Chapter 2:  

Land Administration: Processes and Constraints

by

John Bruce, Fortune Kachamba, and Michelo Hansungule

I. Current framework for land administration

All land in Zambia is vested in the president, in trust for the people of Zambia, under the Land (Conversion of Titles) Act, 1975 (see p. 16), SECTION 4. The president has delegated land administration to the Commissioner of Lands under Statutory Instrument No. 7 of 1964 and Gazette Notice No. 1345 of 1975, as amended. Land in Zambia is divided into State (formerly crown), Reserve, and Trust Lands, as well as park reserves.

The Commissioner of Lands administers the State Land, appropriated by the colonial power for settlement of whites. The commissioner allocates this land as farms and agricultural smallholdings, and as stands for buildings and other uses, all under leasehold. There is also a state-farm and parastatal sector. The entire State Land amounts to less than 6 percent of the total land area of Zambia, but it is relatively good-quality land, advantageously located near the rail lines. All land in municipalities is also State Land. The larger municipalities now administer land independently under the Housing (Statutory and Improvement Areas) Act, 1976, i.e., statutory land and housing land.

In the Trust and Reserve Lands access to land is governed by customary law and institutions. The Reserve Lands were set aside for the original inhabitants of Zambia by the colonial authorities. The Trust Lands were at one time destined for white settlement but white settlement did not materialize to the extent anticipated. In both the Reserve and Trust Lands, land has been in the hands of traditional land users. The government, following the example during the colonial period, has for the most part continued to rely on traditional authorities for the allocation of that land to farming households. However, the Commissioner of Lands also allocates land in these areas directly to other users, such as outside investors.

The work of the MOL consists of the allocation, survey, and registration of leasehold titles in the State, Trust, and Reserve Lands, and in both urban and rural land. Under the legal breakdown of responsibilities, allocation is handled by the Lands Department (headed by the Commissioner of Lands), survey by the Survey Department (headed by the surveyor general), and registration by the Lands and Deeds Registry (headed by the Chief Registrar) under the Commissioner of Lands. See figure 2.1 for an organization chart. Recently, the former minister created a committee chaired by the deputy permanent secretary to review allocations, and asserted authority in the P.S. to make allocations, but this has no basis in law.

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1 John Bruce is former director of the Land Tenure Center and adjunct professor in the College of Agricultural and Life Sciences at the University of Wisconsin-Madison; Michelo Hansungule is lecturer in land law, School of Law, with the University of Zambia; and Fortune Kachamba is a senior legal officer in the Ministry of Lands.
Figure 2.1: Organizational chart of Ministry of Lands

- Minister of Lands
- Permanent Secretary
- Deputy Permanent Secretary

Lands Department

- Commissioner of Lands
  - Deputy Commissioner
    - Chief Lands Officer
      - Regional and Provincial Officers
  - Registrar of Lands and Deeds
    - Computer Registry
    - Assistant Registrar

Survey Department

- Surveyor General
  - Survey Services
  - Cadastral Services
  - Mapping Services
  - Administration
    - Regional & Provincial Offices
The ministry has historically carried out its functions in a highly centralized fashion, and despite a several-year-old policy of decentralization, it continues to do so. Lack of funds and lack of qualified staff are cited as causes of the slow progress. As will be seen later, some ministry staff are now posted to each province, but decision-making and record-keeping have not yet been decentralized.

Leasehold was the dominant tenure for titling from the colonial period. The very small amount of freehold land, amounting to less than 1 percent of the land, was converted to 100-year leasehold by the Conversion Act. Leasehold tenure is today available from the state as follows. The commissioner grants leases of up to 99 years on State Land. In Reserve Lands, Zambian nationals can also receive leases up to 99 years in duration. In the Trust Lands, they can be granted a right of occupancy up to 99 years.

There are significant restrictions upon the right of noncitizens to hold land. Under Amendment No. 15 of 1985 to the Conversion Act, no noncitizen may receive a lease, unless the noncitizen is an investor within the terms of the 1993 Investment Act, and the application has been approved in writing by the president. In Reserve Lands, "nonnatives" cannot receive lands for more than 5 years, except in the case of a religious or charitable organization, in which case the lease can be for up to 33 years. There are no special restrictions as regards the Trusts Lands, but the president's consent is necessary in all cases.

The leases are heavily concentrated in the State Land, where a 99-year lease is typical. To be registered, a 99-year lease requires a survey which complies with the relatively rigorous accuracy requirements provided for under the Survey Act. The MOL does not have the necessary technically competent staff to meet the demand for survey at this standard. When a Survey Act survey is not feasible, a 14-year leasehold is granted and registered on the basis of a sketch map (see section VII below). The 14-year leases have been widely used in a number of contexts: in settlement schemes on State, Trust, and Reserve Lands, on land in municipalities, and for leaseholds granted in the Trust and Reserve Lands.

Leases are granted with only a charge for services. Ground rents, despite several increases, have been so nominal that they have not been worth collecting. The rents remain nominal because raises do not keep pace with inflation. Ground rents are paid sporadically, tending to be paid only when the land is to be mortgaged or transferred, by which time the value of the rent has been decreased by inflation. There are no penalties for late payment. Current ground rents are presented elsewhere in this report.

Land is administratively allocated. When State Land becomes available, it is advertised and applications for leasehold requested. Availability generally comes about through abandonment or resumption by government for failure to comply with leasehold conditions, but there is also a small amount of unallocated State Land. The land can be allocated to anyone who is Zambian; beyond that, there are no clear legal criteria. A Land Allocation Committee within the ministry advises on allocation decisions (see section III below).

On Trust and Reserve Lands, a similar procedure is followed in settlement-scheme situations. But in most instances outside the settlement scheme context, a sole applicant for the lease identifies the land requested. A new ministry regulation seeks to require at least three applicants for each leasehold, but this may not be practical in Trust and Reserve Land situations, and it is clearly inappropriate where the applicant is already the customary owner. The ministry requires that the chief
of the area where the land is located consent in writing to the lease and that the local council must also concur in the lease.

The appropriate size for allocation is decided according to administrative guidelines developed within the ministry. They call for an estimation of the applicant's present and anticipated income, and relate it to investment costs, an evaluation of the applicant's management capability, and land availability in the area concerned. The guidelines are undated, but they envisage appropriate sizes for ranching (2,000 hectares), mixed farming (1,000 hectares), dairy (100 hectares), horticulture (200 hectares), and small stock (100 hectares). The guidelines predate the 250 hectare limitation in the land circular of 1985, but that limit can be and is surpassed with the consent of the minister. The guidelines are reproduced in annex 2.1.

Lessees can assign their leases to others or mortgage them only with the consent of the Commissioner of Lands (SECTION 13 of the Conversion Act). In the case of scheduled farms under the Agricultural Lands Act, the Agricultural Land Board is required to approve such transactions, but it is now defunct and the consent is provided by the commissioner. There is no requirement of consultation with the chief or council.

Leasehold documents require certain development of the land by the lessee. Failure to meet these conditions constitutes breach of the lease, allowing termination after six months' notice to the lessee of the government's intention to terminate. The ministry appears to read these conditions as not only requiring the initial investment specified, but the maintenance of that investment over the life of the lease. At the same time, because of a lack of staff and transport, there is no systematic inspection for compliance with these conditions, and breaches are commonly identified by persons seeking to have the land taken from the lessee and made available to them.

II. Lessons from the African experience

At independence, a great many countries in Africa opted for state ownership of land and leasehold tenure rather than freehold tenure. The latter was associated with white ownership of land in many countries. State leasehold, if sufficiently long-term, was considered to provide adequate tenure security and economic incentives to households for land development, while at the same time allowing the state to maintain control of the landholding structure. To some, there were parallels to customary land tenure, with the state assuming the role of the chief, holding land in trust for its people and allocating it according to need (Bruce 1989).

The experience with state leaseholds has been troubled, however. The problems do not stem from the necessary characteristics of a leasehold (since it is possible to draft a lease which is virtually a freehold except in the most formal sense), but rather lie in the policies which are implemented through leasehold tenure.

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2 The National Lands Committee in its 27 April 1994 comments to this report suggested a maximum of 100 hectares per applicant because land is limited and there is danger that chiefs become carried away with promises of development and begin allocating large tracts to local and foreign investors.
In most leasehold systems (including that of Zambia), land is provided at little or no charge, and subsequently the value of the land is not allowed to be reflected in transactions. Land may be said, as was the case in Zambia, to have no value, indicating that government as a matter of policy refuses to recognize its value. This raises several problems. There are distortions in land use created when market forces are not allowed to determine the allocation of land. Land near Lusaka is often underused precisely because it has been treated as a free good. There are problems with urban elites, both governmental and commercial, grabbing land from rural people. Because the land is virtually a free good, cost puts no brake on their ambitions. In some counties, such as Guinea-Bissau, this landgrabbing has been extensive (Bruce and Tanner 1992), and in a number of countries it has caused serious, often interethnic, conflict (Bruce 1989; Platteau 1992; Binswanger et al. 1993).

Such systems, almost inevitably, have serious corruption problems and encourage rent-seeking behavior. The tendency towards corruption is strong because a limited amount of a valuable good is being administratively rationed and allocated virtually for free. The gap between the real value—what someone would pay to get the land—and the value recognized by government is the amount which those seeking land will be willing to pay in bribes.

