

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON THE LANDS TRIBUNAL BILL N.A.B. NO. 42 OF 2010 FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY

Consisting of:

Mr C K Banda, SC, MP (Chairperson); Mr G B Mwamba, MP; Ms J M Limata, MP; Major R M Chizhyuka, MP; Mr C M Silavwe, MP; Rev G Z Nyirongo, MP; Mr J K Zulu, MP; and Mr J Shakafuswa, MP.

The Honourable Mr Speaker,
National Assembly,
Parliament Buildings,
LUSAKA.

Sir,

Your Committee has the honour to present its report on the Lands Tribunal Bill, N.A.B. No. 42 of 2010 referred to it by the House on 24th September, 2010.

Functions of the Committee

2. In addition to any other duties assigned by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bill that may be referred to it by the House.

Meetings of the Committee

3. Your Committee held seven meetings to consider the Lands Tribunal Bill N.A.B No. 42 of 2010.

Procedure adopted by the Committee

4. In order to acquaint itself with the Bill, your Committee sought both written and oral submissions from various stakeholders.

Objectives of the Lands Tribunal Bill N.A.B. NO. 42 OF 2010

5. The objectives of the Bill are to:

- (a) continue the existence of the Lands Tribunal;
- (b) provide for the powers and functions of the Tribunal; and
- (c) provide for matters connected with, or incidental to, the foregoing.

Background

6. The Lands Tribunal was established in 1995 pursuant to section 20 of the Lands Act Chapter 184 of the Laws of Zambia. The rationale for establishing the Tribunal was mainly to create a forum through which land-

related disputes could be disposed of in a quick, flexible and cost effective manner.

Over time however, the Tribunal has been rendered almost non-existent following the Supreme Court's interpretation of the Tribunal's legal framework as well as the various pieces of legislation which have a bearing on the activities of the Lands Tribunal, to the effect that the Tribunal does not have jurisdiction over land disputes in customary land, housing and statutory improvement areas and over titled land.

In the spirit of strengthening the operations of the Tribunal, the Lands Tribunal Bill No. 42 of 2010, seeks to continue the existence of the Tribunal and provide for its powers and functions under its own enabling piece of legislation.

Salient Features of the Bill

7. Your Committee wishes to highlight the salient features of the Bill as set out hereunder

Clause 3: Continuation of Lands Tribunal

This clause provides for the continued existence of the Lands Tribunal established under the Lands Act Chapter 184 of the Laws of Zambia as if the Tribunal were established under the proposed Act.

Clause 4: Jurisdiction of the Tribunal

This clause provides for the jurisdiction of the Tribunal to hear and determine all disputes that relate to land. The Bill proposes to extend the jurisdiction of the Tribunal, among others:

- (a) to inquire into, and make awards and decisions in any disputes relating to the Housing (Statutory Improvement Areas) Act or under any other law;
- (b) to inquire into and make awards and decisions in any dispute relating to land under customary tenure;
- (c) to hear and determine appeals to land under the Housing (Statutory and Improvement Areas) Act or any other law;
- (d) to make orders for the rectification of entries made in the Lands Register;
- (e) to make orders for the cancellation of certificates of title that it considers to have been erroneously issued or to have been obtained fraudulently, or that it otherwise considers necessary to cancel;
- (f) to make any declaration that it considers appropriate and issue any order for the implementation of the declaration; and

- (g) subject to the State Proceedings Act, Cap. 71, to grant injunctive relief or any other interlocutory relief that it considers appropriate.

Clause 5: Composition of the Tribunal

This clause provides for the composition of the Tribunal. The Bill proposes to expand the composition of the Tribunal to include a representative of the House of Chiefs. The clause further sets out the grounds of disqualification for appointment to the Tribunal.

Clause 6: Tenure of Office and Vacancies

This clause stipulates that the term of office of a member of the Tribunal shall be five years, subject to re-appointment for a further term of five years. The clause further provides the circumstances in which the office of a member of the Tribunal shall become vacant, which include death of the member, removal of the member by the Minister, mental or physical incapacity of the member and the conviction and imprisonment of the member, for the commission of an offence, for a term exceeding six months, without the option of a fine.

