

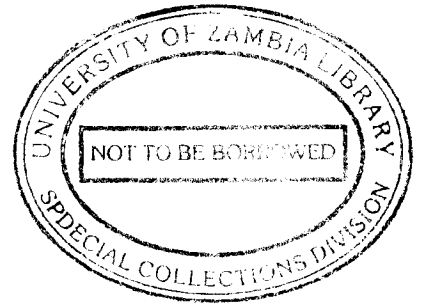
**A PROBE INTO THE PUBLIC HEALTH: THE INCIDENT OF THE
DEVELOPMENT OF SQUATTER SETTLEMENTS VIS-À-VIS THE
LAW.**

BY

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UNZA

2005



DIRECTED RESEARCH

**A PROBE INTO THE PUBLIC HEALTH: THE INCIDENT OF THE
DEVELOPMENT OF SQUATTER SETTLEMENTS VIS-À-VIS THE
LAW.**

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**DIRECTED RESEARCH PAPER SUBMITTED TO THE UNIVERSITY OF
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**A PROBE INTO THE PUBLIC HEALTH: THE INCIDENT OF THE
DEVELOPMENT OF SQUATTER SETTLEMENTS VIS-À-VIS THE
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DATE: 9TH JANUARY 2006

DEDICATION

To

Judy

for her loyalty

and love, and continued intercessions on my behalf and also for agreeing to sacrifice our meager family resources to support my school demands, my parents for their silent encouragement and prayer.

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It takes more than one person to come up with work of this nature. For this reason, I would be failing in my duty and doing a disservice to all the people who contributed to making this essay a reality, if I did not express my profound appreciation to them.

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ABSTRACT

This paper focuses on the development of squatter settlements as a factor that has impacted negatively on public health.

- The problem of unauthorised residential settlements has been an eye sore for quite sometime. The emergence of these slums triggers numerous problems such as illegal invasion of land, the erection of in-hygienic dwellings around urban areas, the illegal water and electricity connections and inhibition of planned use of land. The problem has been persistent despite the government taking measures to avert the problem.
- This expose probes into the continued mushrooming of the squatter settlements in urban areas of Zambia. The lay out of the paper is as follows:
- CHAPTER ONE delves in the genesis and development of squatter settlements in the urban areas of Zambia.
- CHAPTER TWO deals with the colonial government's reaction to the growth of the unplanned settlements in the urban areas of Zambia. The response came

- by way of the introduction of a housing policy. The paper in this respect evaluates the adequacy of the colonial housing policy in a bid to eliminate the squatter problem during the colonial era.
- CHAPTER THREE explores the process of change in the housing policy adopted by the new African Government at independence. This change involved a departure from the colonial housing policy. The paper also evaluates the adequacy of the housing policy in the elimination of the squatter settlements.
- CHAPTER FOUR covers the conclusion which is mainly the advancement of policy recommendations that could help eradicate the squatter problem.

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CHAPTER ONE

1.0 THE GENESIS OF THE SQUATTER SETTLEMENTS IN THE URBAN AREAS OF ZAMBIA

1.1 INTRODUCTION

A squatter has been defined as "a person who occupies land (not being a tenant or tenant holding over after the termination of a tenancy) who has entered into or remains in occupation of the land without a licence or the consent of the person entitled to occupation"¹

The non-formalised defacto tenure of land in squatter settlement raises fundamental issues.² Thus firstly, squatter settlements are built by illegal invasion of private or public owned land and that once settled thereon, squatters resort to illegal water and electricity supply connections in places where these services exist. Secondly, settlements ignore health codes, zoning and building standard even though official requirements relating to building standards and planning regulations are meant to ensure that basic health and safety standards are met.³ Thirdly the grant of legal title to squatters is a basic consideration in providing a stimulus to self help improvement of squatter settlements. Yet on the other hand, conferring such title on squatter settlements may be considered a defacto recognition of the settlers' acquisition of land through illegal means, an act which may in effect perpetuate the expansion of the squatter problem. Fourthly since squatters are not sure of their security of stay on a particular piece of land, often they invest very little in the improvement of their houses or communities while at the same time they are vulnerable to extorting pressure

¹ Leslie, R., and Sheila B., (editors), Concise Law Dictionary, Eighth Edition. (New Delhi: Universal Law Publishing Co. PVT Ltd., 1993), p.309

² Mbao M.L.M., "Legal Aspects of Uncontrolled and Unplanned Urban Settlements in Zambia," *Zambia Law Journal*. Volume 15, 1983, p.4

³ For example, due to the poor state of houses built out of inferior building material in Kanyama Compound, torrential rains in 1978, swept through the compound and killed five people while leaving homeless, twenty-thousand people – see the *Zambia Daily Mail* of Thursday 2nd February 1978 at page 4.

from corrupt political and civic leaders, which pressure, often come in form of vote-soliciting, a trade-off mechanism aimed at guaranteeing an extended stay of squatters on a particular public owned piece of land. And, finally, squatter settlements are often viewed as breeding grounds for crime because in most cases, squatters come from the low-income earning class in society so that involvement in one vice or another may become necessary for survival.

With the foregoing it is crystal clear that policy intervention is required to check the expansion of these unplanned settlements.

