



## Human Rights Commission

# RIGHT TO ADEQUATE HOUSING

with a perspective from  
selected areas in Zambia

2009

STATE OF HUMAN RIGHTS REPORT  
IN ZAMBIA

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*“A home is not a commodity - four walls and a roof. It is a place to live in security, peace and dignity, and a right for every human being.”*

*- Raquel Rolnik*

*UN Special Rapporteur on Adequate Housing*

*“Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” . (Article 25 (1), Universal Declaration of Human Rights {UDHR})*



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## Foreword

Housing is now recognised as a fundamental human right of all human beings in many international human rights instruments. Indeed in December 1991, the UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 4 on the right to housing, stressing on its adequacy. This was the first General Comment adopted on a specific right contained in the Covenant and indicates the importance given to the right by the Committee. The Committee guides State Parties not to interpret the right to housing narrowly or restrictively as “merely having a roof over one’s head or...as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity”. This reflects both the holistic conception of the right and the value it gains from the aspect of adequacy.

Based on this broad interpretation, the General Comment identified seven aspects of the right to housing that determine “adequacy”: These are

- (a) legal security of tenure including legal protection against forced evictions;
- (b) availability of services, materials, facilities and infrastructure;
- (c) affordability;
- (d) habitability;
- (e) accessibility for disadvantaged groups;
- (f) location and
- (g) cultural adequacy.

The 2009 State of Human Rights Report provides insights on the extent to which Zambia secures the individual’s right to adequate housing.

Like our previous reports its sets out with a definition of what human rights are, then proceeds to define what adequate housing is, it provides a historical perspective, gives the policy and legal frameworks and concludes with perspectives on the right to adequate housing and recommendations for realisation of this right.

It is the Commission’s greatest hope that this report like those before it will not only contribute to the nation’s knowledge and information base on issues of human rights and in this particular case on rights related to adequate housing and land, but that it will also inform enhanced interventions by government, its agencies and other duty bearers aimed at ensuring and safeguarding the rights to adequate housing, access to land and the variety of rights that should be enjoyed with them.

It is also our greatest wish that various actors in the human rights sector will use this report as a framework for education, for monitoring government’s various interventions and as a tool for advocacy and for influencing government to decisions and actions.



Chairperson, Human Rights Commission  
Lusaka

October, 2010

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Many thanks go to the United National Development Programme (UNDP) for their continued financial and technical support towards the research, development and publication of this report.

I also wish to thank the institutions and members of the *Zambian public* who positively responded to our request and took time to answer the questionnaires that we administered during the compilation of this report. These included the financial institutions and city and municipal Councils in Mongu, Kaoma, Senanga, Livingstone, Mazabuka, Ndola, Kitwe and Chingola, the Zambia National Building Society in Mongu, Kitwe and Lusaka, Caritas Zambia in Mongu, Livingstone and Ndola and the Departments of Physical Planning in Mongu, Livingstone and Ndola.

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E. Mulembe  
Director, Human Rights Commission  
Lusaka

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## Acronyms

AHF	Africa Housing Fund
BSA	British South Africa Company
FNDP	Fifth National Development Plan
HRC	Human Rights Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MFNP	Ministry of Finance and National Planning
MLGH	Ministry of Local Government and Housing
NHA	National Housing Authority
PHI	Presidential Housing Initiative
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
UNHRP	United Nations Housing Rights Programme
ZLCHDF	Zambia Low Cost Housing Development Fund
ZNBS	Zambia National Building Society

# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

The 2009 Annual State of Human Rights Report theme is Right to Adequate Housing. This premised on the recognition that housing forms an indispensable part of ensuring human dignity. The report conceives the right to adequate housing in a broad and inclusive sense as the right to live in “security, peace and dignity” rather than a narrow or restrictive sense.

This 2009 Annual State of Human Rights Report provides insights into the extent to which Zambia secures an individual’s right to adequate housing with respect to the right to adequate monitoring aspects of legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy.

International human rights norms and standards recognize the inherence, universal and inalienable nature of the right to housing which forms an indispensable part of ensuring human dignity. They require that the state must endeavor by all appropriate means to ensure that everyone has access to adequate, affordable and acceptable housing by undertaking a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing. This is in line with the essential elements of the state’s obligation to implement all Economic, Social and Cultural rights (including the right to adequate housing) as encapsulated under article 2(1) of the ICESCR. Zambia has, since independence, stepped-up efforts to meet housing needs in the country. Therefore, the Commission saw the need to assess the provision of housing from a human rights perspective.

The succeeding sections first provide an understanding of human rights, then proceed to discuss the right to adequate housing, and lastly the structure of the Report and limitations.

### 1.2 What are Human Rights?

Human rights are minimum standards of legal, civil and political freedom that are granted universally<sup>1</sup>. These rights usually include the right to life, freedom from torture, freedom of movement, the right to an adequate standard of living, freedom of religion, the right to self-determination, the right to participation in cultural and political life and the right to education.

Human rights prescribe basic standards without which people cannot live in dignity. To violate an individual’s human rights is to treat that individual like she or he were not a human being. Human rights are not ordinary moral norms relating to behaviours between individuals like assault or theft of property. Human rights forbid governments to discriminate in their actions and policies, and they impose duties on governments to uphold human dignity through provision of sustainable livelihoods.

Fundamental freedoms and human dignity are entitlements to all people regardless of nationality, sex, ethnicity, race, religion, language, or other status like socio-economic or political/group affiliations.

Human rights mean both rights and obligations. States (that is governments) assume obligations and duties to respect, to protect and to fulfil human rights.

The obligation to respect means that States must refrain from hindering the enjoyment of human rights.

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<sup>1</sup> <http://www.unpo.org/article/4956>

The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled to our human rights, we should also respect the human rights of others<sup>2</sup>.

Thus, human rights are usually divided into civil and political rights, on one hand, and economic, social and cultural rights on the other.

Civil and political rights include rights like the right to life, to physical integrity, to due process and to vote. Civil and political rights obligate the government not to do something against its people, for example not kill you, not torture you, not to unlawfully detain you, or not to deny you a speedy and fair trial before the courts of law.

Economic, social and cultural rights, on the other hand, include the rights to food, shelter, medical attention and social security. These rights require the government to do something for its people.

National and international laws protect human rights of individuals. In Zambia, fundamental rights and freedoms are proclaimed in the Bill of Rights under Part III. Whilst the Directive Principles of State Policy, Part IX, outlines duties of the government with respect to socio-economic standards that it intends to meet as a means of upholding human dignity. Appendix I provides the human rights provisions in the Constitution of Zambia.

The United Nations System defines human rights as “universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity”<sup>3</sup>. These rights are the due birthright of every human being, for the sole fact of being human.

The Universal Declaration of Human Rights (UDHR) is the international founding stone of respect and protection of human rights. The UDHR was adopted by the United Nations General Assembly on December 10 1948. This international agreement defines the civil, political, economic, social, and cultural rights of all people, and commits governments to the minimum standards that all States should observe in respecting, promoting and protecting the fundamental rights of every individual within their boundaries.

Lastly, two major features of human rights are that they have right-holders, and they have addressees. Right-holders relate to individuals or agencies having a particular right. Human rights also have addressees who are assigned duties or responsibilities.

An individual’s human rights are not primarily rights against the United Nations or other international bodies; they principally impose obligations on the government of the country in which the individual resides or is located at that present time.

<sup>2</sup> [www.ohchr.org/EN/Issues/Pages/whatarehumanrights.aspx](http://www.ohchr.org/EN/Issues/Pages/whatarehumanrights.aspx)

<sup>3</sup> The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System” approved on behalf of the Administrative Committee on Coordination (ACC) by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.

