PLANNING LAW, POLICY AND URBANISATION:
A CASE STUDY OF LUSAKA.

BY
SITALI MUFUNGULWA

(25056719)
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The University of Zambia,
School of Law,
P.O Box 32379.

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SCHOOL OF LAW

By

MUFUNGULWA SITALI
(25056719)

Entitled

PLANNING LAW POLICY AND URBANISATION;
A CASE STUDY OF LUSAKA,

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

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Mrs NKOLOMA TEMBO, 
Supervisor
DECLARATION

I Sitali Mufungulwa, Computer number 25056719 do hereby declare that the contents of this directed research paper are entirely based on my own findings and that I have not in any respect used any persons’ work without acknowledging the same to be so.

I therefore, bear the absolute responsibility for the content, errors, defect and any omissions therein.

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ABSTRACT

Lusaka as a capital city, has found itself with a large population whose problems it can hardly cope with. Because of its centrality and function, it has and will continue to grow. Due to the ever increasing urban population, the city has faced problems of housing, planning and unemployment. This population affects the political, social and economic policies, and increases pressure on the demand for urban land.

This research set out to look into Urbanisation, Planning Law and Policy. Planning is an integral part of any government, and as a result the planning law, that is, the Town and Country Planning Act must be representative and meet the demands of an ever growing population. The laws which govern the city in its planning, social, economic and political affairs assume an importance of the greatest magnitude.

Urbanisation though not a legal subject must be taken into account when dealing with land policy. If the planners and administrators are to carry on an appreciable job of managing the city, it becomes imperative that the effects and causes of Urbanisation are analysed.
TABLE OF STATUTES

1. TOWN AND COUNTRY PLANNING ACT, CAP 283 of the Laws of Zambia.

2. LANDS ACQUISITION ACT, CAP 189 of the Laws of Zambia.

3. The HOUSING (STATUTORY and IMPROVEMENT AREAS) ACT, CAP 194 of the Laws of Zambia.


5. LOCAL GOVERNMENT ACT, CAP 281 of the Laws of Zambia.
LIST OF ABBREVIATIONS

1. CBD...............................CENTRAL BUSINESS DISTRICT
2. RDA...............................ROADS DEVELOPMENT AGENCY
3. IDP...............................INTEGRATED DEVELOPMENT PLAN.
4. FNDP...............................FIFTH NATIONAL DEVELOPMENT PLAN.
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CHAPTER ONE

1.0 INTRODUCTION

Lusaka has been experiencing growth in its population. This has resulted in an increase in demand on its land resources. The rise in the population is due to many factors among them urban migration which is a major contributing factor. Lusaka was established as the capital city because of its central location. The planners and civic administrators in 1930\(^1\) came up with the garden city concept, which was introduced to alleviate squatters in existing industrial cities in England. The new developments and activities such as the opening up of the mines, marked the genesis of urbanization and this process has continued to date, of course under different circumstances.

Urbanization is described as an increase in a nation’s population in urban areas. It refers to the proportion of the total population concentrated in urban areas and to a rise in this proportion\(^2\). It has also been defined as the physical growth of urban areas as a result of global change\(^3\). The United Nations defines urbanization as the movement of people from rural areas with population growth equating to urban migration. This definition varies between the developed world and the developing countries. In the former, migration is linked to modernization, industrialization and the sociological process of rationalization while in the later it is linked to economic advancement. Thus, it is important to note that the

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\(^1\) In 1930, S.D Adshead a professor of town planning, London University was commissioned to select a suitable site for the new capital and prepare a plan for the new city.


\(^3\) [http://en.wikipedia.org/wiki/Urbanisation](http://en.wikipedia.org/wiki/Urbanisation). Urbanisation not only covers migration from rural areas into urban areas but covers instances were people move from urban into cities, and also inclusive is the natural urban growth of a city.
majority of people migrating into Lusaka are not mainly from rural areas but from the other cities and towns.

People migrate to Lusaka and settlements along the line of rail due to varying reasons but mostly the reasons are economic related. Migrants are attracted to the city by the possibilities that it can offer. They range from search for job opportunities, better living standards, educational facilities and welfare standards. These factors and the global economic recession have resulted in adjustments in the economic activities and as a result Lusaka is experiencing an increase in demand on its land resources. Land is becoming a ‘scarce’ resource in Lusaka and this raises the need of appraising the existing legislation and policies. It raises the question of whether the laws and policies in place are able to meet the evolving problem of land use. This is were the need for planning arises.

Planning is a means for systematically anticipating and achieving adjustment in the physical environment of a city consistent with social and economic trends and sound principles of civic design. Planning affects all aspects of development. It deals with the various space using functions of city life and concerns itself with the location and the amount of land development required. The planning process involves a continuing process of deriving, organization and presenting a broad and comprehensive program for urban development and renewal.
1.1 SCOPE

Chapter 2, will look at urbanization in relation to land use in Lusaka. It will also discuss the effects of urbanization.

Chapter 3 will look at the planning law (Town and Country Planning Act). It will look at how legislation in respect of planning is coping to curb the urban growth and the amendments in the law in relation to land use planning. It will also look at the process of allocation and acquisition of land.

Chapter 4 will contain an analysis of the findings.

Chapter 5 will comprise the conclusions and recommendations.

1.2 STATEMENT OF PROBLEM

Urbanization in one of its dimensions involves a process of growth and change. This growth is presenting social, economical and environmental problems in land use. The city has seen an increase in the number of slums and, private and public construction works in the form of shopping malls and office blocks. Unfortunately this growth has not been paralleled by adequate planning to meet the growing needs of the population. Services such as public housing, refuse collection have faded. In the central trading area there is overcrowding. The shanty compounds are overcrowded and unsightly presenting health problems and criminal activities. There has been an increase in traffic congestion. This poses a danger to health because of the vehicle fumes, noise and life is becoming hazardous. With regard to traffic
congestion, the increased congestion is putting pressure on the available road space, and this increase has not been accompanied by road improvement. The city is loosing its appeal as a "Garden City" because of unplanned settlements.

The Housing (Statutory and Improvement Areas) Act, was enacted as a response to uncontrolled and unplanned urban settlements in Zambia. This seems not to have helped because most of these squatter settlements lack health codes, zoning and building standards. They have no proper street system, provision of public services such as piped water, sanitation and especially garbage removal. These facilities are non-existent in these settlements.

The Town and Country Planning Act, Cap 283 of the Laws of Zambia does not do much to help offset or eradicate the problems faced by councils, planners and the people themselves. This is because there is a general perception by the general populace that the Act is a Western import and doesn’t represent the aspirations and intentions of the people to whom it applies. This is because the Town and Country Act is a colonial legacy which was premised upon Britain. There is need for will power on the part of the Executive and civic leaders to see that they embrace this growth of the city by ensuring that they adequately plan for it.

Urbanization is also having a strain on the land resources of Lusaka at the expense of rural areas. Rural areas largely remain undeveloped because most of the economic activities are concentrated in Lusaka and other towns. There is need to decentralize some of these activities to rural areas.
1.3 PURPOSE OF THE STUDY

Effective urban planning is possible only in a society which has clear objectives which are workable. The policy on planning should be able to culminate into action. The purpose of this study is to enlighten on the importance of city planning, urban growth and having in place clear and well defined developmental plans and legislation which is able to give planning authorities, sufficient latitude to perform their functions efficiently.