1.2 EVOLUTION OF THE SQUATTER PROBLEM IN THE URBAN AREAS OF ZAMBIA

1.2.1 The Advent of Urbanisation

Squatter problems in any given country are a direct concomitant of urbanization. This position, as it shall soon become clear, is also true for Zambia.⁴

Prior to colonialism, Zambia was rural in character. Naturally too, the land tenure system was customary, characterized by abundance of land and low level of technology.⁵ As such, urban centers in Zambia only emerged with the advent of colonialism in order to serve colonial interests. The process began on the one hand, with the opening up of the mines in the Central and Copperbelt Provinces. In the 1930s, the mines at Bwana Mkubwa, Roan, Nkana, Mufulira, Nchanga and Chambishi, were being developed. This development, demanded a labour force of 29,000 Africans.⁶ By 1956, the figure of Africans employed both in the Industrial and agricultural sectors had risen to 230,000.⁷

⁴ Mbao, M.L.M., "Legal Aspects of Uncontrolled and Unplanned Settlements in Zambia", Zambia Law Journal, Volume 15, 1983, p.86

⁵ Mbao, M.L.M., "Legal Pluralism and its Implications for Land Owners and the Control of Land use in Zambia". Master of Philosophy Degree in Land Economy (Cambridge: Clare College, 1982), pg. 25.

⁶ Gray, R., The Two Nations (OUP). London (1962), pg. 92

⁷ Bates, R., Rural Responses to Industrialisation. (New Haven: Yale University Press, 1976) pg. 41.

The rapid growth of labour force had itself been attributed firstly to economic benefits accruing from wage employment. In economic terms, life in the village had become less rewarding and consequently less enviable for young African men as compared to working in the mines. For example, in buying maize grown on settler owned farms rather than maize grown on village land, the miner discouraged the improvement of village agriculture and encouraged villagers to sell their labour instead of their produce.⁸ Secondly, the imposition by the colonial government, of the poll and hut tax in the early 1900s, also triggered migrant African Labour mostly into the mining areas. As payment of tax became possible only in monetary terms as opposed to apriori methods of payment in kind, African taxpayers had no alternative but to sell their labour in the mines in order to raise monies needed to pay the tax.

On the other hand, the process of urbanization was also triggered by the construction of the railway line from the South, across the Zambezi River up to the Copperbelt. This development paved way for the establishment of commercial farms by white settlers and thus also added to employment opportunities for Africans. Additionally, the railway line promoted trade and the movement of people between the countryside and urban centers, such as the mines.

Notably therefore, the opening up of the mines on the Copperbelt and the Central Provinces and the introduction of settler farms concomitant with the establishment of the railway line from the South to the Copperbelt triggered a huge influx of Africans on these places basically because of the availability therein of employment opportunities.

⁸ Mbao, M.L.M. Law and Urbanisation (Degree of Doctor of Philosophy), (Cambridge: Clare College, 1987), pg. 34

1.2.2 The Urban Housing Situation Prior to 1948

Despite attracting a huge African workforce to work on the mines and settler commercial farms, housing for the African worker was not the pre-occupation of the government or other labour recruiting agencies, prior to the enactment of the Urban African Housing Ordinance in 1948. The responsibility of local authorities was restricted only to the maintenance of public health, the prevention of outbreaks of epidemics,⁹ the maintenance of cleanliness and sanitary conditions,¹⁰ and the prevention of conditions dangerous to health arising from the erection or occupation of unhealthy dwellings or from overcrowding. The absence of a concrete housing policy was itself due to two factors namely, on one hand, the nature of the African Labour force and on the other because of the labour policy itself.

With respect to the nature of the African Labour force, in the early years of industrialization, it was migrant in character. That is to say that, it comprised peasants who worked in paid employment for short periods of 2 to 3 years and then returned home to resume cultivation or fishing, for their livelihood. This feature arose from the low wages offered by employers in industries so that a number of years had to be spent in employment in order to enable the worker sufficient time to have enough money from which he could acquire his "target article." In the mean time, his family will have grown too big for him to remain in town.¹¹

In terms of the Labour policy, the colonial government favoured a system of migratory labour for fear of the breakdown in Law and order, which might antecedent the establishment of a stable urban Labour force.¹² To this extent the colonial government was under pressure from white settlers who regarded

⁹ Section 6 of the Public Health Ordinance Number 12 of 1930.

¹⁰ Ibid, Section 65

¹¹ Supra note 6 at pg. 74

¹² Ibid, pg.75

the permanent settlement of Africans as a threat to their economic, social and political privileges. Another pressure group were the industrialists e.g those who owned mines, who argued that in view of the lessons learnt from the economic depression in the 1930s, it was favourable to maintain a labour force whose size could be altered depending on the position of the economy at any particular time.

Owing to this pressure the colonial government was poised to control labour migration to employment centers and also to prevent the emergence of an urban Labour force. In pursuit of this strategy, government encouraged workers to leave their families in the village and also under the Employment of Natives Ordinance, ensured that no employer was obliged to provide accommodation for a family but only for a single employee.¹³

Of greater importance in this labour migratory control effort was the pass system introduced under the Native Registration Ordinance Number 50 of 1929. This Ordinance provided for the registration of every African who entered a district; he/she was then issued with an identity certificate.¹⁴ This Ordinance also required visitors to African residential areas to have a visitor's permit which enabled them to reside in a particular area for a prescribed period.