In addition, because state leasehold systems do not rely on market forces to exert economic pressure for land development, they must instead rely upon contractual development conditions. Development conditions have in practice proven very problematic. If they require a specific type of development, for instance a coffee farm or a petrol station, they are too rigid and impose economically irrational limits on behavior as rapidly changing economic circumstances alter the most profitable use of land. On the other hand, if the development conditions are vague, they are difficult to enforce. There is a tendency for holders to be harassed by reports of noncompliance from those seeking to replace them on the land, and again there is great potential for corruption in the evaluation of compliance. In many countries, political dissent has caused a review of the dissenter's compliance with development conditions. In fact, there has been almost complete failure in most countries to systematically and fairly evaluate the fulfillment of development conditions. The requisite staff and resources, especially transport, are usually not available. Alternatives to development conditions include less-direct land use controls, such as zoning enforced through fines, plus mechanisms such as economic ground rents which exert pressure on landholders to either place their land in economically profitable uses or, if they cannot afford to do so, to transfer the land to someone who can develop it.

Finally, the experience with leasehold systems shows that it is simply difficult to find the resources for a national system of land administration. It is one thing to implement a leasehold system in a settlement scheme, quite another to imagine the costs and staff requirements of bringing all the land in a country under such a system. Even a freehold system requires an administrative infrastructure—the cadastral and registry system—and cannot be expanded without concern for costs.

In light of these problems, there is a growing realization that it is not feasible to broadly replace indigenous tenure systems with leasehold (and to a lesser extent freehold) in the short or even intermediate term. The need is to identify what the priority areas should be for the limited tenure "replacement" which can be afforded. Replacement is likely to be most effective in rather limited geographic areas where market forces, including produce markets for relatively high-value commercial crops and rural financial markets, are well developed. For other areas, the need is for tenure-change strategies which stress more evolutionary processes and may involve continued reliance for some time on the relatively cost-effective customary institutions of land administration.

Zambian experience and needs will be examined with these issues in mind.
III. State leasehold process

The process of getting an initial lease of land from the ministry is set out in the ministry’s circular No. 1 (see p. 21). The circular is a set of instructions addressed to all provincial permanent secretaries and district executive secretaries. It includes the forms to be used in applying for land and imposes certain important limitations. There is a basic pattern which is common regardless of the location of the land, but details differ.

For Trust and Reserve Lands, the applicant for a lease begins with the local headman and chief in whose territory the land is located. The State Land and Reserves Orders, SECTION 6A(1), and the Trust Land Orders, SECTION 5(2), require that the president consult local authorities before granting a lease or a license in their area. The circular requires that the chief consent to a lease and that the lease be considered by the appropriate subcommittee of the rural council and then approved by a meeting of the full council. In the case of a resident villager, there is no need for the headman to identify his land, only to review the lease application.

For a stranger or nonvillager seeking land, the process begins with the headman of a particular village (there may be a dozen or many more in a chiefs area) who receives the application for land under a lease. Applicants seeking land may go to a particular headman because they have friends there or someone (e.g., a district agricultural officer) indicates the village has good land available. After discussion in the village, if inclined to recommend the land and lease, the headman takes the applicant to meet the chief. There may be 2-5 chiefs in a district. After discussion with council, the chief may give consent to the application. This usually takes the form of a simple letter to the local council.

Before the application can be presented to the council, however, there must be a sketch plan of the land for which application is made. This will generally be done by an agricultural assistant from the Ministry of Agriculture’s Land Use Planning Office, who usually comes from the provincial office for this purpose. The assistant has access to a 1:50,000 topographic map, on which the applicant locates the land. The assistant then visits the parcel, verifies the location, and clears a 2-4 meter swath around the boundary. Sometimes this is done in the presence of the headman, at other times in his or her absence. This is a critical step in making sure everyone understands which land and how much is involved. A sketch map is prepared at the office based on the field visit and the topographic map base. The applicant will have the sketch plan signed by the chief. Until recently, the Ministry of Agriculture provided this service for free but now has begun to charge for its services.

In the case of settlement schemes on Trust and Reserve Lands, the land for the entire settlement is obtained from the chief at the outset. The chief is not involved in the process further, nor in subsequent leases to the settlers. The parcels are demarcated and assigned to the settlers. At the end of a two- or three-year probationary period they can apply for leases to the Commissioner of Lands through the council.

In the case of any State Land, there is no need for a chiefs consent. It is the municipal survey officer who will do the sketch map, or failing such an officer, a staffer from Town and Country

As indicated in chapter 5, either the headman or the chief may be responsible for allocating land, depending on the region. Hence in certain instances the application process may start with the chief.
Planning, often from a Regional Planning Authority. While the wording of the circular suggests that there are likely to be predemarcated stands to be allocated, this is often not the case.

In all the above situations, a sketch map is the basis for a 14-year lease. If a 99-year lease is desired, the applicant must apply for a survey by the Survey Department of the MOL, either from Lusaka or a provincial office, or from a private surveyor (see section VII below). The former is more expensive, the latter involves long delays. The ministry's charge is K40,000/day, including both fieldwork and office work, plus expenses such as transportation, accommodation, and food as may be necessary. It is not possible to give a specific figure for these costs, which tend to be negotiated on a case-by-case basis. Moreover, some elements are provided directly by the applicant, for instance, use of a vehicle. (See figure 2.2 for a list of ministry fees.)

The process up to this point will have taken several months, sometimes years, since the process involves convincing local people of one's serious intentions to develop the land.

At the council, a K2,000 fee for paper is charged. The application is first considered by the Plans, Works and Development Committee, a subcommittee of the council. The committee will interview the applicant and may visit the parcel, especially if none of the councilors is familiar with the location. This committee will make its recommendation to the full council, which must give final approval. The full council may meet only every three or four months, partly because this time frame is so stipulated in Council Standing Orders, and partly because of the costs of bringing councilors from different parts of the district. The result is considerable delays in application approvals. A council may, if it chooses to do so, meet on special issues or hold extraordinary sessions.

The council then forwards the application to the ministry's provincial office or the ministry's headquarters in Lusaka. The provincial office lands officer is not actually in the line of authority for land allocation, and if it receives an application from council, it can only inspect the paperwork to make sure that it is in order then pass it on to the Lands Department in Lusaka. For settlements, the paperwork goes through the provincial agricultural officer.

The applications normally travel by mail, which is regarded as reliable and reasonably prompt. When the office concerned has no stamps, the application may wait to be hand-carried by an official travelling to Lusaka. On arrival in the Lands Department, it goes to the Registry, which gives the application a temporary number and sends it to the relevant regional office in the Lands Department. Within the Lands Department in Lusaka, the work is divided into a Northern region (Eastern, Western, Copperbelt, and North-Western provinces, and part of Lusaka province) and a Southern region (Southern, Central, Luapula, and Northern provinces, and part of Lusaka province).

The regional officer reviews the file to determine if everything is in order. Roughly one in ten is returned to the district because of problems with paperwork. If there is no such problem, the regional office sends the file through the Registry to the Land Department's Folio Section (the Map Room). All files moving between offices in the ministry move through the Registry, primarily to ensure that the location of a file can be determined at any time, but also, since records are computerized, to allow the relevant acts to be recorded in the computer file at the Registry. In the Folio Section, the map accompanying the application is plotted onto a master map on which all other leased parcels are shown to make sure the parcel is available and that there are no overlaps with existing parcels. This process in the Lands Department takes about one week.
Figure 2.2: Survey Department fees and charges, 1 August 1993

**Cadastral fees**

1) **Daily rate.** Excluding subsistence and transport costs, for each survey team including related office and drawing work shall be 40,000.00 (prorated when more than one parcel).

2) **Subsistence.** A land surveyor engaged on a survey away from headquarters shall, when free board and lodging are not provided, charge reasonable hotel or subsistence expenses.

3) **Transport.** Actual costs to include fuel and oil or public transport used in the course of the survey.

**Surveyor general’s charges**

1) **Land surveyor’s license.** In accordance with subsection 9 of the act shall be 3,000.00. Surveyor general may remit this fee for a license issued to a land surveyor in government service but the fee shall become due should the surveyor leave government service and continue to practice in Zambia.

2) **Taxing account.** For taxing a land surveyor’s account, the fee shall be 2.5 percent.

3) **Examination fee.** Examination of survey records, general, and working plans the fee shall be 1,600.00 each stand; 1,600.00 each lot or farm in urban areas, and 3,200.00 each lot or farm outside urban areas.

4) **Cadastral drawing charge.** For work involved in the preparation of certified true copies of plans or diagrams, the compilation of plan and diagrams where fieldwork is not required, the drawing of plans and diagrams for private surveyors, and any other miscellaneous drawing work, the charge shall be 1,600 per hour for each draughtsman excluding materials (at cost).

5) **Photogrammetric survey charge.** Aerial triangulation, plotting, and other office-based photogrammetric work shall be 48,000.00/day per photogrammetrist excluding materials and new aerial photography (at cost).

**Noncadastral fees**

Printed Maps: price payable by all map users within Zambia including departments (postage at cost).

