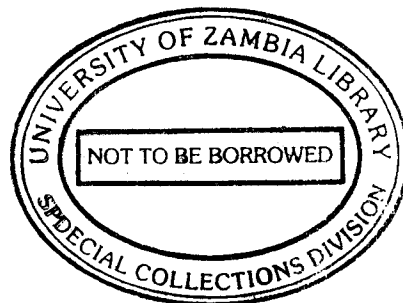


# **HOUSING LEGISLATION AND POLICY IN ZAMBIA**

**BY**

**ILUNGA JOSEPH (20019530)**



**Being a paper submitted in partial fulfillment of the examination requirement for the Degree of Bachelor of Laws of the University of Zambia.**

**DECEMBER**

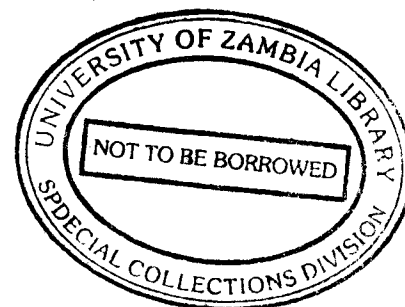
**2005**

Copyright© 2005 Joseph Ilunga

All rights reserved. No part of this work can be reproduced in any form, electronic or otherwise, without a written consent of the copyright owner except within the fair use exceptions provided for under the Copyright Act Cap 406 of the Laws of Zambia.

THE UNIVERISTY OF ZAMBIA

SCHOOL OF LAW



I recommend that the obligatory essay prepared under my supervision.

By

ILUNGA JOSEPH (20019530)

Entitled

HOUSING LEGISLATION AND POLICY IN ZAMBIA

*subject to signing the declaration*

Be accepted for examination/ I have checked it carefully and I am satisfied that it fulfils the requirements relating to format as laid down in the regulations governing Obligatory Essays.

Date. *29/12/2005.*

Supervisor.....

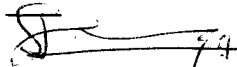
*[Signature]*  
Prof. Patrick Mvunga

## CONTENTS

<b>TITLE</b>	<b>i</b>
<b>SUPERVISOR'S CERTIFICATION</b>	<b>ii</b>
<b>DECLARATION</b>	<b>iii</b>
<b>DEDICATION</b>	<b>iv</b>
<b>ACKNOWLEDGEMENTS</b>	<b>v</b>
<b>INTRODUCTION.....</b>	<b>7</b>
<b>CHAPTER ONE:</b> HOUSING POLICY AND LEGISLATION AT INDEPENDENCE.....	<b>8</b>
<b>CHAPTER TWO:</b> HOUSING LEGISLATION AND POLICY UNDER THE SECOND NATIONAL DEVELOPMENT PLAN (SNDP) 1972-1976.....	<b>18</b>
<b>CHAPTER THREE:</b> THE POST 1991 HOUSING LEGISLATION AND POLICY.....	<b>28</b>
<b>CHAPTER FOUR:</b> RECOMMENDATIONS AND CONCLUSION.....	<b>46</b>

### DECLARATION

I declare that this work is an expression of my ideas. It is not copied from any prior work. Where reference is made to any written work, i have at all times sufficiently acknowledged the source.

Signature:  Date: 14/01/06  
Joseph L Long

## DEDICATION

To the **Almighty God, Jehovah**, for the undeserved kindness He has bestowed unto us.

To my late mom, who inculcated in me the spirit of believing in myself at a tender age. It is because of her teachings that I have learnt to endure a great many things.

To my sister, Mirriam, for having consistently stood by me, all the years, through thick and thin.

To my nieces, Chungu and Deborah for adding colour to my life and giving me a reason to be alive.

## **ACKNOWLEDGEMENTS**

One cannot claim to have managed to come up with this piece of work solely by himself. I therefore feel duty bound to recognize the contributions of these fine individuals. Firstly, I would love to thank Prof. Patrick Mvunga SC, for ably supervising my work. I would mention at this point that all the errors that might be found herein are entirely mine.

Special thanks go to Gady and Benjamin for exhibiting true brotherhood over the years.

I would also mention a couple of friends that made my stay at UNZA memorable. These include Kondwani Musukwa, Benson Mpalo, Mando Mwitumwa, Monford Chishimba, Katongo Waluzimba, Chola Mwewa, Philemon Tembo and Gideon Kalandaya.

Gentlemen, life at UNZA couldn't be better! I would also say thumbs up to the entire LL.B. IV(2005) for the wonderful moments we shared as a class.

I would like to thank Chiti Mulenga, Mahara Kaira and Titus Walamba for the company we shared. Last but not the least, Manda Chishimba, whose computer i used most of the times in typing my obligatory essay.

## INTRODUCTION

Since the publication of the **Second National Development Plan(SNDP)**1972-76 unauthorised settlements are no longer considered as temporary housing units. In 1974 the government of the Republic of Zambia enacted a law namely **Housing (Statutory & Improvement Areas) Act (Cap 194 of the Laws of Zambia)** to provide for a legal regime within which the various housing policies and strategies for the low-income groups would be realised. The issue remains as to whether this piece of legislation has provided an enabling environment for the policy makers to device viable housing policies. And if they have, whether such policies have worked for the benefit of the low-income groups. Thirty-one years after the enactment of the Act, the problem of squatter settlements in urban areas seems to be too remote from a solution. Many inhabitants of these areas still live in fear of being evicted. It is trite that investment in housing is directly proportional to the perception of security of non-removal. It is this vein that there is need for a deliberate policy on housing specifically for the low income groups as it is a notorious fact that these constitute the larger population of this country. This in turn demands a suitable legal framework for the changing socio-economic environment. Thus the gaps between the present laws and government policy on the same must be bridged. Allowing this status quo has serious repercussions in that it makes the cities grow haphazardly. The growth being largely defined by where illegal settlements spring up. Moreover, the lives of the inhabitants are at risk as most of these houses are built on sites ill suited to housing and dangerous to health.

This paper seeks to evaluate the policy framework in housing for the low-income groups vis-à-vis the enabling legislation. From the first chapter up to the last one the paper provides an insight into the various policies and legislation on housing since independence. It is the author's submission that although there appears to be suitable legislation and policy on housing in Zambia, a lot needs to be done. Thus, the last chapter has specifically alluded to certain policy and legislative alternatives to improve access to housing for the poorest of the poor.

## CHAPTER ONE

### HOUSING LEGISLATION AND POLICY AT INDEPENDENCE

#### INTRODUCTION

It is trite that law is a major instrument for social, economical and political change. It is also evident that most countries in Sub-Sahara Africa face formidable housing problems. Almost without exception they have poorly developed housing institutions and markets, stock which are in poor condition, a huge backlog of housing need and weak policy responses. The 1996 Global Report on Human Settlement (UNCHS, 1996a) observes that the striking feature of most African cities is the extent of informal development. This, it attributes to "incremental forms of housing investment where owners become self-developers and rely on small crafts and trade to build their own units." The report also adds that this is why many such cities have



the appearance of "endless, almost permanent, construction sites."<sup>1</sup>

The quality of housing, especially in the cities of the developing countries, is deteriorating steadily. It is estimated that almost one quarter of humanity is inadequately housed and that as many as 100 million are homeless.

The United Nations Centre for Human Settlements (UNCHS) (Habitat) estimates that at least 600 million people in the cities of developing countries live in shelters that are life- or health- threatening. Women and children are most affected by poor living conditions, since they spend more time at home. According to the World Health Organization, some 70 million women and children live in homes where smoke from cooking fires damages their health. Investing in shelter has been found to be a productive expense and not simply a drain on public spending. It has been found that, for every unit of currency spent on house construction, a unit of currency is returned to national income. Low-cost housing, because it is labour-intensive, creates jobs and enhances the income- earning power of tenants. Men and women earn more money when their living environment has been improved.

