

U R B A N L A W
AND
HOUSING POLICY IN ZAMBIA

by
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It is hereby declared that this dissertation
or any part of it has not been submitted for
a degree in this or any other University.

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A B S T R A C T

This dissertation attempts to evaluate the legal framework within which the government seeks to implement its housing policies. The government has made several policy statements in National Development Plans, housing programmes and circulars regarding the steps to be taken to eliminate housing shortage. This inquiry seeks to determine whether the law relating to housing enhances the implementation of the policies formulated by the government. It follows therefore that the term "policy" in this context is restricted to policy statements and directives emanating from government sources.

That there is a need for reform of the various legislative enactments affecting housing in this country is evident from the following observation in the Third National Development Plan:

"There is an obvious need to co-ordinate legislation relevant to housing and to introduce amendments to various Acts which at present are hampering housing development in order to formulate a comprehensive legislative backing of the housing policies and to remove inconsistencies in the present legislation". (p.330)

The following legislative enactments appear to be of particular interest in this regard: the National

Housing Authority Act, the Lands and Deeds Registry Act, the Land Survey Act, the Town and Country Planning Act, the Public Health Act and the Housing (Statutory and Improvement Areas) Act. These will be critically analysed in the work.

Chapter One: This is an introductory Chapter which discusses the general urban housing situation in the country. It shows the various categories of land available for housing in urban areas, and urban land tenure generally. It also examines the institutions responsible for housing and the nature of the housing problem which they are to solve.

Chapter Two: The Chapter is concerned with the colonial housing policy and the law; as some of the housing policies being pursued were evolved during the colonial era, namely home ownership and housing tied to employment, the emphasis is therefore on the legacies of the colonial housing system.

Chapter Three: The Chapter discusses the policies adopted by the government after independence which are home ownership within and outside Site and Service Areas, and the recognition and improvement of Squatter Areas. These policies reflect an appreciation of the

futility of reliance on local authority rental housing. Hence the abandonment of further rental housing in 1972. The Chapter also discusses the significance of each of the policies in the overall national housing programme and the sources of finance for their implementation.

Chapter Four: This is an exposition of the legal difficulties and practical problems encountered by developers of housing in areas outside Site and Service Schemes and improved or upgraded squatter settlements. The difficulties arise from the law and practice relating to dealings in land, planning permission under the Town and Country Planning Act and the Public Health (Building) Regulations. The Chapter also evaluates the building standards as prescribed by the building regulations in terms of their suitability in the context of the Zambian situation.

Chapter Five: The Chapter discusses the legal framework for the implementation of the policy of home ownership in Site and Service Schemes and upgraded squatter settlements. This involves a discussion of the provisions of the Housing (Statutory and Improvement Areas) Act with regard to incentives towards housing

development in the areas covered by the Act. The Chapter also evaluates the Act with regard to the extent to which it enhances the implementation of the home ownership policy in Site and Service Schemes and upgraded squatter settlements.

Chapter Six: The dissertation concludes with an appraisal of housing policies with regard to their suitability to the Zambian urban situation, as well as the law under which these policies are being implemented.

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CHAPTER ONE

THE URBAN HOUSING SITUATION

This chapter gives a general background to the succeeding discussion on the legal framework for housing policy implementation. The law governing the development of housing in urban areas differs depending on the class of land in which the house is constructed. In view of this, the different classes of land for housing are discussed. This discussion includes the land tenure subject to which land in Zambia is granted.

Attention is also focussed on the role of public institutions in providing housing in urban areas in Zambia. In spite of the efforts of these institutions, housing in Zambia remains in demand. The chapter discusses the nature of the housing problem that the country has been facing.

CATEGORIES OF LAND AVAILABLE FOR HOUSING

There are two major categories of land namely state land and local authority land. An individual who intends to construct a house on state land applies to the commissioner of lands who issues on behalf of the President, parcels of land. Local authorities also possess land through state grants. It follows therefore, that conditions of tenure that apply to individuals equally apply to local authorities subject of course to such modifications as are necessary to enable local authorities to perform their statutory functions as such. But local authority land zoned for

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housing is divided into three categories. This division is based on the cost to local authorities of the houses or the services provided. On this basis, there is therefore, High Cost Housing Areas, Low Cost Housing Areas and Site and Service Areas¹. In Site and Service Areas, local authorities do not construct houses, but provide services in the nature of roads, refuse collection, etc. and facilitate the building of houses by individual developers. There is in addition to the three above, another category called Improvement Areas. These are originally squatter areas which have been subsequently recognised by provision by local authorities of services in the likeness of those provided in Site and Service Areas. After having effected the necessary improvements, the responsible local authority applies to the Minister to have the area declared an Improvement Area whereupon the residents are granted title to land in accordance with the Housing (Statutory and Improvement Areas) Act². There are separate chapters³ discussing the legal framework within which houses are constructed on state land, in Site and Service Areas, and in Improvement Areas.

LAND TENURE IN URBAN AREAS

Land tenure as the mode of holding or occupying land is relevant to housing. It influences the degree to which the public respond to housing policies. Whether or not an individual, employer or lending institution should invest in housing depends on the security of tenure⁴. The individual house builder must be

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assured that the conditions upon which he enjoys his estate in land are not onerous or such that he may lose his interest on the mere commission of trivial breaches. Financial institutions such as building societies that lend money to builders through mortgages are particularly wary of the tenure and the estate in the land of mortgage applicants.

Land tenure in urban areas⁵ is governed by the land (Conversion of Titles) Act of 1975⁶. This Act vested "all land" in Zambia "absolutely in the President" to be "held by him in perpetuity for and on behalf of the people of Zambia"⁷. The effect of this provision was not significant in so far as Reserves, Trust lands and State lands⁸ had already been vested in the Crown under the relevant Orders-in-Council⁹. At independence the President succeeded to the Crown. There were however, some parcels of land owned absolutely by the British South Africa Company¹⁰ which could be said to have been affected by the above provision.

The Act converted all land held in freehold or "in any manner implying absolute rights in perpetuity" and all leases granted by the President for a period in excess of a hundred years to statutory leaseholds¹¹ for a period of hundred years¹². Leases granted before the coming into effect of the Act were saved so long as their conditions, covenants or terms were not inconsistent

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with the provisions of the prescribed terms, conditions and covenants applicable to statutory lessees¹³. Such leases are however to expire one day before the expiry of one hundred years from the first of July, 1975.

Following the coming into effect of the Act on the 1st of July, 1975, the terms, applying to statutory lessees were published by statutory instrument¹⁴. The method of imposing terms by statutory instrument hardly gives much security to the lessee for the reason that the Minister can at any time alter the terms unilaterally. This is not the case in contractual leases where parties agree on the terms which are to be included in the lease.

Under the Regulations, four sets of covenants were prescribed. These apply to four different categories of land namely: Municipal areas; Township areas; Agricultural land; and Mining areas¹⁵. Rents varying according to the permitted user are charged where previously the freeholder paid almost nothing. The other conditions and covenants are in the main a reproduction of requirements at Common law such as the obligation on the lessee to pay rates and taxes; to permit the lessor access to the property to effect repairs on water and electricity mains; to maintain survey beacons; and not to carry out improvements¹⁶ without prior planning permission from a Council or Planning authority. The lessee is duty bound to maintain the improvements on the land in a state of repair, but this is to his advantage

since the "fair and just" compensation due to the lessee upon the determination of the lease is based on the value of those improvements¹⁷.

The anxiety created by the conversion of freehold titles to hundred-year leases is allayed by the provision for an automatic renewal of the statutory lease for another term of hundred years on the same terms¹⁸. But there is no automatic renewal unless the lease has determined by effluxion of time and the lessee has complied with the terms of the statutory lease, or where he has failed to comply with certain terms, the non-compliance is in respect of terms which do not render the lease liable to forfeiture¹⁹. Neither the Act nor the Regulations indicate however with respect to which terms a lease will be liable to forfeiture. Where a statutory lease is not renewed, the leaseholder is entitled to compensation for the unexhausted improvements²⁰. No compensation is payable in respect of undeveloped land.

Section 10 of the Act restricts the operation of mortgages charges or trusts subsisting over land only against the unexhausted improvements. The Section also extinguished all encumbrances on undeveloped land in so far as the same could not operate against unexhausted improvements²¹. This Section and Section 16 which limits the amount of compensation by the state to the lessee to the value of unexhausted improvements

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have rendered undeveloped land valueless in Zambia. As a result the facility of raising funds by way of mortgage has been greatly impaired because lending institutions cannot sell undeveloped land offered as security. This is an impediment to impecunious people who would like to build their own houses.

So far as it is relevant to housing, the Land (Conversion of Titles) Act may be thwarting investment in housing by the manner in which it is being implemented. Under Section 13 no person may "subdivide, sell, transfer, assign, sublet, mortgage, charge or in any manner whatsoever encumber or part with the possession of his land.....without the prior consent in writing of the President". Power is conferred on the President, under the same Section to impose conditions under which such dealings may be subject, and to fix the maximum amount that may be charged as the price of the improvements, in the case of assignments or as rent, in the case of a sublease. This authority was conferred with a view to control speculation and curb inflation in the property market.

But the requirement for the consent of the President has provoked two kinds of criticisms. One complaint has been that there are delays in processing applications for consent, and these delays tend to hold up the construction of urgently

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needed buildings²². This complaint however relates to the procedure and does not militate against the advantage of controlling land prices. The other criticism challenges the principle and the method of price control. In fixing the maximum price or rent, the government follows the advice of its officers who inspect and assess the value of improvements on the land. Difficulties arise when the consent price is less than the vendor's price and perhaps less than the cost of construction. The vendor may then refuse to sell or lease the property at the lower figure or may force the purchaser to pay more than the price or rent approved illegally.

Faced with such uncertainties contractors and other developers of real estate may be reluctant to build houses for prospective purchasers²³. It is submitted that in cases where the amount of compensation is in dispute provision should have been made for an independent valuer to determine the value. Under the Lands Acquisition Act²⁴ where compensation for improvements is payable by the state upon compulsory acquisition of land²⁵, disputes as to the amount of compensation are settled by the National Assembly²⁶. This method would not be practicable in cases of dealings in land because such dealings are so numerous that the National Assembly would have to devote a substantial part of their time determining prices or value of improvements and rents. The services of an independent valuer suggested above is the only fair alternative.

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In the final analysis the present urban land tenure is not favourable to housing investment. The private investor is awed by the cavalier fashion by which covenants, terms and conditions are imposed on the statutory lessee. It is also difficult for an individual to raise housing finance on the security of undeveloped land. It is however conceded that while one may be unable to construct a house owing to financial constraints, it is still possible and it is in fact common for people to buy houses on sale. The lending institutions provide the money to the vendor on the security of the house itself with the purchaser as the mortgagor. This facility however does not alleviate the housing shortage as it is dependent on the existence of ready houses. It does not contribute to the construction of new houses.

PROVISION OF HOUSING IN ZAMBIA

The emphasis on institutional housing dates back to the colonial era, and it was not until the early 1970s that a departure from this trend was envisaged under the Second National Development Plan. The term institutional housing is used in this context to mean the slavish reliance on institutions such as local authorities to provide formal housing to the residents in their respective areas. This is in contradistinction to individual initiative at housing. Since this trend is still significant an exposition of the legal framework within which

these institutions operate and the effectiveness of these institutions is necessary. The relevant institutions comprise, at the national level, the National Housing Authority, and at local level, Local authorities namely the City, Municipal, Township and Rural Councils. Perhaps it is important to point out that every employer is legally bound to provide housing accommodation to the employee²⁷ but the significance of this obligation has been denuded by the proviso which enables an employer to pay a housing allowance in lieu of housing.

(i) THE NATIONAL HOUSING AUTHORITY

The Authority was established under the National Housing Authority Act²⁸. The members were appointed in June 1971, and the Authority became operative on the 1st of August of the same year, the day following the dissolution of the Zambia Housing Board, its predecessor. The Act prescribes a wide scope of functions conferred in general terms, apparently so as to place on the Authority the whole responsibility for various aspects of housing in addition to an express duty to provide housing. Section 19(1) which delineates the main functions of the National Housing Authority reads:

"It shall, subject to the provisions of this Act, be the object and general duty of the Authority to keep under continuous review housing conditions in the Republic and the needs of the Republic with respect to the provision of further housing accommodation and to provide, or to

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secure and promote the provision of, such housing accommodation for the Republic and to take all such steps as it may appear to the Authority requisite or expedient in those respects".

Subsection 2 of the above Section gives a breakdown of the Authority's functions "without prejudice to the generality of the provisions" of the preceding Subsection.

The need for the wide powers vested in the Authority can be better appreciated by considering the rationale of replacing the Zambia Housing Board established under the Housing Act²⁹ with the Authority and making an inquiry as to why the Board was unable to cope with the country's housing problem after the attainment of independence.

The extent of the housing problem before and after the country's independence is shown elsewhere so that at this stage it is only necessary to make a comparison of the functions and powers of the defunct Board and the Authority.

A cursory look at the preambles in the repealed Housing Act and the National Housing Authority Act shows the wide disparities of the intent in both Acts. Whereas the preamble to the Housing Act emphasises the provision of loans and grants of public moneys for housing, the National Housing Authority Act emphasises the development and control of housing throughout the country. More specifically, the duty of the Housing Board was restricted

to that of advising the Minister in matters relating to housing; the application of measures to provide for contribution by employers towards the cost of housing their employees occupying houses under a scheme approved by the Board; the changes which the Board considered desirable to the existing laws related to housing. The Board was also obliged to assist local authorities in the preparation of proposals for the construction of dwellings and schemes, and to review the existing minimum standards laid down for housing and recommend to the Minister any changes which the Board considered desirable. In the field of research, the duty of the Board was stated vaguely as one to undertake and encourage research and the "collection and dissemination of information concerning housing and matters connected therewith"³⁰, and to carry out surveys of accommodation needs in any particular area.

With respect to its active duty, this was similarly limited. Under Section 19, when it appeared to the Minister after a public inquiry by a person appointed by the President for that purpose that the provision made in any local authority area for accommodation was inadequate or unsuitable, the Minister could by written notice order the responsible local authority to provide housing to such persons as specified in the notice. Upon the failure

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of the local authority to comply with the notice, the Board could carry out such work and do such things as to give effect to the requirement in the notice³¹, and any reasonable expenditure incurred by the Board in pursuance of the above could be recovered from the responsible Authority as a civil debt³².

The National Housing Authority Act outlines some twenty -three separate functions³³ to be performed by the Authority. These functions can however be divided into three major categories: advisory, regulatory and active³⁴. Advisory functions involve providing assistance to the Minister on a number of issues ranging from national housing policy to building standards and the determination of the demand for housing throughout the country. As the Authority has the greatest concentration of expertise, mostly expatriate in these matters in the country, the Authority is uniquely qualified to perform this function³⁵. Its regulatory functions include responsibility to receive and approve building designs and plans from any public or private entity.

Most important, however, are its active functions. Such functions include the clearance of squatter areas and the planning of their improvement and redevelopment; the rendering of assistance to local authorities in housing

construction, and the provision, management and control of housing accommodation of public officials. Other functions are the establishment of a national housing revolving fund; the purchase, manufacture or processing of building materials; the promotion of home-ownership by the introduction of house-purchase schemes; the establishment of a national building organisation capable of undertaking the development of housing estates and the formation of a company to carry out the above functions.

The Authority, is also empowered "to examine and approve, disapprove or vary any schemes proposed to be carried out by any local authority"³⁶. In fact Section 22 enjoins any local authority or person from initiating detailed planning of any scheme in any area of a municipal or township council until a preliminary plan of the site of the scheme, showing the proposed development, and a written memorandum explaining the nature of the proposed development, have been submitted to and approved by the Authority³⁷. This sweeping power is modified in practice since schemes planned by the three consultants engaged on the National Development Plan Programme (of which the National Housing Authority is one) are excluded³⁸.

The National Housing Authority has further powers with regard to housing estates which its predecessor, the Board,

never had. The Authority is empowered to "develop, build or manage and control housing estates" whenever requested by any local authority or person responsible for the development or management of such estate. It may sell a house or housing estate or enter into contract for the maintenance or supervision of building on housing estates. Under Section 23, the Act provides the mode by which the Authority may provide housing accommodation. This may be by direct building; or conversion of buildings into dwelling houses; by direct acquisition through purchase; by agreement with any person with the required housing accommodation; and more significantly in view of the acuteness of the country's housing problem, the clearance of squatter areas or improving and redeveloping them. Further, whereas the Board could only build houses if there was housing shortage only after a public inquiry, the Authority has merely to consult the Minister before sending the notice to the responsible local authority to meet the need, in default of which the Authority may directly build the required houses and be reimbursed by the defaulting local authority³⁹. In addition to the aforementioned powers, the schedule to the Act vests twenty-four general powers.

