared to be customary land by an Act of Parliament.

(3) (Addition) Customary institutions shall administer land under their authority in a transparent and accountable way.

(4) ~~An approval under clause (3), shall not be unreasonably withheld.~~ Customary land shall not be alienated or otherwise used until the approval of the **local community**, chief and local authority in whose area the land is situated has first been obtained, **and shall** be provided for by or under an Act of Parliament.

(5) An approval under clause 4 shall be given after extensive and thorough consultations with the local community and shall not be given upon demand or under duress or threats to the local authority. **(Addition) Approval for alienation shall not be unreasonably withheld.**

(6) Communities living on customary land rich in minerals shall for the purposes of exploiting the minerals, be moved to acceptable alternative places and shall have a sizable share of the profits realized from such projects as long as the project remains in operation.

- (7) Parliament shall enact legislation to provide mechanisms for ~~administration of customary land~~ (addition) *customary institutions to administer land in well structured arrangements at their local level.*

331. (1) Land in Zambia is vested in the President and is held by the President in trust for and on behalf of the people of Zambia.
- (2) *All land in Zambia shall be administered and controlled for the use or common benefit, direct or indirect, of the people of Zambia.*
- (3) Subject to clause (3), the President shall through the Lands Commission, Chiefs or local authorities, alienate land to citizens ~~or to non-citizens~~, as prescribed by this Constitution and by an Act of Parliament.
- (4) Subject to Article 330(3) Land situated in a district shall be (addition) *overseen administered* by the local authority in that district.
- (5) (Addition) *Customary land shall be administered by the customary authority with full participation of the local community through transparent, accountable, well structured and engendered arrangements.*

333. (1) Land in Zambia alienated and held on the basis of customary, leasehold or other tenure, as provided by this Constitution or by or under an Act of Parliament.
- (2) Subject to clause (1), State land may be held on a lease of ninety-nine years or such lesser years as may be prescribed in legislation for different categories of State land.
- (3) A person who is not a citizen shall only be entitled to lease land for a restricted period of time, as provided by an Act of Parliament.
- (4) Parliament shall enact legislation to provide for the categories of non-citizens that may hold land and the conditions under which they may do so. (Addition) *including the following:*
- d) *A person who is not a citizen of Zambia shall never be allocated a direct grant of land.*
- e) *For residential purposes, non-Zambians shall have residence status and shall acquire land through transfer of leasehold rights or through negotiation in customary land.*
- f) *Non Zambians requiring land for non-residential purposes should access land on fulfilling all of the following conditions:*
- Through partnership with a Zambian*
 - On acceptable investment plan and environmental impact assessment*
 - With communities involved in the terms for investment*

334. (1) The State is empowered to regulate the use of any land, interest or right in land in the interest of defense, public safety, public order, public morality, public health, land use planning or the development or utilization of property.
- (2) The State shall encourage and provide a conducive, social, economic, political and legal atmosphere for the creation, development and management of property.