### 1.3 What is the Right to Adequate Housing?

Everyone has the right to an adequate standard of living for him/herself and his/her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and governments must take appropriate steps to ensure the realization of this right<sup>4</sup>. The human right to adequate housing is central to the enjoyment of all economic, social and cultural rights, and applies to everyone<sup>5</sup>.

Housing is recognised as a fundamental human right of all human beings in many international human rights instruments. The most significant provision on the right to housing is Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) states that, “The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions”

The right to adequate housing means the right to live somewhere in security, peace and not as “merely having a roof over one’s head or...as a commodity dignity”<sup>6</sup>.

Accordingly, seven aspects of the right to housing that determine “adequacy” are identified as: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy.

<sup>4</sup> UN International Covenant on Economic, Social and Cultural Rights. [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm\(9/24/08\)](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm(9/24/08))

<sup>5</sup> “The right to adequate housing (Art.11(1))”. 13/12/91 CESCR General comment 4.” Office of the High Commissioner for Human Rights. Sixth session 1991.

<sup>6</sup> UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 4 (para. 7).

### 1.3.1 Legal Security of Tenure

Legal security of tenure should be understood to mean that the right to adequate housing means the State (the government) is obliged to legally confer this security by ensuring that that all individuals in any living arrangement possess a degree of security against forced eviction, harassment, or other threats. Forced eviction means “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to appropriate forms of legal or other protection”<sup>7</sup>.

### 1.3.2 Availability of Services, Materials, Facilities and Infrastructure

To ensure the health, security, comfort, and nutrition of its occupants, the right to adequate housing obliges the government to ensure that a house should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

### 1.3.3 Affordability

Affordable housing is housing for which the associated financial costs are at a level that does not threaten other basic needs. Therefore, the State should take steps to ensure that housing costs are proportionate to overall income levels, establish subsidies for those unable to acquire affordable housing, and protect tenants against unreasonable rent levels or increases. In societies where housing is built chiefly out of natural materials, States should help ensure the availability of the materials.

### 1.3.4 Habitability

The right to adequate housing obliges the government to make sure there is affordable housing. Habitable housing should be that which provides the occupants with adequate space, physical security, shelter from weather, and protection from threats to health like structural hazards and disease.

### 1.3.5 Accessibility

Accessibility means that adequate housing must be accessible to those entitled to it. This includes all disadvantaged groups of society, who may have special housing needs that require extra consideration.

### 1.3.6 Location

The right to adequate housing necessitates that the location of adequate housing, whether urban or rural, must permit access to employment opportunities, health care, schools, child care, and other social facilities. Further, to protect the right to health of the occupants, housing must also be separated from polluted sites or pollution sources.

### 1.3.7 Cultural adequacy

The way housing is built, the materials used, and the policies supporting these must facilitate cultural expression and housing diversity. The development and modernisation of housing

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights. General Comment No. 7

in general should maintain the cultural dimensions of housing while still ensuring modern technological facilities, among other things.

Although the foregoing provide what the government should ensure in fulfilling the right to adequate housing, noteworthy however is that a government's obligations with respect to the right to adequate housing does not mean that the government is required to build housing for the entire population, or that housing should be provided free of charge to the populace. But that a government should within its appropriate means ensure that it takes appropriate steps to ensure the realisation of this right, and that when it does not, a government should show why it is not fulfilling the right.

Thus, recognition of the right to adequate housing by a State means that the State undertakes to attempt by all appropriate means to ensure that everyone has legal security of tenure and has access to affordable and acceptable housing. The State should further have in place measures which indicate policy and legislative recognition of each of the constituent aspects of the right to adequate housing.

#### **1.4 The 2009 State of Human Rights Report**

The 2009 State of Human Rights Report provides observations on the application of the right to adequate housing in Zambia. The Report assesses the application of the international, regional and national human rights standards relative to existing legislation, government policies and administrative practices by reviewing government policies and legislative frameworks on housing. In addition, the Report provides field realities and perspectives.

This Report is premised on an adaptation of the United Nations Housing Rights Programme (UNHRP) proposed indicators of the right.

The proposed indicators of the right to adequate housing this Report uses are as follows:

(a) Legal security of tenure.

- The extent to which international norms and standards on the right to adequate housing can be invoked in domestic courts;
- Timeliness of dispute settlement. That is, the average number of months taken to settle disputes related to the right to adequate housing in the courts and tribunals;
- Legal entitlements and local mechanisms. That is, existence of a legal entitlement to free or subsidised access to information/consultation, legal aid and redress in cases of violation of the right to adequate housing;
- Existence of legal contracts of tenure within the population (on tenancy or title to property); and,
- Persons subjected to forced evictions per 100,000 population over a 5 year period.

- (b) Availability of services, materials, facilities and infrastructure.
  - Proportion of households with access to suitable water;
  - Proportion of households with access to adequate sanitation;
  - Proportion of households with energy for cooking, heating and lighting; and,
  - Proportion of households with refuse disposal/collection.
  
- (c) Affordability.
  - Proportion of monthly household housing expenditure to total monthly household income; and,
  - Cost of building materials.
  
- (d) Habitability.
  - Crowding. That is, average number of persons per room;
  - Durability/quality. That is, proportion of households living in permanent structures in compliance with building codes and bye-laws;
  - Availability of sufficient space around the house;
  - Availability of sufficient physical security;
  - Durability of walls, and roof (i.e., can they stand the adversities of nature like bad weather/flooding); and,
  - Availability of site drainage.
  
- (e) Accessibility.
  - Institutional policy framework (housing assistance). That is, proportion of a target group (e.g. those living below poverty line) that receive assistance related to housing. In other words, this assesses the extent to which government policies and administrative practices ensure that adequate housing must be accessible to those entitled to it. And whether all disadvantaged groups of society, who may have special housing needs that require extra consideration are taken into account.

(f) Location.

- Existence of adequate access to social services like education and health; and,
- Existence of adequate access to economic services like workplaces and markets.

In retrospect, this Report comprises five (5) chapters. Chapter two of the Report looks at the housing situation in Zambia; chapter three provides a discussion of the policy and legal frameworks of housing in Zambia; chapter four provides results of the field study survey undertaken in thirteen (13) districts of four provinces in the country; and chapter five provides the conclusions and recommendations.

### **1.5 Limitations of the Report**

The discussions provided in the 2009 State of Human Rights Report are based on the documentation review and field study of the right to adequate housing in selected areas. The major limitation of the study is that there has been no monitoring of the right to adequate housing in Zambia, and hence providing information on compliance and fulfilment of the right has no baseline with which to make comparisons. Further, as can be discerned from sections 1.3 and 1.4, there are no defined minimum standards that can be used with certainty to derive a conclusive summation of the fulfilment of the right to adequate housing in Zambia.



# CHAPTER TWO

## HOUSING SITUATION IN ZAMBIA

### 2.1 Introduction

This chapter provides the salient features of the housing situation in Zambia. The chapter first summarises the history of housing in Zambia. This is followed by an overview of cultural perspectives of housing. The last section of the chapter discusses issues relating to historic perspectives of housing location.

### 2.2 History of Housing in Zambia

#### 2.2.1 Pre-Colonial Period

The pre-colonial history of Zambia has been characterised as a series of migrations of people into the territory which now forms Zambia. The ancestors of the majority of Zambians are Bantu Speaking peoples who came into Zambia during the first century and introduced the Iron Age. They did not move into an empty territory in the sense that they displaced the San people who were pushed further south into drier areas. The Bantu Speaking people were predominantly agriculturalist and practiced sedentary agriculture but also hunted, fished and gathered food to supplement their food requirements. They also engaged in regional and long distance trade.