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Although the preamble to the Act and Section 19 (which prescribes the Authority's functions) makes no specific mention of the provision by the Authority of housing finance to developers, Section 45 makes provision for grants or loans of money to any local authority for the purpose of enabling such local authority to discharge certain functions prescribed under the Act. The Authority may also lend (but not grant) to any person, money by which such person could acquire land and construct thereon approved houses or carry out approved housing estates or schemes⁴⁰. In this respect the Authority has a similar power as the Board with the exception of housing estates not provided for under the Housing Act. The interest that must be paid on such loan must be approved by the Minister responsible for finance. Before making any loan to any person the Authority must take into account the financial position and the sufficiency or value of the security that the person proposes to offer for the repayment of the loan. Every such loan must be secured by a first mortgage or charge on the land upon which the house, housing estate or scheme is situated or to be constructed. This is in addition to any other security that may be required by the Authority⁴¹.

Section 59 exempts the Authority from complying with the

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Town and Country Planning Act⁴² except for Part VII of that Act which deals with Regional plans⁴³; and Section 17 by which the Minister's approval to the development plan submitted to him in accordance with Section 19 is secured. In so far as Part VIII of the Act is applicable to land developed or proposed to be developed by the Authority, the planning authority is responsible for the preparation of a development plan⁴⁴, but this can be done by the Authority itself on its own behalf in which case it must comply with the procedure prescribed under the Act. The prescribed procedure includes on submission of the development plan to the Minister, the publication of a notice to the public to submit their objections, if any, and the handling of such objections. Under Part VIII, the Minister responsible for Town and Country Planning may order the preparation of a regional plan and appoint a regional planning authority in any area inclusive of areas proposed to be developed by the National Housing Authority.

The National Housing Authority has not fared badly in the performance of some of its obligations, notably research. Its annual reports are replete with exhaustive accounts of approved schemes, loans and has tables of the present national housing stock and housing need. These reports

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also indicate amenities provided in low cost housing areas although the figures indicating housing need are acknowledged to be exaggerated owing to the failure by local authorities, on whom it relies, to differentiate between housing need and housing demand⁴⁵. The former depicts the number of people who have no shelter or whose shelter is in unauthorised areas for instance squatters, but the latter includes not only people in need of housing but also those who have authorised housing but wish to acquire better accommodation.

Although the "housing conditions" under Section 19(1) which the Authority must keep under review seem broad enough to cover the terms under which people occupy housing such as the amount of rent, so far the Authority has restricted its attention to the physical designs of the houses, which designs are ideally intended to improve the quality of life⁴⁶.

In order to promote home ownership, the Authority has completed certain projects one of which is in the suburban area of Lusaka (Woodlands) where houses have been built with the sole purpose of selling them. Rental housing has also been provided in Kabwata Housing Estate in Lusaka⁴⁷. The Authority is also assisting in the upgrading of some

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unauthorised or squatter areas especially in the urban sector where this problem is most acute⁴⁸. The role of the Authority with regard to upgrading has been to provide finance and provide building materials in resettlement areas. The physical execution of upgrading is left to local authorities. Since neither the Authority nor local authorities have the capacity in terms of finance and manpower respectively to upgrade the numerous squatter areas simulateneously, the question arises as to what criteria is used in determining which of the areas should have priority. For this purpose the Authority initially carries out a feasibility study concerning the terrain, distance from the urban centres of employment for workers, and the ease of establishing a drainage system, and the most favourable area in respect of the above criteria gets priority⁴⁹.

In retrospect, although the array of functions of the Authority is broad, the impact of the National Housing Authority on national policies and local programmes is less evident⁵⁰. Its essentially non-political functions, or at least more technically-based decision-making, sets the Authority at some distance from the Ministry and local authorities. The expatriate character of its staff reinforces this distance. The result has been an attempt

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by the Ministry of Local Government and Housing to narrow down the National Housing Authority's functions and delimit its areas of activity⁵¹.

(ii) LOCAL AUTHORITIES

Local Authorities comprising the City, Municipal, Township and Rural Councils fall under the Ministry of Local Government and Housing and are the major institutions which provide rental housing. Their functions and powers are prescribed by the Municipal and Township Acts and the Local Government Act. Originally and under the Municipal and Township Acts⁵², the functions of local authorities were restricted to the control and maintenance of streets and lands within their areas⁵³. The repealed Urban Africa Housing Ordinance⁵⁴ provided for the establishment of African Housing Areas by local authorities in their respective areas, but relegated the actual construction of dwelling houses to individual employers who were duty bound to provide accommodation for their employees⁵⁵. The Local Government Act extended the powers of local authorities to the actual construction of dwelling houses⁵⁶.

Provision of housing by local authorities is now a legal obligation. Under the National Housing Authority Act, the National Housing Authority may compell a local authority

to build the required number of houses so as to satisfy the housing need⁵⁷. Where a local authority fails to carry out the order, the Authority may proceed to construct the required number of houses, but the local authority responsible has to reimburse the Authority for the expenses reasonably incurred in the process⁵⁸.

Local authorities are empowered to raise loans for the construction of houses and where such loan is obtained from the National Housing Authority, it can only be used in accordance with the provisions of the National Housing Authority Act. Under this Act, the Council may, out of the loans, acquire land, construct approved houses or execute approved housing estates or schemes within the area of its jurisdiction or outside this area if the consent of the National Housing Authority has been obtained⁵⁹. Out of the said loans, local authorities may make loans to any person to enable such person to build himself a house or purchase one. The loan granted to such person and the interest thereon must be repaid within a period not exceeding thirty years⁶⁰.

The fast rate of urban population growth since independence has made it impossible for local authorities to meet their legal obligations. This failure has mainly been due to financial constraints exacerbated by rent defaulting

by many of the Council's tenants. Attention has, as a result been focussed not so much on formal provision of housing accommodation by local authorities but rather the provision of sites or plots of land on which individuals can construct their own accommodation, while Councils provide roads, sanitary services, water and lighting as planned under the Site and Services policy⁶¹.

The realisation of the futility of providing official rented housing has also manifested itself in the final resort to squatter upgrading, a policy under which selected squatter areas are improved or developed through the provision of roads, water and other services at nominal rates. The Site and Services Policy and Squatter upgrading policy find expression in the Housing (Statutory and Improvement Areas) Act⁶² examined in greater detail under Chapter 5 dealing with Statutory Housing Areas and Improvement Areas.

The failure by local authorities to satisfy the housing need in their respective areas has worsened the housing problem. This is a clear indication that the emphasis on institutional housing, from its inception was a grave miscalculation.

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THE HOUSING PROBLEM

The efforts of the housing institutions just discussed have been dwarfed by the immense proportions of the housing problem, hence the shift in emphasis from policies by which those institutions are to provide formal housing, to policies that limit their role to the provision of the necessary infrastructure within which individuals may build their own housing accommodation.

The problem of housing accommodation is a world-wide phenomenon differing only in nature and intensity. Notwithstanding the fact that developed countries see it in the context of slums and developing countries in the nature of squatter and unauthorised settlements⁶³, the problem of providing adequate housing accommodation is common to both. Housing accommodation is based primarily on the availability of land. In this, Zambia is relatively fortunate in that whereas other countries especially in Asia⁶⁴ and South America⁶⁵ face the problem of shortage of land as the initial obstacle, in Zambia land has never been a matter of "burning national importance"⁶⁶.

The housing problem is perceived as comprising three important aspects. The first is the shortage of housing accommodation; the second is the quality of available housing, that is compliance with building standards; the third is the conditions under which housing is acquired or provided. The two latter

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aspects are considered elsewhere⁶⁷. In this part attention is focussed on the extent of housing need so as to highlight the enormity of the problem that confront housing institutions.

In any discussion of the housing need two difficult problems arise. The first is as to the understanding of the term "need" when used in relation to housing. The second problem relates to the mechanics or methods of quantifying or determining the extent of this "need". If provisionally housing need is taken to mean the sum total of households without a permanent home, then it is also assumed for purposes of providing formal housing that these households have the ability to buy houses or pay rent. But this is not usually the case, as a sizeable number of people lacking housing accommodation are simply unable on account of their low wages to pay rent to Councils, needlessly to say, buy their own homes. Local authorities are experiencing some difficulties not only with rent defaulters but also with those who must pay for the ground rent and service charges in Statutory Housing Areas and Improvement Areas⁶⁸. If in calculating housing need the capability of people in terms of income to pay for their accommodation was taken into account, the figures would not appear so monstrous⁶⁹.

The second but related problem is that of determining the

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quantum of housing need. One method is to count housing units in squatter and unauthorised settlements. The figure will represent the category of persons who are prepared to invest their income and labour through "self-help" into housing. With the current emphasis on Site and Service schemes in which participants must construct their own houses, persons in squatter areas will make the Site and Services policy a success because of their experience acquired in squatter areas. But this approach ignores a certain minority of persons who are tenants to owners of houses in squatter areas. Besides, there is still the problem of over-crowding which is not discernible from the figure representing housing units. Another method, which should take into account wage levels, is to count those in salaried employment. But this method has a serious flaw in that the figure arrived at will exclude the rising number of self-employed artisans, tailors and marketeers whose financial returns may even exceed the lower category of menial workers. This method would even make the problem of the housing planner much more difficult as the planner must anticipate the rise in employment opportunities.

The present method used is that of counting the households in squatter and unauthorised areas and make projections on the increase of workers as employment opportunities rise or decrease. The figures obtained through this method not only represents

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those with the desired acumen to make Site and Service and squatter upgrading schemes successful but also those who are tenants to owners of squatter houses. The present and future housing need as determined by the third National Development Plan⁷⁰ is shown in Appendix I.

Appendix I indicates that housing shortage is much more acute in large urban areas than in small towns. It is no wonder therefore, that squatter areas are so numerous in cities such as Lusaka, Ndola and Kitwe. It is also apparent from the figure of estimated need within five years from 1978 to 1983 that by the end of the plan period the situation will have worsened. Such an increase cannot be explained by increases in birth rates because small towns which are under the same conditions will not have increased in population by the same percentage. The increase in estimated need indicates the movement of people in search of better opportunities into large urban areas.

The planners acknowledge that the shortfall accumulated figure is low compared to figures of persons on waiting lists submitted by local authorities (80,000 Units), but point out that the majority of entries are not in respect of new requirements of housing accommodation, but reflect a desire for change to a better standard of dwelling "generally on the expectation of

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subsidised rent".⁷¹ The task confronting housing institutions is not however a small one. If housing was the major consideration in a development plan the solution would lie in the allocation of more funds into the housing sector. But there are other equally important sectors which require attention in a welfare state such as Zambia. These include free medical services, free education, and social welfare.

In conclusion it is submitted that even from the preliminary aspects relating to housing considered in this Chapter that there is a need to modify the present tenure⁷². But the legal framework within which housing institutions operate appears to be adequate for them to discharge their responsibilities. There are undoubtedly other problems such as finance and manpower which they face⁷³, but these problems cannot be discussed in this dissertation as they are beyond its scope.

There are many areas in which the responsibilities of the National Housing Authority and Local Authorities overlap, so it is necessary that their activities should be co-ordinated. Local authorities in their tripartite capacities as planning authorities; public health enforcement agencies; and as institutions that must provide housing or the housing infrastructure must co-operate with the National Housing

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Authority as the overrall body responsible for housing. The seriousness of the housing shortage makes co-operation all the more necessary. It also greatly circumscribed the otherwise wide scope of housing policy options available to the government. The following Chapter traces the development of housing policies in Zambia commencing with the colonial era.

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CHAPTER TWO

COLONIAL HOUSING POLICY AND THE LAW

The Colonial government (1924-1964) evolved some of the housing policies which have been carried over to the present namely housing tied to employment¹ and home-ownership². The policy by which local authorities built houses for renting to the public first enshrined in the Urban African Housing Ordinance³ continued under the Local Government Act⁴ until 1972 when it was abandoned⁵. In addition to the Urban African Housing Ordinance the other relevant legislation during this period are the Public Health Ordinance⁶, the Townships Ordinance⁷, Municipal Corporations Ordinance⁸, Employment of Natives Ordinance⁹, Private Locations Ordinance¹⁰ and the Natives on Private Estates Ordinance¹¹. This Chapter attempts to trace the evolution of the above policies, the factors that led to their evolution and their effectiveness by the close of colonial era.

1. THE ADVENT OF URBANIZATION IN ZAMBIA

- Housing shortage in any country is a direct concomitant of urbanization. Prior to the colonial era Zambia was rural in character. There were no urban settlements such as existed in West Africa¹². The urban areas of Zambia were all created by the European Colonists for their own

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purposes as industrial, mining, commercial and administrative or agricultural centres.

The process of urbanization in Zambia began with the opening up of the mines in the Central and Copperbelt Provinces. For the same reason, the railway line progressed from the South, across the Zambezi River up to the Copperbelt. While the mining industry attracted large numbers of white workers from the South (South Africa and Zimbabwe), the railway line paved the way to the establishment of commercial farms by white settlers.

By 1930 the Copperbelt was in the period of a construction boom. The mines at Bwana Mkubwa, Roan, Nkana, Mufulira, Nchanga and Chambishi were being developed and this development process required a labour force of 29,000 Africans¹³. Although the mining companies had initially experienced some difficulties in persuading Africans to work underground¹⁴, the expansion of the labour force through the role of the Native Labour Association formed in 1929 as a labour recruiting agency within the country helped alleviate the situation¹⁵.

The overall figure of Africans employed in industry and agriculture rose from 69,500 in 1931 to 126,000 in 1946¹⁶, despite the depression of the early thirties which caused

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a fall in copper prices and consequent reduction in the labour force on the mines. By 1956 the number had almost ✓ doubled to 230,000¹⁷. The rapid growth of the labour force has been attributed to factors^{e.g.} which are however beyond the scope of this dissertation to pursue¹⁸.

2. ABSENCE OF HOUSING POLICY BEFORE 1948

Prior to the passage of the Urban African Housing Ordinance in 1948, housing for the African worker was not the pre-occupation of the government or even the labour-recruiting agencies. There was therefore no concrete government housing policy as such. Several factors contributed to this state of affairs, among them the nature of the African labour force and especially the labour policy itself.

(i) THE NATURE OF THE AFRICAN LABOUR FORCE

- In the early years of industrialisation a system of migrant labour prevailed. As Helmuth Heisler has stated "prior to the creation of the urban proletariat in Zambia a class of proletarianised peasants was formed. They can aptly be described as target proletarians"¹⁹. The phrase target proletarians meant ^{peasants} ^[Target Proletarians] who worked in paid employment for a short period of two to three years and then returned home and resumed cultivation or fishing for their livelihood²⁰. These peasants would normally

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work in town for as long as it took to enable them to save enough money to buy a pre-determined article or "target", and pay the tax.

One explanation has been offered to explain this attitude by African peasants. Wages were then very low and for this reason a number of years had to be spent in employment to enable the person sufficient time to save some monies from which he could acquire his "target". In the meantime his family will have grown too large for him to remain in town. Resort had therefore to be had to the rural area where he could easily maintain it²¹. Furthermore, the status of family head and the eminence of tribal eldership made the village much more attractive to the older and mature²².

(ii) GOVERNMENT LABOUR POLICY

The government favoured a system of migratory labour not so much owing to envisaged housing problems but rather the fear of the breakdown of law and order which would follow the establishment of a stable urban labour force²³.

The colonial government was under pressure from white

settlers who regarded the permanent settlement of Africans as a threat to their economic, social and political privileges. Another pressure group was the industrialists headed by the mining companies. Throughout the period of the 1930-8 depression, the companies had experienced difficulty in keeping all their workers in employment and subsequently declared redundancies. The lesson lent was that it was necessary to keep a labour force that could be increased or decreased as economic circumstances dictated and for this purpose a stable urbanized work force would be unsuitable²⁴.

In an attempt to control labour migration to the centres of employment and prevent the emergence of an urban labour force, not only did officials encourage workers to leave their families in the villages²⁵, they also ensured under the employment of Natives Ordinance that no employer was obliged to provide accommodation for a family but that of a single employee.

But of far greater importance was the pass system introduced under the Native Registration Ordinance²⁶. This ordinance provided for the registration of every African who enters a district after which he was issued

with an identity certificate²⁷. Employers who took into their service an African for a period in excess of forty-eight hours were obliged by the Ordinance to demand the employee's identification certificate and record its particulars. The Townships Ordinance 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. In the years between 1947 and 1956 there were 94,858 convictions for violations of these pass laws²⁸.

- ^ Prior to 1948 therefore there was no concrete housing policy, reliance being placed entirely on employers housing their employees in accordance with the Employment of Natives Ordinance²⁹. Local authority responsibility was restricted to the maintenance of public health, prevention of the outbreak of epidemic³⁰, maintenance of cleanliness and sanitary conditions³¹ and the prevention of conditions dangerous to health arising from the erection or occupation of unhealthy dwellings or from overcrowding³². No local authority built houses for Africans except Ndola which under its by-laws
- ✓ constructed houses for rent. The Municipal Corporations and Township Ordinances placed responsibility on local authorities with respect to the construction and

maintenance of streets and lighting.