- Topographic Maps 1,000.00
- Street Plans and Tourist Maps 1,500.00
- ICAO Charts 1,500.00

**Miscellaneous and Atlas Charts**

- International and Regional 1,500.00
- National 1,000.00
- Prices payable by all map users outside Zambia US$10.00

**Dyeline prints** (charges per square decimeter for paper/film)

- Materials supplied by Survey Department 30.00/90.00
- Materials supplied by customer 10.00/40.00

**Photographic products** (Materials supplied by customer/client, half the total cost shall be charged)

- Contact prints 1,700.00
- Paper P/DM^1 120.00 (single weight)/140.00 (double weight)
- 1 m x 1 m paper 12,000.00 (single weight)/14,000.00 (double weight)
- Diapositives 25 cm^2 2,000.00
- Film P/DM^2 200.00
- Dyeline paper copy P/DM^2 100.00
- Ozalar film P/DM^2 250.00
- Computer printouts of survey data 800.00 per page
- Photocopies 80.00 per A4 page and 160.00 per A3 page

**Nonstandard services** (survey and mapping projects, other than cadastral, including field survey, cartography, and map-related photo-reproduction or photogrammetry)

- Field survey, each field team per day 40,000.00
- Cartographer, per day excluding materials 20,000.00
- Photo reproduction staff, per day, excluding materials 20,000.00
- Photogrammetrist, per day, to include stereo plotting but excluding materials US$110.00
- Photogrammetrist, per day (planning, sorting, and preparations) 12,000.00

All figures in Zambian currency unless otherwise noted. Source: Survey Department, PO Box 50337, Lusaka.
If the parcel is available, the file is sent via the Registry to the Surveys Department, where it is checked against a master map in the Property Registration Section (Plan Room), then given a number and returned via the Registry to Folios for the number to be noted. This may take one month. Folios then sends the file back to the regional office for presentation of the case to the Land Allocation Committee (LAC), which meets weekly. The LAC will advise the commissioner who makes the final decision. The new committee chaired by the deputy permanent secretary has taken over this function, and makes its recommendations to the permanent secretary. (For "scheduled farms" listed in a schedule or annex to the Agricultural Lands Act, the appropriate agency for the allocation would be the Agricultural Lands Board, but this board no longer functions.) If the allocation is approved, the regional office or headquarters then sends a letter of offer to the applicant by post, stipulating the amount of the lease charges the applicant is expected to pay. This takes a minimum of two weeks, and often much longer.

If State Land is involved, especially in a town, planning permission may be needed before an offer can be made. If the council where the land is located is itself a Planning Authority, this will have been handled earlier, but it may be necessary for the applicant to pay certain service charges to the authority before he or she can get a certificate of title. If the council is not a Planning Authority, the offer is an offer in principle and requires the applicant to obtain planning permission. Only when that permission is obtained and communicated to the Commissioner of Lands will an offer be given. The time to obtain planning permission will vary considerably depending on the particular planning authority. The Lusaka provincial planning authority is quite prompt, but one also hears of other cases in which the time needed could be as much as five months. It can be much longer if the land must be repossessed before it can be reallocated.

If there is not a need to obtain planning permission, the applicant accepts the offer by paying the lease charges. Unless there are special reasons for delays (such as the applicant having difficulty finding the funds for the payment or confusion as to the roles played by different agencies, as when the council is also the planner), this is usually accomplished about two months after the letter of offer is mailed. Once the offer is accepted, the regional office requests the Surveys Department to prepare a sketch plan for the lease agreement itself. Where the land has been surveyed, the regional office will request a survey diagram rather than a sketch plan. On receipt of the plan, the regional office prepares a lease agreement for the successful applicant and mails it to him or her to sign. Another two months may elapse.

The applicant signs the lease and returns it to the regional office and sends it through the Registry for the commissioner's signature. After signing, it is sent through the Registry to the Chief Lands Officer, who witnesses the signature and returns it through the Registry to Folios. Folios records the lease and then sends it on to the Lands and Deeds Registry for registration. There, the lease is received by the Lodgement Desk and then forwarded to the registrar. The registrar reviews the lease for completeness and, if it is complete, signs a processing schedule. The lease is entered in the register. A title deed is prepared by the registrar and sent to the Commissioner of Lands, who sends it to the regional office who mails it to the applicant. This process, after the applicant returns the signed lease to the ministry, may take ten days.

The process is largely the same for the different categories of land, except that chief's permission must be obtained for Trust and Reserve Lands and planning permission becomes an issue in many State-Land contexts.
The processes for consents to transactions concerning leases are more expeditious. All transactions concerning leases must have the state's consent under SECTION 13 of the Conversion Act. The consents are available only in the head office of the ministry. No consents from chiefs or district authorities are necessary. The structure of consent fees at various periods from 1985 to newly proposed rates for 1994 are summarized in table 2.1.

**Table 2.1: Structure of revenue of the Lands Department: Consent application fees**

<table>
<thead>
<tr>
<th>Year</th>
<th>Assign/sell transfer</th>
<th>Sublease</th>
<th>Mortgage/charge</th>
<th>Subdivide</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/85</td>
<td>K100</td>
<td>K100</td>
<td>K50</td>
<td>K50</td>
</tr>
<tr>
<td>01/01/88</td>
<td>i) K100 for CMV below K100,000. ii) K300 for CMV between K100,000 and K300,000. iii) <strong>K500 for CMV above K300,000.</strong></td>
<td>i) K100 for annual rent K10,000 and below. ii) K300 for annual rent between K10,000 and K30,000. iii) K500 for annual rent above K30,000.</td>
<td>K100</td>
<td>K100</td>
</tr>
<tr>
<td>01/01/91</td>
<td>i) K300 for CMV K100,000 and below. ii) K600 for CMV between K100,000 and K300,000. iii) K1,000 for CMV above K300,000.</td>
<td>i) K600 for annual rent K10,000 and below. ii) K600 for annual rent between K10,000 and K30,000. iii) K1,000 for annual rent K30,000 and above.</td>
<td>K250</td>
<td>K1,000</td>
</tr>
<tr>
<td>01/07/91</td>
<td>i) <strong>K600 for CMV K10,000 and below.</strong> ii) K1,200 for CMV between K10,000 and K30,000. iii) K2,000 for CMV above K30,000.</td>
<td><strong>K2,000</strong></td>
<td>K500</td>
<td>K5,000</td>
</tr>
<tr>
<td>01/01/94</td>
<td>K25,000</td>
<td>K25,000</td>
<td>K5,000</td>
<td>K50,000</td>
</tr>
</tbody>
</table>

a. The consent application fees came into effect on 26th January 1985. Prior to that date all consent applications for dealings in land were free of charge. Figures in the table are the respective fees as they were being reviewed upward from time to time.

For an assignment or transfer of the lease, the applicant must pay a K2,000 consent fee (1993 rate). He or she must produce photocopies of the national registration card of the buyer, if an individual, or, if a company, form 23 from the company's registry, and copies of the national registration cards of all the shareholders. Alternatively, an investment certificate from the Investment Centre can be produced to establish that the applicant is a Zambian or qualified to hold land in Zambia. The applicant must also show that the ground rent is paid up to date and that he or she is not
in breach of any of the covenants in the lease. The file is sent to the Valuation Department in the Housing Conglomerate for assessment of the "unexhausted value of improvements." A property transfer tax of 5 percent of the value must be paid. The commissioner will grant consent if the applicant has fulfilled these conditions. The process may take five weeks to one year. The onus of registering the transaction is on the parties to the transaction.

Consents are similarly required for subleasing, mortgaging, and subdividing leaseholds. The consent fee for subleasing is K2,000, for mortgaging K500, and for subdividing K5,000 (1993 rates). The process is the same, except that in the case of a subdivision the applicant must provide an approved sketch plan showing the proposed subdivisions. In the case of a subdivision, the onus is on the individuals to get the proposed subdivisions numbered and surveyed by the surveyor general.

In general, the processes for consents are fairly straightforward. Rather, the issue is why they are needed at all, except perhaps as a means of collecting ground rents and the property transfer tax. If land values were recognized and self-declaration of the consideration used as the basis for a property transfer tax, the declared price could by law be made the base for compensation in case of a taking by the government, and underreporting would cease to be a major problem.

The basic problems lie in the process for initial grants of lease. No one step seems to take an unreasonable amount of time, yet in the field, one regularly hears stories of files that have been sent to Lusaka and then nothing heard for years. The various parts of the MOL tend to blame one another for delays, and the ministry as a whole emphasizes the delays that occur before the application even reaches the ministry and the delays caused by reliance on staff from other ministries or the municipalities. The process usually goes well enough so long as all is in order, but once a mistake is noted and the case moves back down through the system, it often goes into administrative limbo. It was estimated a few years ago that there are between 25,000 and 50,000 applications pending, some from many years ago (ODA 1989).

IV. Overcentralization and overarticulation

The leasehold system is too centralized, and the procedures for leasing reviewed above involve far too many separate stages and decision-makers. Each step in and of itself is not very time consuming, but at each stage there are possibilities for delay caused by backlog of work, absence of officials, clerical error, or any number of other reasons. The process emphasizes precise compliance with all requirements, and so it is not uncommon for files to be sent back down the chain to remedy errors and omissions. Once confusion develops in this many-staged process, it is very difficult to resolve. Troubled cases cycle up and down in the system, fraught with misunderstanding of what is required, and very substantial amounts of time must be devoted to them over several years before they are finally resolved.

