



Barefoot Education for Afrika Trust

**THE ZIMBABWE POLICY AND LEGAL FRAMEWORK ON
LAND GOVERNANCE**
**With special attention to small-scale farmers and women
land rights**

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**Consultation Meeting:
Regional Land Networks
Johannesburg, South Africa, 26 – 27 November 2018**





INTRODUCTION

- Land rights especially for small-scale farmers and women are generally ill-defined within both the customary and given law.
- This legal dualism applies both to the definition of rights as well as the procedural rights.
- The regulatory framework on land administration in Zimbabwe therefore appears rather complex and fragmented across various areas.
- Evolved during the years, some of these legal provisions appear outdated with overlapping roles and responsibilities across various Departments and Ministries.
- A robust/inclusive land policy is required to clearly better guide/update and harmonize the regulatory framework around land in Zimbabwe



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- This challenge, therefore, should be analysed at several levels:
 - a. **Policy-legal framework** (definition of rights and obligations; who has which right? are there conflicts among different laws? etc.)
 - b. **Implementation of rights/obligations** (Land administration/Governance system)
 - c. **Awareness and rights enforcement** (individual and communities): are individual adequately informed about their rights entitlements? To what extent this is cause for conflicts? What are the key law enforcement challenges?



ZIMBABWE'S TENURAL SYSTEMS



Communal Areas

- The legal framework that guides tenure institutional arrangements in communal areas represents a complimentary interface between customary and common laws.

- The institutional arrangements are provided for in four acts, namely;
 - The Communal Land Act no 20 of 1982;
 - The Traditional Leaders Act (Chapter 29:17);
 - The Customary Law and Local Courts Act (chapter 7.05) Revised Edition 1996 and;
 - Rural District Council Amendment Act 1998. Chapter 29:13. Revised 1996.



Freehold (title deed) in large commercial sector

- The legal framework provides for and protects individual land ownership
- Relevant acts are
 1. The Deeds Registries Act, 1998 and
 2. The Land Survey Act (Chapter 20:12) Revised 1996.



Leasehold Tenure

- Leasehold tenure empowers a person to lease land from the state under agreed terms and duration.

- There are four main leasehold tenure in Zimbabwe:
 - Leasehold in the small scale commercial sector,
 - 99 Year lease in A2 resettlement areas,
 - Permit tenure in villagized (A1) resettlement and
 - Tenure systems under the Old resettlement scheme.

- Two key acts guide the administration of the lease rights of each of the above systems:
 - The Rural Land Act (CAP 155) 1980,
 - Agricultural Land Settlement ACT (Cap 137) Revised 2000.



Natural Resources Tenure

- Natural resource tenure refers to patterns of access and ownership of natural resources, particularly those being protected against the risk of extinction.
- Key resources include minerals, wildlife, forestry, water and fisheries. The legal framework provides for tenure rules governing exploitation, use and trading of the above natural resources.
- For example the **legal framework for minerals** (mineral tenure arrangements) are guided by the Mines and Minerals Act 1996(CAP 21:05).
- The Act vests ownership of all minerals in the President. Individuals and corporates have rights to exploit mineral resources through state authorisation.
- The **legal framework for Forestry** (tenure arrangements) are guided by two acts:
 - The Forest Act (chap 19:05)1996 guides tenure arrangements in private and state land and
 - The Communal Lands Forest Produce Act guides and protects forestry tenure in communal areas.
- During the Fast Track Land Reform Programme, there was an interim policy on Wildlife Based Land Reform and Forestry Based Land Reform.



LEGAL SYSTEMS



Communal Land

■ **The Communal Land Act no 20 of 1982**

- The Act provides for continued occupation of communal areas.
- Statutory law thus recognizes and protects customary law and customary tenure arrangements in communal areas.
- The Act repealed the Tribal Trust Land Act No 6 of 1979 which was governing communal land occupied by black Africans.
- The Act provides for, among others, the regulation of the occupation and use of communal land.
- The state, through the President, owns the communal areas and allows traditional customary communities to occupy and use land in communal areas.
- The same Act provides for the involvement of the President, the Minister responsible for local government, the Rural District Council (RDC) and the traditional leadership (TL) in the administration of communal land



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■ **The Traditional Leaders Act (Chapter 29:17)**

- Provides and protects the role of traditional leadership institutions (Chiefs, Headmen, and Village Heads) in communal areas.
- Recognizes that the communal areas are predominantly traditional in their institutional framework.
- It therefore provides for the appointment of traditional leadership (village heads, chiefs and headmen),
- Provides for the establishment of a Council of Chief and village, ward and provincial assemblies and defines their functions.