---

<sup>1</sup>Groves, R. **Challenges Facing The Provision Of Affordable Housing In African Cities**, The School Of Public Policy, Paper presented at ENHR Conference July 2<sup>nd</sup>-6<sup>th</sup> 2004, Cambridge, UK, p.2

In Zambia, **Schlyster** draws attention to the fact that, "land delivery has been impeded by inappropriate legislation and by limited capacity to deal with land transactions" and that the National Housing Policy document (1996) also acknowledges that the restrictions on the development of a free market in land were amongst the most severe constraints on the housing market.<sup>2</sup>

Zambia is the third most highly urbanized country in Sub-Saharan Africa.<sup>3</sup> Of its total population, over 40 percent is estimated to live in urban areas. The country has eight major towns with populations in excess of 150,000; most of these are in the Copperbelt province.

During the 1960s and 1970s, the production and export of copper led to an expansion of the urban economy. Zambia experienced high levels of rural-urban migration, as citizens sought to benefit from urban-based employment opportunities and subsidized food and infrastructure. Lusaka was and continues to be the main destination for rural migrants, closely followed by the Copperbelt

---

<sup>2</sup>Groves, R. Challenges Facing The Provision Of Affordable Housing In African Cities, opt-cit., p.4

<sup>3</sup> Zambia Country Assessment Report: Upgrading Low Income Settlements. World Bank; January 2002

province. Zambia's economic decline has eroded many of the benefits of urban living.

Recent poverty assessment reports estimate that almost 80 percent of the urban population lives below the poverty line. Poverty and HIV/AIDS have led to decreased urban growth rates in recent years of between 5 and 6 percent.<sup>4</sup>

The City of Lusaka covers an area of 360 square kilometers (the total municipal area is approximately 423 square kilometers). Much of this area is underutilized, and over 20 square kilometers have not yet been urbanized. There is thus room for expansion. About 70 percent of Lusaka's population lives in poor, unplanned settlements comprising 20 percent of the city's residential land.<sup>5</sup>

During the copper boom that followed the country's independence, Zambia's cities developed quickly and, from a spatial viewpoint, inefficiently. Previously, towns were not intended to be permanent homes for the majority of the country's workers; thus, legal tenure and the provision of housing and amenities for informal residents were not

---

<sup>4</sup>Zambia Country Assessment Report: Upgrading Low Income Settlements, Opt-Cit, p.2

<sup>5</sup> Ibid

priorities. With prosperity and rapid urbanization, the republic's new government installed sophisticated and costly urban infrastructure, confident that copper export earnings would provide for its support and maintenance. In fact, however, the infrastructure soon became dilapidated, and operation and maintenance costs let alone those for debt service remain unrecovered.

The years of central planning created another, perhaps more significant problem: the development of a culture of dependence on the state and the top-down provision of services, which has resulted in citizens not expecting or wanting to pay for services enjoyed and consumed. Zambia's 1991 Local Government Act attempted to reverse this centralization, giving the country's 22 city and municipal authorities greater autonomy and responsibilities. However, it did not provide corresponding resources, thus continuing the decline of urban infrastructure and services.

In parallel, poverty and the lack of a sustainable housing policy have led to urban growth being absorbed into informal settlements. The ever-increasing poverty (a recent study showed that in Lusaka's Kamanga settlement, the lowest income group which was one-third of the population spent over 90 percent of its income on food alone) means that, even if willing, many do not have the ability to pay for the level of service offered. Thus housing is not

affordable and authorities have few resources with which to improve or maintain infrastructure and services.

The housing, health, and environmental conditions in the growing informal settlements of Zambia's cities consequently are extremely poor. As Anna Tibaijuka, Under Secretary-General and Executive Director of the United Nations Human Settlements Programme (**UN-HABITAT**), aptly observed in a press briefing on her recent mission to assess the scope and impact of "Operation Murambatsvina" in Zimbabwe. She said that the challenges of urbanization, playing out in a catastrophic fashion in Zimbabwe, were quietly but surely playing out in the whole of Africa, the world's fastest-urbanizing continent. With 37 per cent of its population already living in cities, Africa would cease to be a rural continent by 2030. When a country tried to clean up cities and set things right, a crisis like the one unfolding in Zimbabwe could be unleashed.<sup>6</sup> In light of this timely counsel, it is only right and proper that a viable policy and legislation on housing is sought.

---

<sup>6</sup>A Press Conference by Special Envoy on Human Settlements Issues in Zimbabwe. UN-HABITAT, 22 July 2005

## POST INDEPENDENCE HOUSING POLICY AND LEGISLATION

At independence, Zambia's urban population exceeded a quarter of its national population, thereby placing it among the most urbanised of black African states. A factor contributing to this urban increase was the removal of legal barriers to rural-urban migration. At that time the Ordinances limiting urban residence to job-holders were struck from the statute books.

Following Zambia's independence in 1964, the new Ministry of Housing and Social Development was given the responsibility for mapping out an overall housing and urban development policy. Subsequently the Ministry of Provincial and Local Government was assigned responsibility for housing policy throughout Zambia. Within that Ministry the Department of Town and Country Planning determined land use; and the Zambia Housing Board provided site plans, house plans and technical services for house construction. In addition, the Housing Board maintained control over the Direct Building Organisation which built access roads, water supply systems and sewers for government house construction only. Thus, government continued to provide medium density housing for the middle class. Yet one of the

standing instructions to the Ministry of Provincial and Local Government was "particularly to foster home ownership schemes through self-help for people of modest means."<sup>7</sup>

Schemes for low-cost housing which the colonial administration had instituted did not prove adequate to the needy. Private industry was no longer interested in taking on low-income housing projects. Public funds, building skills and supervisory talent were not sufficient. Pressed increasingly for a solution that was potentially equal to the problem and consistent with the ideal of Zambian Humanism which emphasised the dignity of each human being, government planners turned towards finding ways to encourage Zambian town dwellers to construct their own houses.

Thus, in 1967 the government launched a new program called the "Aided Self-Help Site and Service Scheme" to pararell with its other efforts in low-cost housing. The government Aided Self-Help Site and Service Scheme was initiated as a major means of attacking the squatter housing problem. The **First National Development Plan (FNDP)**, 1966-1970, stated:

---

<sup>7</sup> **Chawama Self-help Housing Project, Kafue Zambia.** Paper by American Friends Service Committee. Philadelphia 1975. In Cooperation with Kafue Town Council and the Republic of Zambia, p. 8

**"It will be seen that much emphasis is placed on site and service schemes which will provide plots with adequate services where people in the lower income groups or self-employed can, by their own efforts in cooperation with others, build accommodation suited to their needs. The efforts and resources of our people are here harnessed in the schemes which will play a major part in the solution to our housing problem. The greatest possible assistance and guidance will be afforded to the schemes."**<sup>8</sup>

Under this national programme a local government body, such as a township council, in cooperation with other government bodies at the national level, makes plots of land available to would-be homebuilders on a ten-year renewable lease basis. These plots were of two types, namely basic and standard. The basic plan provided for a water tap for every four houses and a sanitary pit privy for each plot. The standard plot plan provided for running water for each house and a water-borne sewage. All sites were serviced by government roads and municipal trash collection. The township council was responsible for administration of all housing tracts and the technical supervision necessary for construction. Site plans were to be approved by each local council; and financing was carried out through them.