The planning authorities must be adequately funded and provided with enough man power so that they have enough room to perform without hindrance.

There are many variables involved in the planning process and it is also part of the political process. The political process influences policy making and implementation, which in turn determines how effective the councils will operate. The problem with the planning process being a political process is that decisions regarding planning are effected by the party’s social contract. The majority of voters come from these shanty compounds and in most instances occupy land illegally or allocate land to themselves based on party lines. When the councils decide to take action, by removing squatters, a conflict results between the council executing its function and that of the political interest in not alienating its voter. The keynote of planning is to grasp the policy of the party in power and mobilize its resources towards actualizing that policy.

The increase of squatter settlements represents a need in society for housing. These settlements seem to be absorbing the excess demand for housing. But it is the general
appearance of these settlements and the effects which follow that is critical. The problem is that the people in these areas do not follow the laid down procedures for acquiring land and erect their structures anywhere. The land they occupy is not surveyed and serviced before they build. What results is an eye sore. They are characterized by leaking sewer, lack of availability of tap water, poor or no drainage system and there is no standards applied in building their structures. In order that urbanization may turn out to be a more positive, constructive phenomenon, it is necessary for the planning authorities not to merely treat urbanization as an exogenous factor to be taken into account in their planning but to make it the subject of a deliberate and comprehensive policy in planning for the economic and social development.

Social justice must exist between the densely populated areas and the affluent suburbs. This social justice can be achieved by ensuring that the shanty compounds have access to facilities such as proper drainage systems, streets, utilities and uniformity in the structures. Failure to provide these might result in a class system which results in hostility as those living in the shanty compounds feel marginalized. What is happening in Lusaka is that city space is becoming less and less. The increase in population has resulted in a ‘multiplier’ effect in that all aspects of life are affected. The increase in traffic results in inadequate roads and parking space problems, lack of public space and leisure facilities or social amenities such as parks. All these factors have to be taken into consideration during planning. All developments must be carefully planned. One should not take precedence or preferred over the other. The increase in demand for offices or housing does not mean that parks or open green spaces should be given less attention or that they should be made
available only to those who can afford them.

Along Great East road there has been an increase in demand for land for both commercial and office blocks. There is no available vacant land and the result is that residential houses are being purchased and converted into offices. What can be seen is that Lusaka is experiencing growth due to economic development and there is need for this growth to be adequately absorbed. All stakeholders involved should ensure that policies are representative of the prevailing social and political environment. The planning policy must be able to provide for the discrepancies and the law must be simplified to be effective and understood by all.

Planners must evaluate their rhetoric carefully, using the criteria of preferences and stated needs of the individuals and groups who will be most affected but must have the general overview in mind, that is, the character of the City of Lusaka and what they want its direction to be.

1.3.1 OBJECTIVES

The objectives of the research are:-

- To investigate the adequacy of planning Laws in relation to urbanization.
- To investigate the effects of unplanned settlements on land resources in Lusaka City.
- To investigate whether or not the planning authorities have put in place mechanisms to correct the situation and the adequacy of these mechanisms.
• To investigate the difficulties facing the local planning authorities in regulating land use in Lusaka.

1.4 SIGNIFICANCE OF THE STUDY

Preservation of the vitality of the city is very important. It is important that all stakeholders participate in the planning process and in all decisions which will effect change in their localities. There is need for intensive consultations between the government and the planning authorities so that there is consistency in policy. The interaction between government and planning authorities must be a continuous process to allow for policy analysis and feedback. Planning will enable the city planners to put in place mechanisms which will enable them identify available space and plan how it is going to be distributed. It will also enable them revisit the developmental plans.

There has been a mushrooming of unplanned settlements. To curb this, policy is vital. A good policy can only be as a result of a good legal system providing a sound and enabling environment for the implementation of planning policy. Legislation must equip them adequately. One of the functions of the law is to regulate human behavior. The legislator uses the law to achieve certain social ends and to bring about a desired result, which is in this case, the control of migration and certainly the effects of urbanization. There are conflicting interests between squatters and the local authority. The law has to be employed in such a way that in maintaining public order, it settles the disputes arising in a rationalistic and peaceful way. This is because there are divided human activities which have to be
regulated. There is the professional need to identify and set objectives on how policies will be implemented.

An analysis of some of the sociological schools of thought such as John Locke's social contract has great significance to some of these issues that society and the local authorities are facing. For the people in unplanned settlements, some of the implications of the social contract is that they have to make certain sacrifices of personal liberty in order to achieve the advantages of living in a safe and ordered society. This implies that they have to seek the services of the local authorities when building and follow all the regulations and requirements of legislation before deciding to settle or build.

Dias\textsuperscript{4}, enunciated that jurisprudence is concerned not only with the law and institutions as they are, and with social impact, but also with having them and changing them in line with social developments. This brings in the pressures behind change and the machinery of change. The planning and implementation of policies must be able to respond and meet the social demands. Planning helps reduce on the strain on natural resources in one particular area and helps distribute land evenly.

1.5 METHODOLOGY

Two methods of data collection will be used. This will include primary and the secondary source data collection methods. The primary source data will comprise of observations,

questionnaires and interviews. I will interview people from the legal department and department for physical planning at the Lusaka City Council.

The observations will look at the physical potential of land for building purposes, the movement or generation of traffic, the existing infrastructure.

Secondary source data will be collected by reviewing and reading existing literature and legislation on town and, country planning and land use. The books will provide enlightenment on the task involved. The books and statutes will also help provide understanding on the topic of urbanization and planning.

1.6 LUSAKA- HISTORICAL BACKGROUND

Lusaka is located 1,300m above sea level. The city occupies a water shed area.\(^5\) Lusaka was chosen to be the capital because of its central location. When selecting Lusaka to become the capital, the traditional development plan was not adhered to.\(^6\) The new capital came into existence in 1905, when the site was selected for one of its rail sidings being laid every twenty miles on the railway line through the centre of Northern Rhodesia.

Lusaka was planned for a European population of 500,000. It was originally designed for to be a small spacious city which was going to be an administrative centre and not an industrial

\(^5\) Lusaka City, State of the Environment Report.

\(^6\) Ibid p.3.
Town. The initial total area was 2.6km, after which it increased to 18km in 1931, then 36km, 139km and 360km in 1961, 1969 and 1970, respectively. The city planners projected an unusually large area which was to allow or permit subsequent future extension and development. Preservation of the originally conceived plan of the city was key. Great care was taken to intersperse the areas set aside for buildings with reserves for parks and public gardens.

A professor of Town Planning, S.D. Adshead was commissioned in 1930 to select a suitable site for the new capital and prepare a plan for the new city. Professor Adshead intended and planned for a city with wide streets and open spaces in order to cater for any future growth in the population of the city. He echoed the words that, "... the uncertainties of the future are so great, that it is wise to err on the side of being too widely spaced rather than to have buildings conveniently near, with a possibility of being overcrowded in the future." The essential feature of Professor Adsheads’ plan was the separation of the various branches of civic activity, one from the other. The trading area was to be distinct from the residential area. The plan made no allowance for any untidy mingling of shops with private houses. The native compounds, sports grounds and public buildings were all given their own sections of the town, each one convenient within itself, but each quite distinct and removed from the residential area.