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- **The Customary Law and Local Courts Act (chapter 7.05) Revised Edition 1996**
 - Provides for traditional institutions to ensure justice in the communal areas in all disputes except land disputes.
 - Provides for appeals against customary law jurisdiction using common law.
 - Recognizes the operation of customary and common laws in communal areas.
 - Provides for the application of customary law in civil cases and also provides for the constitution and jurisdiction of local courts, while providing for appeals.
 - Section 2 defines customary law to mean the customary law of the people of Zimbabwe, or of any section or community of such people before the 10th June , 1891 , as modified and developed since that date;
 - Section 10 and 11 establish local courts for the administration and application of customary law.
 - Local courts are divided into primary courts presided over by headmen and community courts presided over by Chief;
 - Section 15(g) however denies local courts power/jurisdiction in any case involving a dispute over land.

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- **Rural District Council Amendment Act 1998. Chapter 29:13. Revised 1996**
 - Empowers the State to delegate land tenure administration and development functions to RDCs.
 - The State also takes responsibility for the financing of development plans produced.
 - Provides for, among others, the administration of districts and the empowerment of Rural District Councils to control, regulate and direct development within their areas.
 - Section 71 grants extensive powers to the RDC, though these powers are subject to Ministerial controls and regulation
 - The powers include conservation of natural resources, cultivation and farming, grazing, agriculture, provision and control of water resources, among others.
 - Section 74(1) gives councils power and authority to promote the development of the council area, to formulate policies for the council area and to prepare annual development plans and other plans and to monitor the implementation of these plans;
 - Section 76 empowers councils to raise funds; in addition to budgetary allocations from government.



Freehold (Title Deed) in Large Scale Commercial Sector

■ The Deeds Registries Act, 1998

- The objective of this Act is to establish deeds registries, to regulate the appointment of registrars of deeds and to regulate the process of transferring immovable property.
- In particular, Section 3 provides for Deeds Registries in Bulawayo and Harare;
- Section 4 provides for the appointment of a Chief Registrar of Deeds, which supervises and directs Deeds registration in Zimbabwe;
- Section 5 provides for the duties of the Registrars and,
- Section 14 provides for the transfer mechanism of land rights.

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■ **The land Survey Act (Chapter 20:12) Revised 1996**

- The objectives of this act are to control and regulate the survey and charting of land for purposes of registration in the Deeds Registry and to create a system for the making and preservation of all records relating to surveys of land.

- In particular Section 5(1) provides for the establishment of the Surveyor General's office; Section 5(2) provides for the Minister of Lands to open other offices outside Harare as and when required;

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- Section 7 provides for the duties of the Surveyor General; Section 11 provides for the registration and certification of land surveyors.



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▪ Nature of rights to land

- Freehold tenure provides quantitatively more rights than all other tenure systems.
- In this regard, a landholder has rights to occupy, use, exclude, sale, lease, mortgage, bequeath, donate and hypothecate land.
- Despite these rights to exclude, interviewed land holders, particularly in farming, forestry and conservancies, complained it is currently difficult to exclude people who illegally settle on their properties.



Leasehold tenure in small-scale commercial sector

■ **The Rural Land Act (CAP 155) 1980**

- The objectives of this Act are to provide for the acquisition and disposal of State Land, and to provide for farming or other purposes.

- The Act empowers the Minister of Lands to lease and sell state land for agricultural purposes subject to certain conditions.

- If the land is to be leased for a period in excess of 10 years, the lease agreement has to be registered with the register of Deeds.

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▪ **The Agricultural Land Settlement ACT (Cap 137) Revised 2000**

- The objectives of this Act are to provide for **the** establishment of the Land Settlement Board (LSB) and to prescribe its functions and duties as well as provide for the settlement of persons.
- Section 3 provides for the establishment of the Board while section 5 defines its functions as considering and reporting upon all applications to lease land.
- This act empowers the Minister to acquire individual farms to establish agricultural schemes for the settlement and training of farmers.

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- **Nature of obligations to land (with and without option to purchase)**

- Two variants of the leasehold tenure arrangement exist in the small scale commercial sector.
- The first arrangement is referred to as lease with option to purchase. The second arrangement is referred to as lease without option to purchase.

- **Nature of rights**

- The leasehold tenure provides lessees to occupy and use state land.
- Lessees are however not allowed to sublet, bequeath, hypothecate, mortgage, sale and donate state land.



99 Year Lease in A2 Resettlement Areas

- The legal and administrative machinery that governs 99 year leasehold tenure system has to be understood within the context of the land reform programme post 2000.
- Year 2000 witnessed massive land redistribution from the large scale commercial sector to the black people.
- This phase was dubbed the Fast Track Land Reform Programme.
- The programme resulted in the settlement of semi-commercial smallholder farmers (A1) and commercially oriented medium to large scale farmers (A2).
- A2 farmers are settled on state land and thus lease land for 99 years from the state.