Part of the answer lies in decentralization. When applicants can come to the office in the Lands Department where their papers are being processed, confusion can more readily be resolved than through an exchange of documents through the mail. Though it is not in theory necessary, those seeking action by the ministry very often have to follow up in person. Proximity to the client is an important factor and reduces follow-up costs to the client. These considerations also apply to some extent, though less forcefully, to the work of the Land and Deeds Registry. For the Department of
Surveys, the existence of a survey capability closer to the land to be surveyed obviously can reduce costs, which have been the major obstacle to applicants' obtaining 99-year leases.

The ministry has for the last several years been opening offices in provincial capitals. Both the Lands Department and the Department of Surveys now have some staff in each provincial capital, though these are skeleton staffs. At present, the Department of Surveys has offices in Kabwe, Ndola, Livingstone, and Kasama. The Department of Lands now has some staff in every provincial capital. There are plans to move the Northern Regional Office from headquarters to Ndola, and to establish a Lands and Deeds Registry there for the northern provinces. The pace of the process has been constrained by a lack of funding and qualified staff. Support for establishment costs for provincial offices is a clear priority for donor assistance, provided the ministry demonstrates that it can generate the revenues necessary to maintain the system.

But there are also some questions that need to be raised about the decentralization process to date. First, the purpose and implementation of the opening of the new offices has not always been well thought out. There is, for instance, no centralized supervision of Lands Department and Survey Department offices at the provincial level. They operate as if they were from different ministries, each reporting to its home department in Lusaka. The Lands Department's provincial-level staff lacks vehicles and, more important, clear terms of reference. While staff have been decentralized, decision-making has not. The provincial office simply examines the papers and if they are in order, passes them on to Lusaka. The result is simply to interpose a new layer in the process with no clear rationale for its existence.

The program must also be examined carefully with a view not just to moving ministry personnel physically closer to the land concerned but to reducing the number of steps involved where possible, or at least never increasing the number of steps. To date, there is not a true decentralization program.

While a presence at provincial level is obviously potentially useful, the shortage of trained staff has inclined the ministry to think in terms of a regional solution. There is the beginning of a regional office for the north in Ndola and one for the south in Kabwe. Before proceeding much further there is a need to rethink the relationship among these offices and the head office and where final decision-making will be located.

The issues involved are not simple. It would be convenient to selectively delegate final decisions which are more complex or technically demanding than others to lower-level officials. But there are also compelling reasons why the authoritative records of those final decisions need to be maintained at one level, to permit easy cross-referencing and communication among the decision-makers. Some possible approaches are suggested in section XI below.

The Ministry of Lands in late 1993 authorized the Lands Department to double the size of its staff in order to carry out the decentralization.
V. Institutional coordination

Another reason for the poor performance of the system is that the MOL must rely on numerous other government agencies. Difficulties in coordination with those agencies account for considerable delay and confusion. The point is not to place blame, as too much time is already spent pointing fingers. Rather, it is important to understand what flaws in the system lead to such great delays.

Having to rely on planning approval and services from local authorities is a first problem area identified by ministry staff. For the planning of stands for various purposes, the Lands Department relies on Municipal Planning offices, where they exist, or alternatively on the Department of Town and Country Planning in smaller towns and in rural projects such as settlement schemes. When the Lands Department makes an offer in principle relating to an area for which a plan exists, the applicant must obtain planning permission before a final offer can be made. This is often a source of considerable delay over which the ministry has no control. In addition, these local authorities are responsible for servicing plots. Unserviced plots are commonly allocated in towns, and rates are charged even before services are provided. This has caused problems in the implementation of development conditions, allowing leaseholders to plead the town's failure to provide services as an excuse for nonfulfillment of the conditions.

A second problem area involves the MOL's dependence on the Ministry of Agriculture staff for preparation of sketch plans for 14-year leases. The Survey Department cannot meet the demand for Survey Act surveys, and in fact few holders are anxious to incur the cost for such surveys. Since that department has failed to move quickly to develop a program utilizing less precise but more cost-effective survey methods, the Lands Department has relied upon the staff of other ministries to produce sketch maps. In small towns, this is the town and country planning staff, but in rural areas they are prepared by the provincial staff of the Ministry of Agriculture, usually based in the Department of Lands and Irrigation in the ministry's provincial office. In some areas, the preparation of such sketch plans has become their major role. This reliance on the staff of another ministry means that the MOL lacks control over the rate of land delivery in rural areas. On the other hand, the sketch maps prepared appear adequate for the 14-year leases, and in fact for longer tenure. The issue appears to be why this function, in the case of rural lands, should not be performed by the Survey Department, rather than a section of the Ministry of Agriculture.

Problems of coordination exist within the MOL as well, constituting a third problem area. The Lands Department and Survey Department within the ministry have not always worked well together to provide cost-effective access to land. In particular, the Survey Department has enjoyed a remarkable degree of autonomy, with the surveyor general at an equivalent level with the Commissioner of Lands. The department delayed for decades the introduction of more cost-effective methods of parcel demarcation and identification used successfully in other countries for rural titling, such as the general boundaries system linked to aerial photography. The Survey Department must be seen as an integral part of the land-delivery system, as a service section for the Lands Department which actually allocates land. In the process of decentralization, it is important that the provincial or regional offices

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5 One answer is that the Ministry of Agriculture has staff posted in all districts, while the Survey Department has a critical shortage of staff. Under current restructuring plans, consideration is being given to transferring some staff from the land use planning section of the Ministry of Agriculture to the Survey Department.
have integrated management at that level rather than separate lines of authority running back to the respective departments in Lusaka.

A further area of concern is the requirement of consent by chiefs and councils for certain leases. Because the MOL does not generally have a presence at the district level, it relies heavily on local political institutions for decisions about the availability of land, the viability of proposed land development, and the reliability of proposed lessees. This is not just an administrative convenience. It is entirely appropriate that local authorities, in closer contact with local opinion, should make decisions about land allocation in their areas. These decisions should not be centralized in the MOL. On the other hand, some important questions can be asked about the present arrangements. There is significant demand for leaseholds in some Reserve/Trust Land areas, especially near towns and along major roads. The popular attitude toward leasehold tenure from the state is effectively blocking the development of leasehold tenure in these areas. This may be expressed as opposition from chiefs, but it has a broader base and extends to some councils. The councils may delay or ignore lease applications, and in one case a council suspended consideration of applications for leases two years ago. When the councils are willing, they lack the staff and administrative systems necessary to play their role properly.

A number of other problems hamper the land administrative system as well. In the areas visited, the poor state of rural infrastructure and the rather desperate financial situation of rural councils was striking. Both the chiefs and councils have a virtual veto over any application for a lease in a Reserve/Trust area. Further, they do not have a good working relationship, and there is often a difference of perspective about the utility and future of leasehold tenure. At present, there is no forum for discussion and compromise, which would lead to the development of a common vision of the future of land tenure in these areas. This problem is discussed further in section IX below, but in time, there will need to be significant institutional changes at the local level to permit effective land administration.

VI. Ignorance of correct procedures

Another source of problems is the widespread public ignorance of correct procedures. As far as the local participants are concerned, all the procedures of which they need be aware are outlined in one document: the MOL’s circular (see p. 21). But some officials at both district and provincial level are not familiar with the circular and could not locate a copy in their offices. In addition, the fact that many important steps in the process involve staff of government agencies other than the MOL makes these procedures more difficult to communicate. This appears to be a particular problem in settlement schemes, in which Ministry of Agriculture or Directorate of Settlement personnel are the primary source of information on how settlers can apply for leasehold titles after the successful completion of their probationary periods.

It also seems that no attempt has been made to provide chiefs with copies of the circular. All consulted at village and district level expressed enthusiasm for the possibility of seminars and popular education on leaseholds and titling. One chief remembered a 1988 Pickwe seminar at which these issues had been discussed. While the wider distribution of the circular is one element in such a program, it would be important to produce and distribute more informal instructions. These should discuss not only procedures, but the rationale for the system. Translation of such materials into local languages should be considered.
The lack of understanding of the system is strikingly pervasive. In a full meeting of the Chibombo Rural Council at Kabwe, councilors were unable to repeat the procedures governing applications for titles. Often, they confused their powers over land with those of the Commissioner of Lands. None of them knew that Trust and Reserve Lands, just like State Land, was vested in the president. Nor were they aware of the existence of the circular.

Similarly, officers of Chongwe Rural Council east of Lusaka did not have a clear understanding of the titling process in settlement schemes. They considered that they did not have the authority to process applications for titles in resettlement schemes, although no applications for such titles can be considered by the commissioner unless recommended by the council.

In a random interview of ten civil servants and ordinary citizens, nine thought a house could be bought in the same way as a car, i.e., without the requirement for a deed. Of those nine, five absolutely rejected the suggestion that the MOL played a role in property transfer at all. One of them confessed to having already paid the full purchase price to a vendor for a house and land in Ngwerere farming area even before the transaction was completed.

The Swedish International Development Agency (SIDA) has discussed an awareness campaign as an important component in its future assistance with the ministry. It is an important initiative, but it is important that the work be approached not just as a one-way transfer of information. The ministry and its staff need to engage in serious conversations with rural people about the advantages and disadvantages of leasehold tenure and titling and be willing to modify its actions accordingly. But the ministry has no capacity to do this alone. Villagers need to be presented with the advantages and disadvantages of various customary tenures as well as statutory tenure and be granted choice to make their best educated decisions. The University of Zambia's law school and other extension services could play an important role in performing these functions.