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7 Central Statistics Office
8 Lusaka 1935, The New Capital of Northern Rhodesia, p.28.
9 Ibid, p.28.
10 Ibid, p.28.
When Adshead set out to plan for the city of Lusaka, Land was bare, surrounded by bushes. No provision was made for Africans because permanent settlement for Africans was not yet accepted. Africans were transient migrant laborers, and officials encouraged workers to live their families in the villages. For the African Laborers, under the employment of the native ordinance, no employer was obliged to provide accommodation for a family but only to a single employee.

It will be seen under chapter two, that with the emergent welfare societies that developed in Europe there was a new era of urbanization. The industrial revolution brought about urbanization. Zambia was not left out as with the discovery of copper, she saw a rise in her urban population.
CHAPTER 2

URBANIZATION IN A DEVELOPING CITY

2.1 INTRODUCTION

The post independence decade of the sixties brought rapid Urbanization to Zambia’s capital, Lusaka. From 1935 till independence in 1964, the city grew steadily without further significant changes to its basically administrative character. At independence, Lusaka was a small but sprawling city of around 110,000 people. In 1968, 15 per cent of the city’s population lived in unserviced squatter settlements. During this period, after independence there was a relaxation on the pass law system which restricted movement. It was during this period that Lusaka as a developing city started experiencing a surge in its population. The majority of the population then was solely and mainly caused by urbanisation, unlike in the past. Lusaka functioned as an administrative centre. The advent of independence also saw a vast increase in the scope of governmental functions, resulting in the creation of new ministries and departments, an expanded social and economic infrastructure and a rapid increase in commercial, industrial and service functions, especially with the creation of new industrial town of Kafue. 12

Population growth is one major factor that affects land. When a city is faced with or is experiencing growth, the demand for its land resource increases. Planners legislators and local authorities such as the Lusaka City Council must conduct a thorough

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investigation and research into the appropriate areas of planning and housing, in order to be effective. This chapter will highlight the effects on land brought about by migration and the causes.

2.2 DRIVERS OF MIGRATION AND URBANIZATION

The last census of 2000 held the population of Lusaka to be about 1,084,703 and to date the city has continued to grow rapidly, with a population increase of about 3.2 per cent per annum.\textsuperscript{13} There are various causes of intra town and rural urban migration, and amongst the causes the following were the most pronounced and common.

As the capital, Lusaka is the focal point for all economic policies and it houses most of the ministerial headquarters. Most of the social and economic activities are situated within the capital. This creates a gross regional imbalance with other provinces in the rest of the country. Other towns are of significance only as exporters of labour and the rural areas are far lagging in development. The best academic institutions offering a variety of courses are located in Lusaka. People, especially from rural areas migrate into Lusaka with hopes of acquiring high education. Rural areas lack education and proper health facilities. But it is important to note that even people from the Copper belt towns and those along the line of rail move into Lusaka for education reasons.

According to the census on population, the Central Statistics, recorded that the population of Lusaka is predominantly young. The implications of this, is that there is

\textsuperscript{13} Central Statistical Office [CSO]
a high demand for employment. Employment is one of the major causes of migration into Lusaka. Colonial policy in the pre independence era was that the town centres were to be a preserve of whites only, Africans were only allowed to live there provided they were domestic servants or general labourers. There was migrant labour force. The resulting problem from such colonial policy is that even after independence, the rural areas and other towns in Zambia have remained undeveloped and unexploited. What this has brought is the continued migration of people, not only from rural areas, as then was, but also from towns and cities such as Ndola, Kitwe and Livingstone. The Seers Report stated that rural urban drift in Zambia has been caused by two factors; the relative stagnation of rural areas coupled with an unprecedented and unanticipated rise in both real and money incomes in the towns. The most pronounced cause of migration into Lusaka is that relating to economic prospects. People move into Lusaka in order to improve their standard of living. They move in the hope that Lusaka has greater opportunities and higher wage employment as compared to other towns.

Yet to traders, Lusaka provides a market for goods and services because of her high population, which can not be sustained elsewhere in the country.

The above are the most likely drivers of migration into Lusaka. Most of the reasons are socio- economic in nature. People prefer to move to Lusaka because of the opportunities services available, which are lacking in other parts of the country. These

are specialised health services, higher education, wage employment and entertainment [recreation] are mostly in direct reach in the capital.

2.3 EFFECTS OF MIGRATION IN A DEVELOPING COUNTRY CITY

Dias enunciated that no society is static, changes develop gradually over the years in practically every sphere brought about by evolution in environmental, economic and political circumstances.\textsuperscript{18} Lusaka as a human settlement is dynamic. A dynamic settlement is one which is characterised by continuous urban growth.\textsuperscript{19} Lusaka is no exception. As has been alluded to, Lusaka is the most developed city in Zambia and as a result, people are more polarised to migrate for varying reasons. With a high population comes an increased demand for land for competing uses. The rapid growth of the urban population poses a number of challenging questions and raises some momentous policy issues. The existing infrastructure is not commensurate with the increased population.

The demand for land has increased and Lusaka has continued to expand. There is an escalating demand for land which has led to illegal land allocations and developments. This is because the procedures for acquiring land under the Town and Country Planning Act are too rigid to the ordinary person. It takes time to process an application for land and as a result people resort to short handed methods.

\textsuperscript{18} Dias, \textit{Jurisprudence}, p208.
The Lusaka City Council has noted some of the main causes of shortages of land for development in the city,\textsuperscript{20}

- Lack of serviced land- poor supply of serviced land against the ever increasing demand for the same.
- Speculation on land- Land owners hold on to land for a long period without developing it.
- Complex procedures in land allocation and poor record keeping, which has led to the growth of illegal settlements.
- Ignorance of land alienation procedures. There is ineffective land audit and coordination among land administration institutions.
- Slow pace of issuance of security of land tenure, poor information and cumbersome procedures for transferring titles make the costs of developing land unnecessarily high.
- Failure to implement the Doxiadis Development Plan has resulted in inconsistencies. The planning system has been rigid and static, seldom based on realistic appraisals of an area’s economic potential or likely growth.

The increase in population has resulted in an increased demand for land for competing uses. The above factors coupled with limited financial resources are overwhelming the system. Thus, the local authorities have been faced with an old time problem of human resource. What is happening is that as Lusaka is continuing to expand, the Lusaka City Council has pointed out that it is running out of expansion space. To

\textsuperscript{20} Outlook Report, ibid p30.
expand, it will need to acquire land from neighbouring districts in order to extend the
district boundaries. The population increase has also brought about overcrowding and spontaneous
construction. The Lusaka City Council is responsible for preparation of land use
plans, but this is proving difficult because it is faced with poor mechanisms of making
land available. It’s capacity to monitor and control development, has subjected the
city to environmental problems of pollution. Urbanization has contributed to the
increase of informal settlements, which are making the appearance of the city to be an
eyesore. An informal settlement is defined as

i. Residential areas where a group of housing units has been constructed on land
to which the occupants have no legal claim or which they occupy illegally.

ii. Unplanned settlements and areas where housing is not in compliance with
current planning and building regulations

These settlements are as a result of inadequate housing to meet the growing needs of
the population. The Town and Country Planning Act provides that before any
development in the form of building or construction takes place, there must be issued
a development plan. The purpose of a development plan is to determine the suitability
of the given piece of land for which it is required and also the suitability in terms of
location. Section 16 (1) provides that the development plan is to consist of a report of
a survey. Most of these illegal settlements are built without following the guidelines
and in most cases the land were they establish their structures is not serviced. The

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21 Ibid p. 70
22 Ibid p. 25
23 United Nations Habitat Programme
24 Chapter 283 of the Laws of Zambia
majority of the population reside in informal settlements, which mostly comprise of persons of the low income bracket. These people do not follow the procedures which are lengthy and costly, for acquiring land. This makes it difficult for the public authorities to correct the situation in light of the many constraints which they face.