Clause 7: Registrar of Tribunal

The clause provides for the appointment, by the Public Service Commission, of the Registrar of the Tribunal who shall be a legal practitioner of five years legal experience. The experience also mandates the Ministry of Lands to provide other staff that may be necessary for the performance of the Tribunal.

Clause 8: Application to Tribunal

According to this clause, a person aggrieved by a direction or decision of a person in authority may apply to the Tribunal for determination. The clause extends the definition of the phrase "person in authority" to include, the minister responsible for local government, a chief and a council registrar.

Clause 9: Filing of Complaints, Applications, etc

This clause makes provision for filing of a complaint and all documents to be submitted to the office of the Registrar of the Tribunal.

Clause 10: Proceedings of Tribunal

This clause outlines the proceedings of the Tribunal. Under the clause, three members of the Tribunal duly constitute the Tribunal. The number should include either the Chairperson or the Deputy Chairperson. The clause also provides for the sitting, by the Tribunal as a circuit tribunal, which shall be duly constituted by three members of the Tribunal, provided that each circuit includes the Chairperson or the Deputy-Chairperson or the representative of the Attorney-General.

Clause 11: Powers of the Tribunal with respect to Proceedings

This clause provides for the powers of the Tribunal when dealing with complaints. The Tribunal is empowered under this clause to:

- (a) order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of the proceedings; or
- (b) take any other course which may lead to the just, speedy and inexpensive settlement of any matter before the Tribunal.

Clause 12: Judgment of Tribunal

This clause compels the Tribunal to deliver judgement on any matter within sixty days after the conclusion of the hearing of the case.

Clause 13: Publications of Judgment

This clause places a responsibility on the Registrar to communicate every award, decision or judgment of the Tribunal to the parties concerned. The Chairperson may also cause any award, decision or judgment of the Tribunal to be published in the Gazette, if the Chairperson considers it to be of public interest.

Clause 14: Frivolous and Vexatious Proceedings

This clause empowers the Tribunal, where it determines that any application to the Tribunal is frivolous or vexatious, to order an applicant to pay the applicant's costs, those of the other party and of the Government in connection with the proceedings.

Clause 15: Immunity of Members and Staff of Tribunal

This is a standard clause which provides that members and staff of the Tribunal are immune from any actions or proceedings for any act or thing done or omitted to be done in good faith in the exercise or performance, or the purported exercise or performance of any of the powers or functions conferred under the Act.

Clause 16: Appeal to the Supreme Court

Under this clause, an aggrieved person may appeal to the Supreme court against a decision of the Tribunal, within thirty days of the receipt of the Tribunal's decision.

Clause 18: Rules

This clause grants the Chief Justice power to make by way of statutory instrument, rules of evidence and procedure for the Tribunal.

Clause 19: Costs

The clause proposes that the duty to tax costs should lie with the Registrar. Currently, the secretariat taxes costs. However, this is a judicial function which ought not to lie with the secretariat.

Clause 20: Offences

This clause creates offences under the Act. Under the clause, it is an offence for a person who is summoned to give evidence or to produce any book, document or thing-

- (a) without reasonable cause, fails to attend as required;
- (b) refuses to be sworn or affirmed as a witness;
- (c) having been sworn as a witness, refuses to answer any question lawfully put to that person; or
- (d) without reasonable excuse, fails to produce the book, document or thing.

The clause also makes it an offence for a person to knowingly give false testimony regarding any matter which is material to a question in any proceedings before the Tribunal.

Concerns from Stakeholders

8. Several stakeholders recognised that at present the jurisdiction of the Lands Tribunal to hear land disputes had drastically been limited following several judgments by the Supreme Court.

In view of the foregoing, most stakeholders who appeared before your Committee welcomed the introduction of the Bill and recognised that the Bill seeks to extend the jurisdiction of the Lands Tribunal to cover all land disputes falling under customary tenure, housing and statutory improvement areas as well as to properties on title, thereby harmonising the existing Statutes regarding the land dispute resolution mechanism.

It was however, pointed out by the stakeholders that there were a number of provisions in the Bill that needed to be refined to make the Bill more effective. Some of the concerns raised by the stakeholders are set out hereunder.

It was suggested that for the future, the Lands Tribunal should be transformed into a division of the High Court to handle land matters. The advantage to this approach was that there would be specialisation and retention of staff on permanent basis, as was the case with the commercial division of the High Court.