Due to the absence of a concrete government housing policy, Private Landlords took advantage of the situation by permitting workers to settle on their land for a consideration of rent. After a futile attempt through the Natives Private Estates Ordinance to control settlements of Africans on private property, the government enacted the Private Locations Ordinance in 1939. This Ordinance regularized the establishment of settlements called "Locations", on estates. Here, landlords were required to obtain permits for locations and to enter into written

¹³ Ibid, pg.111

¹⁴ Ibid, Section 5

agreements with every persons (other than a labourer on the estate) stating concisely the terms of occupation.

By 1948, African workers were settled in different areas as follows:¹⁵

- (1) "Private Compounds", established through the initiative of some local authorities within their jurisdictions;
- (2) "Grass Compounds", which were part of locations although structures therein were erected by Africans for their accommodation;
- (3) "Private Compounds", established by employers outside local authority areas;
- (4) "Private Locations", which were settlements established on private lands in which plots were rented to Africans who erected their own houses;
- (5) "African Suburbs", which were approved settlements on sites immediately contiguous to municipal or township boundaries not falling under local authority control, and
- (6) "Mine Townships", which were residential areas established by mining companies under the Mine Township Ordinance Number 11 of 1932 for their employees.

In addition to residential areas listed above, there were also unauthorized settlements established by African squatters on crown land in the vicinity of municipalities or townships.¹⁶ Ironically, these squatter settlements were to mark the roots of a problem which hitherto, still exists and is even expanding.

¹⁵ Mulimbwa, A.C Urban Law and Housing in Zambia, Master of Laws Dissertation. (Lusaka: University of Zambia, 1980), p. 34

¹⁶ Ibid

2.0 CHAPTER TWO: POLICY CONSIDERATIONS

2.1 THE EMERGENCE OF COLONIAL HOUSING POLICIES

This chapter shall explore the colonial government's reaction to the growth of squatter settlements in the urban centers of Zambia. The reaction was by way of the introduction of a housing policy. The paper shall evaluate the adequacy of this housing policy, in the elimination of the squatter problem during the colonial era.

As human societies become more populous, the need for planning and orderliness becomes apparent. In the context of land use, the primary objective of planning is basically to ensure that all land is put to the use, which is best from the point of view of the community,¹⁷ thereby ensuring a place for everything and everything in its right place. To achieve such order, society needs a system of regulatory Laws, which in as far as the squatter settlement is concerned, includes policies on housing. The paper therefore proceeds to trace the emergence of the colonial housing policies.

The migratory labour system proved wasteful and less fruitful to employers. For example, because of the short period that Africans were in employment, they remained inefficient and lacking in skills. This factor necessitated the establishment of a stable labour force by the colonial government and mining companies.¹⁸

Following the policy of stabilization of the African labour force, the question of African housing also became relevant. Earlier in 1944, the Eccles Commission¹⁹

¹⁷ Matibini P., The Urban Housing Problem for Low Income Groups with Special Reference to the City of Lusaka: A Social – Legal Perspective. Master of Laws Thesis (Lusaka: University of Zambia, 1989), p. 57

¹⁸ Heisler H., Urbanisation and the Government of Migration. (London: C. Hurst and Company, 1974), p.41

¹⁹ Report of the Commission of inquire into the Administration Finance of Native Locations in Urban Areas (Lusaka: Government Printer, 1944), p. 4

appointed by the colonial government to inquire into the administration and financing of Native Locations in urban areas, had found conditions in areas set aside by local authorities for employers and in private locations, to be unsatisfactory. The Commission noted that there was overcrowding and consequently stressed the need for good housing. Here too, the government and Local Authorities were cited as having failed to set an example by providing adequate accommodation for their employees. This position was attributed to the reluctance on the part of the government and local authorities to accept full responsibility for Africans. As for private locations, they were unreservedly condemned as being "unhygienic and squalid in the extreme" whose presence so near the towns constituted a menace to the public.²⁰

Intending to place the responsibility for African housing on local authorities, the government enacted the urban African Housing Ordinance of 1948. Characteristic of this piece of legislation were three major policies namely, housing tied to employment,²¹ rental houses provided by local authorities and the home ownership scheme attempted towards the close of the colonial era.²² Accordingly, the paper now proceeds to examine firstly, the nature and secondly, the adequacy of each of these policies in the elimination of the squatter problem during the colonial era.

2.1.1 THE NATURE OF THE POLICY OF HOUSING TIED TO EMPLOYMENT AND ITS ADEQUACY IN ELIMINATING THE SQUATTER PROBLEM IN URBAN ZAMBIA DURING THE COLONIAL ERA

Housing tied to employment refers to the policy by which the provision of housing was restricted to Africans in salaried employment. This kind of policy

²⁰ Ibid

²¹ Here, the Urban African Housing Ordinance provided under Section 3 that, "every person who employs an African under a contract of service to perform work within any urban area, shall at his own expense provide accommodation for such an African..."

²² Supra note 14 at p.37

was associated with two related features. One feature entailed that, Under the Employment of Natives Ordinance of 1929, employers were obliged to provide adequate accommodation to their employees and in so doing, to observe all reasonable directions in order to ensure decent housing and hygienic sanitary arrangements prescribed by labour or medical officers.²³ Furthermore, elaborating on the housing responsibility of employers under the Employment of Native Ordinance, the Labour Department explained that, where servants were required by the employer to erect their own houses, the employer was obliged to meet the cost of construction both in terms of the physical structure and the time spent by the servant in erecting the structure.²⁴ However, where an employee resided in his village that was as near as conveniently possible to his work place, the employer was relieved of the obligation to provide housing accommodation.