The second wave of migrations was dominated by groups from the north who wished to establish new settlements and found kingdoms. These movements started as early as the twelfth century and continued up to the sixteenth century. Again, these migrations did not move into empty territories as there had been earlier migrations. In most cases they co-existed or integrated with people that were already there before them. This might explain the linguistic similarities of contiguous tribes.

The third wave of migration was from the south as an after shock of the upheavals following Shaka's exploits in Natal. Thereafter, Zambia was subjected to external influences of slave traders. The Arabs plied their trade from the North, while the Portuguese engaged in human traffic from the West and East. The slave trade also intensified internal conflicts as some African tribes began to act as intermediaries of the slave traders.

The series of migrations and inter-tribal wars the vast majority of pre-colonial Zambian communities were semi itinerant; either within a given geographical area or even across 'regional' and national boundaries. This was due to a number of factors which include economic (search of better pasture, hunting or fishing grounds and/or the practice of shifting cultivation) as well as security considerations. The exception to the rule being Mwansobombwe, Mwata Kazembe's village which currently, is still the largest and continuously longest settled village in Zambia.

Consequently, during this period, these imperatives resulted in the housing structures which were largely semi permanent using rudimentary building material (pole, mud and thatch) available in the given locality as the population was continuously on the move. Such housing structures can still be seen in various rural parts of the country. Plate 1.0 and 2.0 provide examples of cultural housing in Zambia that still exists from pre-colonial times.



**Plate 1.0 An Example of a Village House in rural Zambia**



**Plate 2.0 Village Housing Setting in rural Zambia**

### 2.2.2 The Colonial Period

Hot on the heels of the slave traders, were European explorers, missionaries, big game hunters, prospectors and lastly colonialists like Cecil Rhodes who was instrumental in the final colonisation of Northern Rhodesian, now Zambia. Zambia was colonised by the British South Africa Company (BSA) acting on behalf of the British government. Ostensibly, Rhodes' motivation was to prevent the territories in the north from falling in the hands of people such as the Portuguese, Germans, Boers or Belgians. However, Rhodes' motivation was purely economic. He wanted to secure the mineral wealth of these countries for his company.

The BSA built the railway line and alienated large chunks of land along the line of rail in order to promote white settlement; acquired all mineral rights; introduced a British legal system; and imposed hut taxes to force Africans to seek wage employment. As such, the country was turned into a classical dual economy: a capitalist mining and plantation agriculture dominated by white settlers; and a reservoir of cheap labour in the rural areas induced by the imposition of taxes to temporarily seek employment in the mines and commercial farms. The dual economy also produced a plural society of the white settlers and the African majority.

The provision of housing also very strongly reflected the plural society that was emerging both in urban and rural areas. The settler community albeit small in number comprised: the colonial administrators, the rail men, the missionary, the miner, the farmer, and the trader. It was also during this period that urban centres were established in administrative centres, rail stations and more importantly in mining centres. The majority of Africans on the other hand were confined in rural areas as subsistence farmers as peasant production of commercial crops was not encouraged. The few that ventured in urban areas became migrant workers in the mines, commercial white farms, domestic workers, artisans, clerks, teachers and evangelists.

The prominent feature of colonial housing development in Zambia is that it was based on residential segregations that restricted movement and total exclusion from decent housing facilities. The latter is evidenced in that housing for Africans built under the 1948 Urban African Housing Ordinance mostly consisted of one or two bedrooms, a small kitchen, and pit latrine. In addition, most were designed as temporal structures devoid of any amenities since Africans were not viewed as permanent residents in the urban areas.

Housing for the settler community, on the other hand, especially in the mining towns and administrative centres were built of sturdier materials – burnt brick, concrete floor and galvanised roofing sheets – and provided with running water and electricity whenever that was possible. Even when permanent residence of Africans in urban areas was accepted due to the need for stabilised labour, the houses for African workers continued to be small single quarters with communal toilets and water points.

### 2.2.3 Post-Colonial Period

Since the attainment of independence in 1964, housing in Zambia has evolved through three transformations. These have been characterised as: The First Republic (1964-72); the Second Republic (1972-91); and the Third Republic (1991-Present). Each of these phases has had its own very distinctive political ideology, and approaches to economic and administrative regulation. Political organisation was based on a multiparty political system. The dominant economic ideology then was a general commitment to a mixed economy (private and public sector development). The political philosophy which dominated this period was that of Black Nationalism in spite of the fact that Zambia was a multi-racial society.

Owing to the fact that the colonial system was discriminatory towards blacks, independent Zambian society inherited a society that was racially divided. The majority of the blacks were

poorly educated and economically weak. In terms of housing, the colonial system continued. The only major difference was those Africans whose social mobility had been enhanced by the attainment of independence moved into what had been predominantly white residential areas, while the structures in the 'locations' and rural settlements remained largely unchanged in spite of the huge investment in social and physical infrastructure like schools, clinics, hospitals and roads.

The Second Republic (1972-91) saw the nationalisation of private companies including the mines. In the economy, the state assumed a leading role by the establishment of parastatal companies through which the state invested in the economy. State planning became the major role of managing the country's economic affairs including the distribution of public goods such as schools and hospitals, the provision of water supplies, energy, roads and other infrastructure.

The construction of urban housing was taken up. However, the majority of the houses built during this time were in the medium and high cost areas. During this time an attempt was made to build more integrated housing units as opposed to previously segregated townships. This was not totally achieved as the influx of the people from the rural areas outstripped the number of housing units built. This resulted in the proliferation of unplanned/unauthorised or squatter settlements in all urban areas. In these settlements, there was no provision of amenities such as water, and sanitation and roads. Further, since these were unplanned settlements, the squatters used very cheap and non-durable materials as they could not afford building materials.

The Third Republic (1991-Present) heralded the return to a multiparty system of government with an economic system which was market oriented. As such, in the economic sphere, the private sector is seen to be the engine of growth. During the initial stage of the Third Republic, the notions of planning and state participation in the economy were assumed to be signs of bad governance. The Third republic thus believed in the empowerment of citizens through home ownership. As a consequence, there was a massive transfer of council, mining company and parastatal houses into private ownership. Further, the Presidential Housing Initiative (PHI) was launched as a way of increasing the housing stock in the country. The Initiative constructed some medium and high cost houses in Lusaka and Ndola.

Lastly, it should be noted that the most prominent feature of post-colonial housing in Zambia was characterised by housing being related to formal employment. Public servants and other employees in the formal sector were provided decent housing rented or owned by their employers, or were provided a housing allowance where accommodation could not be provided. However, council housing was also available for those in the informal sector.

### **2.3 Cultural Perspectives of Housing**

As noted earlier, shelter or housing is one of the most basic human needs after food and clothing. The types of shelter man has used over the ages range from caves and shacks to the more elaborate castles and palaces. In spite of these differences, the useful value of shelter is essentially the same. However, the aesthetic value as well as the durability of these structures is largely defined by the environment and cultural traditions imposed on society through laws and planning systems that govern human habitation in a given social and cultural environmental condition.

Geography and environmental factors – cold, heat, rain, snow and wind – play a critical factor in the cultural adequacy of human shelter. Similarly, the availability of building materials, which is also a factor of geography, contributes to the nature of housing units that are built. For instance, the Igloo is more suited to the Eskimo living in the frozen Tundra icecap as the grass shacks of fishing communities in the Bangweulu Swamps.