In terms of some of the provisions of the Bill, stakeholders noted that clause 4(1) of the Bill appeared to give the Tribunal exclusive jurisdiction on all land matters contrary to Article 94 (1) of the Republican Constitution, which gave the High Court unlimited and original jurisdiction in all criminal and civil

matters except industrial and labour matters. It was therefore proposed that the Bill should clearly provide for concurrent jurisdiction with the High Court.

It was observed that section 4(2) of the Bill which sought to exclude rules of evidence from proceedings of the Tribunal was at variance with section 18 (d), which empowers the Chief Justice to prescribe some rules of evidence to be used in proceedings before the Tribunal.

In light of this contradiction, some stakeholders proposed that section 4 (2) should be deleted because from the previous operations of the Lands Tribunal, the administration of rules of evidence in civil proceedings had never posed any problems. To retain the section would be an open invitation to hearsay evidence and was undesirable in land matters, which should be subject to strict proof under the rules of evidence in civil proceedings. Other stakeholders however, were of the view that section 18(d) be amended to leave out rules of evidence, in keeping with its rationale for being created as a forum where ordinary citizens could take their cases without legal representation.

It was also noted that by section 4(3) of the Bill, parties who are not party to proceedings before the Tribunal, but affected by the decision of the Tribunal, are bound by such decision. This ran counter to the well established legal doctrines and judicial decisions, and should therefore, be deleted.

In terms of the qualifications of the Chairperson and Deputy Chairperson of the Tribunal, as provided in section 5(a) and (b), it was suggested that in addition to being qualified to be a High Court Judge, the two should of necessity have a bias in Land Law.

Stakeholders also submitted that the appointment of the Registrar of the Tribunal by the Public Service Commission as provided in section 7(1) of the Bill, be done by the Judicial Service Commission in light of section 7(3) of the Bill. This was because the Judicial Service Commission was better placed to assess suitability of persons appointed to judicial office.

It was further observed that section 8(1), which makes provision that a person aggrieved with the decision of the person in authority can apply to the Tribunal for determination, was misplaced in the light of the Tribunal's jurisdiction in section 4(1) (e). It was therefore, suggested that section 8(1) of the Bill be rephrased to cover all instances where the Tribunal had jurisdiction as was the case in section 4(1) (e) of the Bill.

Further, section 5(4) (d) was thought to suggest that a person who had been convicted and sentenced for commission of a crime, with an option of paying a fine could be considered for appointment as a member of the Tribunal. It was therefore, proposed that the section be rephrased to read that anyone who had been convicted of a criminal offence and imprisoned or fined should not be eligible for appointment. This suggestion was also extended to section 6(2) (e).

It was also suggested that it was inappropriate to have the Registrar of the Tribunal consider interlocutory applications as prescribed in section 7(2) (e) of

the Bill. The jurisdiction to handle such applications, especially injunctions, was supposed to be reserved for the Tribunal's Chairperson and Deputy Chairperson in keeping with the settled practice both in the High Court and the Industrial Relations Court, where only Judges are empowered to hear and determine such applications. Further, section 7(2) (e) did not provide or contemplate an appeal process against decisions of the Registrar in light of the extensive judicial powers which the Registrar would enjoy.

Section 10(2), which provides for circuiting of the Tribunal, was welcomed, but it was suggested that presiding over the circuit sessions of the Tribunal under section 10(5) should be the preserve of the Chairperson and Deputy Chairperson of the Tribunal only. Chairing by a representative of the Attorney-General was frowned upon because it would create a perception as if such a representative would take instructions from the Attorney-General and the perception would be compounded where the Government was a party to the proceedings.

As regards section 10(11), stakeholders were of the view that areas of interest where a member could recuse oneself from proceedings of the Tribunal were not only restricted to spouses as suggested by the section. There were other categories of interest that members could have and which could jeopardize the proceedings if interest is not declared by a member. It was therefore suggested that the section should be rephrased to capture all forms of interest that a member could possibly have in a matter before the Tribunal.