---

<sup>8</sup>Ibid



## CONCLUSION

It is clear from the above discussion that immediately after independence nothing revolutionary happened in terms of legal reforms in so far as the problem of housing was concerned. In spite of the wish by the then Zambian government to provide a decent shelter to its citizens, no corresponding legislation was passed to achieve that particular objective. It was only after the **Second National Development Plan (SNDP)** that the 1974 Housing (Statutory and Improvement) Areas Act<sup>9</sup> was passed. This will be discussed in detail in the second chapter. The "British modeled" Town and Country Planning Act<sup>10</sup> regulated and still regulates land use in many areas. The failure, therefore, of the **FNDP** to combat the problem of squatter settlements was imminent.

---

<sup>9</sup> Chapter 194 of the Laws of Zambia

<sup>10</sup> Chapter 283 of the Laws of Zambia

## CHAPTER TWO

### HOUSING LEGISLATION AND POLICY UNDER THE SECOND NATIONAL DEVELOPMENT PLAN (SNDP) 1972-1976

#### INTRODUCTION

It can be observed from the previous chapter that prior to the publication of the Second National Development Plan (SNDP) 1972-1976 unauthorised settlements were considered as temporary housing units. Government's policy was to provide as many housing units as possible through Self-Help Site and Service Schemes. When this proved too costly, requiring higher and more stable income than most prospective residents could afford, housing policy shifted towards the upgrading of squatter areas. The new policy was foreshadowed in the SNDP (1972-76). Squatters' areas, the planners observed, represented social and economic assets. Since the demolition of houses, whether good or bad, was not a practical solution, the recommended remedy was to replant the settlements and give them essential services.<sup>11</sup> Simons observed that it is a realistic policy that acknowledges the failure of public authorities to provide housing of approved standard for two-thirds of the urban population. Those affected build their homes without loans from banks, building societies or government funds. Ignoring the law of private property, they extend the traditional system of land tenure to the towns, make do with meagre

---

<sup>11</sup> Slums or Self-Reliance? Urban Growth in Zambia. UNZA: Institute of African Studies, p. 23

resources, improve their dwellings as best they can, and, in village style, cultivate large gardens on nearby vacant land. By introducing an element of rural living the shanty dwellers strike more of a balance between town and country than the policy makers are able to achieve. This display of fortitude, self-reliance and capacity to adapt is not enough, however, to reduce the social inequalities inherent in a system that sanctions sub-standard housing for a large section of the working people.<sup>12</sup>

Housing policies and practices involve conflicting social objectives. Existing institutions favour investment in high quality houses for the favoured few. On the other hand, Humanist conceptions of social justice gave priority to essential services for the deprived majority. The choice depended on what people could afford and partly on the social forces that determined the method of allocating funds, materials and labour. The then Minister of Local Government and Housing, Mr. Matoka, when presenting the Housing (Statutory and Improvement Areas) Bill before Parliament highlighted the essential principles for housing in the SNDP:

**“The SNDP laid down certain essential principles for housing in Zambia, namely:**

**(a) that squatter compounds have to be improved**

**(b) that the government’s principal role is to assist in developing service sites so that Zambians can become home-owners through self-help.**

**Added to this is the fundamental problem which all countries in the whole world have to face...This is that dealing in land and home-ownership should be the privilege of every man and not just the privileged few. In order to**

---

<sup>12</sup> Ibid

achieve this, a country has to break away from a lot of traditional and historical land law and get rid of all the mambo jumbo to make dealing in land as simple and as cheap as possible.”<sup>13</sup>

The Minister was very optimistic that legalising squatter compounds would lead to improved housing standards in those areas:

“It also recognises that at present the squatters are occupying land illegally-they live constantly under the fear that any day they may be forced to move. This Bill takes care of that. Very few people may have to move to provide roads and other services. But everyone will have his occupancy legalised. *We strongly believe once the fear of forceful eviction has been removed the inhabitants will improve their houses to unbelievable standards.*”<sup>14</sup>

#### **THE 1974 HOUSING(STATUTORY AND IMPROVEMENT AREAS)ACT<sup>15</sup>**

This Act provides for the control and improvement of housing in certain areas and for matters connected with the same. Apart from the regularisation of the tenure the Housing Act also introduced a simplified system of land administration in areas where the Act applied. For instance, all dealings in land covered by the Housing Act are registrable at the Council Deeds Registry wherever they are established.<sup>16</sup> The Act sought to make housing affordable to the low-income groups. As a consequence, the Town and Country planning Act does not apply to areas covered by the Housing Act since the building standards requirements under the former Act prove to be beyond the reach of low-income groups. In this vein, the provisions of any written law in so far as they are inconsistent

---

<sup>13</sup> **Parliamentary Debates of the 1<sup>st</sup> Session of the 3<sup>rd</sup> National Assembly.** 23<sup>rd</sup> July-2<sup>nd</sup> August 1974. Lusaka: Government Printer

<sup>14</sup> Ibid. Italics mine

with the provisions of the Housing Act shall not apply to any land comprised in a Statutory Housing Area or an Improvement Area.<sup>17</sup>

It has been previously noted that the site and service scheme and squatter upgrading programmes are the two strategies adopted by the government to tackle the problem of housing for the low-income groups. The Housing Act provides for the declaration of site and service schemes and squatter upgrading areas as statutory housing areas and improvement areas respectively. However, there are two conditions that must be fulfilled before making such declarations, namely;

1. The area must be held by the Council in fee simple or by way of leasehold from the State. However, all land previously held in fee simple was by the Lands (Conversion of Titles) Act converted to statutory leasehold for a maximum period of 100 years.

2. Local authorities in whose jurisdiction the area falls must prepare a statutory housing area plan in case of a site and service scheme and an improvement area plan in case of squatter upgrading. Both plans must be approved by the Surveyor-General and later deposited by the Local Authorities with the Surveyor-General, Commissioner of Lands and the Registrar of Lands and Deeds Registry.

According to section 4(2) relating to site and service areas and section 37(2) relating to improvement areas the plans are required to contain the following particulars;

---

<sup>15</sup> Cap 194 of the Laws of Zambia

<sup>16</sup> Section 11 Cap 194 of the Laws of Zambia

<sup>17</sup> Section 2 Cap 194 of the Laws of Zambia

- a) Name and description by which the Statutory Housing Area or Improvement Area is known or is to be known
- b) The existing roads if any
- c) The roads proposed to be constructed
- d) Existing areas for common use
- e) Proposed areas for common use
- f) In the case of a Statutory Housing Area Plan, the area and dimension of each parcel of land identified by a serial number. In the case of an Improvement Area plan, the location of each building identified by a serial number

The Housing Act confers two types of 'interests' in land namely leasehold in areas declared Statutory Housing Areas and licence in areas declared Improvement Areas. Thus in Statutory Housing Areas Council certificate of title are issued for a period of 99 years and subject to renewal if the covenants are complied with. Inhabitants of Improvement Areas are granted licences for period of 30 years.<sup>18</sup> Clause 7 of the 5<sup>th</sup> Schedule of the Housing Act stipulates that the licence confers no tenancy upon the occupant. It clear that a licensee at common law is one who is allowed to do that which would otherwise amount to trespass. Thus, occupants in Improvement Areas do not have title to land. Furthermore, a local authority may after giving not less than three months notice to the licensee revoke an occupancy licence on the grounds that the licensee has breached the covenant or has failed to pay the prescribed fee. The preceding propositions have a net effect of depriving licensees in Improvement Areas of security of tenure. The justification could be that since structures in such areas are unplanned developments, a

---

<sup>18</sup> Section 39(3) Cap 194 of the Laws of Zambia

Local Authority, in the course of improving these areas, may deem it fit to order the removal of certain houses to facilitate construction works. The truth, however, is that investing in housing at any level is directly proportional to the perception of security for non-removal.