VII. Survey standards and the 14-year lease

A further source of problems in the system of land administration concerns appropriate survey standards and the 14-year lease. The Lands and Deeds Registration Act (CAP 287) in Section 12 requires a diagram under the Survey Act (CAP 293) to be presented with any document relating to land presented for registration. The Survey Regulations, 1971, define normal acceptable standards of error in terms of maximum acceptable misclosure of a traverse, requiring different standards for different types of land: a maximum of 1:12,000 for surveys to determine the position of township control or reference points, 1:8,000 for surveys in townships, and 1:4,000 for all other cases, including agricultural lands. These are relatively rigorous standards of accuracy and can be achieved only by well-trained survey staff.

Due to a shortage of such staff, the ministry's inability to provide surveys to that standard became the major bottleneck in the system of land delivery and titling. In 1973, the backlog of survey work was estimated as twenty to thirty years surveying at present staff levels (Swedish University of Agriculture 1976). To deal with this problem, the MOL has increasingly resorted to a 14-year lease, for which it requires only a sketch plan instead of a Survey Act survey. The legal basis for this is not clear, but the reasoning seems to be that a more limited tenure could make do with a lesser degree of accuracy. The 14-year leases have been utilized in a wide range of cases: urban developments,
settlement schemes, isolated parcels placed under leasehold in Reserve/Trust areas, and any circumstance in which a Survey Act survey would take too long or cost too much.

The 14-year leases are of very questionable value. It is clear that they have done nothing to provide better access to credit (see chapter 3), it is doubtful that there is much of a market in them, and they provide only limited security of tenure. The option of a 14-year lease may have hampered the ultimate obtaining of 99-year leases by creating a longer and more complex road to that end. It is further difficult to justify them as a reasonable response to a lack of well-trained survey staff, as they have been presented. One must justify titling in terms of its economic and financial impacts, and a 14-year lease seems to have little of either. Their widening use appears prompted by an overemphasis on accuracy and classic ground-survey methods.

As has been noted in consultancy reports going back more than ten years, the surveyor general's office has insisted on an unnecessarily high and uneconomic standard of accuracy and has been slow to adopt new methods such as the marking of boundaries on aerial photos for situations with lower accuracy requirements (e.g., Swedish University of Agriculture 1976; Bruce and Dorner 1982). While it is sometimes suggested that greater flexibility requires legal changes, the standards of survey are in regulations which could be changed by the minister. The Survey Act (SECTION 38) does allow use of aerial photography as a basis for boundaries, provided the surveyor general gives prior written permission. And SECTION 12 of the Lands and Deeds Registry Act gives the surveyor general the ability to allow lesser standards of accuracy where a normal survey is impractical, by approving a sufficiently detailed plan as a basis for registration.

The reason given for the backlog in survey work—a lack of qualified personnel—would lessen in importance if more appropriate standards and methods of survey are accepted.

A 1993 draft amendment of the Lands and Deeds Registry Act prepared by the MMD committee on land issues provides for description of land in a document presented for registration to be by a plan or "verbal description" which satisfies the surveyor general. The verbal description is too extreme a reaction to the past; what is needed is simply a clear statement of the surveyor general's legal discretion to utilize whatever survey means appropriate and economic in a particular situation. This will include use of aerial photography in some situations, but for some work there should soon be a shift to survey by GPS (global positioning system), which relies on hand-held units to establish precise position by fixes from multiple satellites. That technology could be particularly important for isolated parcels in Reserve/Trust lands, where the geodetic network for conventional survey is poorly developed.

The sketch plans prepared for the 14-year leases and located on the 1:50,000 contour maps provide a perfectly acceptable standard of accuracy for large parcels of low-value rural land. Based on broadly accepted international standards, they are an acceptable basis for the registration of 99-year leases. For urban areas, where access to survey should be relatively easy, the survey should be done either to Survey Act standards or by aerial photography, which results in some size distortion but is entirely reliable for boundary verification. There, on more high-value land, 99-year leases should have been issued, with conditions concerning later upgrading of survey standards. The recommendations

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c. To some extent, more work is placed on the limited numbers of learned staff, as the volume of turnover is high.
below suggest the conversion of all 14-year leases to 99-year leases. A proposal for 30-year leases does not go far enough.

VIII. Land management principles: plan and market

Zambia's land management style has been that of a planned economy with direct administrative control, rather than through managed markets and control of land use through regulation as in market economies. It has involved state ownership of land; administrative rather than market determination of land allocation; reliance upon development conditions; restrictions on transactions; and undervaluing of land in the context of both transactions and taxation. These policy decisions have impoverished Zambia's public sector and undermined development in its private sector. The government has denied itself income from the country's most valuable resource—land. The MOL, anxious for donor assistance, has failed to generate the revenues that could easily have come from land. Ground rents are uneconomic and not regularly collected. Land is allocated for nominal amounts.

There is substantial evidence that the current system is not allocating land to those who will use it efficiently. The MAFF/World Bank 1993 evaluation of use levels on State Land found 652,000 hectares underutilized, of which 60 percent (400,000 hectares) is good arable land (see chapter 1). It found that 150,000 hectares are available from the state farm and parastatal sector, between 100,000 and 200,000 from privately owned farms, and substantial unutilized land from the settlement sector. An examination of the state of use of Reserve/Trust Lands recently allocated under leasehold might reveal even higher levels of underutilization.

Many allocations have been requested purely for status and speculation, and development conditions have failed to prevent holders from keeping the land idle. In light of the experience of other countries with such conditions, this is hardly surprising. It is important that attempts to encourage land development shift from reliance on a development-condition approach to reliance on economic incentives, creating economic costs for land that make it disadvantageous to hold land without developing it.

It is equally important to reestablish public confidence in the probity of the MOL. As in any system which allocates a scarce and valuable good for free or nearly free, opportunities for corruption abound. Not surprisingly, it is popularly believed that favoritism, abuse of insider information, and the acceptance of bribes are rife in the MOL. Officials of other government agencies which act on behalf of the ministry at local levels are subject to similar temptations.

Clearly one of the most fundamental requirements of reform is the recognition of the value of land. This must be done through the expansion of the role of market forces rather than through administratively set prices. Government must make land available for economic cost and allow the market a major, if not necessarily exclusive, role in determining its distribution. Constraints on the market, such as restrictions on subdivision, must be removed.

IX. Problems of confidence and vision: Trust and Reserve Lands

If the problems of the State Land are considerable, it is relatively easy to see the directions that must be taken. It is land policy with respect to Reserve and Trust Lands that is most genuinely
problematic. To date, land policy seems to anticipate the gradual conversion of the land under customary tenure to leasehold tenure. But such policies have worked out badly in many countries. Administrative allocation of land has often been used to deprive indigenous people of their land. Those who lose the land are not compensated. Often the land is allocated to those who use it poorly, resulting in resentment.

Zambia has been no exception to this pattern. Zambia's Land (Acquisition) Act, 1975, is a textbook example of a callous disregard for rights in land. Allocations made by the ministry to date have induced cynicism about government's intentions on the part of local people. In rural areas in Eastern and Northern provinces, complaints were heard of land-grabbing and a failure to bring the land under production. In one location, an 8,000-hectare allocation to a former commissioner was said to be undeveloped, but now is being subdivided and sold. In other places, huge areas of land taken by the government for unsound development projects, for instance the ill-conceived council farms, are sitting idle. There are bitter complaints about the abuse of the ministry's power to allocate land. Land-grabbing has emerged as an issue in the local press (Daily Mail, 14 January 1994) as the result of a critical report from the Southern African Non-Governmental Organizations Network (see p. 29 in chapter 1 for an extract from the Daily Mail).

The current titling system, which is in theory open to traditional farmers in the rural areas, is by reasons of expense and complexity really open only to the relatively wealthy, well-informed, and influential. It is exceptional for traditional farmers to apply for or receive titles. The system as it is now working is not solely or even primarily a system for providing title as evidence of rights to land, but a mechanism for taking land away from communities which customarily have had access to it and allocating it to new governmental and commercial elites, both Zambians and foreigners.

If the land is actually allocated to those who will develop it, if reasonable compensation is provided to the community that loses access to it, and if the community consents, some such transfers may be appropriate. There are areas of unutilized land in Reserve and Trust regions which local communities will not need for the foreseeable future. If the land is developed, local communities can potentially profit through new jobs, new technologies, and new sources of revenue. However, as rural people look at the current system, they see no end to this process of deduction from their land. It occurs not only through leasehold titling but through the declaration of protected areas and reserves for environmental purposes. In some areas, at least, they feel threatened. The vast majority of traditional farmers do not understand the pros and cons of leasehold tenure and are not in a position to evaluate its relevance to the development of their land. While most traditional farmers seem to have no felt need for titles, there are exceptions, especially in areas near towns and along main roads.

Chiefs see the gradual erosion of their authority over land as seriously undermining their power and a harbinger of landlessness and social disintegration. They react in very different ways, and it is worth reviewing their comments on these issues.

Headman Mang'ang'auka, Chief Sianjalika, Mazabuka, said that he could not allow title deeds in his village, arguing that the traditional systems of tenure would not allow it. Land, despite allocation, remains community land. He said he held the land for the community which, by implication, would cease to be a community if individuals acquired title deeds for their land:
I am holding this land for you in town.... When you die, I must find land to bury you here as I should when you return home to settle. Where will you stay when you come back if I allowed people to get title deeds to our land?