Thus, in Zambia the quality of village structures differs from one area to another and/or from one district or province. This is largely influenced by house building traditions and the

availability of building materials. For example, Luapula Province has the tradition of building houses from burnt bricks with a brick lined floor and roofs made of thatch or iron sheets. Where as in Western Province the traditional house is made of poles, reed mats and thatch (*Mashasha*) as the Kalahari sands are devoid of any clay necessary in the making of burnt bricks.

Advances in civilisation, however, and the increase in urban populations, the housing has taken new meaning to include the incorporation of modern amenities in houses such as running water, water borne sewage systems, heating, etc. Further, and as a consequence of human civilisation, this resulted in the separation of functions of rooms within the house: the kitchen, living room, dining room, toilet and bath rooms, and bedrooms evolved into distinct units within the house. With these developments, housing began to incorporate the extent to which these added requirements were provided as well as the size and functionality of such rooms.

With urban development, regulations were put in place to control the design of the urban environment as a way of minimising conflicting uses of the urban space. For example, there was need to separate factories from residential areas; polluting industries from places of recreation; and planning of roads, railways and waterways for ease of transportation of goods and people. Such development not only led to the birth of urban planning and associated laws, standards and regulations that govern urban settlements, but also started influencing the design of traditional housing.

## 2.4 Historic Perspectives of Housing Location

The need to plan the urban settlements resulted in the zoning of urban space. For example, The British tradition works on a principle of the separation of three distinct zones: residential, business and industrial. In mining towns the mining area becomes an additional zone. In other urban planning traditions, the zones are less distinct as residential areas become an integral part of the central business district.

In some urban areas, the residential areas are further divided into high, medium and low cost areas each with different housing standards and provision of amenities. In a country like Zambia which was racially divided, the zoning of residential areas was largely influenced by race: the high cost areas were for the white community, the medium cost was for Indians and those of mixed race, while the low cost areas were predominantly for the Africans.

Almost all the Zambian towns and cities still carry that historical legacy even after so many years of independence. While there are many black Zambians currently living in the high cost areas, it is very rare to find a person of European or Indian origin, even when they are Zambians, living in a low cost residential area.

The massive rural urban migration which characterised the post-colonial period led to the growth of unplanned settlements. This gave rise to the emergence of two additional types of urban settlement, namely: the squatter and the site and service. Squatter settlements are illegal settlements where people illegally occupy land and build houses without the owner's permission. In most cases, and because of their illegality, these settlements are not provided with water, electricity and sanitation services including social services such as schools, clinics and roads<sup>8</sup>. Further, housing in informal (squatter) settlements is often rudimentary. Plates 3.0 and 4.0 show examples of some housing types in these settlements.

<sup>8</sup> Note that some squatter settlements were upgraded following the enactment of the Housing (Statutory and Improvement Areas) Act 1974. E.g., Kalingalinga



**Plate 3.0 (a) An Example of a House in an Informal Settlement – Chazanga, Lusaka**



**Plate 3.0 (b) An Example of Some Sanitary Facility in an Informal Settlement – Chazanga, Lusaka**





**Plate 4.0 An Example of a House in an Informal Settlement – Kuku, Lusaka**

Noteworthy however, is that in 1974 a law which sought to provide a legal framework within which site and service schemes, and squatter settlements could be designated as statutory housing areas and improvement areas was enacted. This law is called the Housing (Statutory and Improvement Areas) Act<sup>9</sup>. Designation of an area as an improvement area necessitated that the State provides basic services such as roads, plot demarcations, and other ancillary services.

According to the Fifth National Development Plan, the number, type and location of houses in the country is given in Table 1.0 below.

**Table 1.0 National Housing Stock 2001**

Housing Type	1991		2001	
	No. of Houses	%	No. of Houses	%
Traditional	988,249	65.89	1,527,301	66.09
Squatter	160,703	10.71	242,771	10.51
Site and Service	58,574	3.91	87,743	3.80
Low Cost	241,806	16.12	381,498	16.51
Medium Cost	24,532	1.64	32,369	1.40
High Cost	26,034	1.74	39,306	1.70
<b>Total</b>	<b>1,499,898</b>	<b>100.00</b>	<b>2,310,988</b>	<b>100.00</b>

**Source:** National Housing Authority, 2001, Annual Report<sup>10</sup>

Houses in the rural areas are very much determined by the prevailing land use. Houses found in commercial farming areas, which are still dominated by people of European origin or large corporations, are permanent structures similar to the high cost houses found in urban areas. Residential structures found in resettlement farming areas which are predominantly owned by the so called Zambian emergent farmers vary from high cost to medium cost through to low cost housing units especially if the farm is run by a caretaker. Workers' houses on farms, whether commercial or otherwise, are mostly of poor quality and very inadequately provided with basic services.

From the Table 1.0 above, it is evident that the largest numbers of houses in the rural areas are traditional houses. These are largely found in villages and homesteads depending on the cultural norms of the given area. For example, in the Southern Province settlements are small as families prefer to live in separate family homesteads even when they belong to one village.

While in Eastern Province the villages are large as families live together in established villages. Yet in places like Luapula province, especially in the valley area, one finds large aggregations of village settlements.

Noteworthy is that housing location, whether in urban or rural areas is an important fact in terms of access to both social and economic services. The social services relate to schools, health services, water and sanitation, energy, as well as arts and culture. Access to economic services relate to: employment opportunities, business services, markets, physical infrastructure as well as agricultural land especially for those living in rural areas.

The location of housing can constitute a major constraint to accessing these vital services due to distance, as well as the ready provision of such services. For example, people living in unplanned settlements which are often located very far from the industrial and business districts may experience difficulties in accessing employment opportunities and/or social services as these are not provided in settlements that are considered illegal. While those living in high cost areas usually have easy access to both social and economic services.

## 2.5 Retrospect

<sup>9</sup> Further explanation of this law is provided in section 3.3.1 of Chapter 3.

<sup>10</sup> No other latest data on housing other than the above could be found.

The foregoing discussion shows that housing in Zambia has evolved out of a long historic process and that the present housing condition to some extent still reflects the historic footprints and disjunctions in housing development approaches. The latter being in part chiefly because of a weak economic base.

# CHAPTER THREE

## POLICY AND LEGAL FRAMEWORKS OF HOUSING IN ZAMBIA

### 3.1 Introduction

This chapter discusses the policy and legal frameworks in Zambia. The chapter first considers the policy framework, and this is followed by a discussion of the legal instruments that influence housing policies as well as the security of tenure and habitability, and administrative and institutional interventions, thereof.

### 3.2 Housing Policy Frameworks in Zambia

For decades the Government of Zambia had a fragmented approach to housing. The major salient features of housing provision in Zambia were provision of institutional houses for employees and rental housing under the control of local authorities. In the mid 1990s, these were, however, sold to sitting tenants. In addition, an individual's ability to build a housing unit outside prescribed housing standards in the mushrooming illegal settlements also constituted the visible housing developments.

The first housing policy in Zambia was adopted in 1996<sup>11</sup>. The National Housing Policy sought to provide adequate and affordable housing to all income groups in the country. The policy entailed that the Government liberalises the housing sector and provides an environment that stimulates private investment in housing in order to provide more housing to the population.

Further, the proposed policy framework has a gender bias in that it stipulates proportions of land acquisition by women. The policy stipulates that 30 percent of title deeds for land be reserved for women, while the remaining 70% is open to both men and women.