In compliance with the Employment of Natives Ordinance, some employers established private compounds outside local authorities areas for the accommodation of their employees.

The other feature, which actually perpetuated the policy tied to employment, arose from the Urban African Housing Ordinance Number 32 of 1948 under which the allocation of Local Authorities houses was restricted only to Africans in salaried employment. This ordinance was the first piece of legislation to impose the duty on local authorities to establish housing areas for the accommodation of all Africans employed within local authority area.²⁵

In order to satisfy this obligation, local authorities had to set up African housing areas of two kinds namely on one hand, Industrial African Areas which were set

²³ Employment of Natives Ordinance of 1929, Section 45(a)

²⁴ The Employment of Natives Ordinance and its Regulations (Labour Department) Lusaka: Government Printer, 1945 p.73

²⁵ Urban African Housing Ordinance No. 32 of 1948 at Section 21

aside by local authorities for employers according to plans and specifications approved by the Commissioner for Local Government and African Housing,²⁶ and on the other hand, temporary African Housing Areas, which were also allocated to employees to erect temporary houses for their employees for whom no permanent accommodation was available.²⁷

Noteworthy also under African housing areas, was the fact that local authorities themselves were obliged to construct therein, both single and married quarters to be occupied only for a prescribed period by Africans in search of employment.²⁸ A striking feature about this new innovation was the approval by the colonial government, of the African worker's entitlement not only to marriage but also to living with his wife in an urban area during his employment life. Hitherto, under the migratory Labour System, African workers had been encouraged to leave their families in the villages.

Having explored the nature of this policy, it is now convenient to evaluate its adequacy in combating the squatter problem during the colonial era.

An examination of the policy of housing tied to employment reveals the incidence of an African being in wage employment was a precondition for him to access housing accommodation. Under the Urban African Housing Ordinance, the consequent hardship on the employee upon leaving employment, was addressed in the sense that such an employee was permitted to retain his house provided for him by the local authority for as long as he proved that he had been in continuous employment for a period of not less than six months; that, if he was replaced on his job, his replacement had alternative accommodation and, that he could afford to pay rent to the local authority.²⁹

²⁶ Ibid Section 27

²⁷ Ibid Section 28

²⁸ Ibid Section 3

²⁹ Ibid Section 36

However, the inadequacy of this policy in addressing the squatter problem lay in its omission of the housing concerns, of self-employed urban Africans.³⁰ This omission becomes of major concern in view of the fact that being economic centers, urban areas did not only attract Africans seeking wage-employment in the Industries and settler owned farms. To the contrary, however, is the fact that such employing agencies also attract ancillary economic activities such as shoe mending, hawking, charcoal burning, and tailoring, whose undertakers, also deserved accommodation because they were a necessary component of the urban population. As such, the policy of housing tied to employment, was flawed in as far as it discriminated against one component of the urban population in the sense that, that category of the population, which was left out, was by implication, expected to employ initiative in housing itself. Naturally, such initiative translated itself in the mushrooming of squatter settlements. An adequate housing policy, to deal with the squatter problem, would have been one which is all-embracing, that is to say that, one which sort to address the accommodation concerns of wage-employed Urban Africans and self-employed urban Africans.

2.1.2 THE NATURE OF THE POLICY OF LOCAL AUTHORITY RENTAL HOUSING AND ITS ADEQUACY IN THE ELIMINATION OF THE SQUATTER PROBLEM IN URBAN ZAMBIA DURING THE COLONIAL ERA

The enactment of the Urban African Housing Ordinance Number 32 of 1948, empowered local authorities for the first time in the history of the colonial housing policy, to construct houses for rent by employees deductible from their wages right from the source of the wage. However, owing to the high rental rates, the colonial government introduced some form of subsidy in order to cushion the burden placed on employees.³¹

³⁰ Supra note 14 at p.47

³¹ Ibid at p.42

Having noted the nature of the local authority rental housing, the paper shall now proceed to evaluate its adequacy in addressing the squatter problem.

The inadequacy of this housing policy in addressing the squatter problem, like in the case of the policy of housing tied to employment lay in the fact that it discriminated against an indispensable category of the urban population namely, self employed urban Africans, such as hawkers, charcoal burners, tailors and shoe repairers who thus had to house themselves through the use of initiative, by occupying titled land illegally. Worse still, even if the policy was extended to such self-employed urban Africans, they could still have not afforded the high rental rates demanded by local authorities, in view of their irregular and low level of income especially that the colonial government would still not have subsidized their rental payments as it did for those in wage-employment. Furthermore, this policy proved inadequate in addressing the squatter problem in the sense that the employers' provision of rental houses for their employees was overtaken by the large increase in the number of employees taken on by various employing agents.³²

2.1.3 THE NATURE OF THE HOME OWNERSHIP SCHEME AND ITS ADEQUACY I THE ELIMINATION OF THE SQUATTER PROBLEM DURING THE COLONIAL ERA.