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■ **The Rural Land Act (CAP 155) 1980**

- The objectives of this Act are to provide for the acquisition and disposal of State Land, and to provide for farming or other purposes.
- The Act empowers the MLRR to lease and sell state land for agricultural purposes subject to certain conditions.
- If the land is to be leased for a period in excess of 10 years, the lease agreement has to be registered with the register of Deeds.



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■ **The Agricultural Land Settlement ACT (CAP (137) REVISED 2000**

- The objectives of this Act are to provide for the establishment of the Land Settlement Board (LSB) and to prescribe its functions and duties as well as provide for the settlement of persons.
- The Land Settlement Board has since been replaced by the Land Commission.
- This Act empowers the Minister to acquire individual farms to establish agricultural schemes for the settlement and training of farmers.

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- **Nature of obligations:**

- Obligations to land in the A2 resettlement have to be understood in the context of obligations as set out in the Offer Letter and the A2 leasehold.
- Before an applicant receives 99 year leasehold, he/she occupies land on the basis of an offer letter.
- The offer letter has obligations which the applicant has to satisfy before accessing the 99 year leasehold.
- Key obligations include the need to initiate development on the farm and the need to permanently settle on the farm.



Permit Tenure in Villagized A1 Resettlement

- Land tenure institutional and organizational arrangements in A1 resettlement have to be understood within the context of the land reform programme post 2000.
- The key objective of the A1 resettlement was to de-congest overpopulated communal areas, different from the commercially oriented objectives of the A2 resettlement programme.
- The nature of the fast track resettlement, in particular the speed with which the programme progressed, did not provide time for systematic farmer selection.
- Farmers were settled in a villagized model, which fundamentally copied the communal area organizational structure, except the cultural, religious and administrative aspects.
- However, within the context of the Constitution, these farmers occupy agricultural land which should be used on a commercial basis.
- Leasehold tenure empowers a person to lease land from the state under agreed terms and duration. Two acts guide the administration of lease rights



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■ **The Rural Land Act (CAP 155) 1980**

- The objectives of this Act are to provide for the acquisition and disposal of State Land, and to provide for farming or other purposes.
- The Act empowers the Minister of Lands to lease and sell state land for agricultural purposes subject to certain conditions.
- If the Land is to be leased for a period in excess of 10 years, the lease agreement has to be registered with the register of Deeds.

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■ **The Agricultural Land Settlement ACT (CAP137) REVISED 2000**

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- This act empowers the Minister to acquire individual farms to establish agricultural schemes for the settlement and training of farmers.



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■ Nature of obligations

- The permit holder has to be productive and has to stay on the farm and should not abandon the property for at least 30 days without notice to the acquiring authority, upon which the lessee can be evicted. Compensation is given for improvements.

■ Nature of rights

- The permit allows the land holder to occupy and use land.
- The permit holder is not however allowed to sell, lease, hypothecate, and bequeath land rights.



Old Resettlement

- Old resettlement schemes started way back as early as 1980.
- Tenure systems under the Old resettlement scheme have to be understood within the context of the resettlement programme that took place in the early 1980s during the operation of the Lancaster House Constitution.
- The resettlement programme was based on a willing seller willing buyer basis.
- A total of 71 000 households were settled along a villagized resettlement model, similar to A1 and communal areas.
- These schemes were administered by the then Ministry of Local Government, Rural and Urban Development.
- Each scheme was directly managed by a Resettlement Officer, who was a civil servant residing on the scheme.
- At that time, the MLRR was responsible for resettlement planning and Local Government was responsible for settler emplacement.
- The scheme was substituted by the A1 model post year 2000, which now falls under the administration of the MLRR, including planning, emplacement and administration.



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▪ Legal framework

- Leasehold tenure empowers a person to lease land from the state under agreed terms and duration.
- Two acts guide the administration of lease rights

1. **The Rural Land Act (CAP 155) 1980**

- The objectives of this Act are to provide for the acquisition and disposal of State Land, and to provide for farming or other purposes.
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- The objectives of this Act are to provide for the establishment of the Land Settlement Board (LSB) and to prescribe its functions and duties as well as provide for the settlement of persons.
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- This act empowers the Minister to acquire individual farms to establish agricultural schemes for the settlement and training of farmers.



Natural Resource Tenure

- Natural resource tenure refers to patterns of access and ownership of natural resources, particularly those being protected against the risk of extinction.
- Key resources include minerals, wildlife, forestry, water and fisheries.
- The legal framework provides for tenure rules governing exploitation, use and trading of the above natural resources.
- In particular, natural resources outside state owned protected areas are found in LSCSs, SSCSs, communal areas and resettlement areas.