Notwithstanding the foregoing, the most prominent development in provision of housing in Zambia was provided in the Fifth National Development Plan (FNDP). The FNDP envisaged to increase the housing stock in districts for both home ownership and rental; improve the living environment of unplanned urban settlements; promote the development and use of cheap local building materials for housing development; revise and update the National Housing Programme; mobilise cheap long-term finance on the capital market for housing development in Local Authorities; provide adequate affordable Low Cost Housing for the poorest of the poor in urban areas; promote Capacity Building in building technology for the poor and enable self-help methods; and, prepare Integrated Development (structure) Plans (IDPs) for 68 districts<sup>12</sup>.

However, notwithstanding the preceding intentions in housing, in the period of the Fifth National Development Plan (FNDP), there was no evident substantive change in the housing situation in Zambia. Noteworthy however, the National Housing Programme resulted in 199 housing units constructed in several districts. One hundred and seventy (170) medium cost houses were built in Lusaka; Chilubi (7); Mambwe (7); Milenge (7); Mpulungu (7); Mufumbwe (8); Mungwi (3); and, Nakonde (5)<sup>13</sup>.

Further, the FNDP 2007 progress report observes that "there were other housing building projects financed by individuals and private institutions, owing to falling lending rates"<sup>14</sup>.

Lastly, it is worth noting that the Ministry of Local Government and Housing is responsible for the implementation of the National Housing Policy and the provision of housing especially in the urban areas. This responsibility is delegated to the traditional rulers in the rural areas.

The administration of land (on behalf of the president), however, is the responsibility of the

11 This policy is being replaced by the National Land Administration and management draft policy of 2006

12 GRZ (2006), FNDP, Lusaka, Zambia page 199.

13 MFNP (2007) Annual Fifth National Development Plan Progress Report.

14 *ibid*, page 43.

Ministry of Lands. The Ministry of Lands is responsible for titling of land, registration of title deeds and the management of land transfers. However, land under statutory jurisdiction, that is land on title, constitutes 3 percent private, freehold or leasehold, and 16 percent State land. Eight-one (81) percent is under customary law or the jurisdiction of traditional authority<sup>15</sup>.

### 3.3 The Legal Framework

Legal frameworks for housing in Zambia can be conceived to provide security of tenure in two forms. That is, tenure of security through contract of title to land (which provides security of tenure of ownership) and contract of tenancy. These are protected through possession of title deeds and adherence to the Rent Act Chapter 206 of the Laws of Zambia.

In addition, Zambia legal frameworks that provide for the protection of individuals from living and/or constructing houses that are not habitable are provided in the Town and Country Planning Act which delegates planning authority to local authorities governed by the Local Government Act of the Laws of Zambia.

#### 3.3.1 Security of Tenure of Ownership

An understanding of security of tenure is here provided with reference to land acquisition in Zambia.

The Independence Constitution, while entrenching the right to private property also recognized the right to Parliament as part of its legislative omnipotence to authorize the compulsory acquisition of land under the public utility principle upon payment of compensation. The entrenched clauses were removed under the Constitution of Zambia (Amendment) Act of 1969, pursuant to the referendum of the same year. This gave way to the passage of the Lands Acquisition Act.

Prior to the passage of the Lands Acquisition Act in 1969, compulsory acquisition of land both during the colonial and post independence periods was regulated by the public lands Acquisition Ordinance. The ordinance was very restrictive on the Government's powers of compulsory acquisition. The Governor and subsequently the President could only acquire land required for specified public purposes. The specified purposes related to acquisition of land for public purposes such as construction of railways, townships, airports, schools, and provision of sanitary services. The acquisition was further subject to compensation.

The immediate post independence government was concerned with the vast tracts of land which were either lying idle for speculative purposes because the land owners had left the country. It was felt that this type of land did not justify compensation.

Currently, the President may whenever he is of the opinion that it is desirable or expedient in the interests of the Republic to do so, compulsory acquire any property of any description. Unlike the repealed ordinance, the President's power to acquire land is not restricted to specified public purposes. It has been observed that the President's opinion is conclusive on the matter of desirability and expediency in the interest of the republic.

To this extent two possible views have been advanced in relation to the provision. One view is to read the provision literally and to hold that the President's opinion is conclusive in so far as he is the sole arbiter of public interests.

The other view is to impose an objective test; thus if it can be shown that no public interest will be served by an acquisition, a proposition no doubt quite onerous to discharge, the President's

<sup>15</sup> ECA (2003) Land Tenure Systems and Sustainable Development in Southern Africa, Economic Commission for Africa Southern Africa Office, Lusaka, Zambia

decision is open to challenge in the Courts. The latter view is to be preferred. Thus, in *Zambia National Holdings Limited and Another vs The Attorney General*, one of the questions the Supreme Court was invited to consider, is whether or not the President's resolve to compulsorily acquire property is open to challenge. The Supreme Court acknowledged that the Lands Acquisition Act gives power to the President to resolve in his sole judgment when and if it is desirable in the interest of the republic to acquire any parcel of land or property. The Supreme Court held that quite clearly a provision of this type does not mean that the President's resolve cannot be challenged in Courts both as to legality and other available challenges, whereby arbitrariness and other vices may be checked.

The point about the Land Acquisition Act is that it is an effective tool for mobilizing and assembly of land for housing development, especially in urban areas. However, the major challenge faced by central and local governments is to raise sufficient financial resources to compensate land owners for the land compulsorily acquired. As long as this challenge is not overcome, it is difficult to see how land will be assembled to accommodate the ever increasing urban population.

Security of tenure on title for land for ownership of housing development is guaranteed through a title deed which is usually for 99 years and is subject to renewal. This is prescribed in the Lands and Deeds Registry Act of the Laws of Zambia. The major threats to security of tenure provided by title deeds in Zambia is that the deeds are leases as opposed to freehold, and that traditional authority also have land alienation rights on their customary land.

Noteworthy is that, given that 81 percent of the land in Zambia is under traditional authority, and, though security of tenure on title for land for housing on this type of land is guaranteed, its access for individual housing can, however, be problematic as rights to land in these areas are more of traditional group rights. The recognition of customary tenure does not bring about the registration of ownership rights, but only the protection of use and occupancy rights<sup>16</sup>. Customary land is controlled by the chiefs and their headmen but act with the consent of their people.

Women's access to land is (and hence opportunities for housing development), however, constrained in most customary systems. This is mostly because of to traditional and cultural structures, patriarchal attitudes, women's submissive attitudes to male domination, lack of knowledge on land rights and economic constraints<sup>17</sup>. It is also shown that, in rural and urban areas, and whether educated or not, women do not have equal opportunity to access, inherit and buy land when compared to men<sup>18</sup>.

Further, security of tenure on title for housing in unplanned (squatter) settlements does not exist. This is chiefly because housing in unplanned (squatter) settlements is illegal and forced evictions can occur if the titled owners of the land seek legal recourse.

Lastly, it is worth noting that land administration in Zambia is beset with administrative "red tape" and poor record keeping. This has created high susceptibility to corruption and hence likely undermining security of tenure on title. To which end incidence of allocation of land titles for individual housing to more than one person are not rare.