The home ownership scheme was a policy intended to encourage people to construct their own houses on plots leased to them by local authorities. This innovation was relatively expensive and complicated especially in as far as a developer was to comply with laid down building and public health regulations. Accordingly, an average developer needed the aid of an agent who was ready to finance the construction and recover from him or her over a long period of time

³² Annual Report of the Department of Local Government and African Housing, (Lusaka: Government Printer, 1955), page 75

the money so expended at an agreed rate of interest.³³ Because of this complexity, the policy was not fully developed. For example, in Lusaka, homeownership constituted only nine percent of the total housing stock, yet thirty-nine percent of this figure belonged to European developers.³⁴

In real terms, the home ownership scheme began in 1958. In that year, plots were made available for alienation to Africans on the Copperbelt and Kabwe in a bid to encourage the stabilization of the African labour force.³⁵ Government assisted prospective developers by providing demarcated and serviced plots and technical advice and assistance. Building societies; commercial banks and insurance companies, assisted with finances.

In order to encourage the low-wage earners also to participate in the homeownership scheme, the government, in conjunction with building societies created the low cost/high density guarantee scheme.³⁶ Here, the government indemnified the society on the whole amount of monies lent to developers. At the same time, some employers were also encouraging their employees to own houses. Furthermore, government and local authorities granted loans for this purpose to their senior staff while mining companies were encouraging their employees to purchase houses on land owned by the mining industries.

In Lusaka, the homeownership scheme began in 1961 at Lilanda Compound, having been initiated by the British South Africa Company in conjunction with Richard Constain (African Limited).³⁷ Here, the two companies developed plots of land, provided funds and subsequently constructed five types of houses which were sold at varying prices. On buying, the initial deposit was ten percent of the

³³ Hope G., Homeownership in Proceedings of the Conference on Urban Housing. Ministry of Housing and Social Development (Lusaka: Government Printers, 1964), p.4

³⁴ Ibid

³⁵ Annual Report of the Department of Lands, (Lusaka: Government Printer, 1958), p.1

³⁶ Supra note 14 at p.45

³⁷ Ibid at p.8

purchase price and repayment of monthly instalments were spread over a period exceeding twenty years.

Having stated the housing policy above the paper now proceeds to evaluate its adequacy in addressing the squatter problem in urban areas during the colonial era.

Notwithstanding the empowering efforts depicted under the homeownership scheme, the response from employees was below expectation. The reason for this poor response was that employers' house rental scheme appeared more attractive to employees as compared to embarking on the homeownership scheme, in view of the great cost associated with the home ownership scheme. Furthermore, due to its complexity and the high financial cost, the homeownership scheme failed to provide for low-income earners also who in fact constituted a larger proportion of the urban population. Naturally, the failure of the home ownership scheme to encourage employees to take advantage of its empowering provisions, entailed squatting by employees who chose to remain in urban areas upon leaving employer-rented houses.

In concluding this chapter, it is important to note that until 1948, there was no concrete housing policy for urban areas in Zambia. This was despite the fact that urban areas were the country's economic bulwarks, the consequence of which was the rural-urban migration and its concomitant effects namely, the mushrooming of unauthorized settlements. Under such circumstances, the colonial government's delay in evolving a concrete housing policy contributed to the mushrooming of squatter settlements in urban Zambia because there was no control mechanism. The most appropriate approach under such foreseeable developments, was for the government to quickly devise a concrete housing policy that could have fore stalled to a larger extent, unauthorized settlements in

urban areas. This observation is cardinal in the sense that certain vices are difficult to eliminate once they have taken root.

Furthermore, even when the colonial government finally devised a housing policy, the policy itself proved inadequate in the elimination of the squatter problem because of reasons that have been given above. In which case, some of those persons who could not benefit from the policy, has to seek refuge mostly on private estates owned by Europeans at rental charge. However, as the number of such settlers increased, it became difficult for land lords to exact rent and control the settlements themselves. In Lusaka, compounds such as Howard and George, named after European landlords, are examples and remnants of such settlements. Other persons left out of the policy nonetheless preferred to squat on land owned by the crown and also on that which was owned by local authorities.

In view of such deficiencies in government efforts to combat unauthorized residential settlements, the squatter problem expanded, such that by 1933 for example, Lusaka had the largest number of unauthorized settlements.³⁸ And owing to the deplorable conditions of squatter settlements namely, the poor quality of houses, the poor water supply and need the poor sanitary facilities, the colonial government, in conjunction with the Lusaka City Council, embarked on a demolition exercise sooner as the Council provided and serviced suitable alternative land to allocate to the affected squatters. In pursuit of this exercise, it has been reported that despite a shortfall of twenty-eight thousand housing units in Lusaka urban, some squatter settlements were nonetheless demolished and their residents taken into African Housing Areas.³⁹ However, even in the

³⁸ Annual Report of the Department of Local Government and African Housing, (Lusaka: Government Printer, 1955), p.75

³⁹ Ibid

work of such government efforts, unauthorized residential settlements expanded and to date, are still a prominent feature in the urban areas of Zambia.

3.0 CHAPTER THREE: THE PROCESS OF CHANGE IN THE HOUSING POLICY IN ZAMBIA

3.1 POST-INDEPENDENCE HOUSING POLICY

Under this chapter the paper states the post independence legal framework adopted by the African government in an effort to eliminate the squatter problem. Essentially the post-independence housing policy hinged on the formalisation of the site and service schemes.⁴⁰ In the case of squatter improvement, the policy discouraged the demolition of the squatter settlements by local authorities and instead made provision for the recognition of squatter settlements and also for their improvement, through the provision by local authorities of utilities and social services.⁴¹ Last but not the least during the post-independence era government recognized home ownership outside site and service areas.⁴²

3.1.1 THE NATURE OF SITE AND SERVICE SCHEMES

Under site and service schemes, a respective local authority identifies a piece of land suitable for human habitation, demarcates it into plots and provide thereon services such as piped waster, roads, sanitation facilities and finally construct thereon a core-building, Thereafter, individual developers called participants, do the complete construction of their own houses by further developing the core-buildings. Additionally, participants are assisted with technical advice and loans

⁴⁰ A detailed account of the nature of site and service areas, will be provided for under paragraph 3.1.1.