The rights and obligations of holders of occupancy licences have been prescribed in the Housing Act. The occupants are not in the first instance allowed to build, use or let or in any way deal with any dwelling without an Occupancy Licence.<sup>19</sup> Furthermore, the holder of an Occupancy Licence shall have rights and obligations in respect of the piece or parcel of land to which the licence relates and in respect of any dwelling or other building constructed therein as may be prescribed.<sup>20</sup> It is clear therefore that term licence by definition imports the absence of any estate or interest in land to which it relates.

The obligations of a licensee can be summarised as follows;

- a) To pay a charge for water supplied to the Improvement Area
- b) To pay a charge for sewage service if supplied to the Improvement Area
- c) To pay a charge in lieu of rates based on the value of the average of the nominal dwelling and out-buildings within the Improvement Areas
- d) To make the foregoing payments whether the same are demanded or not
- e) Occupy the premises as a residence for himself and the immediate family only
- f) To keep the premises clean and tidy
- g) Not to sub-licence or assign without the previous consent of the Council

---

<sup>19</sup> Section 39(1)

<sup>20</sup> Section 39(5)

The rights and duties of a tenant in a Statutory Housing Area are similar to those of tenant for a fixed term at common law. It is worth noting that a licensee covenants to occupy the premises as a residence of himself and the immediate family only. However, there is no definition of the expression immediate family. It is presumed to mean the nucleus family. The rationale may have been to prevent overcrowding and discourage migration by rural dwellers to urban areas.

### **PERFORMANCE OF THE HOUSING(STATUTORY AND IMPROVEMENT AREAS)ACT 1974**

The Housing Act has major weaknesses with regard to its restrictions on private sector participation in housing schemes. This Act provides for the control and improvement of housing (statutory housing areas and improvement areas) and is considered the principal legislative document on upgrading regulations; it also provides for the issuance of certificates of title and occupancy licenses, which give security of tenure. The Act precludes other laws from applying to areas of its jurisdiction. However amendments are needed to bring the Act in line with market-oriented housing delivery mechanisms and to better address the unplanned settlement situation. While some squatter upgrading has continued to take place, and some new site and service schemes have been opened, there has been no significant allocation of resources either to comprehensive squatter upgrading or to the construction of additional low-income housing.

A research carried out by **Karen T. Hansen** revealed that Lusaka residents are making do as best as they can with regard to shelter. Increasingly, they are becoming tenants and lodgers rather owners. She noted that in view of Lusaka's shortage of low-income housing,, it is not in the least surprising that commoditization of low-income housing is



taking place in the form of the renting out of rooms by owner-occupiers or even absentee landlords.<sup>21</sup> While such subletting is illegal, its growing incidence across Lusaka's high density housing areas demonstrates not only marked differentiation in housing access in general but also unequal distribution within specific residential areas. **Simons** averred that the determining factor in a competitive capitalist economy is the relation between supply and demand on the property market. Property values rise with urban growth and development; scarce plots are exchanged at many times higher than their original cost; and landlords, both in shanty towns and authorised settlements, are in a position to extract high rents from homeless people. Newcomers and newly married couples have great difficulty in obtaining accommodation at rents which they can afford, and may be forced to erect unauthorised dwellings, the nucleus of new shanty communities, in the peri-urban area.<sup>22</sup>

The major contribution to Lusaka's urban growth during the 1970s and 1980s came from increased squatting and the subdivision of plots and construction of rental rooms in low-income areas. It is likely that more and more of Lusaka's future urban residents will live in rented rooms and the rate of commercialisation of rentals that already is taking place in site and service schemes and squatter settlements will increase dramatically in scope. This must be food for thought for urban planners. The low-income housing question was for many years approached with the presumption that houses, even in low income areas, are occupied by owners. The renting out of rooms that is increasing in scope in many

---

<sup>21</sup> Schlyter, A (ed.) 1996. A Place to Live: Gender Research on Housing in Africa. Stockholm: Gotab, p. 130

<sup>22</sup> Slums or Self-Reliance? Urban Growth in Zambia. opt ,cit .p. 27

cities throughout Africa and the absentee landlordism and subletting that now is taking place in townships like Mtendere cast additional critical light on that assumption.<sup>23</sup>

The compliment to public ownership of land is public ownership of housing in urban and peri-urban areas. This is the indicated remedy for housing inequalities and deficiencies. The common objection that public housing absorbs capital needed for production reproduces the argument used by colonial capitalism to support its policy of sacrificing workers welfare to promote the export of minerals. The argument is flawed in two dimensions of production as **Simons** aptly puts it: Investment in housing has a multiplier effect on the domestic manufacture of building materials and household goods; and, by raising housing standards, improves the health of workers and their efficiency.<sup>24</sup>

Since the mid 1980s, the Zambian government policy on housing has neglected the rental housing market in favour of owner-occupancy. **Karen T. Hansen** is of the view that the time is long overdue for urban planners of low-income housing in rapidly growing cities like Lusaka to envision different scenarios than owner –occupied housing which is far too costly for the poorest population segments. The low-income housing question in Africa's strained economies may well hinge on the rental housing market, which ought not to remain neglected at policy level. The rental option shifts the housing debate from questions of ownership to issues of access and is independent of men's culturally constructed claim to houses. This the claim that only a man can own a house as he is the head of the family. Above all, rented housing might enable women to get housing in their own right which would contribute an important step toward reducing the inequality of the present housing allocation system, most certainly in Zambia's urban settings.

---

<sup>23</sup> Schlyter, A (ed.) 1996. **A Place to Live: Gender Research on Housing in Africa.** Opt. Cit. p.141

<sup>24</sup> Supra note 9, p. 30

## CONCLUSION

It is clear from the above analysis that the fruits of the Housing (Statutory and Improvement Areas) Act 1974 are yet to be fully realised. The restriction on private sector participation was intended to avoid speculating in land, especially that the then UNIP government regarded landlordism as the “worst form of exploitation of man by man.”<sup>25</sup> Now that the same low-income groups are exploiting each other, it would be prudent to involve the private sector, under the regulatory power of Local Authorities though, in order to boost the provision of housing on the supply side. The Act has not given sufficient guidelines to the Minister as to what factors to consider before declaring a particular area either as an Improvement Area or Statutory Housing Area. Worse still, the Act has conferred on the Minister unfettered power to declare any such areas or parts thereof to cease to be Improvement Areas or Statutory Housing Areas. Such provisions have a potential effect of subjecting the inhabitants in the areas to ‘momentary whims and caprices’ of the politicians, in that politicians, being what they are, may regularise areas that they consider party strongholds and do the exact opposite in other areas. In essence the purported security of tenure in Statutory Housing Areas is still at the mercy of the Minister. The Act does not seem to sufficiently provide for preventive measures of squatter settlements. Although there is provision for the occupation of the occupant and his immediate family only, a provision intended to prevent overcrowding, which has been viewed as a nucleus for squatter compounds, the Act has not specifically provided for any legal sanctions against the perpetrators. It is more or less sending a message that people can make such structures and wait for the Minister to regularise the area.