Mbao\textsuperscript{25} noted that urban life requires complicated services such as houses, traffic, sewage, water reticulation and refuse collection. But these services can not easily be scaled up as population grows. As the infrastructure fails to meet minimum acceptable standards of service and amenities, social economic imbalances and injustices intensify, the quality of life erodes and it becomes increasingly difficult to harmonize man’s activities with the components of the natural environment\textsuperscript{26}. Because of illegal settlements largely being unplanned, there is no proper service provision. These settlements are characterized by leaking sewers, scattered garbage, pit latrines and all manner of ill activities. The structures they set up are not in accordance with the standards set by the Public Health (Building Regulations) Act. The housing problem in Zambia is nothing new. It has existed since time immemorial and keeps on worsening.

There has been reported cases of corruption in the land administration system. Officials note the desperation and take advantage by making the system work for those who are willing to go the extra mile, so that the process can be expedited for them while it is extremely costly for low income groups to access land through proper means. This causes many to resort to other means or to start allocating land to themselves illegally. In most compounds land is given by a chairman upon paying a

\textsuperscript{25} Mbao, M., \textit{Law and Urbanization in Zambia}, ibid p11.  
\textsuperscript{26} Ibid P 11.
fee which is fixed. These compounds have formed their own structures of land allocation, and most people use these channels due to ignorance.

The increase in population has caused an increase in traffic and congestion. The existing road network has become inadequate to cope. The problem is further, compounded by the fact that most land adjoining these roads is developed. This makes it difficult to expand the existing roads or create new roads. The Lands Acquisition Act, Cap 189 of the Laws of Zambia under section 3 gives power to the president to compulsorily acquire any property of any description, whenever he is of the opinion that it is desirable or expedient to acquire any land, it shall be lawful for any person authorized either generally or specially by the minister in that behalf.

a. To enter upon the land in question or any land in the vicinity thereof and survey, and take levels of any such land or

b. To do all other acts necessary to ascertain whether the land is or may be suitable for the purpose in question

c. To clear, set out and mark the boundaries of the land proposed to be acquired

The Act further provides that where property is acquired under the Act, the Minister shall on behalf of the government pay in respect thereof, out of the moneys provided for the purpose by parliament, such compensation in money.

The section thus, provides that with the consent of the person entitled to compensation, the president in lieu of or in addition to any compensation payable, may take a grant of other land to such person. It is inconceivable or unattainable for

27 Outlook Report, pp 12
28 Section 10
government or Roads Development Agency (RDA) to embark on compulsory acquisition as the costs of compensation would be enormous to bear.

This position is not workable in a developing country like Zambia. This is because as a developing country is faced with the problem of limited resources in finance and manpower. This is why, before it embarks on amending or enacting laws, care should be taken in ensuring that the resulting legislation is dependent on the local circumstances. It is worth of note that most provision (such as the one relating to compensation) have tended to be modelled on those existing in Britain, which is far more developed than Zambia. Kanyeihamba notes that the result is that voluntary purchase of land for such elementary uses as public road construction has led to astronomical compensation to owners, while compulsory purchase takes a long time to materialize.

The Central Business District (which comprises of Cairo Road, Cha Cha Cha Road, Freedom way and Kamwala Trading Area) has become overcrowded and there is inadequate parking space. Most businesses are shifting their offices from the CBD to residential areas. There is a merging taking place. The original plan for Lusaka was based on functional specialization were residential areas were distinct from commercial areas and industrial areas. But there has been a change in land use, from functional specialization to a merging of activities.
CHAPTER 3

3.1 INTRODUCTION

Land is a scarce and ever diminishing resource, which requires tactful and strategic planning. For a growing city like Lusaka, the need to address the increasing demand for land is cardinal. The development of land must be conducted in an orderly manner, with care being taken to the general appearance of the city. Development must be consistent and orderly and not progressing in an up hazard manner.

With the pressures of urbanization, planning helps contain the urban sprawl. Knowledge of urban growth and rate of urbanization is important because it is relevant to the planning process. The authorities are able to systematically project into the future and in so doing put in measures to absorb rapid population growth. For planning to be effective, good and sound legislation is important in order to provide a sustainable environment. For the legislators, they must take into consideration the existing needs of the people, the challenges faced by authorities and find a way of ensuring that a balance is struck between the competing needs of land use.

This chapter is going to look at the process of planning, the statutory control of land use under the Town and Country Planning Act, Cap 283 of the Laws of Zambia, the local authorities and matters incidental thereto, and the land delivery system in Lusaka.
3.2 THE PROCESS OF PLANNING

3.2.1 THE TOWN AND COUNTRY PLANNING ACT

The town and Country Planning Act, Cap 283 of the Laws of Zambia, is an Act which provides for control of land use. This act was enacted in order to provide for a rational and integrated pattern in the process of land use and development\textsuperscript{29}. Town and Country Planning Law is that Law which deals with the making of plans or schemes for the planning and development of both urban and rural land\textsuperscript{30}. The primary object of planning is to ensure that all land is put to the use which is best from the point of view of the community\textsuperscript{31}.

The Town and Country Planning Act provides and points out such plans and developments which are permitted in different parts of the city. It is an Act which makes provision for the appointment of planning authorities, for the appointment of planning authorities, for the establishment of a Town and Country Planning Tribunal, for the preparation, approval and revocation of structure and local plans, for the control of development and subdivision of land… section 22 (1) of the Act\textsuperscript{32} provides that permission shall be required… for any development or subdivision of land that is carried out after the appointed day. The previous 1962 Act required a planning scheme for every development but was replaced by a new concept of structure plan or local plan. A structure plan or local plan (development plan) shows the allocation of land for

\textsuperscript{29} Mudenda, F., \textit{Land Law in Zambia}, P. 665
\textsuperscript{31} Ibid, p. 665
\textsuperscript{32} Town and Country Planning Act.
different uses, such as housing, schools, industries and open spaces; and the approximate future position of such things as the principal traffic roads\textsuperscript{33}.

Part III of the Town and Country Planning Act provides for structure plans or local plans. Previously, the structure plan and local plan were collectively known as the development plan, but the amendment Act number 21 of 1997 removed the development plan. Development plan was substituted with structure plan or local plan wherever it appeared in the Act\textsuperscript{34}.