⁴¹ A detailed account of the nature of squatter upgrading schemes, will be provided for under paragraph 3.1.2.

⁴² An account of home ownership outside site and service will be provided for under paragraph 3.1.3

for the purchase of building materials. In order to qualify for such assistance, participants had to show that they are in salaried employment. In relation to participants, one important measure introduced by the Second National Development Plan need mention. This measure broadened the scope of participants because hitherto, participation was restricted to low-income earners. Under the Second National Development Plan however, any body irrespective of income, could apply for a plot, since the plan expected people at all levels to accommodate themselves.⁴³

Since site and service schemes were viewed by the government as one of the panacea for the chronic shortage of urban housing, certain building standards were sacrificed and also participants were allowed to improve on the amenities of their plots. This arrangement called for a simple and flexible legal regime to govern the schemes. It was on this premise that for example, the requisite of survey diagrams, which is a pre-requisite to the registration of documents transferring interests in land, was avoided by providing under the Housing (Statutory and Improvement Areas) Act Number 30 of 1974⁴⁴ of a separate registration system operated by local authorities.⁴⁵ Additionally, the high building standards, although not specifically excluded, are not relevant under site and service schemes since the application of the Public Health (Building)

⁴³ Office of National Development and Planning, 'Second National Development Plan (1972-76).' (Lusaka: Government Printer) p.318

⁴⁴ This statute governs statutory housing and improvement areas

⁴⁵ This development therefore entails an exemption of transactions in site and service areas, from Section 4 of the Lands and Deeds Registry Act that requires that every document purporting

Regulations⁴⁶ under which they fall, depended on a declaration made by the Minister which declaration, had never been made.⁴⁷ Finally, the Rent Act and Town and Country Planning Act, have been excluded from application in site and service areas.⁴⁸

3.1.2 THE NATURE OF SQUATTER IMPROVEMENT AREAS

Through out the world, public response to the squatter problem have ranged from disregard, spasmodic demolition and co-operation with the self-help efforts of squatters. However, classical approaches tend to ignore the productive potential of squatters and to harass them instead so as to maintain a façade of modernity and standards of the urban enclave. In the latter approach, town and country planning Laws, public health regulations and building codes have been found useful in implementing squatter demolition campaigns.⁴⁹

In Zambia soon after independence, he adopted trend was to demolish squatter settlements. But when it became obvious that official conventional methods of providing housing were inadequate to solve the urban housing shortage, government decided to grant official recognition to squatter settlements. Historically though, the policy of squatter upgrading has been a controversial one between the central government and local authorities. Government was itself

⁴⁶ See statutory Instrument Number 357 of 1967

⁴⁷ Mulimbwa A.C., "Legal Constraints on Housing Developing in the Site and Service Schemes and Improved Slums Areas", Zambia Law Journal, 1982, Volume 14

⁴⁸ See Section 48 of the Housing (Statutory and Improvement Areas) Act

⁴⁹ For example, Section 31 of the Town and Country Planning Act empowers Planning Authorities to demolish structures erected without the blessings of a planning permission granted by planning authority

opposed to the idea of demolition because in its view, squatters, if mobilized, could be transformed into a decisive political force due to their numerical strength.⁵⁰ In fact, government was sympathetic to squatters so that in 1966, it actually installed a piped water to grant, convey land or any interest in land or to be a lease, must be registered.

Supply in Kanyama Compound in Lusaka and further made funds available for the supply of Chlorinated water to Robert and Bauleni Compounds also in Lusaka.⁵¹ Furthermore, by 1968, the project for the supply of water to Chawama Compound in Lusaka was under way. While on the Copperbelt, piped water had been introduced to some compounds in Luanshya and Ndola Towns, respectively.⁵² As a follow-up to these efforts, government finally granted official recognition to squatter settlements in 1972 upon the inception of the Second National Development Plan. Herein, it was conclusively stated thus: "it is recognized that although squatter areas are unplanned they nevertheless represent assets both in social and financial terms. The areas require planning and services, and the wholesale demolition of good and bad houses alike, is not a practical solution."⁵³

⁵⁰ Seymour A., Squatters, Migrants and the Urban Poor, D. Phil. Thesis (University of Sussex, 1976 unpublished) p. 319

⁵¹ Annual Report of the Ministry of Lands and Mines (Lusaka: Government Printer, 1966) p. 3

⁵² Annual Report for the Ministry of Lands and Mines (Lusaka: Government Printer, 1968), p. 3

⁵³ Pap W.J., Towards Economic Aspects of Humanistic Revolution, (Lusaka, 1973) p. 43

The envisaged position was that existing squatter settlements were to be upgraded through the provision of utilities and social services such as water, roads, schools, health centers and garbage collection. This policy was viewed as a last resort in the quest for a solution to the urban housing shortage. It struck a balance between two options, one being demolition and the other being formal recognition. Critically viewed, the option to demolish is inhumane because it would leave homeless many families. Moreover, in the absence of alternative accommodation owing to the inability of local authorities to satisfy the rising demand for houses, the displaced family would simply rebuild in another locality in which case, the tug of war between the authorities and squatters could go on ad infinitum. On the other hand however, outright recognition of squatter settlements would imply conferment of title on squatters, hence the need for government to acquire title to the privately owned land on which squatters have settled before granting official recognition to such a settlement.