---

<sup>25</sup> Dr Kaunda's **Watershed Speech**

## CHAPTER THREE

### THE POST 1991 HOUSING LEGISLATION AND POLICY

#### INTRODUCTION

In general, there appears to be a sufficient policy and legislative framework in Zambia regarding the legalisation of unplanned and informal settlements; additionally, both the central and local governments acknowledge the need to recognise and regularise such settlements. The way this regularisation presently works in Zambia is as follows. Currently, the majority of land on which informal settlements are situated is publicly owned. These settlements must be recognized by municipal administrations and regularised (declared) by the national government, through the Ministry of Local Government and Housing (MLGH), so that occupiers of plots within them can obtain security of tenure. The Department of Physical Planning and Housing in the MLGH considers regularising an unplanned or informal settlement if (1) 60 percent or more of the land on which the settlement is located is publicly owned, (2) the settlement has been in existence since 1974, (3) development for which the land is zoned on the development plan is not imminent, and (4) 50 percent or more of the dwelling structures in the settlement are constructed of conventional materials.<sup>26</sup>

---

<sup>26</sup> Zambia Country Assessment Report: Upgrading Low Income Settlements. World Bank; January 2002, p. 20

It was recognized that the physical planning of housing was very much a local government matter. To this end, local authorities are responsible, under the **1991 Local Government Act**, for the following functions: (i) creating capacity in order to provide necessary services; (ii) setting local housing delivery goals; (iii) creating and allocating land for housing purposes; (iv) providing and maintaining infrastructure services to open up land for housing development; (v) enforcing building standards; (vi) regulating land-use and controlling development; (vii) establishing and managing upgrading and site and service schemes; (viii) providing community and recreational facilities in residential areas; (ix) constructing low-cost housing and selling it (or existing housing) at market rates.

Additionally, local planning authorities ensure that land for housing is identified and planned for in good time and that appropriate planning standards are in place for the quick and efficient development of housing. Even though the Local Government Act 1991 attempted decentralising housing planning, it was not until 1996 that a comprehensive policy on housing was established.

## HOUSING POLICY AND LEGISLATION IN OTHER JURISDICTIONS

It is here pertinent to consider the legislation and policy on housing in other developing countries before narrowing it down to our situation. The fact that many of these countries are facing what is termed as 'housing poverty' cannot be overemphasized. The 1996 Global Report on Human Settlements UNCHS (Habitat), defined the concept of 'housing poverty' in the following terms, "... individuals and households who lack safe, secure and healthy shelter with basic infrastructure such as piped water and adequate provision for sanitation, drainage and the removal of household waste."<sup>27</sup> Between 1969 and 1981, approximately twenty (out of about 40) governments in Sub-Saharan Africa (SSA) opted for state ownership of land since it was deemed to be more closely identifiable with the extensive and traditional communal ownership of land associated with African societies. Other governments tried to forge a legal basis for land ownership, which emulated western-style property owning democracies by integrating the two systems of land use through the reform of colonial statutes. Countries like Nigeria, Tanzania and Zambia have adopted the former approach, whilst the latter has involved Botswana, Ghana and South Africa. Both developments have been problematic. Those countries seeking to nationalise development rights have generally registered applications and offered leaseholds for a limited period such as 99 years. Mabogunje asserts that these kinds of reforms have not been successful. Citing the Nigerian experience he claims,

**"Considerable difficulties have arisen over the expeditiousness with which such certificates are issued, the requirements that they must be**

---

<sup>27</sup> Groves, R. Challenges Facing The Provision Of Affordable Housing In African Cities, The School Of Public Policy, Paper presented at ENHR Conference July 2<sup>nd</sup>-6<sup>th</sup> 2004, Cambridge, UK, p. 4

referred back to the governor when such land is being assigned or mortgage (sic) and the practice of many State Governors to use such referrals to raise revenue by charging exorbitant fees for their approval.”<sup>28</sup>

Kombe is even more pessimistic with reference to land policy changes in Tanzania,

**“The National Land Policy approved in 1995 does, in principle, recognize the existence of land markets and aspires to adopt the market mechanism in allocating land. But, in view of the severe public capacity deficiencies, ... the continued monopoly of land supply by a public institution envisaged by the policy would appear to be a non-starter or an ill-advised strategy for addressing the chronic planned housing land shortage.”<sup>29</sup>**

McAuslan observed that with the exception of Botswana, where praise is bestowed on its pioneering Tribal Land Act of 1968 for democratising the land allocation process through local Land Boards and giving these Boards the powers to grant freehold or leasehold rights to land, the land reforms in other countries do not appear to have been particularly successful either. As far as the Ghanaian reforms are concerned, Tipple and Korboe state that,

**“Efforts by the government to ‘modernise’ by reducing traditional land allocation (through...the Administration of**

---

<sup>28</sup> Coventry Mabogunje, A.L.2002. Lessons of experience in housing low-income groups in Sub-Saharan Africa, keynote address delivered at a conference entitled ‘Housing and Urban Development for low-income groups in Sub-Saharan Africa’, Accra, Ghana

<sup>29</sup> Earthscan Kombe, W.J. 2000. Regularising housing land development during the transition to market-led supply in Tanzania, Habitat International, 24 pp167 - 184 Larbi

**Lands Act, 1962) and the nationalisation debates in the late 1970s and early 1980s ... have come to nothing. Land and property are still traditionally held and show little sign of change.”<sup>30</sup>**

The Government of Ghana allocates partially serviced lands practically free of charge. Even in South Africa, where for historical reasons, the issues of housing, land law and tenurial rights have been at the top of the democratic government’s priorities, the initial enthusiasm and commitment which accompanied a wholesale reform programme during the latter part of the 1990s, is now giving way to major criticisms of the way the reforms are being implemented. **Marie Huchzermeyer** comments on the outcome of the housing subsidy programme which has delivered over one million freestanding housing units to low-income groups,

**“It is recognised that the bulk of such housing delivery over the past five years has failed to contribute to a spatial integration of the urban form, and has instead perpetuated spatial inequalities. There is growing acceptance that the overly simplistic market-orientated urban housing policy ... will not overcome race and class-based spatial inequalities such as those cemented in the apartheid urban form.”<sup>31</sup>**

Moreover, as far as those in informal settlements are concerned the conferment of informal tenure has, according to Cross, delivered “fair residential security but not the economic rights to support household-based investment”. But with these new rights to

---

<sup>30</sup> C. Leduka.2003. **Informal Land Delivery Processes in African Cities:** Working Paper 1, The University of Birmingham Renaud,

<sup>31</sup> Huchzermeyer, M .2001. **Housing for the poor? Negotiated housing policy in South Africa,** Habitat International 25 pp303 - 331



ownership there is the realisation that, *“If private tenure is economically unsustainable for the household, the loss of new rights along with previous housing pushes the poor deeper into destitution.”*<sup>32</sup> The principal outcome of these constraints on the operation of the land market is that access to formal land ownership in many African cities is effectively precluded to all but a minority of affluent and influential people. In turn, these circumstances encourage the growth of an informal market in land amongst those who are excluded from the formal market and a dual system emerges.

It is therefore evident that, like Zambia, in many African cities this type of informal land supply greatly exceeds the formal provision and because land, and the various laws which govern its use, are integral to the form of residential development which takes place, these areas become developed as ‘unauthorised areas’, they are constructed without reference to planning codes, they are invariably without basic infrastructure and they sometimes represent health and fire hazards. They range from areas of quite high standard, self-built housing using permanent materials, to some of the poorest areas of squatter settlements. Without legal title, residents of such areas are also penalised in other ways, most notably in their inability to access formal loan finance,<sup>33</sup> but there are many other ways in which residents of informal settlements may be socially excluded from the full rights of citizenship. As Hernando de Soto aptly highlights the problem,

**“The poor inhabitants of these nations (third world and former communist nations) – the overwhelming majority – do have things, but they lack the process to represent their property and create capital. They have houses but**

---

<sup>32</sup> Cross, C. 2002. Why the Urban Poor cannot secure tenure: South African Tenure Policy under Pressure in Durand-Lasserve & Royston (eds) Holding their Ground: secure land tenure for the urban poor in developing countries. London: Bantam

<sup>33</sup> Zambia National Building Society Act does not recognize Occupancy Licences

**not titles; crops but not deeds; businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adopted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work.**<sup>34</sup>

Thus it can be deduced from the above 'fishing' expedition of housing policies in other developing countries that the problem of low-income housing is not only peculiar to Zambia. This is more reason why we should take a leaf from countries in similar situations that have made progress in this area. One such a country is South Africa. When the South African government formulated its New Housing Policy and Strategy after 1994, one of the main thrusts of its strategy was to engage with private contractors to scale-up the output of formally constructed stock in order to meet the huge backlog of housing need. Then, to bridge the gap between the resources of low-income households and the costs of formal construction, various forms of household and institutional subsidies were introduced.<sup>35</sup> Thus South Africa is developing a supply side capacity in housing delivery, which is sustainable.