Inevitably private landlords took advantage by permitting African workers to settle on their property for a consideration of rent. After a futile attempt through the Natives on Private Estates Ordinance to control settlements of Africans on private property the government passed the Private Locations Ordinance in 1939. This Ordinance regularised the establishment of settlements referred to as locations on estates.

Landlords were required to obtain permits or licences for locations and to enter into written agreements with every person (other than a labourer on the estate), stating concisely the terms of occupation. The agreement had to be attested by the District Commissioner and approved by the Provincial Commissioner.

3. URBAN HOUSING SITUATION PRIOR TO 1948

By 1948 African workers were settled in different areas as follows³³:

- (i) Locations: Although there was no legal obligation for local authorities to establish residential areas some local authorities did establish residential areas within their jurisdictions. These areas were commonly referred to as locations.

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- (ii) Grass Compounds: These were parts of locations in which Africans erected their own huts with thatched roofs.
- (iii) Private Compounds: These were areas outside local authority areas in which employers provided accommodation for their employees.
- (iv) Private Locations: These were settlements established on private lands in which plots were rented to Africans who erected their own housing.
- (v) African Suburbs: Approved settlements on sites immediately contiguous to Municipal or Township boundaries not falling under local authority control.
- (vi) Mine Townships: Residential areas established by Mining Companies under the Mine Townships Ordinance³⁴ for their employees.

In addition to the above there were unauthorised settlements established by African squatters on Crownland³⁵ in the vicinity of municipalities or townships.

^ STABILIZATION OF LABOUR AND THE EMERGENCE OF COLONIAL HOUSING POLICIES

The migratory labour system proved wasteful of labour. Because of the short periods that Africans were in employment, they remained inefficient and lacking in skills. Thus wages were kept low and services to employees to the minimum. This

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factor led to the realisation of the need for a stable labour force by the colonial government and mining companies³⁶.

The official government policy however drew a distinction between stabilization and urbanization. The distinction being that in stabilising the African worker, he would not break ties with his rural origin. The worker would spend his childhood years in the village, proceed to town during his youth and spend his most productive years working for wages, but return in old age to his village³⁷. The process of urbanization was taken to mean the total severance of village ties upon securing employment in town³⁸. The policy of stabilization without urbanization was in force until Britain abdicated her sovereignty over Zambia in 1964.

Following the policy of stabilization, the question of African housing became relevant. The Eccles Commission of 1944³⁹ had found conditions in areas set aside by local authorities for employers to construct houses for employees and in private locations to be unsatisfactory. The Commission stated that there was overcrowding and pointed out the urgent need for good housing⁴⁰. It singled out the government and local authorities as having failed to set an example by providing adequate housing for their employees. Further it attributed

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this state of affairs to the reluctance on the part of employers and local authorities to accept full responsibility for the accommodation of Africans⁴¹. With respect to private locations, the commission unreservedly condemned them as being "unhygienic and squalid in the extreme" whose presence so near the towns constituted a menace to public health⁴².

With a view to passing the responsibility for African housing on local authorities at the expense of the individual employers, but without encouraging the urbanization of Africans, the government passed the Urban African Housing Ordinance of 1948 which is the basis for two of the colonial housing policies, ✓ housing tied to employment, and local authority rental housing discussed below.

SPECIFIC COLONIAL HOUSING POLICIES

^ Three major policies can be attributed to the colonial period, namely housing tied to employment; rental housing provided by local authorities; and home ownership attempted towards the ✓ close of the colonial period. The following discussion is restricted to African housing for the simple reason that European workers were employed under favourable contractual terms, so that in respect of them there was no housing problem.

(i) HOUSING TIED TO EMPLOYMENT

Housing tied to employment refers to the policy by which

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the provision of housing was restricted to Africans in salaried employment. There were two aspects to this policy. In the first place there was the obligation on employers to provide accommodation to their employees under the Employment of Natives Ordinance, then the restriction of allocation of local authority houses to Africans in salaried employment under the Urban African Housing Ordinance⁴³.

Under the Employment of Natives Ordinance of 1929 employers were bound to provide "adequate" housing accommodation at their own expense and in so doing to observe all reasonable directions in respect of housing and sanitary arrangements prescribed by labour officers or medical officers⁴⁴. The labour department elaborating on the responsibility of the employer under the Ordinance explained that where servants were required by the employer to erect their own houses for instance, this had to be done at the expense of the employer⁴⁵. The servant had to be paid for the time and labour in building the house. Further, the department explained that building materials were to be provided to the employee at no cost to him. But where the servant was living near his village and it was possible for such servant to commute easily from his village to his place of work, then the employer had no obligation to provide housing⁴⁶. In compliance with this Ordinance some employers

established private compounds⁴⁷ outside local authority areas for the accommodation of their employees⁴⁸.

The Urban African Housing Ordinance of 1948 perpetuated the policy of tying housing to employment. Under Section 3, "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 African, and on such African's request, for one wife". Two things are worthy of comment on this provision, first is the restriction of the obligation on the employer to house Africans "under a contract of service" and secondly, the provision for the first time of married accommodation at the request of the employee. The Ordinance does not define "contract of service" but it can be inferred from the obligation to provide housing that temporary workers were not deemed to be under a contract of service, although in common parlance contract of service refers to an agreement to work for a pecuniary consideration⁴⁹.

The provision for married accommodation was a new innovation in that hitherto African workers had been encouraged to leave their families at home under the migratory labour system. The change evidences a recognition that African workers were becoming increasingly urbanised⁵⁰. It is also important to note that married accommodation could

only be provided for one wife so that where the worker was a polygamist he had to choose one of them⁵¹.

^ The second aspect of housing tied to employment was the restriction on the allocation of local authority housing to Africans in employment. The Urban African Housing Ordinance of 1948 was the first legislative enactment which imposed a duty on local authorities to establish housing areas for the accommodation of all Africans employed within local authority areas⁵². Throughout the Ordinance, housing is made dependent on the fact of employment.

The responsibility of local authorities under the Ordinance as provided in Section 23 is to "provide or cause to be provided suitable accommodation" to African workers. To do this, they had to set up African Housing Areas of two kinds, industrial African Housing Areas and temporary African Housing Areas . The former were areas set aside by local authorities for employers to erect houses for their employees according to plans and specifications approved by the Commissioner for Local Government and African Housing⁵³. Temporary African Housing Areas were also for the employers to erect temporary housing for their casual labour or for whom no permanent accommodation was available⁵⁴.

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Local authorities themselves were obliged to construct in African Housing Areas, both single and married quarters for Africans in search of employment. Such Africans could occupy those houses only for a prescribed period⁵⁵.

A closer examination of the provisions of the Ordinance depicts the emphasis on employment as the prerequisite of housing. The provisions regarding the establishment of African Housing Areas all restrict housing to Africans who are employed either permanently or temporarily. If the fact of being in employment had been the only criterion on which housing was offered, it would have followed that on leaving employment, the African would have had to vacate the local authority's or employer's accommodation. The consequent hardship on the employee was appreciated at the time the Ordinance was under debate⁵⁶ and for this reason under Section 36 a worker who had lost his job was permitted to retain his house provided by the local authority if he satisfied three requirements: first he had to show that he had been in continuous employment for not less than six months; second, that the person who had replaced him (at the factory or other place of work) if any, had alternative accommodation; and third, that he could manage to pay rent to the local authority. One other rationale for Section 36 was the maintenance of a small

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reservoir of African labourers within the urban areas⁵⁷. This rationale also serves to explain the necessity of providing accommodation for job seekers in accordance with Section 26 for either a month or the unexpired period of validity of the worker's pass whichever was the longer⁵⁸.

(ii) LOCAL AUTHORITY RENTAL HOUSING

The Urban African Housing Ordinance was the first legislative enactment empowering local authorities to construct houses for rent. Workers occupying local authority housing in African Housing Areas, did not so long as they remained in employment, pay rent directly to local authorities. Rent was deductible at source, that is, from the employers.

Owing to the increase in the cost of construction of houses which became reflected in high rents, the colonial government introduced rental subsidy. In both East and Central Africa subsidies took various forms. It could be by direct grant, that is, the government paid a portion of rent to local authorities, leaving the occupant to pay the balance; or the government paid local authorities for their services in African Housing Areas so that the cost of such services were not included in the rent. The most popular method however was the former, that is, the charging of economic rent⁵⁹.

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The effect of rental subsidy was to obscure the need for higher housing standards as it was difficult to determine how much rent Africans were capable of paying in the absence of subsidy. Accordingly the conference on Urban Problems in East and Central Africa⁶⁰ stated in its resolutions that governments and public authorities should avoid subsidies wherever possible and prevent the resultant hardship to occupiers by increasing wages⁶¹. A major obstacle however was that wages had slipped a long way below what had been termed "The Poverty Datum Line"⁶², hence the opposition towards withdrawal of rental subsidy in the Report of the Committee appointed to review the Financing of Services and Amenities for Africans in Urban Areas, (Coleman Report) of 1961. The Coleman Report pointed out that there would have to be a very big wage increase to reach the "Poverty Datum Line" and at the same time include enough money to pay unsubsidised rent. Local authorities were afraid that if wage increase was not substantial people would be unwilling or unable to pay Council housing rents and thus many houses would not be let to tenants with consequent loss of rental income.

(iii) HOME OWNERSHIP SCHEMES

Home ownership signifies ownership of the house by the occupier irrespective of interest in land⁶³. The policy

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to encourage people to construct their own houses on plots leased to them by local authorities was the latest to be introduced in the country. This was probably because it is a relatively complicated undertaking. Modern housing standards demand bricks, mortar, iron or asbestos roof and timber of high quality, skilled artisans and compliance with building regulations and public health regulations. The average man is thus unable to embark on such undertaking and hence looks for an agent who will not only provide the building materials and construct the house, but is also willing to finance the whole project and recover his capital outlay over a long period at a rate of interest acceptable to both parties⁶⁴.

It is not surprising therefore that the policy of home ownership during the colonial period was not fully developed. In Ndola for instance at the time of independence, home ownership constituted only seven percent of total housing and out of this seven percent, forty-six percent belonged to Europeans. In Lusaka home ownership constituted nine percent of total housing, and thirty-nine percent of this belonged to Europeans⁶⁵.

Home ownership on rented plots began in 1958. In the course of that year plots became available for the first time for alienation to Africans on the Copperbelt and

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Kabwe. This was a bid to encourage the stablization of
 ✓ the African worker. The term of the lease varied in
 ^ accordance with the standard of buildings erected. The
 period varied between ~~for~~^uteen and sixty-six years
 depending on the quality of building materials used⁶⁶.
 The government assisted prospective home owners by
 providing demarcated and serviced plots, and technical
 advice and assistance, although on the latter it was
 impeded by lack of adequate staff⁶⁷. Building Societies⁶⁸,
 Commercial Banks and Insurance Companies assisted with
 finance.

In order to encourage home ownership by low wage earners,
 the government in conjunction with building societies
 ✓ created the low cost/high density guarantee scheme. This
 scheme applied to houses with a valuation of not more
 than K4,000. Building Societies could advance up to 90
 ^ percent of the valuation. The government guarantee
 extended to the whole amount actually lent by the Society
 so that in effect the Society had a complete guarantee.
 In the event of default by the borrower the Society could
 sell the house and after getting the best possible price,
 call on the government to make up the shortfall, if any
 within thirty days. Very few loans however were made on
 ✓ this basis⁶⁹.

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^ At the same time some employers were encouraging their employees to own houses. The government and local authorities granted loans for this purpose to their senior staff, while mining companies were encouraging their employees to purchase houses on mine properties. Many other commercial and industrial concerns were persuading ✓ their employees to become home owners.

Two experiments may be cited to illustrate the working of these schemes. Under the home ownership scheme tried in Ndola in 1958 loans of up to ninety-five percent of the capital cost were made available at an interest rate of five percent repayable over a period of twenty-five years. Houses varied in respect of facilities and accordingly their prices ranged from K860 to K1,900. Although there was an overwhelming demand which necessitated the screening of applicants with respect to their financial ability to repay the loan, there was a problem of finding suitable purchasers because most of them did not fully appreciate the consequences of home ownership⁷⁰. This lack of appreciation had been engendered by the migratory labour system. To the migrant worker who retained his allegiance and affections in the tribal culture, a house was only "a place to sleep and eat and a repository for his belongings"⁷¹. Housing was not perceived as a status symbol, hence the fewer demands his accommodation made on his purse the

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greater the chances of accumulating cash with which to purchase potential status symbols from the town or to enhance his rural status through the display and the giving away of wealth on returning home⁷².

Occupants were under the mistaken impression that they could rely on the local authority for repairs. Those who carried on trade in rural areas would leave their homes for months without paying the instalments.

Subsequently, it was found necessary to convert these purchasers to tenants so that on default of rent, local authorities could repossess the house⁷³.

- ^ In Lusaka, the home ownership scheme began in 1961. The British South Africa Company in conjunction with Richard Costain (Africa Ltd) initiated the scheme at Lilanda⁷⁴. In addition to developing the land the Company also provided funds amounting to K200,000. Five types of houses were constructed with varying facilities and sold at
- ✓ varying prices. In contrast to the Ndola scheme, in Lusaka the houses were constructed on serviced freehold plots. On buying a house the initial deposit was ten percent of the purchase price and monthly repayment of the loan was over twenty-five years. Extra facilities in addition to electricity, pipe-borne water and water-borne sewage could

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be incorporated at a small extra cost. Monthly repayment ranged from twelve to nineteen kwacha depending on the type of house purchased.

Notwithstanding the efforts taken to make the home ownership policy a success, the response was rather disappointing. The apathy towards these schemes has been attributed to the fact that housing had been made available by employers to employees on "extremely and probably too attractive rental terms", a fact necessary in order to attract workers of all grades of skills to urban areas⁷⁵.

(iv) LEGACIES OF THE COLONIAL HOUSING SYSTEM

The housing policies discussed did not cater for the many Africans who required housing. Housing tied to employment was discriminatory of the numerous persons who carried on trade such as hawkers and pedlars and other self-employed charcoal burners, tailors and shoe repairers. Many of these could not have afforded local authority rental houses even if they had been made available to them. But rental housing proved inadequate for the increasing number of employees⁷⁶. Two alternatives were available for those without housing accommodation, home ownership, which was however a failure for the reasons given above and the additional reason that home ownership was not meant for low income earners, and settlement on private European

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estates⁷⁷.

Those who settled on European estates paid rent to the landlord, but as the number of settlers increased, it became difficult for the landlord to exact rent and control settlement on the estate. In Lusaka there are numerous such settlements still in existence and they are named after the names of the landlords for example Howard and George compounds.

The others found it easier to squat on local authority or Crownland. By 1933, Lusaka had a large number of unauthorised or squatter settlements⁷⁸. Owing to the poor quality of housing in squatter settlements⁷⁹ and the absence of proper water and sanitary facilities, the government in conjunction with the Lusaka Municipal Council (as it then was) decided to demolish them as soon as the Council could provide and service a suitable site. In 1957, despite the housing shortfall of 28,000, some squatter settlements were demolished. The residents were however taken into African Housing Areas⁸⁰.

In spite of the efforts at demolishing squatter areas, they continued to expand and as independence drew near, there were at least six squatter compounds comprising in the order of their respective population strength: Kalingalinga,

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Kanyama, Marripodi, Mandevu, Antonio and Mtengo⁸¹.

CONCLUSION

The Colonial government delayed for too long the evolvement of concrete housing policies. Except for the policy by which housing was tied to employment which began with the Employment of Natives Ordinance, the most important of the housing policies during the colonial era, that is rental housing by local authorities was not introduced until 1948 under the Urban African Housing Ordinance. By this time settlements on private land were already flourishing.

Housing tied to employment although vindicated by the need to prevent unemployed Africans from residing in Urban areas was counter productive. Its success was dependent on the success of the labour policy of stabilising but not urbanising the African worker. When the labour policy failed because of the impoverishment of the rural areas owing to the emigration of the youth to urban areas, African workers who were out of employment or in search of employment decided to squat on private land or local authority or Crownland.

While the legal framework for housing tied to employment was adequate, that for rental housing and home ownership were inadequate. Rental housing was a good policy but the duty to construct rental housing on local authorities was

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inadequately expressed as emphasis was on employers to construct houses in African Housing Areas rather than local authorities erecting houses and then offering them to employers. Home ownership only provided for the acquisition of houses already constructed and the cost of the houses could only be afforded by the privileged few. Instead plots should have been allocated to any enterprising African to construct his own house.

CHAPTER THREE

POST-INDEPENDENCE HOUSING POLICIES

The advent of independence was not followed by a radical change in housing policies in Zambia. Rental housing provided by local authorities continued to form part of the national housing policies until 1972 when the Second National Development Plan (herein after referred to as the SNDP) was embarked upon. The SNDP phased out rental housing and replaced it with a more comprehensive policy to assist self-help housing through site and service schemes. The Plan also discouraged squatter demolition by local authorities and made provision for the recognition of squatter settlements and their improvement. This Chapter traces these developments and indicates the place in the overall national housing plan, of each of these policies, namely rental housing, site and service schemes and squatter upgrading.