Headman Mwambula of Chieftainess Nkomesha also rejected the notion of land titles and said he never consents to them for his subjects. His chieftainess, Chieftainess Nkomesha, has recommended people for title deeds but has watched her authority over that land erode and considers that a strong case must be made by a potential investor to justify her granting a title deed.

Senior Chief W. Tafuna, in Mbala, was willing to consider requests to title deeds and has consented to several, including some to foreign nationals. They are given land away from the villagers' cultivation. But, he stressed, "we do not really understand title deeds, and are not clear on the relationship between farms and title deeds."

Paramount Chief Chitimukulu, near Kasama, argued the importance of title deeds, and said that he encouraged his subjects to obtain them. He was not enthusiastic about titling for investors coming from outside, however, and while land is plentiful in the area he worried about possible lessees who would bring new systems of land use, such as livestock herding, and take up large amounts of land quickly. He reacted favorably, at least tentatively, toward the suggestion of a program of systematic survey and titling of existing farm holdings.

Indeed, the full range of opinion was present, from chiefs who said they would never consent to a lease in their territory under any circumstances, to chiefs who had selectively approved leaseholds for outside investors but made the allocations well away from traditional areas of cultivation to prevent conflicts with traditional tenure rights, to chiefs who wanted titles for all their subjects in order to protect their land rights and foreclose the possibility of the ministry allocating the land to outsiders.

Government has taken two steps in this area. The first is the limitation of grants of leaseholds to 250 hectares in the Reserve/Trust Lands (D(v) of the circular). This is a critical step in limiting abuses, but it is undermined by the understanding that exceptions can be made with the consent of the minister, with no clear criteria for those exceptions. It also may effectively preclude cattle ranching or extensive mixed farming systems in certain regions where there are sizable economies of scale. The second positive step is the requirement of prior consent to any allocation by both the local chief and the local council. This is an important step towards more local control over the use of land and other natural resources.

What is needed is a clear vision of the future that reassures traditional farmers. One option would be systematic, compulsory registration of customary titles as leaseholds. But experience from other countries suggests that this would be expensive and difficult to justify in cost/benefit terms. Considerable flexibility is needed. There is a need to provide for systematic registration for limited areas where commercial development is relatively advanced, for instance in areas closely associated with State Land farms along the rail lines. There may be a need to provide for some means by which local residents can overcome the reluctance of their chiefs to approve leaseholds, especially in the

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7 The policy debate does not yet seem to have contemplated restriction on the number of leaseholds. As indicated in chapter 3 (table 3.6), multiple parcels are held, making it possible, even likely, that the 250 hectare limit could be contravened by acquiring two or more leaseholds.
vicinity of towns and along major roads. Incentives for local communities must be created which allow them to continue to view land under leasehold as part of their community resource base. For instance, ground rents might be collected by municipalities and chiefs with a portion retained for local development projects.

Arrangements will to some extent need to be worked out locally and the various interests effectively represented. It is not clear that any forum for this exists at this time. The MMD has talked about an increase in the powers and responsibilities of chiefs, and there is a need to take better advantage of the respect and authority that these traditional authorities still enjoy in many areas. Moreover, the need is not simply to strengthen one side or the other in a struggle for control of land but to create institutional arrangements within which the various interests are represented and have incentives to work together and strike the needed compromises.

X. Policy debate: July 1993 Land Policy Conference

The electoral victory of the MMD in the 1993 elections provided the first opportunity in twenty years to question in a fundamental way the land policies of post-independence Zambia under UNIP. The MMD had campaigned on a platform which suggested it would promote basic changes, such as the reintroduction of freehold tenure.

The July 1993 conference (see chapter 1), supported in part by USAID, provided the opportunity for a first frank exchange of opinion on the issues. Conference participants discussed the presidential power to acquire land and agreed that it should be clarified if not curtailed. They discussed a need for two land statutes, one dealing with State Land and one for land under customary tenure, without any distinction between Trusts and Reserves. They noted that discrimination against women was common both in the allocation of State Land and in the Trust and Reserve areas. There was broad agreement that the issues of land under customary tenure deserve more careful study, with increased input from traditional leaders. It was questioned how much customary land was available for allocation to investors, and whether customary land tenure itself needed reform.

Participants also debated the relative merits of leasehold and freehold titles. Those who supported the freehold system argued that leaseholds became insecure as they neared the end of their term. Freeholds, they argued, could be regulated to achieve many of the same ends desired in the case of leaseholds. Those who supported the leasehold system argued that freehold would, through land transactions, lead to the dispossession of the poor and excessive land concentration, especially in the hands of foreign interests. They argued that it would lead to uncontrolled land speculation and underutilization. In the end, a large majority of the participants favored a leasehold system.

Discussion of land concentration led to discussion of the effectiveness of ceilings on landholdings and of the impact of auctions of land. It was agreed that the economic value of land needed to be recognized in the form of increased ground rents, but there was no consensus as to whether land should in the future be allocated by government or sold.

For land in urban areas, the discussions focused on the issue of squatters, the housing shortage, and protection to landlords and tenants in their dealings with one another. In the domain of land administration, the participants urged decentralization of Lands and Surveys and a greater
emphasis on dissemination of information about the titling process, especially to traditional rulers. Cheaper, less-precise means of survey were urged for rural areas.

The final resolutions of the conference are listed in figure 1.2. While they are not binding on government, they will be influential in framing policy.

XI. Recommendations

1. The Lands and Deeds Registry Act should be amended to confer broad discretion on the registrar to accept and certify any economic and appropriate parcel description as adequate for the purposes of registration.

   The system to date has been too conservative about what it will accept as the parcel description for a registration. The need is not to specify new standards—technologies in this area are developing with incredible rapidity—but rather to make clear the discretion of the Registrar and to provide the resources that ensure that Surveys will have access to these new technologies.

2. All 14-year leases should be automatically converted to 99-year leases, by law and without ground inspection or further survey.

   These leases are too short for any useful purpose, and their renewal is already becoming a burden on the system. Proposals for a 30-year lease do not go far enough. The sketch plans on which the 14-year leases were based are in fact accurate enough for a 99-year leasehold. At a later date the leaseholder could pay for a more precise survey, if there were a need. Beyond this, the current report will make no recommendations on survey. The ministry is being ably advised by a very competent Swedish team.

3. All future leases of State Land outside agricultural settlement schemes and urban squatter upgrading schemes should be offered at public auction. Within those exceptions, clear criteria for selection must be developed.

   The MOL manages a vastly valuable resource and cannot expect foreign donor assistance while it continues to give the resource away. Moreover, allowing the true value of the resource—and differences in prices depending on potential and location—to be recognized is a critical first step toward allowing the market to determine the most economically effective use of the land. An auction strategy is far simpler with freehold. If the government decides to continue a leasehold system, it is still important that an auction system be used. But to do so, it will be necessary to drop development conditions. With those present, it is unlikely anyone will feel it is worthwhile to bid any substantial amount. The bidding would be on a premium which represents the scarcity value of the lease over and above that recognized in the ground rent. It would test the relationship between the ground rent and actual market value.
4. In order to facilitate the operation of a market in leasehold rights, the requirements for government consent to transactions, including subdivisions, should be eliminated, with the possible exception of lease assignments to non-Zambians.

Already, these approvals are a formality, an occasion for collecting a consent fee which hardly covers the cost of processing, and for collecting ground rents unpaid over many years and the property transfer tax. Provision could be made instead that proof of payment of ground taxes and a property transfer tax must be proved to the Registrar before the transaction is registered. The issue of non-Zambian ownership of resources arouses strong passions. It may be best to preserve the principle of control through a consent requirement, even though that consent will be readily given to attract investment. However, the 5-year limitation on leases to foreign companies on Trust Land should be eliminated.

5. Development conditions should be eliminated from leases and reliance placed instead upon economic disincentives for holding land idle, such as ground rents.

Zambia's experience with development conditions is little different from that of other countries in Africa. They are not enforced systematically and are most often raised as an issue by someone who hopes to displace the exiting holder. They create insecurity, without achieving their objectives. Rather than worry about development conditions, ground rents should be increased to economic levels to bring pressure to bear for the development of the land in a profitable fashion.

6. If in some cases development conditions are still considered necessary, they should only require a specific investment or construction in the short term, for instance five years. The development condition should be considered met if notice of default is not given by the ministry or other relevant authority such as a municipality within that period. Default should be punished by fines rather than by retaking the land. Beyond that time, only a prohibition of abandonment should apply, and in that case a retaking should be subject to compensation for the land and improvements.

A set of development conditions along these lines would be less harmful than the present conditions.

7. Further increases in ground rents should be considered as the economic value of land becomes clearer through the auction process. Penalties should be imposed for late payment of ground rents.

These rents can provide government with much-needed revenue and can in large measure substitute for far less satisfactory means of ensuring that land will not be held idle, including development conditions. It is not a good idea, as recommended in the ODA report (1989), to increase the property transfer tax: this acts as a drag on the land market.

8. The MOL, given its limited staff and facilities, should carefully consider the economic and financial impacts of the allocation of its staff to particular tasks and to particular regions and tenure sectors.