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▪ **Legal framework for minerals**

- Mineral tenure arrangements are guided by the Mines and Minerals Act 1996(CAP 21:05).
- The Act vests ownership of all minerals in the President.
- Individuals and corporates have rights to exploit mineral resources through state authorisation.

▪ **Legal framework for Forestry**

- The forestry resource tenure has to be understood within the context of government need to maintain and conserve forestry resources in the country.
- The country's forest resources fall into four main categories (Shumba: 2001) namely: woodlands, forests and trees in communal and resettlement areas; woodlands and trees in large scale commercial farming areas; woodlands and forests on state lands and in protected areas; and exotic forest.



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- Forestry tenure arrangements are guided by two acts.
 1. The Forest Act (chap 19:05)1996 guides tenure arrangements in private and state land.
 2. The Communal Lands Forest Produce Act guides and protects forestry tenure in communal areas.
 - Communal area people are allowed to exploit forestry products for consumption and no prior permission is required for that.
 - There are concerns that this freedom could have resulted in extensive degradation now visible in most communal areas.
 - In contrast, the Forest Act (chap 19:05) 1996 prohibits harvesting or destroying timber except under the terms of a valid timber permit.
 - Once viability for harvesting in gazetted forests is established by the Forestry Commission, harvesting rights are awarded through an open-tender process requiring an environmental impact assessment.
 - The Forestry Commission oversees logging and uses revenues for future forest-management.



WOMEN'S ACCESS TO LAND IN ZIMBABWE



Introduction

- Zimbabwean women have always lagged behind in agrarian and land reform programmes that have been initiated in the country since 1980.
- Land is a resource governed under patriarchy that privileges male ownership. Under communal land ownership in rural areas women's access to land is mediated by their relationship to men.
- Land reforms offered a chance to radically transform women's property rights but the first reforms in the 1990s saw only 5% of women accessing land as individuals.
- The injustice is that women make up an estimated 86% of people working on the land yet they do not have individual access, control and ownership.



Status of Women's Access to Land

- In post 2000 Fast Track Land Reform Programme (FTLRP), 18% of the women benefited but the number fell short of the 20% quota that had been the standing measure by government.
- Women-headed households who benefited under the A1 model constituted 18% of the total, while less than 12% of the beneficiaries under A2 were women.
- In A1 Model each household is allocated 6 hectares of arable land. Common land such as grazing land, woodlots and water points are shared by the resettlement group.
- A2 Model scheme was meant to indigenize commercial farming through providing opportunities for previously disadvantaged black people.



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- Women loose out regarding inheritance when it comes to land.
- When the husband dies, the family says if the wife wants to remarry she should leave her late husband's homestead.
- The family members can also reduce the land size for the surviving widow.
- If there are sons, their rights are considered by the family over their mother's.
- If there are daughters, it is assumed they will get married and enjoy land rights under the husband



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Zimbabwe Land Commission

- The Zimbabwe Land Commission (ZLC) is a Constitutional body created in terms of Section 296 of the Constitution of Zimbabwe. The functions of ZLC include among others to ensure accountability, fairness and transparency in the administration of agricultural land that is vested in the state, conducting periodic land audits and making recommendations to the Government regarding the acquisition of private land for public purposes. The Commission is also mandated to investigate and determine complaints and disputes regarding supervision, administration and allocation of agricultural land.



Barefoot Education for Afrika Trust Causes of Disputes

- Infrastructure sharing; Farm boundaries ; Inheritance issues
- Property sharing after divorce ; Double allocation; Illegal settlers
- Survey of farms; Deal with corruption; Multiple farm ownership
- Servitudes and disputes; Mining and farming; Corruption in land administration
- Non implementation of policies; Poor land administration
- Parallel structure; Lack of land policy
- Withdrawal of offer letters abruptly and arbitrarily
- Lack of transparency in land allocation
- Speculation /greed and corruption
- Inequitable settlement and allocation; No record of resolved issues
- Compensation; Conflict over resources



Recommendations

- Women organizations need to build a robust system of training and improving knowledge of the Statutory Instrument (SI 153/14) among local policy implementers within government and also women working on agricultural land.
- ***Mobilising women land applications:*** Research findings have shown that women are not applying for land in their own right. Men dominate Land waiting lists.
- ***Lobby for sensitization of land committees on the provisions of 2013 Constitution***
- ***Women are not homogenous: Find ways to fight for women in all spaces:*** Women are heterogeneous and found in differing contexts, which require more research work to understand how women in different contexts are affected, by S153/14 and the constitution.
- ***Translation of SI53/14 into local languages:*** To increase accessibility and reach of SI53/14 it is advisable to localise the SI through translation and dissemination that ensures a wide reach and understanding of the policy.



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Thank You!