1. LOCAL AUTHORITY RENTAL HOUSING

The First National Development Plan (hereinafter referred to as the FNDP)(1966-1970) laid emphasis on the provision by local authorities of low cost houses for rent. Under the Plan, the government spent K8.4 Million each year on this category of housing. This amount is nearly four times greater than the average annual expenditure on low cost housing by the government during the years 1956-1965 when it spent slightly above K2 Million per year¹. The increase in

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expenditure did not result in the quadruplication of the number of low cost houses because there was a corresponding rise in building costs from K640 to K1,000 per house².

- ^ No provision was made in the Plan for the construction of high cost housing units. The government decided that because of the expansion in employment opportunities every effort should be made to minimise the effects of rising prices of building materials by "making more and more reduction in the number of more expensive houses to permit a greater number of smaller and less expensive units to be constructed"³. Emphasis was therefore placed on quantity rather than quality. This was in conformity with the official housing programme introduced in April 1965⁴ whose objective was to construct as many units of accommodation
- ✓ as possible from the funds available⁵. Though provision was made for serviced plots in the FNDP and the 1965 Housing Programme, 70 percent of the expenditure on housing was on rental housing.

- ★ The question of rental subsidy was left unresolved and it was not until 1972 that under the SNDP it was decided to phase out rental subsidy. In the circular explaining housing policy under the SNDP it was acknowledged that annual rental subsidies had been increasing at an alarming
- ^ rate⁶. The mechanics by which rental subsidy was to be



phased out were firstly, the promotion of home ownership through the sale of council houses, upon which subsidies would cease; and secondly, for houses not sold, by a gradual decrease in the amount of subsidy between 1972 and 1975⁷.

However rental subsidy has in fact continued to the present. There is merit in maintaining them since the low wages paid to the majority of employees occupying rental housing would make it uneconomic for them to remain in occupation of council houses or government houses as the case may be. But it has been argued that rental subsidy apart from constituting a heavy burden on government revenue, has the effect of reducing the market in the country⁸. The argument is that because those in resourceful employment are accommodated in houses where they enjoy rental subsidy, they are not afforded the incentive to acquire their own houses and in this way the effective demand for housing is reduced⁹. It was hoped that the sale of council houses would be expedited, but unfortunately owing to some legal problems discussed in the succeeding chapter there has been no significant progress in this direction.

^ In the Third National Development Plan (TNDP) it was decided to withdraw all "hidden subsidies" and convert them into

"direct subsidies"¹⁰. Under the Plan, the government is to define or identify much more clearly the categories of people entitled to rental subsidy as well as determine the extent of such subsidies. Appropriate steps are to be taken to rechannel direct subsidies to the lowest income groups and extend them to the rural areas¹¹.

The SNDP made no provision for the official construction of rental housing whether low cost or high cost. Under the Plan, all housing constructed during the plan period by local authorities were to be sold. Similarly the TNDP makes no provision for rental housing. It can therefore be assumed that rental housing has been abandoned. At the time the SNDP was launched rental housing in urban areas constituted 71.9 percent of all housing and appendix II shows the ownership of rented dwellings as in 1972.

2. HOME OWNERSHIP (OUTSIDE SITE AND SERVICE AREAS)

- ✦ This category of housing is only available to the privileged few who can afford the costs of building their own houses in accordance with existing building standards. The TNDP estimated that the need for this high standard of housing was only 5 percent¹² as the idea was essentially practicable only for the relatively small middle class income group¹³.

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- There are two methods by which a person may provide himself with a home outside site and service areas and squatter settlements. One method is by direct acquisition from a vendor. The other method involves an elaborate procedure commencing with an application for a plot to the Commissioner of Lands followed by the securing of development permission required under the Town and Country Planning Act¹⁴ from the Town Planning Authority to commence construction¹⁵. The house must then be constructed in accordance with building standards under the Public Health (Building) Regulations¹⁶ and the Local Government (Building) Regulations¹⁷. Agents of Local Authorities are empowered to inspect the work and may compel demolition or alteration where there is non-compliance with the prescribed standards¹⁸. The practical difficulties arising from the duty to comply with the said regulations and provisions under statutes relevant to housing are discussed in the succeeding Chapter.

Aronovitch¹⁹ suggests some prerequisites to the success of home ownership in the American States. Some of these prerequisites are relevant to developing countries such as Zambia. Among these is the need for a steady income so that payments on the home are met promptly and the danger of foreclosure practically eliminated. This is of course

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important where the finance has been raised by way of mortgage which is more common than total reliance on private resources. Secondly, changes in the character of the neighbourhood should not be such as would lead to depreciation in the value of the house and thus render continuance of occupancy undesirable or impossible. The character of the neighbourhood may be affected by alteration in the zoning of the area or the indiscriminate construction of various types of housing in the absence of a requirement for a minimum investment value. It is submitted that preservation of the character of the neighbourhood, if insisted upon, may hinder the implementation of the policy to integrate housing in Zambia²⁰.

Other prerequisites are that the housing market should be capable of absorbing the home in case of transfers of owners without "Serious loss of equity"²¹. Further, municipal and other tax burdens should be within a reasonable range, while the value of the original investment should not depreciate in times of economic depression. It is however difficult to avoid the latter where an economic depression has the effect of devaluing existing currency. In such a situation the original investment may depreciate.

^ Home ownership outside site and service areas does not receive

government financial support. The reason for this is undoubtedly due to the high cost of constructing houses. The government prefers to channel its limited resources to Site and Service Schemes and Squatter Areas where the majority benefit. The only significant and major source of finance has been the Zambia National Building Society which offers loans on the security of the house to be purchased. Appendix 3 shows the estimate of loans granted by the Society to individuals during the period of the SNDP.

An examination of Appendix 3 indicates the emphasis the Society has laid on medium cost housing (between K15,000 -K50,000) inspite of housing shortage in the country. It is in view of this that the government has urged the Society in the TNDP to shift its emphasis to low cost housing.

• SITE AND SERVICE SCHEMES

• In these schemes, local authorities demarcate plots called sites and provide rudimentary services such as water, sanitation, facilities and roads²². Individual developers of plots in these schemes, called "participants" do their own construction of houses. They are however assisted with technical advisers and some loans for building materials and roofs.

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The services provided in these schemes are much more than those provided in similar schemes in Kenya. Under the schemes in Kenya provision is made for roads and the demarcation of plots only²³. It is because of this limitation in services that the measure has been said to fall under town planning rather than housing²⁴. The reason for the restriction in the role of local authorities is that Site and Service Schemes have never been supported by the government in Kenya.

In Zambia, the schemes ^{are} fully backed by the government as one method by which housing shortage can be eliminated. Site and Service Schemes were introduced as a result of government policy review in 1965²⁵. The government may have been influenced by Koenigsberger's reconnaissance survey²⁶ of April 1964. He was invited to Northern Rhodesia in early 1964 to "identify questions of general policy which would require top level decisions as prerequisites for a programme of action" in the fields of housing and planning. His report highlighted the policy options available to the government, whether it should continue the system of housing as social justice or change course and insist that townspeople should provide themselves houses²⁷. The second alternative is tantamount to home ownership.

The objectives of site and service schemes are that the government should cause the construction of large numbers of

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houses by utilising the efforts of interested participants; encourage the building of homes by the provision of serviced sites, technical and other advice, loans for building materials and by the introduction of a simple and acceptable form of land tenure²⁸.

Participants in these schemes have to show that they are in salaried employment earning at least K20.00 and also that they can afford to buy at least K20.00 worth of building materials.

In 1968 it was decided to diversify the type of services to be provided in site and service schemes. A distinction was made between "basic" and "normal" plots²⁹. In the former, that is basic, the services rendered are relatively low in standard although allowance is made for the provision in future of a better water supply and water-borne sewage disposal system. The only services provided are gravel access roads and common water stand pipes. [Each water tap is shared among twenty five occupiers.] Participants have to construct their own pit latrines.

On normal site and service plots, a higher standard of services is provided. Water taps are on each and every plot. Constructed on each plot is a semi-detached ablution block with a water-borne

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sewage system. As a model of the houses acceptable by local authorities "core houses" are constructed. Core houses are units of two rooms and a kitchen with internal ablutions and connections to water and sewers for extension by the tenant³⁰. The standard of services provided to core houses are the same as those provided in normal plots. In both normal and basic site and service plots Kimberly bricks were officially accepted as adequate building material³¹.

Local authorities have criticised the idea of the basic plot as a reversion to colonial standards³². But this type of plot was defended by the defunct Zambia Housing Board³³ on the ground that its demand on the infrastructure is so minimal that it is the only form of planned development which can be provided at a rate which will keep pace with the increase in demand for new housing³⁴. It is submitted that in view of the enormity of the housing shortage³⁵ standards should be sacrificed. Further individual participants are at liberty to improve the amenities on their plots by themselves.

One important measure introduced by the SNDP was the broadening of the scope of participants. Hitherto, participation was restricted to low income earners. Under the SNDP however anybody irrespective of income, could apply for a plot, since the Plan expected people at all levels to accommodate themselves³⁶. Local authorities determine the number of

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plots which should be granted to either category of participants - high and low income groups. In order to ensure that the right number of plots has been given to either category, when plots are advertised, applicants are requested to indicate their capital or income³⁷.

THE SIGNIFICANCE OF SITE AND SERVICE SCHEMES

The site and service policy although introduced later than rental housing has since 1972 occupied a significant place in the overall national housing programme. Under the FNDP it was accorded 30 percent³⁸. But under the TNDP total investment was reduced to 27.5 percent of all investment in housing. The reduction is due to the increase in emphasis on the upgrading of squatter settlements.

FINANCING SITE AND SERVICE SCHEME

The burden of financing site and service schemes has been the responsibility of the government. Government funds are used mainly to provide plots serviced to the level that can be afforded by the participants³⁹. The FNDP and SNDP did not define any role that financial institutions should play in site and service schemes. But the TNDP defined the role of certain selected financial institutions namely the Zambia National Building Society; the Local Authorities Superannuation Fund; the Zambia State Insurance Corporation; and the Zambia

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National Provident Fund. The first three were urged to make available for private borrowers a total of K32 Million primarily for conventional housing, but also to a limited extent for self-help housing. The Zambia National Provident Fund is to encourage people withdrawing their benefits to take / up home ownership⁴⁰.

The financial institutions mentioned are all statutory bodies, so that anything they do must be specifically provided for in the statutes under which they were established. Apart from the Zambia National Building Society which is legally empowered to lend money for housing⁴¹, the others do not have similar legal backing. It is therefore necessary to extend the powers of these institutions to lending money for the construction of houses by appropriate amendments to the relevant statutes under which they are respectively constituted.

Part of the money granted to local authorities by the government is used to provide loans to participants. Under the FNDP this amounted to K2.6 Million⁴². But this was insufficient for the success of the site and service policy⁴³. Local authority loans take the form of building materials.

▲ SQUATTER UPGRADING

^ The squatter upgrading policy has been the final resort in the quest for a solution to the housing shortage. The policy

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strikes a balance or compromise between two options, one being demolition and the other formal recognition without much ado. The option to demolish, if exercised, would have left homeless an unconscionable number of families. In the absence of an alternative accommodation owing to the inability of local authorities to cope with the housing problem, the displaced families would rebuild in another locality and await demolition. The tug-of-war between the government and squatters would go on AD INFINITUM. Demolition is ineffective when there is no alternative accommodation readily available. But outright recognition would have implied conferment of title to land to squatters. Hence the need for the government to acquire title to private land on which squatters are settled. Recognition by the government not only depends on the title to land being vested in it but also in the provision of services such as water, and the construction of roads.

Historically, the policy has been a very controversial one between the central government and local authorities. Immediately after independence in 1964 local authorities began agitating for the demolition of these settlements. The government did not succumb to this pressure because squatters could, if mobilised, be transformed into a decisive political force through their numerical strength⁴⁴. In practice the government was sympathetic, and in 1966 it installed a piped water supply in Kanyama compound in Lusaka, and appropriated

funds for the supply of chlorinated water to Robert's and Bauleni compounds also in Lusaka⁴⁵. By 1968 the project for the supply of water to Chawama in Lusaka was well under way while in the copperbelt, pipe-borne water had been introduced to Zambia City in Luanshya and Chibwe in Ndola⁴⁶.

In spite of these projects however, the government avoided total commitment to improve or upgrade squatter compounds and it was not until 1972 that the government in the SNDP formulated the policy. The government had recognised that "although squatter areas are unplanned, they nevertheless represent assets both in social and financial terms"⁴⁷.

It was stated in the SNDP that the areas required planning and services, and that the wholesale demolition of good and bad houses alike was not a practical solution⁴⁸.

In Kenya, faced with a choice between demolition and improvement of squatter settlements, the government opted for demolition. In November 1970, Nairobi's forty-nine squatter settlements containing about 7,000 dwelling units accommodating about 40,000 people, were pulled down and burned by the City Council. To prevent the rebuilding of the huts the Council confiscated building materials⁴⁹.

Under the SNDP, the first step in pursuance of the upgrading

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policy is to contain the existing squatter settlements to their sizes and the preparation of serviced plots to be allocated to those whose houses would be demolished as a result of road construction. The second step is the planning by the Council as to the provision of pipe-borne water, road and refuse removal services and thereafter sewage and street lighting⁵⁰.

Squatter upgrading is not merely a temporary expedient while awaiting better housing⁵¹. The government envisages that people will, given the right encouragement, improve their houses to the same standard, if not above that of local authority housing. In order to allow for this improvement, the water pipes are so sized that, although initially they only serve stand pipes, subsequently every house can be supplied with its own pipe-borne water. For the same reason population densities of squatter settlements are examined to ensure that there is room for every house to expand to a size of four or five rooms. Those people whose houses are cramped are encouraged to build elsewhere where space is available⁵². In Lusaka, the upgrading exercise is being undertaken by the Council's

✓ Housing Project Unit.

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SIGNIFICANCE OF SQUATTER UPGRADING

As earlier pointed out, prior to 1972 squatter upgrading had no place in the national housing programme. The FNDP provided only for the control in the growth of these settlements⁵³.

The SNDP however provided for a sum of K5 Million for squatter improvement. Although this amount was incorporated into the 1972 Government Estimates of Expenditure, it was not possible during the year to spend this sum because time had to be allowed for preparations to implement the policy⁵⁴.

Nevertheless part of the money was utilised for a scheme to upgrade plots in Malota compound in Livingstone, and the taking of aerial photographs of squatter areas in all urban centres⁵⁵. The amount allocated for squatter improvement in the SNDP only consisted 4.7 percent of the total amount spent on housing and 14 percent of the total sum allocated for site and service schemes and squatter upgrading. The emphasis was on site and service schemes during this period.

^ FINANCING OF SQUATTER UPGRADING

Broadly, squatter settlements are the responsibilities of two bodies, urban local authorities (for squatter on local authority areas) and the Department of Lands (for squatters outside local authority areas, that is squatters on state

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land). Since the government is responsible for both local authorities and the Department of Lands, it is the main financier of the upgrading programme. The TNDP has made provision for K198 Million for squatter upgrading, but the government intends to raise only K46 Million of this amount. The rest, it is hoped, will be raised by local authorities and financial institutions⁵⁶. The International Bank for Reconstruction and Development is also assisting in the financing of the squatter upgrading programme being undertaken by the Lusaka City Council⁵⁷.

EVALUATION

Theoretically the post-independence housing policies are the only logical alternative to housing shortage. These policies have the advantage of involving the labour of individuals who require houses. They also offer a better security to urban dwellers than housing tied to employment or rental housing.

In practice however they are difficult to implement⁵⁸. Home ownership outside site and service areas has been hampered by inadequate sources of money to buy or construct houses of inspite the/existence of the Zambia National Building Society. The government does not assist developers outside site and service areas except by a meagre 15 percent guarantee of the National Building Society mortgage⁵⁹. The government

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guarantee is 100 percent for civil servants, but this category of persons is a minority. The majority have to fend for themselves.

Home ownership has also been hindered by statutes such as the Public Health Act⁶⁰, Local Government Act⁶¹, the Lands and Deeds Registry Act⁶², the Town and Country Planning Act⁶³ and the Land Survey Act⁶⁴. (Chapter four focusses attention on these statutes.)

Site and Service Schemes are also experiencing financial constraints inspite of government assistance to participants. The Building Society's lending policy is that money can be borrowed on the mortgage of leasehold property. But site and service scheme participants had no acceptable title until 1974 when the Housing (Statutory and Improvement Areas) Act was passed. The society therefore excluded participants from borrowing. Even after the passing of the Act, the Society has been reluctant to lend participants in these schemes.

Site and Service policy has also suffered due to the apathy among the persons who are intended to benefit from it. Some people prefer to squat rather than be regimented by the laws of the state and local authority bye-laws. In addition, it is becoming increasingly difficult, as the scale at which

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the policy is being implemented expands, to secure sufficient manpower to give technical advice to participants in the course of constructing houses.