Structure or local plan provides for an ordered form of future land uses of the city or town. A structure plan comprises a survey of the planning area which consists of the principal and economic characteristics of an area, the neighborhood, the population, communication, transport system and traffic of the area or neighboring areas\textsuperscript{35}. Structure or local plans also take into consideration the policy statement of the planning authority in respect of the development. Solesbury\textsuperscript{36}, notes that structure plans as operative expressions of planning policy exist in concept but not in reality. In reality, what exists on the ground is far from what is contained in the Act because of extenuating factors such as politics, unavailability of land, economic circumstances, population increase, inadequate housing which will determine generally how development of a city will progress. Development is mostly based on prevailing demand and it proceeds where need arises.

A structure plan fulfills five main functions\textsuperscript{37}

i. Interpreting national and regional policies

\textsuperscript{34} Amendment Act No 21 of 1997
\textsuperscript{35} Section 16(1) of the Town and Country Planning Act.
\textsuperscript{36} Policy in Urban Planning, p93.
\textsuperscript{37} Ibid, P. 94
ii. Stating objectives and strategic policy – the structure plan should contain a statement of the local authority’s political objectives for the area and the strategic policies for environmental change which it is adopting in pursuit of these objectives.

iii. Stating policy norms for strategic promotional and regulatory decisions - some executive decisions and actions will derive guidance direct from the structure plan where they are in response to strategic issues.

iv. Bringing major issues and policies before the public—they provide opportunities for participation and objective. They operate as a means of bringing the authorities perception of environmental issues and their choices of policies forward for public debate and independent assessment.

A local plan on the other hand is a comprehensive statement of policy, their formal adoption, by a planning authority is contingent on the prior approval of a structure plan.

Building, construction and any alteration of any development is to be undertaken according to the structure or local plans for the area. This is the reason why before any construction can take place, planning permission must first be obtained in order for the authority to scrutinize and ensure that any building to be undertaken is in accordance with the structure plan and suitable for the area. Planning permission enables the authority or ministry to control any development and subdivision of land.

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38 Ibid, P. 125
Section 22 (1)\textsuperscript{39} provides that

Permission shall be required for any development or subdivision of land that is carried out. The provisions of the section shall apply to:

\begin{enumerate}
\item[(a)] areas in respect of which there is an order, made under the provisions of the Act, to prepare a structure plan or local plan,
\item[(b)] Areas subject to an approved structure plan or local plan.
\end{enumerate}

It will be observed that the Act has provided quite substantially for most land developments. The problem has been lack of a land management system\textsuperscript{40} and a proper coordination system among the various institutions charged with or involved in the land delivery process and policy. Currently, there are many institutions in Zambia which deal with land delivery. Mudenda\textsuperscript{41}, has observed that this has resulted in problems of coordination and led to an inefficient land delivery system\textsuperscript{42}. The effects are poor road network, congested roads, slums, corruption in the land delivery system, inadequate drainages, overwhelmed local authorities and so on.

The Town and Country Planning Act is administered in conjunction with the Local Government Act\textsuperscript{43} and the Public Health Act\textsuperscript{44}. The local authorities under these statutes possess the powers to control the erection of buildings demolition and removal of buildings which do not conform to the approved plans or are a danger to public health or safety. The functions of the local authority

\textsuperscript{39} Town and Country Planning Act
\textsuperscript{40} Outlook Report, P.26
\textsuperscript{41} Land Law in Zambia, P. 817
\textsuperscript{42} Ibid P. 817
\textsuperscript{43} Cap 281 of the Laws of Zambia
\textsuperscript{44} Cap 295 of the Laws of Zambia
are provided for under the second schedule to the Act\textsuperscript{45}. Under paragraph twenty nine of the schedule, the council can prohibit, control the development and use of land and buildings, and the erection of buildings in the interest of public health, public safety, and the proper and orderly development of the area of the council.

The Public Health (Building) Regulations Act on the other hand under section 75 empowers the Minister by statutory instrument to make regulations that confer powers and impose duties in connection with the carrying out and enforcement thereof on local authorities, owners and others as to \textit{inter alia} the construction of buildings, the provision of proper lighting, ventilation and the prevention of overcrowding. The Act further provides for the requirement of a building permit. A building permit enables the holder to erect the building in accordance with the approved plan and subject to the conditions imposed. What pertains on the ground is different from what the legislators intended. Mbao\textsuperscript{46}, noted concerning the general appearance of most settlements around the city as, "...endless warren like shanty towns of surpassing wretchedness, shack after shack, built of the most disparate bits of wood, tin or anything else that will offer shade and shelter, but uniform, in their shabby inadequacy. Despite the Public Health (Building) regulations Act providing guidelines on the quality of buildings, the trend has continued. The effect of unplanned settlements is all too transparent and the importance of planning is appreciated, more so in the rainy season. Floods and blocked drainages are prevalent.

\textsuperscript{45} Section 61 of the Local Government Act

\textsuperscript{46} Mbao, \textit{Legal Aspects of uncontrolled and Unplanned Urban Settlements in Zambia}, p. 86
Kuku is a newly established compound in Lusaka, whose houses were completely immersed in water, due to the flooding of the adjoining Ngwenya Dam. The land on which the compound was developed is meant to be a reserve for water to collect in once the water level in the dam rises. Such catastrophes can be avoided if regulations and legislation regarding building and planning are followed.

3.2.2 ENFORCEMENT OF PLANNING CONTROL

Failure by a developer to acquire planning permission for any development or subdivision of land attracts an enforcement notice. The enforcement notice is served on the owner and occupier, and may require the discontinuance of that use or impose conditions on the development. Paragraph 30 of the schedule provides that the council has a function to control the demolition and removal of buildings and to require the altering, demolition and removal of buildings which

a. Do not confer to plans and specifications in respect thereof approved by the Council,

b. Are a danger to public health or public safety

The process of demolition is however, a costly one. The council requires equipment, the police and manpower to conduct such operations.
3.2.3 REPRESENTATION AND PUBLIC PARTICIPATION

The Town and Country Planning Act allows for public involvement regarding any structure plan or local plan. Before any plan can be approved, the public are afforded an opportunity to lodge their objections regarding any change in the area of either a structure plan or local plan\textsuperscript{51}. Section 49 (1) provides that, for the purpose of the execution of his functions under the Act, the minister may hold or cause to be held such public inquiries as he may deem necessary, and may for that purpose;

a. Appoint any person to conduct a public inquiry to report to him

The local authority holds public inquiries and consultations for major developments\textsuperscript{52}. The members of the public are requested to submit their views. They indulge the public through adverts placed in the print media. For major development plans, they conduct exhibitions. Depending on the development, an Environmental Project Brief (EPD) or Environmental Impact Assessment is submitted to the Environmental Council of Zambia (ECZ).