### 3.3.2 Security of Tenure on Tenancy

Security of tenure on tenancy is provided in the Rent Act, Chapter 206 of the Laws of Zambia. The Rent Act was enacted in 1971 and it is an Act to "make provision for restricting the increase of rent, determining the standard rent, prohibiting the payment of premiums and restricting the right to possession of dwelling houses, and for other purposes incidental to and connected

<sup>16</sup> Angus-Leppan, 1994, p294

<sup>17</sup> WLSA (2001) p29

<sup>18</sup> *ibid.*



with the relationship of landlord and tenant of a dwelling house<sup>19</sup>.” The Rent Act applies to all dwelling houses in Zambia except those occupied by virtue of one’s employment, premises let by government and premises held by a tenant under a lease for a term certain exceeding twenty-one years.<sup>20</sup>

The underlying purpose of Rent legislation is to protect a tenant in his house, whether the threat be to exhort premium for the grant or renewal of his tenancy, to increase his rent or to evict him<sup>21</sup>. Thus, the primary purpose of the Rent legislation is to protect tenants by regulating rent for residential premises, and ensuring that a tenant has security of tenure while in occupation of residential premises. The Rent Act applies to all dwelling houses in Zambia except the following<sup>22</sup>: premises let by the Government unless they are sublet; boarding houses such as hostels and motels; premises held under lease for a period exceeding twenty one years; a dwelling house let to or occupied by virtue as an incident of employment, and premises let by any local authority or the National Housing Authority unless sublet. An evaluation of the Act reveals that it has had the least impact<sup>23</sup>. An attempt was made in the early seventies to appoint rent controllers. But the exercise failed<sup>24</sup>. The sheer enormity of the Courts task in the absence of rent controllers, made it impossible for the Courts to exercise supervision in the absence of specific legal action by an interested party<sup>25</sup>.

Section 4 of the Rent Act gives the court wide powers which among others include the power to determine standard rent of any premises either on application of any person interested or on its own motion, fixing the date on which standard rent is payable, to apportion payment of the standard rent amongst tenants sharing the occupation of the dwelling house, to make an order for recovery of possession of premises and an order for recovery of rent arrears of standard rent, profits, order landlord to carry out repairs for which he is liable if he fails to do so and to permit the levy of distress for standard rent. The court has power, under section 5, to investigate any complaint relating to the tenancy made by either the landlord or a tenant of such premises.

In determining standard rent, the duty to apply to the court for such determination lies on the landlord and this should be done either before letting the premises or within three months of the letting,<sup>26</sup> and failure to do this is criminalised under section 8(2) of the Rent Act.

The landlord of the premises is further prohibited from recovering any rent in respect thereof in excess of standard rent.<sup>27</sup>

Section 11 of the Act, notes that there can be specified instances under which the landlord is allowed to increase rent. These include the following: (i) increase in rates payable by the landlord, (ii) where the landlord incurs expenditure on the improvements or structural alteration of the premises or (iii) in connection with the installation of or improvement of a drainage or sewerage system or (iv) the construction or making good of a street or road executed by or at the instance of a local authority. The amount in the increase in rent in such cases is however calculated at rate per annum not exceeding 15% of the expenditure incurred.<sup>28</sup>

In addition, section 10 of the Rent Act, provides that the demanding or accepting of rent in excess of the standard rent or an advance of rent exceeding two months standard rent is criminalised.

19 Preamble to the Rent Act

20 Section 3(1) and (2) of the Rent Act

21 Per Lord Scarman in *Hereford Investments Limited v. Lombert* (1951) Ch.39 at 52

22 Section 3(2) of the Rent Act Chapter 206 of the Laws of Zambia

23 A. C. Mulimbwa Land Policy and Economic Development in Zambia. *Zambia Law Journal* (Special Edition (1988) p.8

24 Id.

25 Id.

26 Rent Act, Section 8(1)

27 Rent Act, Section 9

28 Mudenda F, *Land Law in Zambia; Cases and Materials*, UNZA Press (2007), p.529

Further, section 13 of the Rent Act provides another important protection of security of tenure on tenancy by limiting the instances in which the tenant can be deprived of possession or forcibly removed by the order of the court.<sup>29</sup> These are default in payment of rent or non-compliance with the terms of the tenancy; being guilty of creating a nuisance or annoyance to adjoining occupiers; being convicted for using the premises for a criminal or illegal purpose; permitting the premises to deteriorate owing to acts of waste or neglect; serving of notice to quit by the tenant on the landlord and in consequence of which the landlord has contracted to sell or let the premises or takes any step as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; subletting the whole or any part of the premises for a rent in excess of rent recoverable under the provisions of the Act; the dwelling house is reasonably required by the landlord for occupation as a residence for himself or his wife or minor child; the subletting, assignment or parting of possession by the tenant without the written consent of the landlord; and, an instance to enable the carrying out of any reconstruction or rebuilding of the premises.

Lastly, noteworthy is that the enforcement of the Rent Act is vested in the powers of the court to determine standard rent and also to decide any matter brought concerning matters of the landlord taking possession of the dwelling house which can only be done on the specified grounds discussed above. The Act also provides for the appointment of Rent Controllers whose duties include making valuation assessment and carrying out any function or duty specified under the Act.

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<sup>29</sup> Ibid, 530



### 3.3.3 Protection of Habitability

Protection of habitability against the vagaries of nature is provided through the Housing (Statutory and Improvement Areas) Act. This Act provides a legal regime within which various housing policies and strategies for the low income groups would be realized. The Housing Act provides for the declaration of site and service schemes and squatter upgrading areas as Statutory Housing Areas and Improvement Areas respectively.

The distinction between Statutory Housing Areas and Improvement Areas is that in the case of Statutory Housing Areas, council certificates of titles are issued. The certificates of titles show the areas and dimensions of each piece or parcel of land through the use of a sketch plan. An occupancy licence which is issued to occupants in Improvement Areas, does not show the dimensions or area of the piece or parcel of land. The licence relates to land under and immediately surrounding the house which is identified by giving it a serial number on an aerial photograph. It requires to be underscored in appreciating this distinction that site and service schemes are planned housing developments. Improvement Areas are not planned housing developments – they are former squatter settlements.

Thus, the Housing Act provides for two types of interests in land. Namely, leasehold in areas declared as Statutory Housing Areas, and occupancy licences issued to occupants in areas declared as Improvement Areas. The council certificates of title which are issued for period of 99 years, create interest in land, and can therefore be used as collateral. The occupancy licences issued for a period of 30 years do not create any interest in land, and are generally not accepted as sufficient collateral. For instance, the Zambia National Building Society (ZNBS) a major housing financier is by the Building Societies Act compelled to make advances on the security of a mortgage of leasehold estate.

Further, the position of the licensee is even less enviable because occupancy licences confer no tenancy upon the occupant and possession of the premises is retained by a local authority which has a right at any time to enter upon the said lands and inspect buildings or install or erect any works thereon which a Council deems to be in the general interest of the Improvement Area or the occupants.

When the Housing (Statutory and Improvement Areas) Bill of 1972, was read for the second time the Minister of Local Government and Housing indicated that the country had to break away from a lot of traditional and historical law and get rid of all the complexities to make dealings in land as simple and as cheap as possible.

The preceding proposal was ultimately achieved by the non-application of certain enactments. Thus, the following Acts do not apply to areas declared as Statutory Housing Areas or Improvement Areas. Namely, the Lands and Deeds Registry Act; the Land Survey Act; the Rent Act; and the Town and Country Planning Act.

The exclusion of the Lands and Deeds Registry Act and the Land Survey Act, was prompted by the fact that the two Acts require a very high degree of precision in carrying out surveys and the preparation of diagrams. As a result of the exclusion of the Lands and Deeds Registry Act, and the Survey Act, council certificate of titles issued to tenants in Statutory Housing Areas are simply accompanied by sketch plans which are annexed to the certificate of titles showing the location and size of the plot.

The Rent Act does not apply to the areas covered by the Housing Act. However, the Housing Act makes it an offence to levy rent in excess of the rent prescribed by the Housing Act, albeit, the Act does not prescribe any rent.

The exclusion of the Town and Country Planning Act is a significant aspect of the Housing Act. The exclusion of the Town and Country Planning Act raises a fundamental question as to who should be responsible for physical planning in the areas covered by the Housing Act. It is to

be left to the squatters themselves to continue with the spontaneous and dynamic planning or should it be placed under official control.

