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Land Governance in Southern Africa

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## Land Governance in Zambia: Abstract

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### Abstract

Zambia is a landlocked country located in Southern Africa and covers a land area of 752,614 square kilometers of which 11,890 square kilometers is water area. Zambia operates a dual land tenure system being statutory tenure that is based on English Law and customary tenure which is governed under customary law. In terms of classification, 15-20% of the land is held under statutory tenure while 80% is still regulated under customary tenure. Most of the national laws and policies have concentrated on statutory tenure and regulation of customary tenure remains uncodified. The Lands Act simply recognizes customary tenure and supports the conversion of customary tenure to statutory tenure but not vice versa. The management and administration of the two different tenures is supported through different institutional frameworks. For example the current land registration system does not cover customary tenure. As such, there is no comprehensive system of land registration applicable to the two different tenures. This chapter focuses on land governance under the two different tenure systems and the challenges faced in the administration and management of land in Zambia.

The governance of statutory land is situated under the Ministry of Lands and Natural Resources as the main overarching government ministry responsible for land and natural resources. Other government institutions that play a role in the administration and management of land include Ministry of Local Government, Resettlement department (Office of the Vice President), Land Husbandry Section (Ministry of Agriculture), Government Valuation Department (Ministry of Works and Supply), (Zambia Environmental Management Agency and Water Resources Management Authority (Ministry of Water Development, Sanitation and Environmental Protection) and National Parks and Wildlife Department (Ministry of Tourism and Arts). Customary land on the other hand is governed under the Ministry of Chiefs and Traditional Affairs, administered through traditional leaders.

There are several challenges faced at institutional as well as procedural levels that have been discussed in detail in this chapter. The main ones stated in this summary have been outlined in terms of thematic areas. Challenges in institutional framework comprise: inadequate co-ordination among land management and administration institutions and inefficiencies; corruption in land institutions responsible for allocation of land; and traditional leaders' lack of knowledge to govern land and unwillingness to convert customary land. In terms of the Legal framework challenges consist of: outdated and fragmented land Laws; law that does not provide for what amounts to public interest in the case of expropriation of land. Customary tenure which is regulated by customary laws is considered to be insecure due to the fact that each chiefdom has its own customs applicable to the administration and governance of land;

and gender disparity under customary areas due to traditional and cultural structures, patriarchal attitudes, women's submissive attitudes to male domination, lack of knowledge on land rights and economic constraints are the main setbacks.

With regards challenges in land dispute resolution these include to a certain extent: access to the formal court system by most litigants in land matters is difficult because of high legal costs payable to the Advocates who present and defend these cases and the courts fees; The High and Subordinate Courts incur unreasonable delays in deciding cases due to among other factors procedural delays in commencement and completion of the matter, shortage of well-trained staff and shortage of courtrooms (most cases remain unresolved, for several months or even years); Lands Tribunal (specialised land court) is not easily accessible because of the highly centralised lodging system for land cases (all land cases throughout the country have to be filed through the Lusaka office); the use of arbitration and mediation in resolving land disputes is limited because of lack of information (there is no publicity on how to access mediation and arbitration and the advantages they offer in resolving land matters); and civil society organisations and non-governmental organisations such as National Legal Aid Clinic for Women, Zambia Land Alliance, and the Legal Resources Foundation are not able to adequately provide legal services to resolve land disputes due to barriers such as human resource, expertise and financial support.

The valuation and taxation processes face different forms of challenges but the general ones include: insufficient comparable data; lack of centralised information source; corrupted valuation surveyors; and limited sensitisation of the existence of the Tax Appeals Tribunal. Regarding land use planning and control the major challenge is that some developers put up structures without obtaining development permits and others are granted planning permits retrospectively. This promotes disorderly and illegal development since planning regulations and standards are often overlooked. This situation is worsened by the planning authorities' lack of capacity to carry out inspections on a regular basis. Under public land management: the allocation process for public land is not clearly defined in the law however the President can alienate public land in the interest of the public (what amount to public interest is not clear); and there is lack of transparency in the process of allocation of public land. While challenges in Land Information comprise: limited accessibility to the centralised institutional systems of land administration; inaccurate and incomplete data regarding land ownership; and scarcity of information on land availability. In summary this chapter brings out issues of land governance in Zambia and the challenges which are evident at both institutional as well as procedural levels



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that manifest differently for land held under statutory and customary land tenure systems or what is referred to as the dual land tenure system.

**Key Words:** Customary land, statutory tenure, Land governance, Land administration, land management