

## Supplement - The process of gaining title to land

The Land Act (1975) gave ultimate ownership of land and authority over land transactions to the President. It was not, of course, the President who implemented the legislation or administered land transactions. Instead, a department under the Commissioner of Lands was empowered to make grants and dispositions of land on the President's behalf.<sup>1</sup>

The day to day allocation of State land in Zambia is carried out by the District Councils on behalf of the Commissioner of Lands or by the chiefs in customary areas. Land is allocated by the chiefs according to the type of customary tenure operating in the area. Whether such distributions are equitable when compared against international standards depends upon the type of customary tenure practiced. In contrast, the main tenets of the mechanism by which District Councils process applications for leaseholds for title to State land are codified under the *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. The procedure is essentially similar whether the land to be allocated is for various uses (residential, industrial *et cetera*) or for agriculture.

Despite the subsequent introduction of the Lands Act, (1995), it would seem that this the *Procedure on Land Alienation* (as amended) is still in effect.<sup>2</sup> A recent 1998 review of land law, contained within a study of land tenure insecurity by Oxfam GB in Zambia, confirms the continued application of this amended *Procedure on Land Alienation*.<sup>3</sup> Indeed, it is stressed that the overall alienation procedure, dating back ten years, 'is not known by either the general public or even by many officials involved in land administration.'<sup>4</sup>

### 1. The allocation of State land

Before the allocation of land to be used for various purposes can take place, the planning authority must approve layout plans and forward these to the Commissioner of Lands who determines whether the land is available for development. The procedure by which State land is allocated for agricultural use is very similar. Once more, the Commissioner of Lands checks the availability and status of the land in question. It is then the responsibility of the Department of Agriculture to plan the area in consultation with the District Council. Provided the land in question is available - for example, that it is indeed State land and is not either land already leased (for example, to ZCCM for mining) or set aside as a Forest Reserve or other protected natural resource - then the Surveyor-General will be requested to number and survey the stands or plots.

In the case of land earmarked for non-agricultural purposes, it is assumed that the land to be allocated is fully serviced by the District Council. Otherwise the District Council must explain why this is not the case before the allocation process can proceed. The District Council may then advertise the plots or stands in the national press, inviting prospective developers (including individuals) to make applications for title to the District Council.

It is then up to the District Council to select applicants for title to the land and make its recommendations to the Commissioner of Lands. Its reasoning for each allocation is especially important when there is more than one applicant for the title to a plot of land or where an applicant is recommended for more than one stand. The recommendations of the District Council are crucial and are to be 'invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.'<sup>5</sup>

Formal consideration is given to the District Councils recommendations by the Commissioner of Lands and offers of land are issued direct to the successful applicants. A District Council has a 30 day right of appeal to the Minister of Lands if it is aggrieved by the final decision reached by the Commissioner of Lands and its recommendations are not followed. Prior to 1995, the Minister's decision on the appeal is final; however, under the Lands Act (1995), it is possible that appeals may be made to the Lands Tribunal.

Successful applicants will still need to pay lease and development charges. Furthermore, in the case of non-agricultural land, planning permission will be required when the planning authority is not the District Council itself. If buildings are to be erected on a plot, minimum clauses and regulations must be written into the direct lease. Once these conditions have been met, a certificate of title is issued by the Commissioner of Lands via the District Council.

## 2. *Grants or dispositions of statutory leasehold in customary areas*

The Lands Act (1995), through repeal of existing legislation, abolishes the two categories of reserves and trust lands which are now both classified as 'customary areas'.

While the allocation of land in customary areas is handled by the chiefs under customary law, it is possible for tenants in these areas to apply to convert their customary tenure to statutory tenure. It is only when this happens that a District Council will become involved in the allocation of land in customary areas. The procedure to convert tenure under the *Procedure on Land Alienation* is as follows:

A new Statutory Instrument 89 [hereafter 'SI 89'] has been introduced together with a new Lands Circular of 16 April 1996 to inform councils and civil servants of the simplified conversion procedure.<sup>6</sup> There are two mechanisms.

The first relates to an application to the chief from those with a right of customary tenure, or those using land in a customary area and who intend to settle for at least five years, to have his or her tenureship converted to a statutory leasehold title.<sup>7</sup> The chief may give or withhold consent.<sup>8</sup> Reasons for refusing consent must be communicated to the Commissioner of Lands.<sup>9</sup> When the chief gives consent, he sends a form to the local Council confirming both the applicant's status and that the rights of others are not infringed.<sup>10</sup> The Council reviews the application to convert *vis-à-vis* customary law in the area and the Lands Act and makes a recommendation for acceptance or rejection to the Commissioner of Lands.<sup>11</sup> However, the Commissioner has the power to decide whether or not to accept the Council's recommendation and, ultimately therefore, whether or not to grant or refuse the application for conversion.<sup>12</sup>

The second mechanism allows a local council to apply to the Commissioner of Lands to convert customary land into leasehold tenure if it considers this to be 'in the interests of the community.'<sup>13</sup> While there is a requirement to consult the local chief and ascertain family or communal interests or rights, no reference is made to prior consent. Furthermore, a person aggrieved by a decision to refuse an application for title may appeal to the Lands Tribunal.<sup>14</sup> This has powers of decision over specific disputes and a power of adjudication on any matter affecting land rights or obligations under the Act, subject only to appeal to the Supreme Court.<sup>15</sup>

### Notes

<sup>1</sup> Under Statutory Instrument No.7 of 1964 and Gazette Notice No. 1345 of 1975.

<sup>2</sup> *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. A subsequent Lands Circular of 12 April 1996 updates the procedure on the conversion of customary tenure.

<sup>3</sup> Hansungule et al. (1998), *Report on Land Tenure Insecurity*. In particular, see 'Procedures for acquiring land: Circular No. 1 of 1985,' p.21.

<sup>4</sup> *Idem*

<sup>5</sup> *Procedure on Land Alienation*, Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992, para. 4.

<sup>6</sup> The Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument 89 of 1996. The new Lands Circular, dated 12 April 1996, updated that part of the original *Procedure on Land Alienation*, Lands Circular No.1 of 1985, (as amended) dealing with the conversion of customary title.

<sup>7</sup> SI 89, section 2(1).

<sup>8</sup> *Ibid.*, section 2(2).

<sup>9</sup> *Ibid.*, section 2(3).

<sup>10</sup> *Ibid.*, section 2(4).

<sup>11</sup> *Ibid.*, section 3(1) - (2).

<sup>12</sup> *Ibid.*, section 3(3).

<sup>13</sup> *Ibid.*, section 4.

<sup>14</sup> *Ibid.*, section 6.

<sup>15</sup> Lands Act (1995), section 22, on the powers of the Lands Tribunal; see section 29 on appeal to the Supreme Court.