It was also suggested that "Subordinate Court" in section 11(4) be substituted with "High Court" because the Tribunal was almost at par with the High Court in land matters and therefore could not be relegated to a Subordinate Court. The stakeholders further submitted to your Committee that the requirement to deliver judgement within sixty days by the Tribunal as stipulated in section 12 of the Bill was not tenable, although it was ideal. This was because firstly, the Tribunal members were not on full time basis or exclusively dedicated to the Tribunal, and secondly, institutions such as the High Court had failed to adhere to such requirements in election petitions, for example. Lastly, there were no sanctions under the Bill if a judgement was not delivered within the recommended sixty days.

It was proposed that the alternative to this provision therefore, was to require the Tribunal to deliver judgements promptly and within a reasonable time taking into consideration the circumstances of the case.

Your Committee also heard that section 13(1) of the Bill which required the Registrar to communicate every award, decision or judgement of the Tribunal to the parties concerned, would raise difficulties in the reckoning of time for the purposes of one's right to appeal pursuant to section 16 of the Bill. It was suggested that the two sections be harmonised in line with existing and settled practice obtaining in both the High Court and Industrial Relations Court in relation to judgements and orders of courts.

It was observed that the requirement in section 13(2) of the Bill regarding publishing decision of the Tribunal, which in the Chairperson's opinion were in the interest of the public, was archaic. The appropriate place for publication in modern times was the Zambia Law Reports. It was thus suggested that selection of the decisions to be published should be left to the editorial board of the Zambia Law Reports, rather than be left to the sole opinion of the Chairperson of the Tribunal.

It was further suggested that section 14 of the Bill in so far as it related to the award of costs should be deleted as section 19(1) was a better formulation. However, section 14 could be rephrased to give power to the Tribunal to dismiss frivolous and vexatious applications which, at face value, lacked merit.

The stakeholders also noted that section 19(4) and (5), which seems to suggest that the Registrar of the Tribunal can review his own taxation, were in bad faith, as it made the Registrar, Judge in his own cause. Further, the subsections do not clearly explain the circumstances which would warrant such review. It was therefore suggested that review of taxation should lie in either the Chairperson or deputy Chairperson of the Tribunal.

It was also suggested that section 22(1) should be rephrased in the usual language of a *saving provision* to convey clearly the message that any reference to the previous Lands Tribunal, was reference to the Lands Tribunal established under the Bill.

Committee's Observations and Recommendations

9. Arising from the interaction with the various stakeholders who appeared before it, your Committee is of the view that the Lands Tribunal as it currently stands has been rendered almost redundant for want of jurisdiction.

Your Committee therefore, welcomes the enactment of a new law that will extend the jurisdiction of the Lands Tribunal to cover all land disputes.

Your Committee agrees with the concerns of the stakeholders as stated above, but wish to make specific observations and recommendations as set out hereunder.

- (a) Your Committee observes that under the arrangement of sections on page two of the Bill, section 16 erroneously refers to appeal to the High Court instead of appeal to the Supreme Court as clearly stated in the main body of the Bill. Your Committee therefore recommends that the appropriate amendment be effected.
- (b) Your Committee observes that there is an error in section 6(1) (g) where the word 'member' has been inserted before the word 'planner'. Your Committee therefore recommends that the word 'member', be deleted.

- (c) Your Committee observes that section 7(3) contains an inadvertent error, in that the word 'with' which appears between the words 'practitioner' and 'five' should be substituted with the words 'of not less than'.
- (d) Your Committee observes that it is not clear under section 4 of the Bill whether or not the Tribunal will have exclusive jurisdiction on all land matters. Your Committee therefore recommends that the section be refined to give concurrent jurisdiction to the Tribunal and the High Court in light of article 94(1) of the Constitution of Zambia which grants to the High Court unlimited and original jurisdiction in all civil and criminal matters.
- (e) Your Committee also observes that according to section 4(1) (b), the Tribunal's Jurisdiction will extend to customary land. Your Committee therefore recommends that disputes referred to chiefs should conclusively be adjudicated by the chiefs before being referred to the Tribunal
- (f) Your Committee observes that sections 4(2) and 18(d) of the Bill are at variance and therefore recommend that the words "and the rules of evidence to be observed" be deleted from the latter section.
- (g) Your Committee observes that section 4(3) of the Bill has the effect of binding persons who are not privy to the proceedings before the Tribunal, but are merely affected by its outcome. This is contrary to well settled common law doctrines and judicial decisions. It is therefore recommended that the section be deleted.
- (h) Your Committee observes that in terms of section 7(1) of the Bill, appointment of the Registrar of the Tribunal is by the Public Service Commission. Your Committee however, recommends that the Registrar should be appointed by the Judicial Service Commission as this is the body which is better placed to assess suitability of appointment to judicial office.
- (i) Your Committee observes that, with expansion of the jurisdiction of the Lands Tribunal, the Tribunal will become a significant dispute resolution forum similar to the Industrial Relations Court. Your Committee therefore, recommends that the Bill be amended to have the Chairperson and Deputy Chairperson appointed on permanent basis rather than have them serve on part time basis as the case is now.
- (j) Your Committee further observes that in terms of section 7(2) (e) of the Bill, the Registrar of the Lands Tribunal is empowered to hear and determine interlocutory applications. Your Committee agrees with the section, but recommends that the section be amended so that the power to hear and determine applications for injunctions should be the preserve of the Chairperson and Deputy Chairperson of the Tribunal in keeping with settled practice in the courts of law, where only judges hear and determine applications for injunctions.