Squatter upgrading is fairing better in Lusaka than Site and Service Schemes. The ever increasing number of squatters however mean that upgrading must keep pace with the rate of the formation or expansion of squatter settlements. The above shortcomings are however with respect to the implementation and not the rationale. It is submitted therefore that these policies must continue to be pursued.

CONCLUSION

During the post-independence period, significant changes in housing policy have taken place. Rental housing has been replaced by site and service schemes and squatter upgrading. The former, that is rental housing was costly to the government owing to rental subsidies. The change is an acknowledgement of the inability of the state and local authorities to cope with urban population expansion.

The policies have been concerned mainly with the low income group. This is the category of persons who require assistance much more than the higher income group. Hence the emphasis

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on site and service and squatter upgrading. What is needed at present is a legal framework that is complementary to the stated policies. The present legal framework is discussed in subsequent chapters.

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CHAPTER FOUR

THE LEGAL CONSTRAINTS AND PRACTICAL DIFFICULTIES OF HOUSING DEVELOPMENT OUTSIDE SITE AND SERVICE SCHEMES AND SQUATTER AREAS

Home ownership is encouraged at two levels, the first is institutional and the second is individual or private initiative. Local authorities are directed to sell their houses to the public¹ while private individuals are permitted to construct houses for themselves. An attempt is made in this Chapter to evaluate the present law with a view to determining whether it is practical for local authorities to sell their houses to the public. In this connection attention is focussed on the practical problems arising from the Land Survey Act² and the regulations made thereunder.

Secondly this Chapter examines the legal framework for individual initiative in housing development focussing attention on the legal constraints and practical difficulties arising from the law. The Lands and Deeds Registry Act³, Town and Country Planning Act⁴ and the Public Health Act⁵ and the regulations made under the above Acts are particularly relevant.

(i) SALE OF LOCAL AUTHORITY HOUSES

There are three methods by which this may be done namely:

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- (a) Sale to an existing tenant of the house which the tenant occupies. This is hereinafter referred to as "sales of isolated existing houses";
- (b) Sale to individual purchasers of houses situated within a defined block of houses (referred to as "sales of existing houses in a designated block");
- (c) A new estate layout with houses built specifically for sale (referred to as "a new estate layout").

Local Authorities are granted land in blocks so that there is one certificate of title for each and every local authority area. In order to sell isolated existing houses, they have to carry out separate surveys for each and every house and then prepare the diagrams required for the registration of documents transferring title to the purchaser. Section 4 of the Lands and Deeds Registry Act requires the registration of every document "purporting to grant, convey or transfer land...." Every document presented for registration under Section 4 must be accompanied by a diagram as defined in the Land Survey Act and such diagram must be approved by the Surveyor - General⁶.

Regulations⁷ made under the Land Survey Act prescribe the nature and standard of field work, while the First and Second schedules contain the rates of charges or fees

for professional work carried out in accordance with the provisions of the Act. Almost all surveys are in practice carried out by traversing with theodolites with either steel tapes or electromagnetic distance measurement, the latter of which has allowed considerable productivity⁸.

PRACTICAL PROBLEM: SURVEY COST

Most commentators⁹ have pointed out the high cost of Survey under the Zambian system¹⁰. As local authorities have one certificate of title for the whole of a housing area, the cost of surveying isolated existing plots within that area is likely to be expensive because the beacons of the individual plots have to be related to main beacons on the boundaries of the area or alternatively intermediate beacons within the area. It is therefore submitted for this reason that the sale of isolated existing houses is probably impracticable.

In the case of a survey of a block of plots whether it be to facilitate sales of existing houses in a designated block or a new estate layout, the cost of surveying a series of contiguous plots must obviously be less than the survey of isolated existing houses. It has been pointed out

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however that survey costs render the existing system appear to be an unnecessarily high proportion of the total cost of a house and plot provided with services such as water and electricity¹¹.

The standard of survey in Zambia is extremely high compared with many other more developed countries¹². This high standard has distinct advantage as it is so accurate that all boundary disputes are virtually eliminated. Without resort to lowering standards or the charges for professional survey work, it has been suggested that an accurate delineation of a plot of land can be achieved at a lower cost than at present¹³. This can be done by the introduction of a reference beacon system at present used to delineate boundaries in a swamp or river. Under this system there would be fewer beacons to erect and hence survey costs would be reduced.

One weakness with the reference beacon system is the danger of destruction of the few beacons by earth moving equipment. There is no such danger where the beacons are in a swamp. The casualty rate of survey beacons arising from the work of bull-dozers and road graders is very high¹⁴. It is submitted however that the danger may be averted by erecting beacons that do not abutt the roads and are therefore free from

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physical interference.

CONVEYANCING COSTS

In the process of conveying property to individual purchasers, local authorities will have to pay various types of fees for the preparation and certification of documents conveying the leasehold interest in land. These fees which are required under the Lands and Deeds Registry Act; the Stamp Duty Act¹⁵ and the Land (Conversion of Titles) Act¹⁶ will ultimately be reflected in the cost of the house to be borne by the purchaser. The government could grant a subsidy in respect of low cost housing by reducing stamp duty on transactions of less than a determined monetary figure and also reducing the registration fees in respect of such transactions.

(ii) INDIVIDUAL INITIATIVE

Private individuals may provide themselves with housing in two ways, either by purchase of an already existing house or the construction of a house on undeveloped land. With respect to the former, the main problem is that of availability of finance. Where an individual intends to construct his own house, the procedure by which he can construct his house depends on the purpose for which the area in which he wants to settle is zoned. If the area is zoned under the Town and

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Country Planning Act for residential purposes, he only has to secure the Building permit under the Public Health (Building) Regulations. But in all cases where the area is not zoned for residential purposes, the developer has, in addition to securing the Building permit, to obtain the planning permission from the planning authority. It is also required under the Public Health (Building) Regulations that buildings comply with the standards laid down by the building regulations.

In both situations however, that is, housing by purchase or the construction of a new house, the developer is affected by the intricacies of the law and practice relating to dealings in land. Grants of land and dealings in land are effected by means of documents which are drafted in compliance with the formalities required by the English law as applied in Zambia. The validity, subject to the requirement of registration under the Lands and Deeds Registry Act, of the documents and their effect is governed by the rules and technicalities of English conveyancing law and practice. Failure to comply with them may result in defective documents being used. Any such defect may continue to affect the title to the land until cured notwithstanding that the document has been registered. Hence conveyancing by deeds has resulted in complications, expenses and delays

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in land transfers.

PLANNING PERMISSION

Having acquired a piece of land, a developer must depending on the circumstances affecting that land secure planning permission from the Minister or planning authority. The Town and Country Planning Act provides for the appointment by the Minister of Planning Authorities which prepare development plans¹⁷. In these development plans certain areas are zoned for different types of development or use for example industrial, residential, commercial etc. When these plans are prepared and approved by the Minister all types of development must conform to the development plan. Section 22 requires that permission should be secured from the Minister or Planning Authority for any development within an area subject to a development plan. The Act defines development as the "carrying out of any building, rebuilding or other works or operations on or under land or the making of any material changes in the use of land or buildings¹⁸". Clearly the construction of a dwelling house comes within the meaning of the word development.

The Minister has, under his powers to make regulations for carrying into effect the provisions of the Act¹⁹, made regulations prescribing the procedure for securing planning

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permission. Under Regulation 4 all applications must comply with the statutory form. Such applications must include such particulars and be accompanied by such plans and drawings as indicated on the form.

The particulars required in the prescribed form include, INTER ALIA, the area of land affected, area of buildings proposed to be constructed, and the building materials to be used. Three plans are required: the site plan, which shows the boundaries of the land and any adjoining plot or road; a block plan showing the position of any existing or proposed buildings on the land; and a building plan, showing the plan of each of the parts or sides of the building²⁰.

Similar building and block plans are required to be submitted to local authorities under the Public Health (Building) Regulations²¹, as a prerequisite to the grant of a building permit. There is some difference however in detail and size of the plans and this variation necessitates the preparation of separate plans for planning permission and building permission. These plans cannot be prepared by a layman. They need the services of qualified and competent architects, thus adding to the overall cost of housing construction²². In view of the costs, it would be advisable to standardise the particulars of the plans so that the

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developer does not have to go back to the architect for different plans and incur further costs.

BUILDING PERMIT

A building permit is the permit authorising a developer to proceed with the construction of a dwelling house. No construction may proceed until such a permit has been secured in accordance with the Public Health (Building) Regulations²³. Reference has already been made to the requirement of building and block plans above. The securing of the building permit has been made dependent on the applicant having secured development permission. Regulation 8 stipulates the following instances in which an application for a building permit may be refused:

- (a) Plans contravene the regulations or any rules for the time being in force in the Township;
- (b) The system of drainage is unsatisfactory;
- (c) There is insufficient provision of access to sanitary carts;
- (d) For building on plots where there are some buildings standing, that government has not sanctioned subdivision;
- (e) Latrine accommodation is not sufficiently provided for;
- (f) The Site is not fit for human habitation;
- (g) The plans do not adequately provide for the strength and

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stability of the building nor for the sanitary requirements thereof;

- (h) The site is zoned for a different purpose;
- (i) The plan is not accompanied by an undertaking in writing to the person submitting such plan that the building operations will be supervised by a qualified architect or other competent person approved by the local authority so as to ensure that the building complies with the plan.

Notwithstanding the above grounds, a permit may be refused where the authority considers on any ground that it is objectionable to grant it²⁴.

It is obvious from grounds (d) and (h) that a building permit can only be issued after planning permission has been granted. This causes unnecessary delay. At present, in cases where development permission is not necessary, the grant of a building permit may take one to two months from the time the application is lodged²⁵. Where planning permission must be obtained, a similar period is required for the planning authority to grant the permission, whereupon the local authority considers the application for a building permit. It is difficult to appreciate the rationale for the grant of a building permit being dependent on securing planning permission.

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It would be more convenient to the developer if applications for planning permission and building permit could be lodged simulateneously so that both applications are considered by the responsible authorities at the same time.

It may well be that the grant of a building permit was made consequent upon securing planning permission in order to stop people from commencing construction in the absence of planning permission and then only to be compelled to demolish the building on the ground that the area was zoned for a different purpose. Indeed it has sometimes happened especially in cases where the local authority (which grants the building permit) is not the planning authority for that area²⁶, that the local authority grants a permit for the construction of a building to be used for a purpose contrary to the development plan²⁷. The developer is then ordered to demolish the building or secure planning permission.

The above situation can however be avoided by either creating or evolving a machinery for liason between the two authorities or by including an express term in the building permit to the effect that construction should not commence until planning permission has been secured. A similar term can be found in the prescribed form for planning permission stating

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that the application is for permission under that Act only and does not "absolve the applicant from obtaining any other consent under any law, by-law, regulation, state lease agreement etc. that may be required". It is advisable for the building permit to contain a similar provision which should expressly refer to planning permission.

Regulation 11²⁸ requires the developer to commence construction within six calendar months of the date of the building permit. In default of commencement, the permit lapses as if it had never been given. Similarly construction must be completed within twelve months, otherwise the permit is deemed to have lapsed. The developer is however entitled to submit a fresh application following the same procedure.

The period within which construction must commence is too short especially in cases where, as is often the case, the developer relies on the Building Society or other institution for housing finance. Professor Tembo who is constructing a house in Avondale (Lusaka East) has explained that because the Building Society will not release the money until the foundation and slab have been constructed (which form the security for the first instalment) and the money for so doing must be raised by the individual developer from other sources, it is difficult to commence construction within

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the stipulated six months²⁹.

With respect to completion, Professor Tembo who has not completed after a year and three months has pointed out that completion within twelve months is not possible owing to delays by the Society in releasing money. He explained that the Society will only grant a further instalment on the basis of the value of the improvements, but their valuers take a long time in evaluating the property, thereby causing delay. It is submitted therefore that the requirements of commencement and completion constitute a hindrance rather than an encouragement to housing development.

Further, it is submitted that there is no rationale for a public health authority to prescribe the period within which completion must be attained since the lapsing of the permit consequent upon failure to complete does not result in the developer losing his title to the land. The lapsing of the permit merely leaves the land undeveloped until such time as a fresh application is submitted and approved, thus causing further delay.

But the foregoing criticism is not to detract from the necessity of developing the land within a reasonable time. There is the covenant in the statutory lease granted by the state under the Land (Conversion of Titles) Act by which the state

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may treat the lease as forfeited in the event of failure to develop the land.

BUILDING STANDARDS

There are two Acts that prescribe building standards namely, the Public Health Act and the Local Government Act³⁰. The building regulations made under the two Acts do not apply universally. The Minister may, by statutory instrument apply either all or any of the regulations under any of the Acts. The regulations under the Local Government Act have never been applied in practice but the Public Health (Building) Regulations³¹ have been applied extensively.

The application of the building standards has been restricted to all high cost housing areas which are open to the public for housing construction. Their application have not been restricted to important commercial and industrial centres along the line of rail but also in the rural towns³².

Regulations 21 to 49³³ prescribe requirements relating to building materials, the height of walls, thickness of walls and minimum area of every habitable room. All the foundations and floors must be made of concrete, stone, good sound burnt brick, wood or other material approved by local authorities. The regulations also prescribe the

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acceptable degree of ventilation and the mode of building construction. In addition to building regulations, there are other regulations prescribing the construction of drainage systems and ablutions made under the Public Health Act. The Drainage and Latrine regulations³⁴ apply to most areas where the building regulations apply. The application of the two sets of regulations has rendered construction of dwelling houses and the arrangement of drainage and sewage highly technical processes. The costs incurred in a bid to comply with these regulations are therefore enormous.

The building regulations under the Public Health Act have been the subject of persistent criticism. The East African Royal Commission observed that in the economic circumstances of East Africa (which had a similar code) the territories could not afford to spend their limited resources on houses of the standards required by the regulations³⁵. The National Housing Authority has expressed the view that "Countries with a chronic housing shortage like Zambia cannot afford to be too exacting about minimum standards"³⁶.

Before we join in the chorus against the present building standards a perusal of a research paper prepared by the National Housing Authority³⁷ concerning the life expectancy of dwelling houses based on materials used for construction will be helpful. The National Housing Authority found that the most durable houses are those constructed from hollow

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concrete blocks with asbestos roofing sheets or from wire-cut brick work with plaster and galvanised iron roofing sheets. Such houses can last for a period in excess of forty years. But sundried mud blocks (Kimberly bricks) will last for two to three decades only.

The building regulations prescribe standards by which the houses constructed in compliance thereof can serve the occupant for more than forty years. To that extent, these regulations render investment in housing fruitful. Any reduction in the quality of building materials has the corresponding effect of reducing the life expectancy of the house. One must also recall the annual catastrophes in which huts constructed from relatively inferior building materials in squatter compounds collapse during the rain season owing to inadequate foundation and roof support.

It is submitted however that while prescriptions as to the quality of building materials are necessary despite fluctuations in the supply of building materials in the country ³⁸ the technicalities involved in housing construction should be done away with. It has earlier been pointed out that the combination of building and drainage regulations has rendered housing construction an extremely technical

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process. It calls for the engagement of building contractors. But the building industry in Zambia is not fully developed³⁹. It is necessary therefore to remove these technicalities so that independent artisans or bricklayers can construct the house without much difficulty. This will have the added advantage of reducing construction costs as the developer has a better chance of negotiating for a lower charge with an individual artisan than a firm of building contractors.

CONCLUSION

The foregoing discussion serves to indicate that there are some serious impediments to housing development outside Site and Service Areas. The present legal framework involves costs, duplicity and delay. Its quite probable that these inhibiting factors have led to the flourishing of squatter settlements. Further the difficulties encountered by developers who rely on the Building Society for housing finance with respect to the building permit necessitate a liason among institutions responsible for housing.

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CHAPTER FIVE

HOME OWNERSHIP UNDER THE HOUSING (STATUTORY AND IMPROVEMENT AREAS) ACT, 1974

The evolution and significance of the policies relating to Site and Service Schemes and the upgrading of squatter settlements have been discussed in Chapter Three. In spite of their long history¹ it was not until 1974 that the Housing (Statutory and Improvement Areas) Act² hereinafter referred to as the "Housing Act" was passed providing the legal framework within which the policies could be implemented.

This Chapter examines the provisions of the Housing Act particularly with regard to security of tenure. The review will also be concerned with the availability of incentive for housing development in areas covered by the Housing Act as well as an evaluation of the extent to which the Act enhances the implementation of the relevant policies. The Chapter concludes with some comments on the extent to which the Housing Act has been applied.

The legal and practical difficulties encountered in housing development outside areas covered by the Housing Act have been discussed in Chapter Four. The legislative enactments that have hampered development in those areas have been

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excluded by the Act³. The Act also excludes the application of the Rent Act⁴, and the Stamp Duty Act⁵. The costs of survey incurred in the preparation of diagrams of each house are reduced because the Housing Act only requires the preparation of a plan for the whole area in which plots are identified by serial numbers⁶. The exclusion of the Town and Country Planning Act⁷ has removed areas covered by the Housing Act from planning Authorities appointed under that Act, and the National Housing Authority is now the planning agency for these areas⁸.