3.2.4 THE PLAN

A plan lays the scheme of how a specific area should be developed in future and what type of activities may be carried on, in defined places of the area as indicated on the plan\textsuperscript{53}. The city of Lusaka has been using the Doxiadis Development Plan. In 1968, the government through the Ministry of Local Government and Housing retained Doxiadis Associates as consultants to carry

\textsuperscript{51} Section 15, Town and Country Planning Act
\textsuperscript{52} Interview, 26/02/2010
\textsuperscript{53} Kanyelihamba, \textit{Progress in Planning}, p 66.
out a study of the Development plan for the greater city of Lusaka\textsuperscript{54}. They were responsible for the master plan. The approved plan by Doxiadis was completed in 1975 and came into force in 1978\textsuperscript{55}. The Town and Country Planning Act under section 18 provides for review of the plan after every five years. Up to date, the plan has not been reviewed and the development of the city has continued using outdated laws which are not necessarily representative or reflective of the conditions we are living in. There has been failure to implement the Doxiadis Development Plan. The planning system has been rigid and static based on unrealistic appraisals of an area’s economic potential or likely growth\textsuperscript{56}

3.2.4.1 THE NEWLY INTEGRATED DEVELOPMENT PLAN (IDP)

The Lusaka City Council has reportedly run out of available land in Lusaka\textsuperscript{57}. The city is experiencing lack of expansion space and this is compounded by poor mechanisms of making land available and lack of capacity to monitor land development\textsuperscript{58}. In 2000, the Lusaka City Council in collaboration with the Japan Integrated Cooperation Agency (JICA) reviewed the master plan and created the Integrated Development Plan (IDP). The IDP propose to pursue the extension of the city boundary to bring the Lusaka International Airport and additional land around the city within its boundaries\textsuperscript{59}. The creation of the IDP was meant to review the outdated master plan which was prepared in 1975 and has never been reviewed since. The new plan is called Integrated because unlike the Doxiadis Development Plan which was based on spatial

\textsuperscript{54} Matibini, The Urban Housing problem for Low income groups, p 26
\textsuperscript{55} Ibid, p. 26
\textsuperscript{56} Outlook Report, p. 26
\textsuperscript{57} Interview, Mr. Mwansa, 26/02/2010
\textsuperscript{58} Ibid p. 70
\textsuperscript{59} Ibid, P. 70
planning, the latter is mixed. It caters for all development involving infrastructure, transportation, water, sewerage, utilities and so on. It also looks at future trends in the economy and how to best prepare for the said trends. The IDP is also budget based, that is for every project proposed cost is allocated, as opposed to spatial planning.

The IDP will help the local authority to refocus on future development, of the city, particularly taking into account new trends and technologies that may not have existed at the time of the preparation of the Doxiadis master plan. The IDP, though completed in 2000 is up to date yet to be approved.

3.3 LANDUSE PLANNING

Land use planning is the term used for a branch of public policy which encompasses various disciplines which seek to order and regulate the use of land in an efficient and ethical way\(^6\). It is the process by which decisions are made on future land uses over extended time periods.

\(^6\) E_stud.vgtu.it/files/dest/12582
3.3.1 THE FIFTH NATIONAL DEVELOPMENT PLAN

Government under the Fifty National Development Plan (FNDP) (2006 – 2010), pointed out a number of challenges that hinder the ability of the land sector to adequately empower potential of the land resource\(^6\). Among the challenges are:

i. Lack of land policy\(^6\)

ii. Abuse of current system of acquiring land in both customary and state land

iii. Ineffective land use planning

iv. Ineffective land audit

v. Ineffective coordination among land administration institutions\(^6\)

Government’ aim under the FNDP was to streamline the land delivery system and to facilitate economic activities. Urban land use planning is considered to be part and parcel of the national development plans. The basic policy underlying the Lands Act is economic development of land. Mulimbwa\(^6\) elucidated that the difficult being experienced in having access to an urban plot and the high financial cost of securing one is a clear indication of the problems of urbanization.

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\(^6\) Mudenda, Land Law in Zambia

\(^6\) Policy currently in place does not address the challenges facing land administration because review of the existing Town and Country Planning Act has not been extensive. To date, no creation of land banks has been effected and the problems of land shortages persist. The IDP is has not been implemented to address the land challenges. The Act itself, as the law applicable is outdated and rigid. For policy to be effective, the governing legislation flexible and able to meet such challenges with expediency. The Act compounds the challenges thus ‘nullifying’ any policy objectives.

\(^6\) Government of the Republic of Zambia, Finance and National Planning

The land policy in existence was ushered in, in the second republic, by the Movement for Multi-Party Development (MMD) under the Lands Act.

The new regime adopted a policy to

i. Attach economic value to underdeveloped land

ii. Encourage private real estate agency business

iii. Promote regular issuance of title deeds to productive land owners in both rural and urban areas and clear the backlog of cadastral surveys and mappings.

Under the 1995 Lands Act better prospects to land developers were offered in so many ways. There was freedom of alienation, relaxation of control over dealings in land, the establishment of the Land Development Fund (LDF) to open up more land for development thereby enhancing access to land, all pointed towards a firm determination to encourage land development and, in its wake, economic development. The LDF applies to local authorities. However, very few authorities have made use of it as noted by Mudenga, particularly the Lusaka City Council which is exacerbated by problems of poor supply of serviced land against the ever increasing demand.

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65 Movement for Multi-Party Democracy, Party Manifesto, P. 7
66 Cap, 184 of the Laws of Zambia
67 Mulimba, p. 95
68 Land Law in Zambia
3.4 CHALLENGES FACING THE PLANNING AUTHORITIES

The Lusaka City Council is the planning authority for the city of Lusaka. It is responsible for the identification of land and prepares lay out plans. There has been institutional failure to achieve and plan for land efficiently. This is because there are many institutions which deal with land delivery in Zambia. The institutions include the Ministry of Lands, Ministry of Agriculture, Department of Physical Planning and Housing at the Ministry of Local Government, Resettlement Department at the office of the vice president, Ministry of Tourism and Ministry of Environment and Natural Resources. This has led to problems of co-ordination, as these institutions have various pieces of legislation dealing with land.

The local authority is also challenged with regard to the planning laws applicable. The Town and Country Planning Act is based on a colonial legacy. The laws on town planning are ineffective, rigid and unresponsive to the challenges of urbanisation, population change and socio-economic and political development. According to Mudenda, the Town and Country Planning Act is outdated and not comprehensive, the problem has been compounded by lack of enforcement of the law by the planning authority. The result of this law has been erection of structures and buildings by developers without regard to the land use plan (structure and local plans). The problem has been further made worse by illegal land allocations by local authorities.

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69 Mudenda, p. 817
71 Ibid, p. 36
72 Ibid p. 36
Currently, the local authority has no available land and, plans are underway under the IDP to obtain land from the neighboring districts.

There is lack of qualified staff particularly in the survey department of the Ministry of Lands. There is inadequate human resource\textsuperscript{73}. This incapacity is rendering it difficult for the institution to carry out their work effectively\textsuperscript{74}. This results in land not being adequately surveyed, and the settlements or developments made are not in proper alignment thereby rendering it difficult to provide basic services to such places. Other challenges include:-

- The increase in illegal settlements. This is compounded by the slow pace for issuance of title deeds and the long and costly procedure of processing of applications
- Political interference
- Corruption in the system of land delivery system
- Limited financial resources to adequately meet all the pressing needs of the institution.
- The other challenge is that of interference in the land delivery system. Lack of properly defined ‘jurisdiction’ for the various officers. Recently, the Minister of lands withdrew the agency by the local authority to issue land.