Current policy thinking by the United Nations Human Settlements Programme has resulted in a commitment through its Millennium Declaration to improve the lives of 100 million slum dwellers by 2020. This is to be achieved through a global initiative entitled '**Cities without Slums**' and accompanied by a campaign advocating action plans to

---

<sup>34</sup> Soto.2002.**The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else**, Bantam: London Durand-Lasserve,p.106

<sup>35</sup> Republic of South Africa, (1996) **A New Housing Policy and Strategy for South Africa**, Department of Housing, Pretoria, p. 14

ensure the extension, where possible, of security of tenure to the inhabitants of such areas. A second implication of these constraints on the operation of land markets is that they effectively preclude the development of a house-building industry and all the 'backward' and 'forward' economic linkages that this entails. An effective house-building industry is essential to increase the supply of housing, reduce the overall housing shortage and seek to drive down costs. The 'backward' and 'forward' linkages create employment and reduce the need for the expensive import of materials. For it is a truism that within a capitalist economy a secure supply of land with good title is the life-blood of the commercial house-builder.

### **THE 1996 NATIONAL HOUSING POLICY DOCUMENT**

This document is the brainchild of Ministry of Local Government and Housing. The Paper pointed out that informal housing constituted 69 per cent of the nation's housing stock of 13 million dwelling units. It acknowledged the fact that in a situation where land delivery for formal housing is slow, and where not much deliberate effort is put in place to facilitate housing development, informal housing is the inevitable vacuum filler with perhaps a more positive than negative impact on the housing stock.<sup>36</sup> The following are the main characteristics of informal housing:

- a) housing units are owner-built and may not conform with any standard in design, construction materials and workmanship;
- b) lack of security of land tenure; and
- c) low levels of infrastructure and services provision.

The policy also recognized the specific problems related to housing the disadvantaged people. It was identified that the existing housing institutions catering for the disabled

---

<sup>36</sup> National Housing Policy Document. 1996. MLGH. Lusaka, p. 12

and aged do not adequately meet the needs of this sector of the population. The existing infrastructure has not been maintained due to lack of funds rendering such housing unfit for human habitation. Most buildings in the country were designed without due consideration for the disabled. Institutional housing for the disadvantaged groups is mostly located far from facilities and amenities. Above all, the Paper further acknowledged that the lack of data on the disadvantaged has hampered the development of housing for the disabled.

The main goal of this housing policy, nonetheless, is to provide adequate affordable housing for all income groups in Zambia.<sup>37</sup> To achieve this goal the following objectives have been set:

- a) an allocation of a minimum of 15 per cent of national annual budget to housing to support a sustainable housing development programme;
- b) making serviced land available for housing development and streamlining the land allocation system;
- c) streamlining of building standards, regulations and other controls so that they accord with the capabilities, needs and aspirations of the various sections of the population;
- d) encouraging the production and use of local and affordable building materials;
- e) assisting the poor to acquire decent shelter through alleviation of their affordability problems
- f) fostering housing areas that are functional, healthy, aesthetically pleasant and environmentally friendly; and
- g) the preparation of a national housing implementation strategy.

---

<sup>37</sup> Ibid, p. 15

The then Minister of Local Government and Housing, Mr. Mwiinga, aptly observed:

**“A good housing policy...is only as good as it is implementable.**

**Thus, however noble the goals and objectives of the housing policy, it will remain an illusion as long as the necessary financial, institutional and human resources are not applied for its realisation.”<sup>38</sup>**

To these anticipated constraints, the policy enunciated some implementation approaches. Such approaches include, inter alia, putting housing in a central position in national policies alongside health and education, mobilising housing finance from the public sector, the private sector and from international agencies and giving positive incentives to individuals and institutions to invest indirectly into housing or directly through an approved housing finance system.

As regards site and service schemes the document recognises the prevalence of inadequate housing among urban and rural dwellers alike. Thus, proposed giving of support to the principle of assembling and allocating land for making available site and service schemes. The schemes must include the provision of a minimum level of basic services like potable water, sanitation, drainage, street lighting, refuse disposal and community services appropriate in urban and rural areas. The principle of a discretionary approach to settlement upgrading is supported whereby settlement programmes adopt self-help and community participation approaches in the provision and maintenance of the infrastructure. Communities must be encouraged to articulate their shelter needs through residents' assemblies. The policy sought to revise building

---

<sup>38</sup> National Housing Policy Document. opt. cit. p. 28

and construction standards so that they become functional and performance based rather than prescriptive.<sup>39</sup>

It is trite that the policy could only be realised within an enabling legal framework. Thus, it was realised that adopting these housing development strategies and programmes will involve changes to existing legislation. Chief among the pieces of legislation in need of review was the National Housing Authority Act which gives the National Housing Authority(NHA)<sup>40</sup>, a body corporate and player in the delivery of housing, the sole responsibility for the management of the housing portfolio, including policy. There is a clear need to review this legislation for it to accord with the prevailing socio-economic structure which allows for competing actors in the supply of goods and services. For it is a truism that the law has to adjust to changing circumstances. The other pieces of legislation that were proposed for necessary amendments are the Housing(Statutory and Improvement areas)Act 1974, Local Government Act 1991, Public Health Act, Town and Country Planning Act, Land Survey Act, Land Acquisition Act, Building Societies Act, Rent Act and the Rating Act.

In order to provide the necessary institutional support for housing development, it was proposed that the housing portfolio receives attention it deserves in the central government structure. Thus, the functions of the Ministry of Local Government and Housing needed to be reviewed to include the following:

- a) determine, prepare, monitor and evaluate the performance of the National Housing policy and the National Housing development strategy;

---

<sup>39</sup> National Housing Policy Document. Opt. Cit. p. 19

<sup>40</sup> CAP 195 of the Laws of Zambia

- b) facilitate a systematic and appropriate increase of the national apportionment of state budget to housing;
- c) initiate the establishment of a funding framework for housing;
- d) be responsible for overseeing and co-coordinating activities of national, statutory and facilitating institutions(e.g. NHA, NGOs);
- e) monitor national, provincial and local performance of housing delivery;
- f) promote gender issues in shelter development and;
- g) account to parliament for the performance of the housing sector against set targets and efficient parameters.

Moreover, the 1996 Housing Policy retains the principle of home ownership as a means of providing security, stability and economic power to the family unit and as a basis for the development of economically strong and motivated communities.