However, it is worthy noting that the Town and Country Planning Act also provided protection of habitability against the vagaries of nature. The Town and Country Planning Act prescribes that acceptable norms and standards for housing construction be provided. The Act further provides enforcement powers for delegated authorities in case of non-compliance.

The primary task of Town and Country Planning legislation is to control and regulate the development of land. The legislation attempts to achieve this aim in the following ways<sup>30</sup>: by controlling the rights of a landholder to use and develop his or her land; by requiring planning authorities to produce development plans; and by constituting authorities to supervise and control the use and development of land. The essence of Town and Country Planning legislation is that landholders rights in the use of land are controlled by requiring the landholder to obtain planning permission before the land is developed.

Further, Town and Country Planning legislation requires planning authorities to produce development plans. Development plans set out in an ordered form the land uses of a city or town. Development plans are required to be prepared at least once in every five years<sup>31</sup>. Having thus produced a development plan, local authorities are then charged with the function of ensuring that land is put to use which is prescribed by the development plan. In practice, most local authorities do not prepare development plans. Planning authorities have therefore failed to keep pace with dynamics of population changes, economic growth, social and political development, that have taken place since independence in 1964.

Part III (buildings and structures) of the Second Schedule of the Town and Country Planning Act defines that provisions for the size, height, spacing and location of buildings and external appearance and materials of buildings and other structures have to be made. The general rationale of the Act as defined in the Second Schedule is that building developments should promote health, safety, order, amenities, convenience and general welfare of all its inhabitants.

### 3.4 Retrospect

This chapter has inarguably shown that the government policy and legal frameworks in Zambia theoretically reflect an endeavour by the State to put in place appropriate steps to ensure the realisation of the right to adequate housing. This is evidenced in that the policy and legal frameworks advertently seek to meet the determinants of "adequacy", which such determinants being legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy.

However, it can also be argued that the mere existence of these frameworks do not significantly translate in the fulfilment and protection of the right. This is because, first, the policy frameworks have not translated into any significant change in the situation of adequate housing in the country, nor are they gender sensitive. The continued "mushrooming" of unplanned settlements and the vulnerabilities in security of tenure and habitability attributable to problems in land administration and building standards enforcement can be argued to evidence the lack of impact of meeting minimum standard on adequate housing (as shall be provided further in the succeeding chapter). This is further worsened by the fact that housing in customary areas does not fall within statutory regulation.

30 M.P. Mvunga, Land and Law Policy in Zambia; PhD Thesis (University of London) December 1977 at p.402.

31 Section 16 of the Town and Country Planning Act Chapter 283 of the Laws of Zambia

Second, although the Rent Act in general provides for the protection of tenants by limiting rent payable for housing, and provides a substantial measure of security of tenure for tenants through the prescription of a tenant-landlord relationship defined in a written contract, instances of threats of eviction at will or threats to pay increased rent of whatever amount the landlord may exact on the tenant are common. In addition, enforcement of the legal provisions by Rent Controllers is conspicuously absent.

## CHAPTER FOUR

### PERSPECTIVES ON THE RIGHT TO ADEQUATE HOUSING IN ZAMBIA

#### 4.1 Introduction

This chapter provides perspectives on the right to adequate housing in Zambia. The chapter first considers the institutional and social country context of the right to adequate housing as obtains in the last decade to date. This is followed by evidence-based perspectives premised on document review and field study of institutional interventions, and the social and tenant realities of the right to adequate housing in Zambia.

The right to adequate housing monitoring and assessment criteria (that is legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; and, location) is used to have an understanding of the extent to which international norms and standards of the rights are observed in Zambia.

#### 4.2 Institutional Country Context

Chapter two shows that housing in Zambia evolves out of cultural adequacy, colonisation, and the subsequent processes of urbanisation and industrialisation. The consequent housing condition is, therefore, characterised by a rural-urban and formal-informal duality with significant variances from the expected international norms and standards.

It is inarguable that post-independent Zambia policy and institutional frameworks of housing provision for the population continued to follow a colonial heritage of providing housing only in statutorily defined areas of socio-economic development.

Housing provision in Zambia constitutes a housing stock of approximately 1.3 million housing. Thirty-six (36) percent of the housing units are in urban areas and 64% in rural areas. Of the total housing stock, 31% meets the minimum development and health standards and 69% is informal or non-compliant housing<sup>32</sup>.

Although, gender segregated data on housing provision is not readily available, a study done by the Zambia Land Alliance (ZLA) in Lusaka shows that percentage ownership of houses is relatively low<sup>33</sup>. The study shows that women only owned an estimated 25 per cent of houses in Lusaka urban district. And further that, most of the houses owned by women are of lower value than those of men.

Further, the houses which are available on the market, including those that are on rental in both squatter and site and service areas, are largely grossly expensive and beyond the means of most of the poor. This is largely due to the shortage in the housing stock available which in turn is caused by non-availability of proper mortgage facilities, the small number of people who qualify for mortgage facilities currently available, as well as the severe shortage of real estate development.

For example, the Lilayi Housing Estate has a home ownership scheme which has a deferred payment financing scheme for prospective homeowners. The repayment period for 15 years and has a fixed interest rate 14% for the entire repayment period.

Among other conditions include: the prospective home owner has to pay a deposit of 20%

<sup>32</sup> UN Commission on Sustainable Development (CSD), Country Profiles (2002), Johannesburg Summit)

<sup>33</sup> Zambia Land Alliance (2006), Project Proposal: Consultations to Influence Outcome of Land Policy Review Process

of the total amount; the minimum monthly repayments should not exceed 28% of the gross monthly income; and should have life and homeowner's insurance cover for the duration of the repayment period.

**Table 2.0 Lilayi Estate Home Ownership Scheme (in kwacha)**

<b>House Type</b>	<b>1 Bedroom</b>	<b>2 Bedrooms</b>	<b>3 Bedrooms</b>
House Size (Square metres)	36.75	57.00	89.00
<b>Cost of Houses</b>	<b>170,000,000</b>	<b>195,000,000</b>	<b>285,000,000</b>
<i>20% Deposit</i>	34,000,000	39,000,000	57,000,000
<i>Closing + Insurance</i>	7,708,250	8,648,250	12,032,250
Total Upfront Amount	41,708,250	47,648,250	69,032,250
<i>Balance to be paid over 15 years</i>	<b>128,291,750</b>	<b>147,351,750</b>	<b>215,967,750</b>
<b>Minimum Gross Monthly Income</b>	<b>7,645,744</b>	<b>8,721,273</b>	<b>12,593,180</b>

Source: Lilayi Housing Estate Home Ownership Scheme<sup>34</sup>

From table 2.0 above, an average family requiring a small three bedroom house will need to have a gross monthly income of K12.6 million as well as savings in excess of K69 million to qualify for scheme. This is way above the income levels of most households in the country even when both the husband and wife are in fulltime employment.

Further, housing development institutions in Zambia comprise the National Housing Authority (NHA), Zambia National Building Society (ZNBS), Zambia Low Cost Housing Development Fund (ZLCHDF), Ministry of Local Government and Housing (MLGH) and the Presidential Housing Initiative (PHI).

Noteworthy is that, the National Housing Authority (NHA), Zambia Low Cost Housing Development Fund (ZLCHDF) and the Ministry of Local Government and Housing (MLGH) in the period 2002 to 2004 built a total of 1,273. Table 3.0 shows the housing developments by the foregoing institutions in the period 2002 to 2004.