\textsuperscript{73} Outlook report, P. 26
\textsuperscript{74} Interview, Mr. Mwansa, 26/02/2010
CHAPTER 4

4.0 PLANNING LAW, POLICY AND URBANISATION; AN ANALYSIS

4.1 ADEQUACY OF THE PLANNING LAW WITH RESPECTS TO URBANISATION

A good planning law must be able to meet with flexibility the challenges of urban sprawl. The law must be representative of the society. It must reflect the local conditions of the people and their aspirations. The law which applies to planning in Zambia is the Town and Country Planning Act. It is modeled along the 1947 Town planning law of England. The Town and Country Planning Act embodies the law as it stood at the arbitrary out off date of 1911. These laws have since been revised and reviewed in England, but Zambia still places reliance on them. Ehrlich, propounded that law is derived from social facts, and that the real source of law is not statutes or reported cases but the activities of society itself\(^{76}\). The Town and Country Planning Act, is rigid, obsolete and is not in tune with the circumstances and conditions of a developing country and city, like Lusaka. The problem this bears, is that it is more or less adulterated form the people as there is a sense of alienation. This continued reliance on a colonial legacy has contributed to the surge of unplanned settlements. The received law was conceived to deal with the land problems of a different socio-economic and material conditions which inevitably leads to a mis-match between the law and society\(^{77}\).

\(^{76}\) Anyangwe, C., An Outline of the study of Jurisprudence, (University of Zambia, 2005), p241  
\(^{77}\) Mbao, p81
Plans under the Town and Country Planning Act demonstrate a great deal of rigidity and as a result are too inflexible to accommodate rapid urban change\textsuperscript{78}. The whole essence and major function of town planning and urban management is to assist in the absorption of the rapidly growing urban population\textsuperscript{79} in such a way that basic needs are met, one of which is ensuring that there is an adequate and efficient supply of serviced land as opposed to allowing people, occupy land without it being validated as to its suitability for habitation.

In Lusaka, particularly, demand for housing has outstripped supply and residents usually opt to build their own houses. They often do so by acquiring cheap land usually in informal settlements where no planning has been undertaken by the council\textsuperscript{80}.

The procedures for acquiring land or a plot in Lusaka is very costly. To add to this, land and housing in Lusaka has become extremely expensive for the average person. As a result people who can not afford or do not understand the procedure for acquiring land either choose to build in unplanned settlements, where the norm is to buy land from a ‘representative’ commonly called the chairman. This chairman in most instances is the one who distributes land in the settlement. There is no caution or urgency to find out if the land is zoned or surveyed. Upon acquisition of land, building commences without regard being given to the building regulations under the public health (Building Regulations) Act.

\textsuperscript{78} Matibini, Ibid, p.132
\textsuperscript{79} Ibid p.132
\textsuperscript{80} Mr. Mwansa, 26/02/2010
The procedure for acquiring land / plots has itself been said to have attributed to illegal settlements and corruption in the system of land delivery. Matibini\textsuperscript{81} noted that because of the rigidity of the land use controls and the inability to plan for the housing development of the low income groups, squatter settlers continue to proliferate unoccupied land zoned for other purposes. The local authority has recorded a rise in the number of complaints involving illegal land allocations and ownerships.\textsuperscript{82}

It has been observed that the Town and Country Planning Act imposes a significant limitation on the freedom which the common law allowed for landowners to build on their land, or to change the use to which their land and buildings were put.\textsuperscript{83} Under the Act, applicants for plots are expected to submit their applications for planning permission to the planning authority. This is to ensure that only acceptable and orderly development takes place. This method has been blamed for the numerous and unnecessarily long procedures and high costs which mostly favour the financially able. To acquire a plot, an application for planning permission must be filled in the prescribed manner, accompanied by prescribed plans and drawings.\textsuperscript{84} On receipt of the application, the planning authority normally consults other authorities so as to ensure that the proposed development does not violate public health and road traffic laws.\textsuperscript{85}

There is generally, ignorance of this procedure, it has been argued that obtaining plans and drawings is very costly, and people do not usually pay attention to the structures they put up.

\textsuperscript{81} Housing for Low Income Groups, P. 132
\textsuperscript{82} Outlook Report, Preface
\textsuperscript{83} Mudenda, Land Law in Zambia
\textsuperscript{84} Town and Country Planning (Application for planning permission) Regulations 1962 as amended
\textsuperscript{85} Town and Country Planning Development order Paragraph 9
There has been incidents of corruption in land alienation were records of illegally created plots have found their way to the land register.

Land use planning is a central feature of the regulatory function of government. The system has an ineffective land use planning. This was identified under the FNDP and it was proposed that during the plan period, government was going to promote land use planning. Land use planning involves zoning and transport infrastructure. The major instrument for current land use planning is the establishment of zones. It involves the process by which decisions are made on future land uses over extended time periods. Land use planning enables the local authorities to take an audit of all available land and plan for it adequately, by ensuring that it is zoned, and serviced prior to it being developed.

4.2 DIFFICULTIES FACING THE PLANNING AUTHORITIES IN REGULATING LAND USE IN LUSAKA

In order to take efficient stock of land and plan for it efficiently, the local planning authority needs to have capacity to carry out its functions. The capacity of the local authority is not adequate to monitor all activities affecting land\textsuperscript{86}. This has contributed to the proliferation of illegal development. There is lack of qualified staff particularly in the survey department\textsuperscript{87}. What results is that the land which is allocated in most instances is not surveyed. People build on unserviced land and the council comes in to correct the situation after development has taken place, which proves to be more expensive for them. The land delivery system is severely

\textsuperscript{86} Interview, 26/02/2010
\textsuperscript{87} Interview, 26/02/2010
constrained by a limited number of surveys and the volume of applications. The problem with these shortcomings is that the local authority has a poor record keeping and information system, and as such has no proper stock of developed land. This means that it loses revenue in uncollected land taxes. Some of the financial constraints the institution faces could be offset if it was expedient in its operations.

The centralization of title registration has contributed delays in the issuance of consent. This has led to inefficiency and delays in the acquisition of title to land.

The role and function of planning authorities is to ensure that land is identified and planned for in good time and that appropriate standards are in place. This can only be done, if there is enough human resource to cater for the various functions of the institution.

There is also lack of coordination among the various institutions and ministries dealing with the land delivery system in Lusaka. This results in role conflicts because of the multiplicity of agencies with overlapping responsibilities. The Lusaka City Council (LCC) is responsible for the preparation of land use plans where as the ministry of lands allocates land. The Mung’ omba commission noted the lack of coordination among the various institutions that deal with land matters and, it was recommended that:

a. Institutional reforms be undertaken among institutions dealing in land, while a body to coordinate the operations of these institutions should be established.

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68 Waluzimba, Ibid p. 12
b. There should be a comprehensive review of harmonization and updating of the various land related laws in order to provide a clear regulatory framework for policy implementation\textsuperscript{89}

The FNPD also identified ineffective coordination among land administration institutions. There is a need to overhaul the different institutions and departments responsible for land policy and delivery in order to have an efficient land delivery system. The roles and responsibilities must be clarified amongst the institutions involved in the land delivery process and policy\textsuperscript{90}. The Ministry of Lands places reliance on other government institutions and agencies, which in itself does result in considerable delay and confusion\textsuperscript{91}. It relies on the local authorities for planning approval and provision of services. The reliance on the staff of other ministries means that the ministry of land lacks control over the rate of land delivery.