The ministry, like many other Ministries of Lands in Africa, must cease to think in terms of providing a uniform set of services nationally. It must begin to heed the
economics of land administration, focusing efforts on activities that can be characterized as high-return in terms of development or revenue.

9. Using these criteria, the highest priority should be getting land and titles into the hands of cultivators within the State Land sector.

   This should be the priority because (a) there are large amounts of good arable land there, (b) its proximity to the rail lines and other facilities will increase the probabilities of profitable operations there, (c) its higher value can produce more revenue, and (d) it is relatively accessible for survey by the ministry.

10. Within the State Land, first priority should be given to reallocation of the land of State Farms and parastatal holdings, second to resettlement schemes, and third to private holdings. If a land identification committee or similar body is created to identify land for investors, it should for the first several years focus its attention on the State Lands and these particular areas.

   The State Farms and parastatal holdings will decline, and prompt action will be needed to ensure a sound scheme for distribution, before the land can be occupied by squatters. A land identification committee could also work out a repossession strategy and targets based on the World Bank-funded study of land utilization in the State Lands, initiate the reviews suggested in recommendation 32 below, recommend retakings for failure to pay ground rents, and recommend penalties for late payment.

11. In terms of resolving titling difficulties for land already allocated, the resettlement sector deserves special attention. A crash program for dealing with this sector should be considered and put forward for donor funding.

   There appears to have been especially serious confusion in the titling process in this sector, in part as a result of inadequate information. Few settlers have received leases. Because these holdings are clustered geographically, the titling situation could be sorted out relatively expeditiously through a field operation, with scheme officials present to provide planning consent and Lands and Survey officials on the ground empowered to certify plans and sign leases. A field adjudication procedure to determine entitlements would be necessary because of the confusion which has developed in some settlement schemes through departure and replacement of settlers.

12. For selected areas of considerable commercial development in Reserve and Trust Lands, the ministry should seek to develop a procedure for systematic titling of all holdings, along the lines of that incorporated in the repealed Lands (Adjudication of Titles) Act, 1962.

   The priority need for titling in the Reserve/Trust Lands is not so much to make land available to outsiders, since more accessible land is available in the State Lands, but to develop an approach in areas where commercialization justifies title registration. Yet, smallholders are being disadvantaged in obtaining title. These areas are likely to be near existing State Lands. Work under such a system should initially be on a pilot basis.
13. There is a need to create a Policy Analysis and Studies Unit directly under the Permanent Secretary's Office of the MOL.

When the MOL was split from the Ministry of Agriculture, the research capability remained with the latter ministry, and there is no capacity for sustained, informed thinking about policy within a ministry preoccupied with delivering land and titles.

14. There is a need to rethink the present structure of the ministry's senior management to reflect a broader concept of the ministry.

As it stands, the ministry is a structure to deliver lands and titles and little more. Organizational structures in other Ministries of Lands and agencies with similar responsibilities in the region should be examined. Possibilities include a bifurcation into divisions under an Undersecretary (Urban) and an Undersecretary (Rural) and the creation of a post of Director-General for Provincial Land Administration. Among other needs, it is important to ensure that the Survey Department serves the needs of the Department of Lands, rather than pursuing a separate agenda.

15. There is a need to redesign the land allocation committee and the office of the commissioner.

The commissioner should be appointed by the president subject to approval by parliament, and serve a 10-year term. The land allocation committee should be composed of prominent citizens selected in the same fashion, not bureaucrats. The committee should decide allocations, with the commissioner as chair with a tie-breaking vote.

16. The most critical aspect of decentralization is the transfer of responsibility for urban lands to municipalities.

The bulk of the ministry's work concerns urban land and reducing its workload can most effectively be accomplished by establishing the necessary skills and record keeping at municipal level.

17. Regional and provincial offices of the ministry should be fully integrated, with a single officer in charge, rather than divided into departments with separate lines of authority running to Lusaka.

Decentralization cannot be expected to work unless this is achieved. At present, the provincial office of the Lands Department and the Survey Department make their own arrangements for office space, have their own vehicles, etc.

18. The regional office of the ministry in Ndola should be primarily a Land and Deeds Registry, while decentralization of other Lands Department and Survey Department activities should be to provincial level.

Regional offices are still considerably removed from the location of most lands and clients. The provincial level is a more appropriate level to which to decentralize most ministry functions. After offer of a lease, land development tends to begin without
waiting for completion of the registration process and will not be delayed by lodging
the registration at the regional level.

19. The final decision on all leases for under 250 hectares should be delegated to provincial level. Auctions should be held at provincial level, though advertised nationally. The ministry's provincial office should issue both in-principle and final offers, be responsible for sketch maps, and collaborate with the relevant planning authority. A master parcel map would need to be maintained at provincial level to permit checking of possible overlaps and numbering of the parcel. The numbering system would need to reflect location by province and district.

If decentralization is to be tackled seriously, it must be done at least at the provincial level. This implies new resources for the ministry, but provincial offices already exist in many provinces and the new resources needed are within the realm of possibility.

20. Delegation of authority to make final offers for leases to the district level is technically feasible. This would require the posting at that level of a district lands officer. When resources allow, the ministry should begin to build such a cadre on a pilot basis.

If sketch maps as presently done are accepted as an adequate basis for all leases, not just 14-year leases, there is no serious obstacle to delegation of final offers to the district level. This would require the creation of a cadre of district lands officers for the ministry, which would in turn mean new recruitment, but this is in any case necessary for this understaffed ministry. Master map numbering of parcels could be reported up the line for parallel maps at provincial and regional level. The district lands officer would do sketch maps and act as the planning officer for rural grants. Once the council approved the application, the ministry's district officer could make the offer in principal and, once fees were paid (at district level) and any other necessary planning permission received, could make the final offer. Access to vehicles might be the major constraint to the development of operations at district level. Council vehicles could be utilized in some districts, with costs shared.

21. For the time being, the roles played by councils and chiefs should remain as they are but should be studied to determine whether alternative institutional arrangements exist, which require a more collaborative mode between the council and chiefs.

The involvement of chiefs and councils in the approval of leaseholds is a very positive element in the present system. However, chiefs may not adequately represent the interest of all their people and give too heavy an emphasis to preservation of their traditional prerogatives. It is possible to imagine elimination of the consent requirement by either the chief or the council in certain circumstances, where the applicant holds the land as ancestral land. It is also possible that the process could be improved upon significantly by providing an institutional forum in which traditional authorities and elected councilors could interact and discuss policy. But such changes should be based on careful study. Research is urgently needed to explore the possibilities and must begin by obtaining a better understanding of traditional land administration.
22. The process for initial leasing of land could be shortened at the district level by altering the provision of circular No. 1 to allow a subcommittee of the council to act finally in approving a lease without requiring the matter to go before the full council. A special lands subcommittee should be created for this purpose. The powers of the subcommittee and the criteria that they are to use in approving an application should be set out in law, possibly as part of a revision of the Conversion Act.

This is very necessary in light of very infrequent meeting of the full council, only 3-4 time a year in many rural districts.

23. The master map now maintained in Folios in the Lands Department should be turned over to the Survey Department so that checking the parcel for conflicting allocations and numbering the parcel could be done as one process.

At present, the file goes to Folios to be checked for conflicts, then to Surveys for a number, then back to Folios for that number to be recorded. It seems that this could be done in a single step in Surveys.

24. Offers in principle should be eliminated. A final offer should be made initially, to be accepted by payment of fees.

At present, the Lands Department sends out an offer in principle wherever planning permission is required and does not send a final offer until permission has been obtained. It is not clear why this is necessary. This process may have been based in the notion that the development conditions could not be agreed upon until planning consent was required, but if development conditions are dropped or made more general in nature, as is recommended here, this is not a factor.

25. The process could be further expedited by making the final offer the lease itself. On its return, signed by the applicant, with the necessary fees, it could be signed by the commissioner, registered, and sent back to the applicant with the title deed in one mailing.

Currently, once the offer is sent and accepted, a lease is sent to the applicant to sign and return, and then once it is registered, a title deed is prepared and sent to the applicant. The process seems unusually cumbersome. If it is legally required by any act or received law, then this should be amended.

26. Personnel, vehicles, and budget now devoted by the Ministry of Agriculture to the preparation of sketch maps to support applications for leasehold should be transferred to the provincial offices of the MOL. Serious consideration should be given to transferring to the MOL the entire Land Use Planning operation from the Ministry of Agriculture and the Evaluation Section of the Housing Conglomerate.

There is little sense in this work remaining within another ministry. But if the personnel and responsibility for the work is to be transferred, it is essential that the vehicles and budget for salaries and fuel be transferred at the same time.

27. Rural councils and municipal councils should be made responsible for the collection of all grounds rents in towns and on State Lands and should be able to retain a portion of those rents, perhaps half, for local development projects in return for providing this service. It would also be useful to explore
how chiefs might collect ground rents in their areas of Trust and Reserve Lands and similarly retain a portion of those rents for local development projects.

The ministry should not attempt to develop an independent capability for ground rent collection. It must take advantage of the capabilities of these other institutions but will be able to do so effectively only if they themselves have some direct interest in the revenues to be collected.

28. There is a need for the ministry to develop an effective program of training and public information concerning land policy generally and titling specifically. This implies the creation of a training and information unit within the ministry.