On the other hand, the Public Health Act⁹ under which the controversial building standards have been prescribed has not been specifically excluded. This omission should not pose any problem however because the application of the Building Regulations¹⁰ are dependent upon the declaration of the Minister to that effect presumably due to the cumbersomeness of the regulations.

DECLARATION OF STATUTORY HOUSING AREAS AND IMPROVEMENT AREAS

The Minister may, by statutory order or instrument declare any area to be a Statutory Housing Area or Improvement Area as the case may be¹¹. There are two prerequisites to these declarations. First, the area to be declared must be owned in fee simple or in leasehold from the State under the

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provisions of the Zambia (State Lands and Reserves) Orders¹².

In view of Section 4 of the Land (Conversion of Titles) Act¹³, which section has converted all freeholds to leaseholds for a period of a hundred years, the reference to the fee simple estate must be taken to mean the statutory lease granted under the Act.

Secondly, the Local Authority responsible must prepare a Statutory Housing Area Plan or Improvement Area Plan as the case may be. The plan must be approved by the Surveyor-General (who retains one copy). Copies of the plan must be deposited with the Registrar of Lands and Deeds and also, in the case of the Statutory Housing Area Plan, with the Commissioner of Lands. The plan indicates the name and description of the area; existing roads, if any; the roads proposed to be constructed; existing areas for common user; and the area and dimension of each plot of land identified by a serial number¹⁴.

Since the details required in the plan are the same for both Statutory Housing Areas and Improvement Areas, how then does the local authority determine which area should be declared a statutory Housing Area and which area should be declared an Improvement Area? The Act is silent on the distinction. Other sources however reveal the basis of distinction between the two areas.

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In the parliamentary debate introducing the Bill, the Minister of Local Government and Housing said:

"The Bill relates to the improvement and control of squatter compounds which will henceforth be referred to as "Improvement Areas" and it relates to the letting of land in what are commonly called "Site and Service Schemes" which will henceforth be referred to as Statutory Housing Areas"¹⁵.

In a circular entitled "The Housing (Statutory and Improvement Areas) Act, 1974"¹⁶, explaining the mode of implementing the Act from the Ministry of Local Government and Housing it is stated:

"For purposes of classification an ordinary council housing estate such as Libala and Matero in Lusaka, Chifubu and Masala in Ndola, Chinwenwe and Ndeke in Kitwe or Mikomfwa in Luanshya or any other fully serviced area should be classified as a Statutory Housing Area. An upgraded area such as Kanyama in Lusaka or partially serviced area should be classified as an Improvement Area. In case of doubt the matter should be referred to this office for consideration".

It would seem then that the test is the extent to which an area is provided with services¹⁷. What is not clear is the contrast between fully serviced and partially serviced areas, as most of the settlements presently enjoy pipe-borne water, roads, and sewage services although in the case of water, stand pipes may be shared¹⁸.

In this uncertainty, local authorities have so far only sought the declaration of their housing estates in which houses have

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already been constructed by themselves as Statutory Housing Areas but have excluded Site and Service Schemes, whether they are fully serviced or not contrary to the Minister's statement in Parliament and the circular¹⁹. Confirming the above practice by local authorities, the Deputy Registrar of Deeds at the Lusaka City Council disclosed that to the best of his knowledge and experience he had only issued leases under the Housing Act to occupiers of houses in council housing estates and that persons in Site and Service Schemes and upgraded squatter settlements, alike, had been issued Occupancy Licences pertaining to Improvement Areas²⁰.

The declaration of one area as a Statutory Housing Area is of crucial importance to the public because the conditions, terms or covenants in the lease offered in Statutory Housing Areas are more favourable than the covenants in Occupancy Licences offered in Improvement Areas²¹.

COUNCIL'S POWERS IN STATUTORY HOUSING AREAS AND IMPROVEMENT AREAS

Sections 5 and 38 confer certain powers to local authorities in respect Statutory Housing Areas and Improvement Areas respectively. In both areas a Council may subdivide the land, and "in accordance with the specifications prescribed by the

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National Housing Authority erect any building or effect any improvement on any piece or parcel of land"²². In addition to the above, a Council may in a Statutory Housing Area let a piece of land on terms and conditions prescribed by the Minister, while by contrast, in Improvement Areas, the Council may issue an occupancy licence²³ and may carry out the construction and maintenance of roads, sewage, etc. and other works for public amenity. The latter is the basis for squatter improvement or upgrading.

The provisos to Sections 5 and 39 are of utmost importance to the quest for a solution to the housing shortage. The proviso to Section 5 states that the Council shall not (so far as relevant):

- (i) Let more than one piece or parcel of land to any one person;
- (ii) Save for use and occupation by himself or his BONAFIDE dependants, let to any person engaged in the business of buying, selling, letting, developing, or in any way dealing in immovable property".

The proviso to Section 39(2) reads:

"Provided that no more than one occupancy licence shall be issued to any one person".

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The rationale for the inclusion of the above provisos seems to have been to prevent people from prospecting in Statutory Housing Areas and Improvement Areas. The question whether prospectors in housing should be permitted to participate in Site and Service Areas has been one of controversy. The argument of the government in support of prohibition in the Act against prospectors, has been that to do so would encourage the emergence of a class of landlords.

In a circular entitled "Aided Self-Help Housing on Site and Service Schemes"²⁴, from the Ministry of Local Government and Housing, which was the basis for the Site and Services policy, the government argued that by permitting prospecting in housing in Site and Service Areas "we shall be creating a nation of Landlords whose aim will be profiteering and exploiting the unwary masses, because in view of the shrewdness of these businessmen, it will be virtually impossible to control the rents"²⁵.

The choice in the view of the government has been between encouraging prospectors or upholding the government's "moral duty to the populace of protecting them from the caprice and avarice of.....astute profiteers"²⁶. For this reason it was previously decided that subletting in Site and Service

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Areas and Improved Squatter Settlements should not be permitted altogether. But in view of the fact that under the Housing Act subletting is permitted subject to the consent of the Local Authority responsible being obtained²⁷, the question of participation of housing prospectors in Statutory Housing Areas and Improvement Areas should be considered afresh.

It is submitted that the Act contains a safeguard against the fears expressed by the government. Under Section 42 the Registrar is precluded from registering any document purporting to "transfer deal in or affect any land unless the Council is a party to the transaction recorded therein or has signified its consent to any such transaction". The reason for making the Council a party to the transaction is that such transaction must be with the consent of the Council. It is therefore possible for the Council to control rent or the purchase price in the case of a sale, by withholding the necessary fiat. It should also be pointed out that the government controls the amount of money payable as rent under a sublease, under the Land (Conversion of Titles) Act²⁸. If the government can perform such a function in respect of the whole country, A FORTIORI local authorities would find it easier to discharge the same function as their responsibility would be restricted to areas within their respective jurisdictions.

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In any event, the argument is rather weak when applied to Statutory Housing Areas because an exception is made with regard to the government, local authorities, public authorities or other public bodies and employers in Statutory Housing Areas²⁹. These bodies, having provided accommodation to their employees, deduct rent from their income at source. But the Council has no power under the Housing Act to control the amounts deducted as rent from employees resident in Statutory Housing Areas.

On the other hand, the benefits accruing from permitting prospectors to develop housing in these areas should not be under estimated. They have the necessary finance to construct as many houses or purchase the same as to satisfy the current housing need. By stopping them outright, the growth of housing stock in the country is being thwarted.

LAND TENURE UNDER THE HOUSING ACT

The rights and obligations of occupiers in Statutory Housing Areas and Improvement Areas must be examined with regard to the incentives or lack of them, towards investment in either category of land. In connection with the discussion concerning the declaration of areas as Statutory Housing Areas or Improvement Areas, we have alluded to the disparities in

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the rights enjoyed by lessees in statutory Housing Areas and licensees in Improvement Areas³⁰.

With respect to Statutory Housing Areas, local authorities grant ninety-nine year leases³¹. The terms of such leases have been prescribed in the Third Schedule of the Regulations³². Licensees in Improvement Areas, however, are granted occupancy licences valid for thirty years.

The nature of the interest conveyed in the occupancy licence is not defined. The Act merely states that the holder of an occupancy licence has such rights and obligations as prescribed³³. McClain has suggested that in fact what was intended was a lease and the terminology used could have been the result of hasty drafting³⁴. In support of the above suggestion he argues that some new form of tenure for the squatter was necessary to meet the problems discussed in Chapter Four in connection with Lands and Deeds Registry Act³⁵, and the Land Survey Act. The invention of the occupancy licence was directed towards this problem and then at a later date a decision was taken to exclude the Acts which made the original distinction between Statutory Housing, and Improvement Areas superfluous.

The argument can no longer be sustained in view of covenant

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7 of the occupancy licence which expressly states that the licence confers no tenancy upon the occupant and the possession of the premises still remains in the local authority³⁶.

Professor Mvunga has pointed out that the term occupancy licence is misleading as in strict legal parlance "the term licence imports the absence of any estate or interest in the property to which it relates"³⁷. A licence merely confers a right making that lawful which without it would be unlawful³⁸. In this a licence is distinguished from a lease in that the latter creates a legal estate in the land, the essence of which is that the lessee has exclusive possession³⁹.

Although the occupancy licence has been said to be vague and thus attract the interpretation of licence at common law⁴⁰ there seems to be little justification for this conclusion. The crux of the matter is that Section 39(5) excludes by implication any resort to the common law for purposes of interpretation by expressly providing that the rights and obligations of a holder are those prescribed. There is no reason why the occupancy licence should not have its own unique attributes and the mere fact that the terminology used has a parallel at common law is not sufficient⁴¹.

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THE INHIBITING EFFECT OF COVENANTS IN STATUTORY HOUSING, AND
IMPROVEMENT AREAS

The covenants pertaining to Statutory Housing Areas and Improvement Areas have been reproduced verbatim in the lease and occupancy licence respectively. These covenants negate the idea of home ownership. The basis of home ownership is that the occupier has untrammelled or the fullest rights with respect to the use of the house subject, of course, to the general law concerning public health and nuisance. The occupier expects some reasonable degree of non-interference from local authorities or the State. Covenants which may discourage investment in Statutory Housing Areas and Improvement Areas are mainly the covenant to repair and the covenant relating to the grounds upon which the lease or licence as the case may be, may be determined. In addition to the above covenants, occupancy licences contain other onerous covenants such as the covenant against exclusive possession; and the closure of water taps for failure to pay water rates.

(i) REPAIR

The statutory lease and occupancy licence both contain covenants for repair. In the statutory lease, the lessee covenants with the lessor to keep the premises in "good and substantial repair" together with all the fixtures

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erected by the lessor "reasonable wear and tear and damage by fire, lightning and tempest only excepted". Another covenant empowers the lessor to enter the premises and view the state of repair of the said premises and the fixtures. Under the occupancy licence, the licensee must not only maintain the premises in a state of good repair but must also keep the premises "clean and tidy and clear of litter....." There is also a corresponding power in the local authority to enter the premises and inspect the buildings thereon.

In a circular entitled "Aided Self-Help Housing on Site and Service Schemes", the government justified the covenant relating to repair on the basis that it would prevent housing areas deteriorating into slums or hovels⁴². This may be a commendable idea but the consequences of default, forfeiture of the lease or determination of the licence is too harsh. In view of the cost of purchasing or erecting the house, it is suggested that the covenant should only be enforced where the state of disrepair is such as to jeopardise the safety of the occupants or the public health of the neighbourhood.

(ii) DETERMINATION OF LEASE AND LICENCE

The grounds for determining a lease in Statutory Housing

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Areas and a licence in Improvement Areas are onerous. Apart from determination by effluxion of time, a lease may be determined by reason of a breach of any one of the covenants or for being in arrear with respect to rent for fifteen days whether demanded or not. The forfeiture clause seems to treat all the covenants as being of equal importance. Admittedly some covenants are quite important especially those relating to the general maintenance of public health and the safety of occupants in Statutory Housing Areas. But covenants against the cutting of timber or the putting up of fences should hardly give rise to forfeiture of the lease. With respect to the construction or raising of fences, local authorities should themselves put up the fence and include the cost incurred in the overall purchase price. An ordinary action for damages should suffice for the cutting of timber. The determination of an occupancy licence by reason of being in arrear with water rates for three months is unfair, since the period of three months is too short.

In addition to the covenants discussed above, a licensee is under more onerous covenants which render his position less envious than that of a lessee notwithstanding the possibility that the cost of his house may be higher than

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the cost of a house in a council housing estate. The licensee has neither quiet possession nor exclusive possession both of which the lessee enjoys in Statutory Housing Areas. The occupancy licence expressly states:

"The licence shall confer no tenancy upon the occupant, and possession of the premises shall be retained by the Council.....and the Council shall at any time have the right to enter upon the lands and to inspect the buildings upon such lands or to instal or erect any works thereon which the Council deems to be in the general interest of the Improvement Area or its occupants".

The most unjust covenant however is the covenant that empowers the Council to discontinue the supply of water to the part of the Improvement Area within which the house of a licensee who is in arrear with respect to water rates, is situated. The idea is undoubtedly to punish the defaulting licensee. But the consequences of closure of a water tap may be far-reaching. In Chapter three it was said that in some Site and Service Schemes there is one common water tap serving twenty-five plots. Councils have often used this power to the detriment of the other licensees who depend on the same source for the supply of water.

Closure of a common water tap on default of one licensee to pay the rates can only be justified at common law, if the licensees are tenants in common with respect to the tap. As

tenants in common the licensees have the rights to the use of the water tap in undivided shares, and are therefore severally responsible for the due payment of water rates.⁴⁴

But the application of the common law doctrine of concurrent interests to licensees in Improvement Areas who have no relationship with one another except the fact of proximity of the plots of land to one another is not satisfactory and is impliedly not permissible under Section 38 of the Housing (statutory and Improvement Areas) Act. Councils, it is suggested, should include the water rate and other service charges in one lump-sum and thus render default in paying the total sum punishable by determination of the occupancy licence. The repercussions of default will hence fall on one individual, leaving the others unaffected.

The other covenant which may inhibit investment in Improvement Areas is the covenant regarding the use to which the house should be put. Unlike a tenant in a Statutory Housing Area, a licensee must occupy the premises as a residence for himself and his "immediate family only" and in particular should not take in "any lodger or other occupant without the consent of the council."

The reference in the covenant to the immediate family must be understood to mean the "nuclear" family in developed European countries. In view of the prevalence of the extended family system in this country, the rationale for this covenant is somewhat obscure. It might well be that the intention is to

d discourage further migration to urban areas by using homes of relatives as spring-boards. Even if this is taken to be the intended effect, it is an ineffective solution which might even be counter-productive, since it would encourage the establishment or growth of squatter settlements. Perhaps the idea was to prevent sub-licensing of one or more rooms without the consent of the council for some monetary payment. But the covenant is too sweeping for the above suggestion.

The position of the tenant in Statutory Housing Areas and the licensee in Improvement Areas is therefore unsatisfactory. The law permits the individual to invest substantial sums of money in the acquisition or the construction of the house, but thereafter his activities are heavily circumscribed. It has been found in respect of squatter settlements that the introduction of council rules after the declaration of an area as an Improvement Area had led to some licensees emigrating from the area to other unauthorised or squatter area where they can live without interference.⁴⁵ That there has been no emigration from site and service schemes may be due to the relatively higher value of investment as the houses are much more costly than in squatter areas.

EXTENT OF APPLICATION

Since the Housing (Statutory and Improvement Areas) Act came into operation⁴⁶ only about ten areas have been declared

Statutory Housing Areas⁴⁷ and about four areas have been declared Improvement Areas,⁴⁸ in the five years that have elapsed. This falls far short of the expectations of the public which had been led to believe that legislative backing of the policies of Site and Service Schemes, and Squatter up ~~grading~~ would result in the abundant growth of housing stock so as to alleviate housing shortage.

The sparing use of the Act so far as it relates to Statutory Housing Areas is due to the restriction by the Council (quite unwarranted by the Act) of the declaration of Statutory Housing Areas to the council's housing estates. All that is necessary under the Act, as a pre-requisite to declaration is the demarcation of plots, the construction of roads and the provision of services.⁴⁹ The construction of the house itself is the sole responsibility of the owner. If the Councils addressed themselves to the afore-mentioned pre-requisites only many more areas could have been declared Statutory Housing Areas.

With respect to Improvement Areas, the problem has been that of acquisition of title to the land on which squatters are settled. Where the registered proprietor has no objection no problems arise. But in the event of the ordinary procedure of acquisition being impracticable either by reason of the proprietor's disagreement or absence from the country, the government has to utilise the Lands Acquisition Act⁵⁰ to compulsorily

acquire the land.

The Lands Acquisition Act empowers the President "whenever he is of the opinion that it is desirable or expedient in the interest of the Republic so to do, "to compulsorily acquire any property of any description."⁵¹ The Act provides for compensation which is dependent on whether the land acquired is "developed and utilised" or undeveloped and unutilised.⁵² Hence the government policy underlying what is compensable or non-compensable land is the use to which it is being put. The government in passing the Act was concerned primarily with land held by absentee landlords which adverttiously happens to be the land on which squatters have settled.