3.1.3 THE NATURE OF HOME OWNERSHIP OUTSIDE SITE AND SERVICE AREAS

The acquisition of houses outside site and service schemes was made possible via two methods. The first method is where the purchaser acquires the house directly from a vendor who had title to such a house. The second method involves a procedure whereby a person seeking to acquire land applies to the Commissioner of Lands (if the Land in issue is state land or the local authority), and if such an application is successful, the applicant has to build his house in

compliance with prescribed standards laid down in statutes such as the Town and Country Planning Act and the Public Health (buildings) Regulations⁵⁴ and the Local Government Building Regulations.⁵⁵

It is however important to state that homeownership outside site and service areas has not contributed significantly to the increase of urban housing units so as to help in the elimination of the squatter problem. The reason being that only few people can afford the high cost of constructing houses in these areas. This is because, unlike in site and service areas, local authorities do not provide any services to these areas. This is because, unlike in site and service areas, local authorities do not provide any services to these areas, that these areas are fully amenable to laid down statutory building standards and coupled with the fact that there is no government assistance to the developer either financially or technically.

Having stated in brevity the policy strategy adopted by the indigenous government at independence and beyond the paper shall in the next final chapter analyse whether or not the policies stated herein were perfect or adequate in dealing squarely with the problem of the development of squatter settlements and propose some recommendations on what direction the nation should take in as far as policy guidelines are concerned on the issue.

⁵⁴ See Statutory Instrument No. 357 of 1965

⁵⁵ See Statutory Instrument No. 314 of 1968

Having stated in brevity the policy strategy adopted by the indigenous government at independence and beyond the paper shall in the next final chapter analyse whether or not

CHAPTER FOUR: CONCLUSION AND POLICY RECOMMENDATIONS TO ELIMINATE THE SQUATTER PROBLEM.

The development of squatter settlements which impacts on public health negatively have been stated in this discourse and the policies aimed at eliminating it, have also been explored. Unfortunately the squatter problem still persists. As a follow up therefore, this chapter shall recommend measures aimed at strengthening the new housing policy in a quest to finding a lasting solution to the squatter problem.

It is vehemently recommended that the following amendments be made to our laws on housing:

- (i) The provisos to Section 5 and 39 of the Housing (Statutory and improvement Areas) Act, which restricts grants of land to only one plot per applicant, should be amended in order to remove this sort of restriction because the restriction in effect only serve to thwart the growth of the urban housing stock, contrary to the spirit of the Act itself. The best arrangement, in view of the chronic shortage of housing in urban Zambia, is to liberalise grants of plots of land to applicants in which case, the best criterion to use in determining the number of plots that an applicant can be granted in both site and service, and improvement areas, is proof of his or her ability to construct the intended number of houses. Such a position will enable individuals who have sufficient financial

resources, to build as many houses as they can and rent them out to those who cannot afford to build their own houses and hence reduce on the incidence of squatting.

- (ii) There is need to strengthen the security of tenure for tenants and licencees alike, in site and service areas, and improvement areas, respectively, and in particular, owners of land in improvement areas deserve special consideration. In this regard, the paper recommends that owners of houses in improvement areas be granted interest or estates in their land similar to that, which is granted to those who construct houses in housing statutory areas.

As a corollary to the foregoing recommendation, the paper further recommends that a necessary amendment be made to the Zambia National Building Society Act in order to ensure recognition also, of individuals who have built their houses in improvement areas, to access financial loans from the Zambia National Building Society on the strength of their title to such houses.

Introducing such innovations under the current national housing policy would encourage investment in these schemes, a development that could help in the reduction of unauthorized settlements.

- (iii) Although the importance of observing provisions of covenants by owners of houses under site and service and improvement areas is not challenged here, the paper nonetheless notes that the penalty of forfeiture of land by local authorities on breach of a covenant by a person owning a house in these areas, is rather too harsh to attract investment. As such, it is here recommended that a better penalty is the imposition of a fine. This position is taken in view of an acute shortage of urban housing the country is faced with in which case, any kind of arrangement, which tends to repel investment in housing in these areas, must at all costs be avoided.
- (iv) As for the home ownership scheme outside site and service areas, the paper recommends that such areas must be governed by a flexible legal regime that substantially cuts down on the amount of legal intricacies in order that the whole legal arrangement, accords well with the capacities, needs and aspirations of the various sections of the population.⁵⁶ On this premise, this paper recommends that, just like under site and service areas and improvement areas, must be exempted from statutes such as the Lands and Deeds Registry Act, the Town and Country Planning Act, the Public Health Act, and the Local Government Act, which Acts, places the prices of constructing houses in these areas, too high for most people.

⁵⁶ National Housing Policy, (Lusaka: Ministry of Local Government and Housing, 1996), p.15

Additionally, they also circumscribe heavily, the activities of persons who have managed to build in these areas, on the use of their land.