- (3) Parliament shall enact legislation ensuring that major investments in land benefit local communities and their economy.
335. (1) The office of Commissioner of Lands is a public office and the Commissioner of Lands shall be appointed by the President, subject to ratification by the National Assembly.
- (2) The Commissioner of Lands shall be the chief administrator of the Lands Commission and shall perform the functions of office under the supervision of the Lands Commission.
- ~~(3) The term of office of the Commissioner of Lands shall be five years, subject to renewal. or until the person attains retirement age as specified by an Act of Parliament.~~
336. (1) There is hereby established a Lands Commission which shall consist of the Commissioner of Lands and four other part-time members appointed by the President, subject to ratification by the National Assembly. **(Addition) *In the appointment of members of the Lands Commission, consideration shall be made for equitable gender representation.***
- (2) Parliament shall enact legislation to provide for the Lands Commission, its financial resources and financial management, procedures, administration, appointments, qualifications, promotions, transfer, retirement and discipline of staff, including the Commissioner of Lands, and generally for the functioning of the Commission.
- (3) The Lands Commission shall establish offices in every province.
- (4) The expenses of Lands Commission, including the emoluments of the staff of the Commission, shall be a charge on the Consolidated Fund.
337. (1) A member of the National Lands Commission, except the Commissioner of Lands, shall hold office for a term of three years, subject to renewal for a further term of 3 years.
- ~~(2) Parliament shall enact legislation providing for the removal from office of a member of the Lands Commission.~~
338. The functions of the Lands Commission shall include the following:
- (a) administer, manage and alienate land on behalf of the President **(addition) for *the people of Zambia***
- (b) (Addition) *Monitor and have oversight responsibilities over the formulation of a Land Policies and laws for Zambia by the Ministry of lands***
- ~~(b) Formulate and recommend to the Government a national lands policy;~~
- ~~(c) advise the Government national and local government and local authorities on a policy framework for the development of selected areas of Zambia and to ensure that the development of customary land is in accordance with the development plan for the area;~~
- (c) Advise the Government on, and assist in the execution of, a comprehensive programme for the registration of Leasehold title in land throughout Zambia;
- (d) Conduct research related to land and natural resource use, and make recommendations to appropriate authorities;

- (e) Facilitate the participation of communities and civil society in the formulation of land policies;
- ~~(g) Monitor and have oversight responsibilities over land use planning throughout the country; and~~
- (f) Any other functions provided by or under an Act of Parliament

339. Parliament shall enact legislation to –

- (a) Revise, consolidate and rationalise existing laws relating to land;
- (b) Prohibiting speculation in land;
- (f) Revise sectoral land use law in accordance with the national land policy;
- (g) Regulate the manner in which any land may be converted from one category to another, **(addition) and provide for land and agrarian reform as the need arises.**
- (h) Protect, conserve and provide equitable access to all State land;
- (i) Enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities; and
- (j) Prescribe minimum and maximum land holding acreage in arable areas.
- (k) (addition) Ensure customary land rights are equal in recognition to leasehold rights.**
- (l) (addition) Protection for the rights of groups with special needs, as shall be defined by an Act of Parliament.**
- (j) (addition) Set out minimum nation-wide standards for the administration of customary land.**

ACCES TO LAND AND THE BILL OF RIGHTS

1. (1) Every person has a right to access land and to acquire and own property either individually or in association with others, subject to provisions that may be made in the constitution concerning the manner of acquisition.
- (2) The State shall not deprive a person of property of any description, or of any interest in, or right over, property, except under the authority of legislation, and subject to the following principles:
 - (a) Legislation shall not authorize arbitrary deprivation of any interest in, or right over, property of any description;
 - (b) Deprivation of any interest in, or right over, property is justifiable, balancing –
 - (i) The public benefit; and
 - (ii) Hardship that may result to any person who has an interest in or right over the property; and
 - (c) Prompt payment of full and fair compensation shall be made prior to assuming occupation or possession of the property.
- (3) Every owner of –
 - (a) A leasehold interest in land has the right to be issued a certificate of title setting out that interest; or
 - (b) Any other right or interest in land has the right to register that right or interest.

2. (1) Every person has the right to have access to adequate shelter and housing.
 - (2) Parliament shall not enact any legislation that permits or authorizes arbitrary eviction.
3. (1) Every person has the right to be free from hunger and to have access to food in adequate quantities and of adequate quality and cultural acceptability.
 - (2) Every person has the right to water in adequate quantities and of satisfactory quality.
 - (3) Every person has the right to a reasonable standard of sanitation.
4. Every person has the right
 - (a) To an environment that is safe for life and health;
 - (b) To free access to information about the environment;
 - (c) To compensation for damage arising from the violation of the rights recognized under this Article; and
 - (d) To the protection of the environment for present and future generations.
5. *Communities living on customary land have the inherent right to the land and any other resources including minerals found where they live and cannot be resettled elsewhere without their consent and due and appropriate compensation*