## **REVIEW OF THE 1996 NATIONAL HOUSING POLICY**

By acknowledging that informal housing would fill the larger part of housing stock in Zambia, one would expect that, of the 15 per cent of the annual budget towards housing, at least 10 percent or more would have been specifically reserved for upgrading informal settlements. The document only recommends 15 per cent of the annual budget for housing generally. Moreover, there does not appear to be a clear policy and strategy as to how to deal with informal or unplanned settlements. In July 1997, the Research Unit of the Lusaka City Council (LCC), with Irish Aid assistance, carried out a community profiling survey of nine unplanned settlements. Using participatory urban appraisal methods,

the exercise aimed to acquire both qualitative and quantitative data on 9 of Lusaka's 13 illegal settlements to facilitate the formulation of strategies and programmes through a participatory process. In summary, the survey found the following:

- There is significant informal trading activity (by approximately 25 percent of household heads).
- About 12 percent of household heads reported that they were unemployed.
- Over 80 percent of the households surveyed have monthly incomes less than ZK100,000 (US\$50 in 1997).
- Approximately 11 percent of respondents had never attended school; 41 percent had completed primary education; 18 percent, junior secondary school; and 15 percent, senior secondary school. Education up to this level is rarely sufficient to obtain entry to formal employment.
- Water is supplied from the Lusaka Water and Sewerage Company's (LWSC's) piped supply, boreholes, or hand-dug wells: the former source is erratic, while many of the stand posts have been vandalized; the piped supply and boreholes are unsafe.



- Less than 50 percent of survey respondents said they paid for the water they use.
- Over 80 percent of the respondents said water distribution is poor.
- Over 90 percent use basic unprotected pit latrines, which pollute the groundwater drawn from the shallow wells; over 60 percent of households share latrines.
- There is no systematic waste collection.
- Mean household size is six persons.
- Houses are mostly informal, are not made from plans, and are generally built by the resident(s).
- Construction is predominantly concrete block walls and corrugated iron or asbestos sheet roofs.
- Over 65 percent of survey respondents said they own their plot or house, but only about 12 percent actually have title deeds to the land; thus, the owners do not have security of tenure.
- Roads are of unpaved gravel and in poor condition with no drains; many are impassable in the rainy season.
- For improvement, 65 percent of surveyed residents preferred an upgrading option and 30 percent a relocation option, provided a fully serviced plot and house were provided.

The issues cited by residents were, in rank order: illegality of residence and the general lack of water, school, roads, sewerage/drainage/sanitation, security, building space, clinic, community center, employment, and loans.<sup>41</sup> There are 37 informal settlements in and around Lusaka, made up of 9 old sites and services settlements and 28 squatter settlements, of which 13 had not been regularised (or "declared") until 1998 . These are located predominantly to the north, northwest, and south of the central business district.<sup>42</sup> In 1999, the Ministry of Local Government and Housing declared 10 further informal urban settlements as "improvement areas" under the terms of the Housing (Statutory and Improved Areas) Act. The upgrading of declared and regularized low-income, unplanned or informal settlements tends to follow a government "subsidy" approach. In most projects, no attempt is made to recover any of the capital costs of infrastructure provision, down to the secondary and tertiary or local infrastructure. The replicability of most of the current approaches to upgrading Zambia's informal settlements is thus

---

<sup>41</sup> Lusaka City Council Community Profiling Survey of Nine Unplanned Settlements Research Unit - Lusaka City Council July 1997 Basic social planning survey

<sup>42</sup> Sustainable Lusaka Programme Report UNDP/LCC2000 "Outlines objectives, resources, management and eval. Of 1999 SLP"

questionable and can only work where government has funds (often supplied by donors) to finance a subsidy. The National Housing Policy document of 1996 identified the need for more than 860,000 housing units and recommended construction of 110,000 units per year. The policy suggests that 15 percent of the national budget should be spent on building houses annually, but the actual amount spent and the rate of construction have been falling far below the target. **"Due to budgetary constraints, we have been receiving 2 percent instead of 15 percent, which means that investment in the housing sector is negligible,"** said Sylvia Masebo, then Minister of Local Government and Housing. **"We have not been able to meet our targets and the population has been growing at a very fast rate."**<sup>43</sup>

It is not surprising therefore that the state-owned National Housing Authority (NHA) has large reserves of prime land for housing in the major cities but lacks the financial capacity to make use of it. The numbers of new housing units it is able to complete per year are in the hundreds rather than thousands.

---

<sup>43</sup>info@worldreport-ind.com ~June 2005

With such a chaotic financial response, Zambia, like other countries with low-cost recovery of capital costs, must apart from adopting low technical standards ensure that upgraded infrastructure and services can be operated and maintained. Thus, funds for adequate operation and maintenance including replacement must be generated either through community structures or through local authority and commercial utility structures. One option, a **World Bank Report**<sup>44</sup> suggests, is to grant residents secure tenure, and, where the city operates a property tax system, to rate properties in order to generate revenues for operations and maintenance.

## CONCLUSION

Poverty deprives many of Zambia's citizens of their right to proper housing. As Glynn A. C. Khonje, Director of the Department of Physical Planning and Housing, rightly put it: *"A necessity for adequate housing is finance, which the poor have little access to, partly because they have no jobs."*<sup>45</sup> This is all the more reason why the 1996 Housing Policy Document should have deliberately apportioned a significant percentage of the annual budget to low-income housing.

---

<sup>44</sup> Zambia Country Assessment Report: Upgrading Low Income Settlements. World Bank; January 2002

<sup>45</sup> [info@worldreport-ind.com](mailto:info@worldreport-ind.com) -June 2005

The policy document called for amendments to various legislations most which to date have not been touched. This reluctance by the lawmakers can be the main reason why the benefits of the policy have not reached the grassroots. For instance the current Rent Act has been viewed by some quarters to perpetuate squatter compounds. Habitat for Humanity national co-ordinator Alexander Chileshe was quoted, as saying that there is need to review the national housing policy in the country. In an interview, Chileshe said the problem of housing was becoming prominent in the country where rentals were going up every day. He said this was forcing people to establish unplanned settlements because the housing cost was becoming unbearable. *"We need to review the housing policy which hasn't been reviewed since 1996; the government alone cannot work to provide a conducive living environment for its people. The government needs to work with the civil society and non governmental organisations because the housing situation is not getting better,"*<sup>46</sup> he said. In this vein, it is submitted that, even though the current housing policy is very comprehensive in many areas, more affirmative action is required if it is ever going to address the issue of squatter compounds.

---

<sup>46</sup> Post Newspaper. July 19, 2005. Lusaka

## CHAPTER FOUR

### RECOMMENDATIONS AND CONCLUSION

Access to shelter is not only a necessity but also a human right. For this reason it is only right and proper that a legislative framework that stifles access to housing for all is not desirable. It follows from this that the government must formulate a workable policy on the same. The chief legislation on housing for the low-income groups in this country is the **Housing (Statutory and Improvement areas) Act**. The major flaws of this Act were discussed in detail in Chapter two. In this section the author pin points certain provisions that need amendments.

Sections 4(1) and 37(1) must be amended to curb the possible abuse of power that can arise as result of wide discretionary powers conferred on the Minister. It should be amended to provide for sufficient guidelines. Sections 5(1) (i) & (ii) and 39(2) need to be amended to allow for private sector participation in housing delivery. These sections proscribe the Council from issuing more than one plot to an individual. It also forbids such issuance to anyone engaged in the business of real estate. It is submitted that such provision inhibits housing development for if we allow private individuals to participate in housing delivery the supply of finished houses will increase tremendously. The benefits being that houses for both rental and sale will be cheaper, thus increasing access to housing for the low-income groups. A random survey carried out by this author in

Garden township, one of the areas designated as an Improvement Area in Lusaka, revealed that local 'landlords' are subletting their houses to tenants, mostly 'migrants' from rural areas, at exorbitant prices. A bed seater, that is one room, with no electricity, no piped water within the yard, with a pit latrine, is fetching ninety thousand kwacha (K90, 000) per month. It can be deduced from this that retaining these provisions of the Housing Act is not helping the people it intended to benefit. Rather, it is escalating the already existing housing crisis. Therefore an amendment will put the Act in line with the 'living law'.