In spite of the existence of the Lands Acquisition Act much of the Land still remains in the hands of absentee landlords, a factor which hampers the upgrading of squatter settlements. The implementation of the Lands Acquisition Act has not been successful owing to problems of administration and inadequacies in the law. The main problem relating to administration has been the non-availability of funds for compensation. It has been asserted that financial constraint has seriously delimited compulsory acquisition to cases where there is a government ministry requiring land for a specific project for which money is already available.²³

The other administrative bottle-neck has been the shortage of skilled staff and transport. The government has no knowledge

of what land is undeveloped inspite of development clauses in state leases of agricultural as well as residential land. To date knowledge of the location of such land is haphazard depending principally on reports from members of the public. But even where field investigations are conducted there is some confusion among the officers as to which land is compensable⁵⁴. For this reason it has been urged that the terms "undeveloped" and "unutilized"⁵⁵ which lack precision should be simplified by relating them to a minimum monetary value to be attached to developments on the land⁵⁶. The other administrative problem is delay in the determination that acquisition will be in the interest of the Republic⁵⁷.

With respect to the Act itself the major flaw is the provision in Section 11 that in the event of a dispute as to the amount of compensation, the Minister must deposit in court the amount he considers "just" prior to his taking possession. It is therefore possible for the owner to frivolously dispute the amount of compensation on the ground that it is meagre or inadequate, thereby making it difficult to proceed with the acquisition by reason of non-availability of funds to deposit to the court⁵⁸.

The Act has mainly been used hitherto to acquire land for agricultural projects⁵⁹, new school sites, police stations and customs and immigration⁶⁰. To a limited extent however the Act has also been used to acquire land for residential purposes⁶¹.

CONCLUSION

The fact that the Housing (Statutory and Improvement Areas) Act has been used sparingly indicates that the law itself and the manner in which it is being implemented is unsatisfactory. The Housing Act was intended to encourage people to construct their own homes, but the covenants in the lease granted in Statutory Housing Areas and occupancy licences in Improvement Areas negate the idea of home ownership. There is a need to create some incentives towards housing development in Statutory Housing Areas and Improvement Areas. At present the areas being declared either as Statutory Housing Areas or Improvement Areas have already been developed, so that the effect of declaration is mainly to grant a good title to the land. We have seen that the introduction of Council rules in squatter areas led to the emigration of occupiers to other places where they could live without interference from the Council.

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But because the large sum of money involved in the construction of a house in Site and Service Schemes, the residents in these schemes cannot easily leave the area. If undeveloped land was declared a Statutory Housing or Improvement Area and then the public invited to construct houses in the area, the inhibiting effect of covenants would become apparent.

In terms of alleviating housing shortage the present practice of declaring areas in which houses have already been constructed does not lead to the increase in the housing stock in the country. The people in the areas declared are already accommodated and they are not included in the figure representing housing need. Councils should strictly adhere to the provisions of the Act so that more areas are developed.

CHAPTER SIX

CONCLUSION

Housing policies in Zambia reflect a change from the concept of housing as a social service to that of self-reliance. They have been moulded to cope with the housing need. We have seen in Chapter One that the legal framework within which housing institutions operate is adequate for them to discharge their responsibilities. It was also pointed out however that the demand for housing has increased so much as to reduce their effectiveness to discharge their functions under the policies inherited from the colonial government. The enormity of the housing problem has seriously delimited the various policy options available to the government. As the need for housing affects mainly the poor the post-independence policies pursued emphasise quantity rather than quality both in Site and Service Schemes and upgraded squatter settlements.

The policy of home ownership in Site and Service Schemes and upgraded squatter areas are considered the ultimate panacea of housing shortage. As indicated in Chapter Three this policy is laudable considering

the inability of local authorities to construct houses at a rate that corresponds to the increase in demand. That this policy was not fully developed during the colonial era is due mainly to the fear of creating an urban proletariat that would have led to deterioration in the maintenance of law and order as explained in Chapter Two, entertained by the colonial government.

Two adverse observations may be made however, with respect to the home ownership policy. Home ownership tends to slacken mobility, that is to say, people are tied down to their houses, thus making it difficult to utilise employment opportunities available elsewhere. This tendency may discourage low income earners from participating in Site and Service Schemes as they are the most vulnerable to redundancy declarations and loss of employment. Even when they finally secure a job they cannot immediately apply for another plot on which to construct another house. With the abandonment of rental housing as indicated in Chapter Two, they have to rely completely on the employer for housing. But, as we have seen in the same Chapter, the duty on employers to provide housing accommodation to their

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employees has been denuded by the proviso for housing allowance in LIEU of housing. In the circumstances the worker may be faced with no choice but squatting.

The second criticism that may be levelled at this policy is that it encourages permanent urban settlement. In the face of the call to the people to "go back to the land" the government seems to involve itself in contradictions. This factor was pointed out during the parliamentary debate which preceded the passing of the Housing (Statutory and Improvement Areas) Act, but to no avail. The evils sought to be avoided by housing tied to employment under the Urban African Housing Ordinance of 1948 namely urban population explosion, slums, unemployment and crime are already beginning to show. Undoubtedly housing may not necessarily be the direct cause but it is logical to suppose that it may have contributed to the escalation of urban problems.

Nonetheless, the trend is now irreversible. Everything must therefore be done to encourage people to build proper housing accommodation for themselves. The housing policies pursued after independence, discussed

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in Chapter Three are adequate to solve the housing problem although building standards may have to be sacrificed for quantity.

What the policies need however is a legal framework that will ensure that they are successfully implemented. The intentions of the government as shown in various policy statements must find expression in the law itself so that they are acted upon by local authorities.

Attention should also be focussed on the absence of a machinery for co-ordination or consultation among the several bodies or institutions responsible for various aspects of housing, namely local authorities, the National Housing Authority, and the Zambia National Building Society. This factor has led to delay in the development of housing. If all the steps necessary for the construction of a house, discussed in Chapter Four, such as planning permission, and building permission were decided by one body, the practical difficulties encountered by developers would not exist.

There is also the need to consolidate legislation

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regulating housing. At present a study of housing law involves a perusal of statutes which are PRIMA FACIE irrelevant to housing such as the Public Health Act, the Town and Country Planning Act and the Land Survey Act. This is of special importance in respect of housing development outside areas covered by the Housing (Statutory and Improvement Areas) Act.

On the substantive law, the most urgent reform must be in respect of survey standards and building standards. We have seen in Chapter Four how the current high standard of survey may inhibit the implementation of the policy of selling council houses especially with respect to isolated existing houses, owing to prohibitive cost. It was also pointed out with respect to building standards, that they are too technical. Reform of building standards has been urged by most commentators on the subject of housing. The suggestion is that the law must lower the present building standards, but at the same time permit those with sufficient funds to construct more costly and durable homes.

In areas where the prescribed standards do not apply, it is necessary to prescribe by enactment some

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minimum standards. The present legislation governing Site and Service Schemes and upgraded squatter settlements have no statutory standards. Minimum requirements concerning the type and quality of building materials and the mode of construction are decided upon by local authorities and contained in circulars and other extra-legal material. These standards have been varied from time to time under different housing programmes with the result that there is variation in the standards of housing among different housing areas.

The policy of home ownership in Site and Service Schemes and Upgraded Squatter Settlements requires a legal framework within which it should find expression because it is regarded as a panacea to the housing shortage. But the Housing (Statutory and Improvement Areas) Act does not fully incorporate the idea of home ownership as conceived by the government. In Chapter Five it was shown that the covenants in leases granted in Statutory Housing Areas and in occupancy licences in respect of Improvement Areas are not consistent with the idea of home ownership. For this reason these covenants will inhibit investment in housing in the areas to which the Act is applied.

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At present, the effect of these covenants are not very apparent in Statutory Housing Areas because the houses were already constructed before the declaration, and the high cost of purchasing houses leaves the lessee no option but to resign himself to the onerous covenants. By contrast in squatter areas where the cost of construction is less, licensees are deserting following declaration of such an area as an Improvement Area.

One cannot escape the conclusion therefore that on the whole, the law does not in fact reflect the housing policies enunciated by the government, and that in certain respects it is actually hampering housing development in this country.

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FOOTNOTES (Chapter One)

1. National Housing Authority: Kitwe Development Plan 1979,
p.56
Low cost area: 2,900-4,499 square feet; cost: about K8,000
Medium cost area: 4,500-10,999 square feet; cost: about K15,000
High cost area: 11.000 and above; cost: about K35,000
2. Act No.30 of 1974
3. Chapters 4, and 5 respectively
4. Security of tenure means the conditions that assure the holder of land of quiet or undisturbed possession of the land.
5. There is some controversy as to whether the Land (Conversion of Titles) Act, No.20 of 1975 applies to land under customary law (Reserves and Trustlands). It is being urged that customary land is held for an interest that continues in perpetuity and therefore this interest comes within the definition of "absolute rights in perpetuity" converted to leaseholds by the Act. However the above argument ignores the significance of the word "absolute". Studies in customary land rights in Zambia tend to indicate the absence of absolute rights in land if we take "absolute" to mean "the freedom of interest from dependence on other things or persons": HALLEY v. MINISTER OF NATIONAL REVENUE [1963] Ex. C.R. 372 at p.375. Such studies include: Gluckman: THE IDEAS IN BAROTSE JURISPRUDENCE, Yale University Press, New Haven 1965, pp.75-112; Meek: LAND LAW AND CUSTOM IN THE COLONIES, Oxford University Press, London, 1946, pp.11-27; and R. Palmer "Land in Zambia" in "Zambia land and labour studies", No.2, Vol.3, National Archives, Lusaka, 1973.
6. Act No.20 of 1975
7. Section 4, Ibid
8. Northern Rhodesia (Crownlands and Native Reserves) Order-in-Council, 1928.
Northern Rhodesia (Native Trust land) Order-in-Council, 1947.
9. Ibid
10. These pieces of land are in the Eastern Province of the country.
11. Section 5 of Act No.20 of 1975
12. Section 6, Ibid

13. Section 8, Ibid
14. No.187 of 1975
15. Ibid
16. The Act and the Regulations do not define the word "improvement" but Section 3 of the Act defines "unexhausted improvements" as anything resulting from the expenditure of capital or labour.
17. Section 16
18. Section 7
19. Ibid
20. Section 16
21. Section 10
22. Law Association Journal, Vol.3, March 1976, pp.1-3.
23. H.J. Simons "Zambia's Urban Situation" in DEVELOPMENT IN ZAMBIA, Ed. B. Turok, Zed Press, London, 1979, p.22.
24. Act No.2 of 1970
25. Section 10, Ibid
26. Section 11, Ibid
27. Section 41, Employment Act, No.57 of 1965
28. Act No.16 of 1971
29. Act No.36 of 1956
30. Section 7(c), Ibid
31. Section 20(1), Ibid
32. Section 21(2), Ibid
33. Section 19(2) of Act No.16 of 1971
34. Active functions are functions that entail execution of plans, schemes or the construction of estates.
35. World Bank: URBAN SECTOR SURVEY, REPUBLIC OF ZAMBIA Vol.II, May 24, 1976. pp.29-30 (Annex III).

36. Section 20 of Act No.16 of 1971
37. Section 22, Ibid
38. World Bank OP.CIT., p.30
39. Section 25 of Act No.16 of 1971
40. Section 45(1), Ibid
41. Section 51, Ibid
42. Act No.32 of 1961
43. Regional plans are those prepared by planning authorities on request by the Minister in accordance with Sections 44 and 45 of the Town and Country Planning Act.
44. Section 44, Town and Country Planning Act No.32 of 1961.
45. Annual Report and Statement of Accounts, 1st August to 31st December, 1971, p.2, National Housing Authority, Government Printer, Lusaka.
46. Interview with Mr. A.B. Kasongo: Research Officer, National Housing Authority.
47. Annual Report and Statement of Accounts, 1973, p.7, National Housing Authority, Supra.
48. Ibid, p.5
49. Interview with Mr. Kasongo: Research Officer, National Housing Authority.
50. World Bank: OP.CIT. p.30
51. Ibid
52. Act No.16 of 1927 and Act No.53 of 1929 respectively.
53. Sections 3 of both Acts
54. No.32 of 1948
55. Section 21, Ibid
56. Section 65 of Act No.69 of 1965
57. Section 24 of Act No.16 of 1971

58. Section 25, Ibid
59. Section 48, Ibid
60. Section 50, Ibid
61. Circular LGH/54/7/3, dated 20th July, 1972, Ministry of Local Government and Housing.
62. Act No.30 of 1974
63. Technically the word squatter ^{refers to} ~~an~~ unauthorised settler on land with respect to which he has no title. In common parlance, for the purpose of distinguishing squatters on private and Council land and squatters on state land, the description unauthorised settler is becoming commonly used to refer to squatters on state or public land.
64. R. Casanova "Land Policies and Practices" in HOUSING ASIA'S MILLIONS Ed. Yeh and Laquian, International Development Research Centre, Ottawa, 1979. State that: "In South East Asia as in many developing regions the main problem in housing the urban poor is usually not the construction of dwellings but rather the availability of land and the planning and regulation of its use". p.101.
65. T.F. Ray: THE POLITICS OF THE BARRIOS OF VENEZUELA, University of California Press, Berkeley, 1969.
66. "Land in Zambia" by R. Palmer in Zambian "Land and Labour Studies". ed. R. Palmer, Vol.1, National Archives, 1973, p.56.
67. Chapters 4 and 5
68. Circular LGH/54/7/3, Ministry of Local Government and Housing, dated 20th July, 1972.
69. See Appendix I
70. Third National Development Plan 1979-1983, p.323, Office of the President, National Commission for Development Planning, Government Printer, Lusaka, 1979.
71. Ibid
72. The inadequacy of urban land tenure has been pointed out under "land tenure in urban areas". ante.

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73. World Bank Report OP.CIT., p.30

FOOTNOTES (Chapter Two)

1. The policy by which the provision of housing was restricted to Africans in salaried employment, G. Kay, A SOCIAL GEOGRAPHY OF ZAMBIA, University of London Press Ltd., London, 1967, p.91.
2. Ownership of the house by the occupier irrespective of interest in land "Home Ownership" in PROCEEDINGS OF THE CONFERENCE ON URBAN HOUSING, Ministry of Housing and Social Development, Government Printer, Lusaka, 1964, p.7.
3. No.32 of 1948
4. No.69 of 1968. There is no specific reference to rental housing although this has been the practice.
5. There is no legal prohibition on local authorities to build houses for rent, but the government no longer grants money to local authorities for this purpose. See discussion in Chapter Three under the heading "Local Authority Rental Housing".
6. No.12 of 1930
7. No.53 of 1929
8. No.16 of 1927
9. No.56 of 1919
10. No.15 of 1930
11. No.57 of 1919
12. John Collins "The Evolution of Urban Housing policies with particular reference to Lusaka". (M.Sc. Thesis) Columbia University, 1970 (unpublished) p.10.
13. R. Gray: THE TWO NATIONS, (OUP) London, 1960, p.92
14. IBID, p.93
15. H. Heisler: URBANIZATION AND THE GOVERNMENT OF MIGRATION. (C. Hurst and Company), London, 1974, p.41.

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16. R. Bates: RURAL RESPONSES TO INDUSTRIALISATION (Yale University Press), New Haven, 1976, p.41.
17. IBID
18. Some of these factors are the economic benefits accruing from wage employment and the poll and hut taxes imposed by the colonial governments. L. Gann: A HISTORY OF NORTHERN RHODESIA, (Chatto and Windus), London 1964, pp.101-102.
19. H. Heisler: "A Class of Target Proletarians" (JAAS) Vol.V, No.3, July 1970.
20. IBID
21. G. Kay: OP.CIT., p.74
22. IBID
23. R. Gray: OP.CIT., P.111
24. G. Kay: OP.CIT., p.75
25. R. Gray OP.CIT., p.111
26. No.50 of 1929
27. Section 5, IBID
28. H. Heisler: URBANISATION AND THE GOVERNMENT OF MIGRATION, op.cit, p.101.
29. No.56 of 1919
30. Section 6, Public Health Ordinance, No.12 of 1930
31. Section 65, IBID
32. Section 66, IBID
33. REPORT OF THE COMMISSION TO INQUIRE INTO THE ADMINISTRATION AND FINANCE OF NATIVE LOCATIONS IN URBAN AREAS. (Eccles Commission), Government Printer, Lusaka, 1944. p.4.
34. No.11 of 1932
35. Crown land was land subject to English land tenure as distinguished from Reserves and Trustlands which were subject to customary land tenure. Crown land was generally situated in urban areas and by the 1964 Order-in-Council

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was converted into state land.