- (k) Your Committee observes that under section 8(2) of the Bill, the term Registrar, has been defined in section 2 of the Bill as having the meaning assigned to it in the Lands and Deeds Registry Act. Your Committee therefore, recommends that in addition to the persons in authority referred to in section 8(2), the term 'Registrar of the Lands Tribunal' should be added so as to distinguish with 'the registrar'.
- (l) Your Committee observes that enforcement provisions are not mirrored in the Bill. Enforcement should not be left to subsidiary legislation or rules to be promulgated by the Chief Justice. Your Committee therefore, recommends that the Bill be amended to include enforcement provisions relative to decisions, awards or judgements of the Tribunal.

Conclusion

10. Your Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. Your Committee also wishes to thank you, Mr Speaker, for the opportunity to study the Bill. Your Committee is also indebted to the office of the Clerk of the National Assembly for the services provided.

We have the honour to be, Sir, your Committee on Delegated Legislation mandated to consider the Lands Tribunal Bill N.A.B No. 42 of 2010.

Mr C K Banda, SC, MP
(Chairperson)

Mr G B Mwamba, MP
(Member)

Ms J M Limata, MP
(Member)

Major R M Chizhyuka, MP
(Member)

Mr C M Silavwe, MP
(Member)

Rev G Z Nyirongo, MP
(Member)

Mr J K Zulu, MP
(Member)

Mr J Shakafuswa, MP
(Member)

Appendix I
List of Officials
National Assembly

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Mr S C Kawimbe, Committee Clerk (SC)
Mr G Zulu, Assistant Committee Clerk
Mrs C K Mumba, Assistant Committee Clerk
Ms S Mwale, Stenographer
Mr C Bulaya, Committee Assistant
Mr S Likunyendo, Parliamentary Messenger

**Appendix II
List of Witnesses**

Mr M Musonda (immediate past Chairman of the Lands Tribunal)

Professor M P Mvunga, SC, Private Legal Practitioner

MINISTRY OF JUSTICE

Mrs P Jere, Chief Parliamentary Counsel

LANDS TRIBUNAL

Mr A G Chimulu, Acting Registrar

ZAMBIA LAND ALLIANCE

Mr K Chitule, Information Officer

Mr R Chikwampa, Network Liaison Officer

ASSOCIATION FOR LAND DEVELOPMENT

Mr A Mutale, Chairperson

Mr M Katati, Committee Member

UNIVERSITY OF ZAMBIA

Mrs A C Chanda, Acting Dean, School of Law

LAW ASSOCIATION OF ZAMBIA

Mr C H Chimuka, Convenor of the Committee on Conveyancing

Mr F Kachamba, Committee Member

MINISTRY OF LOCAL GOVERNMENT AND HOUSING

Mr B B Chirwa, Acting Permanent Secretary

Mr J Jumba, Acting Director – GUD

Mr J Chulu, Parliamentary Liaison Officer

MINISTRY OF LANDS

Mrs M M Yeta, Permanent Secretary

Mr B Mulenga, Commissioner of Lands

Mr M B Goma, Director Human Resource and Administration

Mr M Khunga, Acting Chief Registrar

Mr D Mubanga, Surveyor-General

Mr K Soko, Senior Planner