There is a need to give the circular much broader distribution but also a need to provide more "how-to" information, which might be disseminated not just through the ministry but through an NGO such as the National Farmers Association of Zambia. In the Trust and Reserve Lands in particular, the need is not just for information but for genuine exchanges on the role of titling. The ministry will need to carry out more formal training in procedures and record-keeping for its own provincial staff and for employees of other agencies on which they must rely, especially council staff.

29. In framing land policy for Trust and Reserve areas, there is a need for a frank admission that abuse of the titling process for land-grabbing is not just a potential problem. It has been taking place, permitted by inadequate safeguards within the ministry's land allocation system. The 250 hectare limit from the circular should be enacted in law for farms; clear criteria should be created for exceptions to this limit; and the approval of such exceptions be entrusted to a national board consisting of respected figures.

The ministry should set up a task force to think through how land grabbing can be avoided in the future. An effective and economic ground rent will be the first need, but even then difficult cases will arise. There will be requests which tax the ability of officials to estimate real land needs, like one currently pending at district level in Northern province for a 15,000 hectare game ranch. Should the commercial farm community find that this ceiling is prohibitively low, a study should be commissioned to arrive at a more efficient and acceptable standard or set of standards.

30. For Trust and Reserve areas, the supply of titles and land delivery for outside investors, though an important element, should be secondary to the development of a viable strategy for protecting and enhancing the land rights of local farmers and communities.

To date, policy has focused almost entirely on the supply of titles, which is in no sense a comprehensive land policy for these areas. Such a policy needs to be developed. There is time to step back and think through the needs of these areas more systematically than in the past, time provided in part by the availability of considerable good, arable land in the State Lands.

31. The recognition of value in land should be an element in this policy as it is in State Lands. Government (and donors) must recognize customary property rights and should pay compensation for land taken for development by others.
When government passes land on to outside investors, they should bear the cost of making the land available. Similar costs should not be placed on local land users and their communities when they seek title to land they already use, in recognition of their land rights under customary law.

32. There should be a systematic review of leaseholds or parcels in the Trust and Reserve Lands 50 hectares or larger held by government, and over 100 hectares held by private individuals or companies. Where this land is unused, government should consider retaking it and returning it to local communities unless the communities can agree with the ministry on some other use for the land.

Too often, local communities have been asked (and pressured) to provide land for ill-conceived development efforts (e.g., the Council Farms), then watch the land sit idle for years. Where such land exists and cannot be put to the use for which it was provided, it should be returned. This would do a good deal for the ministry's poor credibility in the rural areas. In each case, the displacement of traditional users should be noted, and they should be given priority to return to the land.

33. Broad local consultations should be undertaken by the ministry to help it think through the future of tenure in the Trust and Reserve areas.

Those consultations should be linked to educational activities; framed to allow a genuine exchange on the pros and cons of leaseholds and their grant to either local people, outside investors, or both; and framed to include farmers and other productive land users as well as officials and traditional authorities. Participatory rural appraisal methods and focus group approaches would be useful. The recent national consultations on land policy in Tanzania by the Presidential Commission on Land Matters which reported in 1992 should be examined as a model.

34. The ministry should consider further work on systematic titling activities in some quite limited Trust and Reserve areas with good market access where a lack of title may be a binding constraint on investment.

See recommendation 13 above.

35. A program of studies should be undertaken in several carefully selected areas to explore new approaches to customary tenure and local organization for the administration of land.

Our information base on customary land administration is very poor. Each area should include the lands of a group of three or four villages in a district, and the studies should examine not only rights and dealings in farmland but rights in common-property resources shared by community members and by more than one community. The studies should utilize a variety of methodologies: participatory rural appraisal, dispute studies, and household surveys. The studies should develop plans for follow-up pilot work on land rights and administration in these areas.

36. A comprehensive study of the terms of access by women to productive resources should be carried out.
The resolutions of the July 1993 conference (figure 1.2) stress the need for equality of treatment of women. In spite of important legal changes such as the 1989 amendments to the Wills and Administration of Testate Estates Act, there is a vast gap between the aspirations of the resolution and the facts on the ground, where women are seriously disadvantaged both under national statute and customary laws and where implementation of reforms is highly problematic. The purpose of the study would be to devise a realistic and effective strategy for increasing women’s rights and opportunities.

37. A study should be carried out to determine the relationship between the rapid expansion of cultivated land in the last decades and the expansion of the leasehold system.

It should not be assume that the two are directly related as there is some evidence to the contrary. There is a need to understand how access to land for expansion is obtained.
Annex 2.1: Guidelines for determining the size of landholding for farming purposes

Chapter 1. The Formula and Explanation set out below are designed to help District Councils and their Staffs, District Agricultural Officers, and District Executive Secretaries determine the size of undemarcated land granted to a prospective farmer. Before this formula can be implemented the following data must be available:

2. 1. Land capability, at semi-detailed level
2. Location of farm (peri-urban or rural)
3. Relative pressure on the land
4. Pattern of settlement in the adjacent area to the proposed farm (commercial, traditional, emergent agriculture, peri-urban, urban)
5. Pattern of past urban drift and consequential past population density
6. Traditional land use patterns — provincial strategy
7. Recommended future land use pattern — provincial strategy
8. Proximity to economic centers and markets
9. Proximity to power
10. State of roads plus their development.

3. 1. The present income of the prospective farmer
2. The size and education of his family and whether they will be part of the farming unit or independent
3. Capital available for immediate investment
4. Plant and equipment available to support the proposed program
5. Proposed source and extent of funding
6. General ability of the prospective farmer to succeed. By combining the above data we are able to determine the size of farm within any given planning area suitable for a prospective farmer.

This pre-supposes that the province has already had a development strategy plan drawn up. (This has yet to be done for Southern province.) It is the basic ingredient of any coherent development plan. Thus the following principles are applied for guiding prospective farmers to the right location and right size farm for themselves:

4. 1. Is the farmer self-sufficient? Can he survive in the bush by himself? If not, he must be in an area where he can receive support services.
2. Does he require:
   a. Ranching operation
   b. Mixed farming
   c. Dairy
   d. Horticulture
   e. Small stock only.

These items are graded in the degree of return per hectare of land, i.e., land use intensity. Therefore, a small stock specialist can expect more than K1,000.00 per hectare of land if properly used. A ranching operation can only expect a return of K200 per hectare on intensively grazed improved pastures properly managed.

(This scheme takes no amount of traditional methods as these are not economic.)

5. Therefore, the process works as follows:
The income that a prospective farmer can reasonably expect is calculated from his past performance in whatever sector he comes from and his income for the past five years before he applied for a farm. His future expectations of income are based upon what his previous
expectations were, i.e., a civil servant who has successfully reached the top of his career can reasonably be expected to achieve the same level of success in farming but is unlikely to expect more than a safe income as he is probably not an experienced entrepreneur. Therefore, if his present income is approximately K8,500.00 with subsidized housing and transport, we would expect him to be able to command a gross income of K100,000.00 which would allow him a disposable income of K10,000.00 per annum. Therefore, if we apply our income criteria to the five types of farming we would recommend landholding as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>Area</th>
<th>Average Net Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ranching</td>
<td>500 hectares</td>
<td></td>
</tr>
<tr>
<td>Mixed farming</td>
<td>300 hectares</td>
<td>K10,000.00</td>
</tr>
<tr>
<td>Dairy</td>
<td>300 hectares</td>
<td></td>
</tr>
<tr>
<td>Horticulture</td>
<td>100 hectares</td>
<td></td>
</tr>
<tr>
<td>Small stock</td>
<td>20 hectares</td>
<td></td>
</tr>
</tbody>
</table>

N.B. Holdings smaller than 20 hectares would not normally be planned for Commercial Sector Farmers.

6. In respect of traditional farmers there is not much of a problem as they only apply for title deeds when they need to become commercial. Therefore, the size of holding surveyed for title deeds will be restricted by the present income of the farmer projected back over the last five years and a professional estimate of the level that he will achieve over the next 10 years based upon the size of loan he is likely to get.

7. By far the greatest call on the land is from workers wishing to ensure their future. In the case of large companies applying for land they are usually encouraged to move to the areas where they will contribute to the reversal of the rural urban migration. Apart from this provincial policy, the same formula applies, i.e., the amount of money available for investment is compiled, along with the borrowing from various sources so that a total investment figure is available and a program may be involved for a five- or ten-year period of investment plus development leading to an established expectation of income at the end of this period. It must be mandatory that all such programs be certified as within the financial resources of the company concerned, by an independent firm of chartered accountants who will be held professionally responsible if they mislead the settlement committee. All such costs are naturally borne by the prospective farmer.

8. In any case, all holdings of more than 2500 hectares of arable land, i.e., 4—5000 hectares gross, will be presented to Provincial Council for public scrutiny and approved before being finally recommended for title deeds. Therefore, a company wishing to invest K1,000,000.00 in mixed farming will be calculated as follows:

K1,000,000.00 investment = income 250,000.00
Ranching = 2000 hectares, which includes 500 hectare development allowances
Mixed farming = 1000 hectares
Dairy = 100 hectares
Horticulture = 200 hectares
Small stock = 100 hectares

9. In conclusion we should say that land should be granted in:
   a. proportion to the investment expected and income anticipated;
   b. the level of competence of the lender;
   c. the strategic needs of the province;
   d. the demographic expectancy of the area in which the land is granted.