



REPUBLIC OF ZAMBIA

(This Document is the Property of the Government of the Republic of Zambia)

NATIONAL CONSTITUTIONAL CONFERENCE

LAND AND ENVIRONMENT COMMITTEE

(COMMITTEE NO.11)

DETAILED TERMS OF REFERENCE

Approved by the National Constitutional Conference during the 8th January to 10th January 2008 Sitting

National Constitutional Conference
Mulungushi International Conference Centre
LUSAKA

August, 2008

PART XIX
LAND AND PROPERTY

**Basis of
land policy**

- 327.** 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;
 - (d) sustainable and productive management of land resources;
 - (e) transparent and cost effective administration of land;
 - (f) sound conservation and protection of ecologically sensitive areas;
 - (g) cost effective and efficient settlement of land disputes; and
 - (h) that river frontages, islands and lakeshores are not leased, fenced or sold.

**Classification
of land**

- 328.** All land in Zambia shall be classified as customary land, State land or such other classification as may be provided by or under an Act of Parliament, and shall be delimited in accordance with an Act of Parliament.

State land

- 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 national forests, game reserves and water catchment areas, rivers and other natural flowing water

resources, national parks, animal sanctuaries and specially protected areas;

(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.

**Customary
land**

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 traditionally occupied by an ethnic community; and

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

(3) Customary land shall not be alienated or otherwise used until the approval of the chief and local authority in whose area the land is situated has first been obtained and as may be provided by or under an Act of Parliament.

(4) An approval under clause (3), shall not be unreasonably withheld.

**Vesting of
land**

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 may, through the Lands Commission, chiefs or local authorities, alienate land to citizens or to non-citizens, as provided by this Constitution and by or under an Act of Parliament.

(4) Subject to Article 330 (3), land situated in a district shall be administered by the local authority in that district.

Land tenure

332. (1) Land in Zambia shall be 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 provided by 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.

Regulation of land use and development of property

333. (1) The State is empowered to regulate the use of any land, interest or right in land in the interest of defence, public safety, public order, public morality, public health, land use planning or the development or utilisation of property.

(2) The State shall encourage and provide a conducive social, economic, political and legal environment 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.

Commissioner of lands

334. (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.

**Lands
Commission**

335. (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.

(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 the Lands Commission, including the emoluments of the staff of the Commission, shall be a charge on the Consolidated Fund.

**Term of
office**

336. (1) A member of the Lands Commission, except the Commissioner of Lands, shall hold office for a term of three years, subject to renewal for only one further term of three years.

(2) Parliament shall enact legislation providing for the removal from office of a member of the Lands Commission.

**Functions of
Lands
Commission**

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

- (a) administer, manage and alienate land on behalf of the President;
- (b) formulate and recommend to the Government a national lands policy;

- (c) advise the 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;
- (d) advise the Government on, and assist in the execution of, a comprehensive programme for the registration of leasehold title in land throughout Zambia;
- (e) conduct research related to land and natural resource use and make recommendations to appropriate authorities;
- (f) facilitate the participation of communities in the formulation of land policies;
- (g) monitor and have oversight responsibilities over land use planning throughout the country; and
- (h) any other function provided by or under an Act of Parliament.

**Legislation
on land**

- 338.** Parliament shall enact legislation to –
- (a) revise, consolidate and rationalise existing laws relating to land;
 - (b) prohibit speculation in land;
 - (c) revise sectoral land use law in accordance with national land policy;
 - (d) regulate the manner in which any land may be converted from one classification or category to another;
 - (e) protect, conserve and provide equitable access to all State land;
 - (f) enable the settlement of landless people including the rehabilitation of spontaneous settlements of rural and urban communities; and
 - (g) prescribe minimum and maximum land holding acreage in arable areas.

PART XX

ENVIRONMENT AND NATURAL RESOURCES

asis of
nvironment
olicy

339. The management and development of Zambia's natural resources shall –
- (a) respect the integrity of natural processes and ecological communities, including conservation of habitats and species;
 - (b) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources for the present and future generations;
 - (a) ensure equitable sharing of benefits, amongst the local communities, accruing from exploitation and utilisation of the environment and natural resources;
 - (b) ensure equitable access to all natural resources;
 - (c) recognise that natural resources have an economic and social value and this should be reflected in their use;
 - (d) not bestow private ownership of any natural resource or authorise its use in perpetuity;
 - (e) ensure gender mainstreaming by promoting equity between the opposite gender and involve women in decision making processes relating to the use of natural resources and ensure efforts to reduce poverty are undertaken;
 - (f) ensure that social and cultural values and methods traditionally applied by local communities for the sustainable management of the environment and natural resources are observed;
 - (g) ensure that planning and utilisation of the environment takes account of disadvantaged areas and their inhabitants;
 - (h) promote energy saving and the use of solar energy and other renewable energy sources;
 - (i) prevent pollution and ecological degradation; and

- (j) allocate adequate resources to reclaim and rehabilitate degraded areas and those prone to disasters to make them habitable and productive.

**Protection of
environment**

340. Every person has a duty to co-operate with State organs and **State** institutions and other persons –

- (a) to ensure ecologically sustainable development and use of natural resources;
- (b) to respect, protect and safeguard the environment;
- (c) to prevent or discontinue an act which is harmful to the environment;
- (d) to direct the appropriate authority to take measures to prevent or discontinue an act or omission which is harmful to the environment; and
- (e) to maintain a clean, safe and healthy environment.

**Conservation of
environment**

341. In the utilisation and management of the environment the State shall –

- (a) protect genetic resources and biological diversity;
- (b) discourage waste and encourage recycling;
- (c) establish systems of environmental impact assessment, environmental audit and for monitoring of the environment;
- (d) encourage public participation;
- (e) protect and enhance the intellectual property in, and indigenous knowledge of, biodiversity and genetic resources of the local communities; and
- (f) ensure that the environmental standards enforced in the Republic are of essential benefit to all citizens.

**Utilisation and
development of
natural
resources**

342. (1) The State shall ensure the protection, management, promotion and sustainable development of natural resources in accordance with the basic policy under this Part and shall –

- (a) ensure an increase in output and profits;
- (b) undertake strategic research to ensure their enhancement;
- (c) eliminate unfair trade practices in their production, processing, distribution and marketing;
- (d) regulate their exportation and importation;
- (e) regulate their origin, quality, methods of production, harvesting and processing;
- (f) eliminate processes and activities that are likely to endanger or curtail their existence; and
- (g) utilise them for the benefit of all the people of Zambia.

(2) Parliament may enact legislation to provide for the utilisation and management of a natural resource by a local authority where the resource is located and shall enact legislation to –

- (a) regulate sustainable exploitation, utilisation, management of national resources and equitable sharing of benefits accruing from natural resources; and
- (b) protect the intellectual property rights and indigenous knowledge of local communities in biodiversity and access to genetic resources.

**Agreements
relating to
natural
resources**

343. A transaction involving the grant of a right or concession by or on behalf of any person, including the Government, to another person, for the exploitation of any natural resource of Zambia shall be in accordance with this Constitution and royalties shall be paid in respect of the exploitation of the natural resource.