- 36 . H. Heisler: URBANIZATION AND THE GOVERNMENT OF MIGRATION, op.cit., p.101.
37. IBID, p.103
38. IBID, p.104
39. See Note 33 (above)
40. IBID
41. IBID
42. IBID
43. No.32 of 1948
44. Section 45(a)
45. THE EMPLOYMENT OF NATIVES ORDINANCE AND ITS REGULATIONS, (Labour Department) Government Printer, Lusaka, 1945, p.73.
46. IBID
47. Private compounds were settlements established outside local authority areas in which employers provided accommodation to their employees. Cf. Eccles Commission OP.CIT.
48. G. Kay: OP.CIT., p.130
49. There is no uniform or consistent statutory definition: B. Hepple: INDIVIDUAL EMPLOYMENT LAW, (Sweet and Maxwell) London, 1971, p.12.
50. At the introduction of the Bill in Parliament Mr. Eccles, a nominated official, urged parliament to recognise the fact that Africans were becoming more and more urbanised - See NORTHERN RHODESIA LEGISLATIVE COUNCIL DEBATES No.61, 1948, Government Printer, Lusaka, 5th June-30th June.
51. Section 3
52. Section 21
53. Section 27
54. Section 28
55. Section 26
56. NORTHERN RHODESIA LEGISLATIVE COUNCIL DEBATES, op.cit.

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57. IBID
58. The length of time permitted for an unemployed individual to live in town was one month or the unexpired duration of his pass "whichever is the longer", Section 36.
59. REPORT OF THE CONFERENCE ON URBAN PROBLEMS IN EAST AND CENTRAL AFRICA, (HMSO), London 1958, par. 46.
60. IBID
61. IBID
62. D.G. BETTISON: "The Poverty Datum Line", RHODES -LIVINGSTONE JOURNAL, No.27 of 1960.
63. This is in contrast to the common law doctrine of fixtures by which buildings are included in the definition of land under the maximum QUICQUID PLANTALUR SOLO, SOLO CEDIT. Osborn: A CONCISE LAW DICTIONARY, (Sweet and Maxwell). London, 1964, p.264.
64. G. Hope: "Home Ownership" in PROCEEDINGS OF THE CONFERENCE ON URBAN HOUSING. Ministry of Housing and Social Development, Government Printer, Lusaka, 1964., p.4
65. IBID
66. ANNUAL REPORT OF THE DEPARTMENT OF LANDS, Government Printer, 1958, p.1.
67. REPORT OF THE CONFERENCE ON URBAN PROBLEMS IN EAST AND CENTRAL AFRICA, 1958 op.cit. par. 38.
68. For the history of building societies see G. Hope OP.CIT p.6.
69. IBID, p.7
70. IBID
71. D. Bettison: AN ATTEMPT TO ASSESS AND EVALUATE THE ATTITUDE OF THE AFRICAN TO HOUSES AND HOUSING. 1958, Government Printer, Lusaka, p.3.
72. IBID
73. G. Hope: OP.CIT. p.8

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74. IBID, p.9
75. IBID, p.7
76. ANNUAL REPORT OF LOCAL GOVERNMENT AND AFRICAN HOUSING DEPARTMENT, Government Printer, Lusaka, 1958, p.7.
77. G. Hope: OP.CIT. p.9
78. ANNUAL REPORT OF LOCAL GOVERNMENT AND AFRICAN HOUSING, Government Printer, Lusaka, 1955, par. 75.
79. IBID
80. ANNUAL REPORT OF LOCAL GOVERNMENT AND AFRICAN HOUSING, 1957, Government Printer, Lusaka, par. 75
81. G. Kay: OP.CIT. p.125

FOOTNOTES (Chapter Three)

1. First National Development Plan - 1966-1970. Office of National Development and Planning, Government Printer, Lusaka, July 1966, p.47.
2. IBID
3. IBID
4. Circular No.17/65 dated 24th April, 1965, Ministry of Local Government and Housing.
5. IBID
6. Circular LGH/54/7/3, dated 20th July, 1972, Ministry of Local Government and Housing, p.9.
7. IBID
8. G. Hope: "Home Ownership Schemes" in PROCEEDINGS OF THE CONFERENCE ON URBAN HOUSING, Government Printer, Lusaka, 1964, p.7.
9. IBID
10. Indirect subsidies are sums paid to local authorities by the government for the costs of maintenance and services,

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which amount would otherwise be reflected in the rent payable by the tenant.

Direct subsidies are sums paid to local authorities as a portion of rent so that the tenant pays a reduced or economic rent.

11. Third National Development Plan, 1979-1983, Office of the President, National Commission for Development Planning, Government Printer, Lusaka, October 1979, p.328.
12. IBID, p.317
13. This category of people is not defined but some guideline may be derived from what the government calls "middle income" which is between K160-K250 per month. See TNDP OP.CIT., p.326, Table XVI.7.
14. No.32 of 1961
15. Section 22, IBID
16. Statutory Instrument No.357 of 1965
17. Statutory Instrument No.314 of 1968.
18. IBID
19. C. Aronovici: HOUSING THE MASSES, (John Wiley and Sons) New York, 1939, p.109.
20. Circular TPH/02/1 dated 7th August, 1968, Ministry of Local Government and Housing.
21. C. Aronovici, OP.CIT., p.109
22. Circular No.17/65 dated 4th April, 1965. Ministry of Local Government and Housing.
23. H.H. Werlin: "Nairobi's Politics of Housing" in THE AFRICAN REVIEW, Vol.3, No.4 of 1973, p.611-627.
24. IBID
25. ANNUAL REPORT AND STATEMENT OF ACCOUNTS, 1970-1971, Zambia Housing Board, Government Printer, Lusaka, 1972, p.3.
26. O.H. Koenigsberger: HOUSING AND PLANNING IN NORTHERN RHODESIA - A RECONNAISSANCE SURVEY, London Architectural Association, London, 1964, p.9.

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27. IBID
28. Circular 59/66 dated 7th November, 1966, Ministry of Local Government and Housing.
29. LOW COST RESIDENTIAL DEVELOPMENT IN LUSAKA, Department of Town and Country Planning, Government Printer, Lusaka, 1972, p.86.
30. IBID, p.87
31. IBID, p.103
- 3 2. ANNUAL REPORT AND STATEMENT OF ACCOUNTS 1970-1971 OP.CIT., p.4.
- 3 3. Board was dissolved on the repeal of the Housing Act, CAP 426 by the National Housing Authority Act, No.16 of 1971, Section 66 and Statutory Instrument No.223 of 1972.
- 3 4. ANNUAL REPORT AND STATEMENT OF ACCOUNTS 1970-1971, OP.CIT., p.4.
35. See Appendix One
- 3 6. SNDF OP.CIT., p.318
- 3 7. Interview with Mr. Changala, Director of Housing, Lusaka City Council, 8th February, 1980.
38. SNDF OP.CIT., p.318
39. IBID
40. TNDP, OP.CIT., p.325
41. Section 60, Building Societies Act, No.46 of 1968
42. SNDF OP.CIT., p.27
43. IBID, p.28
44. A. Seymour: SQUATTERS MIGRANTS AND THE URBAN POOR, (D.Phil. Thesis), University of Sussex, 1976 (unpublished) p.319.
45. ANNUAL REPORT, 1966. Ministry of Lands and Mines, Government Printer, Lusaka, p.3.

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46. ANNUAL REPORT, 1968. Ministry of Lands and Mine, Government Printer, Lusaka, p.3.
47. IBID
48. SNDP OP.CIT., p.43
49. H.H. Werlin, OP.CIT., p.619
50. Circular LGH/54/7/3 OP.CIT., p.2
51. R. Martin: "Urbanization, Squatter Settlements and Upgrading" in HUMAN SETTLEMENTS IN ZAMBIA. Report of the Workshop held at UNZA, 1975, p.73.
52. IBID
53. FNDP OP.CIT., p.253
54. ANNUAL REPORT - 1972, National Housing Authority, Government Printer, Lusaka, p.3.
55. IBID
56. TNDP OP.CIT., p.325
57. Interview with Mr. Changala, Director of Housing, Lusaka City Council, 8th February, 1980.
58. The same has been said of the schemes in Tanzania. See M.A. Bienefeld: "A Long-Term Housing Policy for Tanzania" in ECONOMIC RESEARCH BUREAU PAPERS, Dar-es-Salaam University College, 1969, pp.23-25.
59. ZAMBIA NATIONAL BUILDING SOCIETY MORTGAGE MANUAL, pp.12-14
60. No.25 of 1969
61. No.69 of 1965
62. No.15 of 1914
63. No.32 of 1961
64. No.59 of 1960

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FOOTNOTES (Chapter Four)

1. Circular ref.: LGH/54/7/3 headed: "Housing Policy under The Second National Development Plan".
2. No.59 of 1960
3. No.15 of 1914, as amended by Act No.5 of 1943
4. No.32 of 1961
5. No.12 of 1930
6. Section 12 of the Lands and Deeds Registry Act, No.15 of 1914.
7. S.I. No.99 of 1971
8. P.F. Dale: CADASTRAL SURVEYS WITHIN THE COMMONWEALTH, (HMSO) London, 1976, p.270.
9. Dale, OP.CIT., p.269; Nzakamulilo: "Status of Cadastral Surveys and Land Registration Services in Zambia". ECA Seminar on Cadastre Paper, ECN.14/CART/250, 1970; "Memorandum by J. Dare on some aspects of owner housing schemes in Northern Rhodesia" in PROCEEDINGS OF THE CONFERENCE ON URBAN HOUSING HELD IN LUSAKA, March 1964, Government Printer, Lusaka, Appendix F.
10. The system is said to have been imported from South Africa, hence the prevalence of South African Surveyors in the Country - Dale OP.CIT., p.269.
11. Dare, OP.CIT., Appendix F
12. IBID
13. IBID
14. IBID
15. No.2 of 1961
16. No.20 of 1975
17. Section 15
18. Section 22

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19. Section 53
20. Form T & CP I
21. S.I. No.357 of 1965
22. The charges for the preparation of plans under the Public Health (Building) Regulations may go up to K3,000; Interview with Prof. Ndulo, who has constructed a house on plot 33, Jesmondine, Lusaka.
23. S.I. No.357, SUPRA
24. Regulation 8(2)
25. Interviews with Prof. Ndulo, 20/9/80 and Prof. Tembo (constructing a house in Avondale, Lusaka East), 21/9/80.
26. Areas coming under the Northern Planning Authority and the Southern Planning Authority, Government Notices Nos. 356 of 1962 and 357 of 1962 respectively.
27. KHUMALO v. SOUTHERN PLANNING AUTHORITY dated 19 and 20 October, 1971, TCPT, Lusaka, (unreported).
28. S.I. No.357 of 1965
29. Interview with Prof. Tembo, 21/9/80
30. No.69 of 1965 as amended by Act No.1 of 1970
31. S.I. No.357 of 1965
- 3 2. IBID
33. IBID
- 3 4. Government Notice No.291 of 1964
35. REPORT OF THE CONFERENCE ON URBAN PROBLEMS IN EAST AND CENTRAL AFRICA HELD AT NDOLA, NORTHERN RHODESIA (HMSO) London, 1958.
36. "City of Kitwe Development Plan", National Housing Authority, 1979, Vol.1, p.216.
37. IBID p.38. Table 3.1

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38 . Interview with Prof. Tembo, 21/9/80

39 . TNDP, OP.CIT., p.307

FOOTNOTES (Chapter Five)

1. Site and Service Schemes commenced in 1965, Circular No.17/65 dated 25th of April, 1965.
2. No.30 of 1974
3. Section 48 and the Schedule to the Act
4. No.10 of 1972
5. No.16 of 1968
6. Section 4(2)(f)
7. No.32 of 1961
8. Section 40
9. No.12 of 1930
10. S.I. No.357 of 1965
11. Section 4 and Section 37
12. Appendix 4 of the Laws of Zambia
13. No.20 of 1975
14. Sections 4 and 37
15. Daily Parliamentary Debates No.36h, 2nd August, 1974
16. Circular No.76/66 dated 7th November 1966
17. Apparently as the services in Improvement Areas improve it is possible and practical to revoke all occupancy licences and declare the area a statutory Housing Area.
18. Chapter 3 (SUPRA).
19. Interview with Mr. Gondwe, Deputy Registrar, Lusaka City Council, 27/6/80.

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20. IBID
21. See p.100 Supra
22. Section 5 and Section 38 of the Housing Act
23. Section 5 and Section 39(2)
24. Circular 59/66 dated 7/11/66
25. IBID
26. IBID
27. Section 42
28. Section 13(3)(b)
29. Section 5(2)
30. p.90 SUPRA
31. Interview with Mr. Gondwe, Deputy Registrar of Deeds, Lusaka City Council, 27/6/80.
32. S.I. No.55 of 1975
33. Section 39(5)
34. W.T. McClain: "Legal Aspects of Housing and Planning in Lusaka, p.27 (unpublished).
35. IBID
36. Fifth Schedule of S.I. No.55 of 1975
37. Mvunga, M.P.; "Land Law and Policy in Zambia" (Ph.D. Thesis), University of London, 1978 (unpublished) p.474.
38. Maudsley R.H. and Burn E.H.: LAND LAW, CASES AND MATERIALS, 3rd Ed. (Butterworths) London, 1975, p.436.
39. IBID
40. Mvunga, OP.CIT., p.474
41. Similar terms have been used such as statutory lease under the Land (Conversion of Titles) Act, 1975 and the "Licence to occupy" under the Zambia (State Land and Reserves) Orders in Appendix four of the Laws of Zambia.

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42. Circular No.79/66 dated 7th November, 1966
43. Covenant 7, Fifth Schedule, S.I No.55 of 1975
44. Megarry and Wade; OP.CIT., p.396
45. Interview with Mr. C. Chinonge, Housing Project Unit, Lusaka City Council, Research Officer, 11/2/80.
46. 1st June, 1975, S.I. No.88 of 1975
47. S.I. No.45, 118, 119, 209 of 1977, 73, 232 of 1979 and 34 of 1980.
48. S.I. Nos, 212, 213 and 146 of 1979
49. Section 4(2) and Section 37(2)
50. No.2 of 1970
51. Section 3
52. Section 15
53. Mwunga M.P., OP.CIT., P.474
54. IBID, p.475
55. Section 15
56. Mwunga M.P., OP.CIT., p.475
57. IBID
58. IBID
59. Annual Report, Lands Department, Ministry of Lands and Natural Resources, 1969, p.3.
60. IBID
61. Annual Report, 1970, OP.CIT., p.3

A P P E N D I C E S

APPENDIX I - Assessment of Dwellings Needed

	TOTAL	LARGE URBAN	SMALL URBAN	RURAL
Estimated Need: December 1978	1,124,000	350,100	26,400	747,500
Estimated Stock: December 1978	1,100,100	333,200	25,400	741,500
Estimated Shortfall: December 1978	23,900	16,900	1,000	6,000
Estimated New: December 1978	391,200	116,000	8,600	266,600
TOTAL NEW DWELLINGS NEEDED - 1979 - 1983	415,100	132,900	9,600	272,600

SOURCE: TNDP, p.323

APPENDIX II - Ownership of Rented Dwellings as in 1972

OWNER	NUMBER OF DWELLINGS	PERCENTAGE
Central Government	37,079	20.6
Local Authorities	53,460	29.7
Companies	64,230	35.7
Private Landlords	24,070	14.0
TOTAL	178,839	100

SOURCE: SNDP, p.145

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APPENDIX III - Personal Loans Granted by Zambia National Building Society During the Second National Development Plan

CATEGORY OF INVESTMENT	UNITS	ESTIMATE OF LOANS GRANTED-1972-1976
1. Loans for Construction of New Houses:	app. 810	17,000
(a) Under K15,000	app. 230	2,200
(b) K15,000-K50,000	app. 250	8,700
(c) Over K50,000	app. 60	6,100
2. Loans for purchase of Houses:	app. 1,480	28,800
(a) Under K15,000	app. 590	6,000
(b) K15,000-K50,000	app. 760	15,800
(c) Over K50,000	app. 130	7,000
TOTAL	app. 2,290	45,800

SOURCE: TNDP, p.318

B I B L I O G R A P H Y

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AND
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Mine Townships Ordinance, No.11 of 1932

Municipal Corporations Ordinance, No.5 of 1929

Urban African Housing Ordinance, No.32 of 1948

ZAMBIA

Housing (Statutory and Improvement Areas) Act, No.30 of 1974

Land (Conversion of Titles) Act, No.20 of 1975

Land Survey Act CAP 293

Lands Acquisition Act CAP 296

Lands and Deeds Registry Act CAP287

Local Government Act CAP 480

Public Health Act CAP 480

Town and Country Planning Act CAP 475

Stamp Duty Act CAP 664

Zambia National Building Society Act CAP 707

Statutory Instrument No.357 of 1965

Statutory Instrument No.99 of 1971

Statutory Instrument No.55 of 1975

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Statutory Instrument No.88 of 1975
 Statutory Instrument No.45 of 1977
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Circular No.59/66 dated 7th November, 1966
Circular No.TPH/02/1 dated 7th August, 1968
Circular No.79/76, dated 8th October, 1976.