Introducing such an innovation in the housing policy would attract investment in housing in these areas from private individuals both for their own occupation and for rental purposes hence reducing on the expansion of the squatter problem.

- (v) The procedure of acquiring land by making an application either to the Commissioner of Lands in the Ministry of Lands or local authorities needs to be revised. Here, it has been noted that the laid down procedure regarding the process of acquiring land is cumbersome and expensive and thus beyond the financial capacity of low-income earners who in effect constitute a larger proportion of the squatter population. The procedure is made even unduly long particularly in the acquisition of state land, because certain officials such as the Commissioner of Land and the Surveyor General, who play a central role in the process of land alienation, are based only in Lusaka. Due to this cumbersome procedure, applicants who often are in urgent need of land and cannot afford to exhaust such a procedure have frequently chosen to settle on such land even before it is legally allocated to them.

Although the importance of the procedures cannot be underestimated, for example in the prevention of future boundary disputes, this paper nonetheless proposes that the procedure be relaxed in order to accommodate the concerns of low-income earners. In this view, the introduction of new innovations may help achieve the required flexibility. For example, in order to cut down on the cumbersome beauracritic practices, this paper recommends that the offices of the Commissioner of Lands and Surveyor General be decentralized, as a starting point, at provincial level and later, with the availability of resources, at district level. Such a development could help in decongesting these two offices thus reduce on the time an applicant has to spend waiting before his or her application is approved and hence reduce also on the temptation to occupy land illegally.

Additionally, the government should adopt macro-economic policies aimed at giving positive incentives to individuals and institutions interested in investing directly in housing or indirectly, through an approved housing finance system.

- (vi) The site and service and squatter improvement schemes are a best solution to the squatter problem in urban Zambia. On this premise, this paper recommends that government should resuscitate this scheme by

funding local authorities. With respect to site and service schemes, introducing measures that would ensure good loan recovery from participants can ensure their self-sustainability, without continued government financial support. This innovation requires a departure from the current arrangement, which makes the recovery of loans from participants, by local authorities, difficult. For example, under the current arrangement, the property rates paid by owners of houses in these areas do not include the cost incurred by local authorities in constructing the core-buildings. Therefore, such a cost in other words, is entirely met by local authorities. However, the new arrangement should be in such a way that the cost of constructing core-buildings, are also included in the property rates paid by participants. Such an arrangement shall ensure a constant flow of funds that could therefore be used to open-up other site and service areas, a development, which certainly would increase the amount of the urban housing stock and thus reduce on the incidence of unauthorized residential settlements.

As for squatter upgrading projects, promoting community participation could ensure their sustainability. For example, while it remains the role of the responsible local authority to provide building materials for the construction of such infrastructure as roads, schools and health centers in an area yet to be upgraded, the community can be asked to contribute its

labour. Such a development can be regarded as a cost-sharing measure, which thus may enable local authorities to save money for upgrading other squatter settlements and hence reduce on the incidence of squatting.

- (vii) Very often the establishment of squatter settlements have been attributed to under-hand methods of politicians, especially at the level of councilor who illegally allocate plots of land to unsuspecting developers. There are various reasons for this practice but usually; politicians do so as a way of appreciating the people who voted for them at an election and sometimes for financial gains. Being unskilled in land matters, such politicians observe no formality. Land is allocated using their feet and gestures; their feet and hands are their survey instruments, while their memory is the register. Almost immediately, money change hands. Eventually people tend to regard such politicians as small commissioners of land. Subsequently, it is often the case that big politicians are reluctant to reverse the results of such activities because once established, squatter settlements form a formidable reservoir of votes at an election so that sanctioning the demolition of such a settlement translates into a proportionate loss of votes from such an area. Clearly, such activities if left unchecked have the potential of promoting the expansion of illegal residential settlements.

In view of such incidents, this paper recommends that sensitization campaigns be undertaken firstly, on councilors to the effect that they do not have the legal authority to allocate land and secondly, on the general public, on the process of acquiring land and also on the dangers of illegally settling on land.

(viii) The problem of squatter settlements in urban Zambia has largely been attributed to the high demand for land. This high demand has itself been attributed to factors such as the lack of economic opportunities in rural areas thus triggering rural-urban migration. In view of the fore-going, it is here noted that there can be no long-term solution to the existence of squatters around our towns without a solution to the fundamental causes of such migration. Accordingly, a deliberate government policy, which seeks to redress structural imbalances in the economy, is welcome. As such, this paper recommends as follows:

- (a) the government should trigger the rapid growth of farming blocks. Here, the government's role is to identify land suitable for farming activities and provide thereon, services such as health centers, schools, roads, electricity and basic social services which are largely enjoyed by urbanites and thereafter, invite eligible people to take-up plots for farming purposes. Noteworthy also is the fact that once farming communities are established, they would attract

ancillary sectors of the economy such as grocers and traders among others, thus further decongesting urban centers. Such a development certainly reduces on the incidents of unauthorized residential settlements because it empowers remote communities with amenities that lure people to settle into urban areas.

- (b) Also, the government should encourage people to take up settlement in Re-Settlement Schemes, by providing therein, services such as bridges, water wells, schools and health centers, among others, basically with a view to providing a conducive environment for agriculture. Resettlement schemes are ideal places for retirees. Clearly, re-settlement schemes can also help decongest urban centers thereby reducing on the incidence of unauthorized residential settlements in urban areas.

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