The other challenge facing the local authority is that of consistency in enforcing planning control. The Act provides that where there is non compliance with the regulations or where no planning permission has been obtained, such buildings should be altered or removed\textsuperscript{92}. The council due to varying reasons ranging from moral considerations has been reluctant to demolish illegal structures. Political interference has also contributed to this inconsistency, as the majority of voters are located in informal settlements and as such the political leaders do not want to alienate their voters. Because of such reasons, people are not respecting the law, and will continue building any how without regard to regulations.

\textsuperscript{89} Willa Mung’omba Constitution Review Commission
\textsuperscript{90} Mudenda, p. 817
\textsuperscript{91} Ibid, p. 817
\textsuperscript{92} Town and Country Planning
Lusaka has continued experiencing an increase in its population and the demand has outstripped the supply of land. As a result, it has run out of land for alienation because of inadequate expansion space. There is a need to open up more land for development. The 1995 Lands Act made provision for the land development fund, which aims at opening up new areas for the development of land. However, currently there are poor mechanisms of making land available and capacity to monitor development because of poor land management under the system. It is yet to be seen, how the situation will be contained under the yet to be approved IDP.

For the local authorities to plan effectively and ensure that there is a constant supply of basic services, it needs financial resources. These resources have been very limited hindering the efficient operations at the institution and rendering it unable to meet the growing needs of an urban sprawl.

4.3 MECHANISMS PUT IN PLACE TO CORRECT THE SITUATION

The most pressing problem, it that of lack of land, it has been proposed under the IDP, that land should be acquired from neighbouring districts. Once the IDP is approved Lusaka will be expanded. The authority will also have to strengthen and develop its land information system in order to improve its delivery system and plan adequately. By improving its land information system, it will be able to audit and take stock of all developed and undeveloped land. Thus, in so doing it will increase its land tax to be collected from the developed settlements.

92 Outlook Report, P. 70
The planning authority with regard to illegal settlements has future plans of upgrading, relocation and renewal. The Japan International Cooperation Agency (JICA) has been working with the Lusaka City Council to upgrade some of the illegal settlements. Plans are underway in Chibolya Compound (Pilot Project) to relocate the residents there, and demolish the structures. The LCC hopes that after relocating the inhabitants they can service the land for private development. They hope to generate revenue through this project and depending on the success of it, they can move to other settlements.

In 1968, the then Ministry of Local Government and Housing instructed local authorities to lay out basic site and service schemes for squatter settlements. This was followed by the enactment of the Housing (Statutory and Improvement Areas) Act. This Act sought to confer security of tenure to inhabitants of illegal settlements, of importance, plots were to be demarcated and serviced with access roads, drainage, piped water, sewerage, electricity, refuse collection and other services.

The policy was stated in the Second National Development Plan as ... ‘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. The LCC plans on upgrading some of these settlements by the provision of utilities and social services. Upgrading programmes are designed to cater for those settlers who can not afford plots in site and service schemes. Upgrading and relocation are less costly than re-planning.'

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94 Mr. Mwansa, 26/02/2010
95 Cap 194 of the Laws of Zambia.
96 Mbao, M.L.M., Legal Aspects of Uncontrolled and Unplanned Urban Settlements in Zambia, P. 98
As a long term solution, the government had approved the upgrading of peri-urban areas to improve the living standards of the people. Kalikiliki, N'gombe, Garden and Chaisa were among the unplanned settlements already undergoing legalization and upgrading to address the problem of safe drinking water and sanitation.

To decongest the Central Business District (CBD), there has been an opening up of satellite shopping centres. This will reduce the amount of traffic going into the CBD. In the future, the LCC intends to introduce parkades to cater for the increased demand for parking in the Town centre. Given the inadequate funding to the LCC it is yet to be seen how they will finance such a project.

The change in land use from functional specialisation to mixed, is held to be favourable because it is easier for the LCC to provide services such as roads, drainage, utilities, waste collection, street lighting and so on, to an area which is densely populated than opposed to isolated spaces.
CHAPTER 5

5.0 CONCLUSIONS AND RECOMMENDATIONS

The planning law (Town and Country Planning Act) of a country is very important. The city planners must ensure that at all times they adhere to high standards of urban development. This is only possible if the law governing town planning is followed to the last letter. This means that even when it comes to enforcement, other things being taken into consideration, the authorities must be consistent. Where there is illegal development, the provisions of the Act must be applied. It is only in so doing that examples would be set to would be developers to follow the proper procedures when acquiring land.

There is also need to simplify the land alienation procedures. These procedures have been said to be cumbersome and costly for the average person. Thus, educating the general public on how to acquire land is very important because there is ignorance. This is a loophole because those with the know how take advantage of this fact and use under handed procedures, which has seen people lose their investments.

Act specifies rigidly the procedure for the plan and preparation and the context of development plans. Rigidity has made it difficult for both the local planning authority and the developers. Act envisages that plans will be implemented by means of regulatory instruments to prevent unplanned developments. These development plans have been found to be outdated and too inflexible to accommodate rapid urban growth.

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For the legislators, it is important that when legislating they take into account countervailing factors such as urbanization and socio-economic factors. This is because law does not exist in a vacuum but is the total resultant of all conditions affecting human kind. As lawyers we tend to be analytical and conceptual in our approach, thus restricting ourselves into strict legal norms. But it is important as Justice Oliver Holmes put it ... ‘to venture forth from the law to garner what one or more neighboring disciplines have to offer respecting questions of a general nature that have been thrown up in legal contexts.’ Issues such as urbanization and planning though not entirely legal, predetermine the legal system and what the law regarding town planning should be. This is the reason why it is important to understand factors affecting trends in population growth and studying the growth pattern of the city before legislation such as the Town and Country Planning Act, which is said to be rigid and obsolete, can be amended or repealed.

For the government, when making policy involving land development, they should ensure that they look into pressing issues, affecting the general populace. They should look at the underlying cause of urbanization. Other towns and cities should be developed as well. This can be done by improving the infrastructure and opening up new investment opportunities in order to create employment and prevent migration. There should be promotion of secondary towns.

There is also need to encourage systematic urban land development. This can only be achieved by having an effective land use planning and management system in place.
The land delivery system must be streamlined. There should not be interference in the land allocation system. More land should be opened up for development. The local authorities must be equipped with financial resources for them to execute their functions efficiently and expeditiously.

Though the Town and Country Planning Act has been said to be inadequate because it was based on conditions pertaining in England, the Housing (Statutory and Improvement) Areas Act, Local Government Act and Public Health (Building Regulations) are able to supplement the shortcoming of the Act. This is because they adequately cater for land development. The problem does not entirely lie on the Act. On the contrary, these institutions suffer from bureaucracy, insufficient funding, and corruption, failure to efficiently run and take stock of both developed and undeveloped land.

The Act has not authoritatively covered what amounts to planning consideration. Planning consideration represents a tradeoff between competing interests in the planning process. Determination of planning consideration is mostly dependent on the construction which is given by the court depending on the circumstances of every case. This is the reason why residential houses or plots are being converted into clinics, shops or schools which in certain circumstances is not appropriate. The mushrooming of these developments precede government’ objective under the Lands Act of economic development of land but unfortunately such developments have been uncoordinated.
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