It is undeniable that provision of houses for the low-income groups can best be handled by the local authorities. This is more reason why the **Local Government Act 1991** focused on decentralization. However, we have much to learn from the Botswana **Tribal Land Act** of 1968, which devolved the cardinal powers of land use to local Land Boards. Section 65(2) of the Local Government Act 1991 grants the Council to power compulsorily acquire land for public purposes but only through the cumbersome process of writing to the President so that he invokes his powers under the **Land Compulsory Acquisition Act**.<sup>47</sup> It is submitted that this section must be amended to allow the council exercise that power on its own since it is more familiar with the local land situation. The Council can thus use the land so acquired to develop new areas for housing. This calls for increased funding to the local authorities to compensate the victims of such actions. One method of securing such funds is to allow constituent development funds (budgetary allocations to constituencies) to be solely handed by the Council. Thus section 45(1) of the Local government Act must be amended to do away with the Minister's

---

<sup>47</sup> Cap 189 of the Laws of Zambia

determination on the matter. In a nutshell, this piece of legislation confers so much power on the Minister such that the existence of an autonomous Local Government system is an illusion.

The **National Housing Authority Act** other than establishing the National Housing Authority, a body corporate, as the sole actor in housing including policy thereof, should have provided for Provincial Housing Boards to advise Government on the same at provincial or regional level. This can enhance efficiency in housing delivery. To encourage financial institutions to provide credit to low-income groups, the government must introduce Mortgage Indemnity Schemes (MIS) as is the case in the Republic of South Africa. These schemes are aimed at indemnifying such institutions against any losses within specified amounts. Housing programmes are much more effective when they take into account the different roles and needs of their targeted beneficiaries: men, women, boys and girls. Women play multiple roles as homemakers, caretakers of children and the elderly and breadwinners, working both within and outside the home. Their multiple roles create special requirements for living and working space as well as for basic services, including day care and transport. The design of housing and the provision of basic services should take into account the different perspectives and requirements of women and men, especially the disabled. There is no law in this country that makes it mandatory that houses should be designed in such a way as to accommodate the disabled. Housing schemes are more likely to succeed when they take into account the economic, social and cultural roles assigned to women and men and the different needs they have for space, privacy, security and basic services. Women who work for



income at home, for example, require work and storage space. In cultures where they are confined indoors, they need room to combine domestic chores with child-care responsibilities, and they also need an area in which to socialise with other women. An example of gender insensitivity in housing design is the following Egyptian scenario: Fatima lived with her extended family in a small apartment in a Cairo slum with no running water. Her husband was a street vendor and Fatima helped supplement the family's income by working as a domestic servant whenever she was able to find someone to watch her children. The family became eligible for public housing and moved to an even smaller apartment in another part of the city. Although the apartment had running water, there were no communal areas for child-care and socialising with other women and no afternoon transport to other parts of the city, which forced Fatima to stop working. The family had relocated, but with no corresponding improvement in their living standards.<sup>48</sup> Therefore the **1996 National Housing Policy Document** must be reviewed to encompass such cardinal matters.

It would be illusory to talk about the right to shelter when the most important law of the land does not include it in the Bill of Rights. It is not surprising therefore that there is provision in the **(Mung'omba Commission) Draft Constitution** to that effect.<sup>49</sup> Nonetheless, it is saddening that the issue of locus standi<sup>50</sup> even in the Draft Constitution remains to a large extent the same as in the current Constitution. Article 86 provides as follows:

---

<sup>48</sup> [cyberschoolbus@un.org](mailto:cyberschoolbus@un.org)

<sup>49</sup> Article 69(1) of the (Mung'omba Commission) Draft Constitution

<sup>50</sup> Locus standi is a Latin expression used in law to denote a right to move the court

**“Where a person alleges that a provision of this Part (IV) has been, is being, or likely to be contravened in relation to that person, without prejudice to any other action, that person may apply for redress (before a court of law).”**

This entails that only the victim of such human right violation can bring up an action before the court of law. It need not be emphasized that the inhabitants of these squatter compounds are poor and they cannot afford the cost of litigation. It would have been better if the locus standi were extended to the other persons who may not necessarily have a direct interest in the issue. This will enable, for instance, human rights NGOs to take up such much matters in their own names on behalf of the victims. The government can then be compelled by the courts to address or at least take reasonable steps to provide shelter for all. Until the necessary legislative and policy alternatives are taken into account housing poverty will forever be with us.

## BIBLIOGRAPHY

### BOOKS

Cross, C. 2002. Why the Urban Poor cannot secure tenure: South African Tenure Policy under Pressure in Durand-Lasserve & Royston (eds) Holding their Ground: secure land tenure for the urban poor in developing countries. London: Bantam

Schlyter, A (ed.) 1996. A Place to Live: Gender Research on Housing in Africa. Stockholm: Gotab

Soto.2002.The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else, Bantam: London Durand-Lasserve

Slums or Self-Reliance? Urban Growth in Zambia. UNZA: Institute of African Studies

Parliamentary Debates of the 1<sup>st</sup> Session of the 3<sup>rd</sup> National Assembly.23<sup>rd</sup> July-2<sup>nd</sup> August 1974. Lusaka: Government Printer

Zambia Country Assessment Report: Upgrading Low Income Settlements. World Bank; January 2002

### STATUTES

Housing (Statutory and Improvement) Areas Act **Chapter 194 of the Laws of Zambia**

Town and Country Planning Act **Chapter 283 of the Laws of Zambia**

**Local Government Act**1991

National Housing Authority Act **Chapter 195 of the Laws of Zambia**

Land Compulsory Acquisition Act **Chapter 189 of the Laws of Zambia**

Botswana **Tribal Land Act** of 1968

### PAPERS

Chawama Self-help Housing Project, Kafue Zambia. Paper by American Friends Service Committee. Philadelphia 1975. In Cooperation with Kafue Town Council and the Republic of Zambia

A Press Conference by Special Envoy on Human Settlements Issues in Zimbabwe. UN-HABITAT, 22 July 2005

Groves, R. **Challenges Facing The Provision Of Affordable Housing In African Cities**, The School Of Public Policy, Paper presented at ENHR Conference July 2<sup>nd</sup>-6<sup>th</sup> 2004, Cambridge, UK

Huchzermeyer, M. 2001. **Housing for the poor? Negotiated housing policy in South Africa**, Habitat International 25 pp303 – 331

Leduka. 2003. **Informal Land Delivery Processes in African Cities**: Working Paper 1, The University of Birmingham Renaud

Earthscan Kombe, W.J. 2000. **Regularising housing land development during the transition to market-led supply in Tanzania**, Habitat International, 24 pp167 - 184 Larbi

Mabogunje, A.L. 2002. **Lessons of experience in housing low-income groups in Sub-Saharan Africa**, keynote address delivered at a conference entitled 'Housing and Urban Development for low-income groups in Sub-Saharan Africa', Accra, Ghana

**National Housing Policy Document**. 1996. MLGH. Lusaka

**Lusaka City Council Community Profiling Survey of Nine Unplanned Settlements Research Unit** - Lusaka City Council July 1997 Basic social planning survey

**Sustainable Lusaka Program Report** UNDP/LCC2000 "Outlines objectives, resources, management and eval. Of 1999 SLP"

**Post Newspaper**. July 19, 2005. Lusaka

**(Mung'omba Commission) Draft Constitution**

Republic of South Africa, (1996) **A New Housing Policy and Strategy for South Africa**, Department of Housing, Pretoria

## WEBSITES

**info@worldreport-ind.com -June 2005**  
**cyberschoolbus@un.org**