<sup>34</sup> <http://www.lilayiestate.com>

**Table 3.0 Housing Units Development 2002-2004**

Year	NHA	ZLCHDF	MLGH
2002	413	176	-
2003	265	212	-
2004	186	-	21

Source: MFNP, Economic Report 2002, 2003, and 2004

In addition, individuals in formal employment can in some cases access employer loans for individual housing unit developments.

#### 4.2.1 National Housing Authority

The National Housing Authority (NHA), a quasi-public company builds houses and then sells them on to individuals. The institution predominantly builds houses that can only be accessed by middle to high income groups in the population, and thus inarguably excludes the low income groups from accessing adequate housing.

#### 4.2.2 Zambia National Building Society

The Zambia National Building Society (ZNBS), was established in 1970 as a quasi-public housing mortgage financing institution for individual housing construction. Notably, however, access to ZNBS mortgages comprised mostly the same income groups that can access NHA housing.

#### 4.2.3 The Zambia Low Cost Housing Development Fund

The Zambia Low Cost Housing Development Fund (ZCLHDF), formerly Africa Housing Fund (AHF)<sup>35</sup>, was established in 1996 as a two-year pilot programme funded by the Norwegian Agency for International Development (NORAD). The objectives of the Fund were to assist the rural and urban poor income groups to construct and reconstruct housing units; provide and improve water and sanitation; and, to provide small-scale agriculture and business loans under micro-credit. The programme was implemented in selected areas of Chongwe, Itezhi-Tezhi, Lusaka, Mazabuka, Mongu, Solwezi, and Kasama.

The AHF worked with Resident Development Committees in the defined project areas, and supported the construction of about 2,408 houses between 1996 and 2004. Table 4.0 shows the number of houses build in this period in each project area.

**Table 4.0 Number of Houses Built under the AHF**

District Name	Low-cost Houses Built
Lusaka-Linda	467
Chongwe	53
Kafue	0
Itezhi-Tezhi	180
Mazabuka	448
Mongu	335
Solwezi	462
Kasama	463
<b>Total</b>	<b>2,408</b>

Source: Habitat Best Practices Database in Improving the Living Environment<sup>36</sup>

#### 4.2.4 Presidential Housing Initiative

<sup>35</sup> In June, 2005 the African Housing Fund (AHF) was transformed into the Zambia Low Cost Housing Development Fund Trust (ZLHDF).

<sup>36</sup> <http://www.unhabitat.org/bestpractices/2006/mainview04.asp?BPID=1405>

This Presidential Housing Initiative was instituted following the adoption of the National Housing Policy in 1996. The initiative worked outside the statutory frameworks of the National Housing Authority (NHA). The Initiative, thus, could be construed to have been an intervention premised on political expedience rather than housing provision to the population. Plate 5.0 shows PHI Housing in Lusaka. Thus, although the Initiative argued to position itself as a means of providing home ownership of affordable houses for all Zambians, only the middle to high income groups could afford the housing<sup>37</sup>.



**Plate 5.0 (a) Presidential Housing Initiative Housing (PHI) in Lusaka - Example of Single Unit Housing**

<sup>37</sup> Noteworthy, however, is that a few housing units were provided to the Zambia Police Service





**Plate 5.0 (b) Presidential Housing Initiative Housing (PHI) in Lusaka - Example of Multiple Unit Housing**

## 4.2.5 Housing Financing

Traditionally, financial institutions in Zambia do not have long-term lending portfolios as they make easy money from trading in government securities and bonds. In addition, and owing to high interest rates prevailing in the country most Zambians are averse to mortgages for fear of losing their properties even after a long period of servicing their mortgages.

Further, the Zambia National Building Society – the leading national financial institution dealing in mortgage financing in the country – collapsed during the period of high inflation during the 1990s and the smaller building society companies such as Finance Building Society, and the Pan African Building Society have not built sufficient financial capital to fill the void.

More recently, a number of commercial banks have been trying to introduce a number of products for long-term lending including home loan facilities which come close to mortgage finance. Table 5.0 provides a summary survey of lending characteristics.

**Table 5.0 Summary of Lending Characteristics in Zambia**

Name	Period	Interest Rate
Barclays Bank	12 years	17%
Indo-Zambia Bank	10 years	17%
Standard Chartered Bank	20 years	19%

**Source:** Commercial Bank Brochures.

From the Table 5.0, a number issues stand out; first, the time period ranges from 10 to 20 years, and second, the interest rates are still too high in view for the fact that inflation is now relatively low (single digits).

Note that, in the financial sector, including access to home loans which most long established banks now have, there is no specific policy which favours female clients as opposed to male clients. However, it should be pointed out that First Alliance Bank Zambia Limited is the only bank in the country which has a policy that offers a lower interest rate on loans to its female customers.

In addition, most of these facilities are targeted at people in formal employment as owner/occupiers. Even among the formally employed, very few qualify for the home loan products on offer. The combined effects of high interest rates and short repayment period make these products not only exorbitant, but also unattractive to prospective customers. As such, there is a need for proper longer term and low interest house mortgage financing in the country.

A recent study observed that:<sup>38</sup>

“Current housing finance developments focus on the relatively ‘easy pickings’ of offering mortgages to high net worth individuals. However, this will in no way meet the vast demand for housing within Zambia’s middle and low-income households.

The real test will be what happens when these easy pickings are exhausted. Already, the secondary target of refinancing existing owned accommodation is beginning to be targeted. Given the very thin market for conventional mortgage finance products, attention to alternative housing financing mechanisms (smaller, non-mortgage instruments), and alternative construction processes (incremental) and their consequent finance demands, is timely.”

The nationalisation of the real estate development companies and the banning of the real estate agencies during the Second Republic did a lot of damage to the development of the housing market in Zambia. The NHA, the parastatal company responsible for real estate development in spite of holding to large tracts of land in the country has been reduced to the status of a jobbing company building an average of less than 300 housing units per year using upfront payment from clients as it cannot raise its own funds to build houses for both sale and rent. The construction companies that could enter the real estate development market do not have

<sup>38</sup> David Gardner (2007), Access to Housing finance in Africa: Exploring the Issues – Zambia, FinMark Trust

access to land, lack financial capacity and equipment, as well as professional and technical skills associated with real estate development.

### **4.3 Social Country Context**

The 2007 Housing Survey Analysis of the Zambia Demographic and Health Survey Report shows that the habitability of housing in Zambia is characterised by 47.2 percent of the housing being with a single room for sleeping, 35.1 percent being two roomed houses, and 16.9% being those with three to more bedrooms.

On availability of services and facilities like access to safe drinking water, energy and sanitation, the Survey shows that 82.2 percent of households in urban areas have access to safe drinking water, while only 19.2 percent in rural areas have access. For electricity as an energy source, only 19 percent of individual housing units have electricity, with 48 percent being in urban areas and 3 percent in rural areas. Sixty (60) percent of the population uses wood for energy, 25 percent use charcoal and 14.5 percent use electricity.

The Survey further shows that only 36.9 percent households in urban areas have latrines with flush/pour flush to piped sewer (includes septic tank), or ventilated improved pit latrines. While in rural areas such facilities only occur in 11.4 percent of the households.

With respect to habitability relative to durability of walls, roofing, and floors, the 2007 Housing Survey Analysis of the Zambia Demographic and Health Survey Report shows that only 12.4 percent of the population live in houses with walls built from cement blocks, with 30.2 percent of these occurring in urban areas and 2.6 percent in rural areas. Brick walls are, however, the most common. The Survey shows that 40.2 percent of the population live in houses with walls built from bricks with 26.2 constituting those in urban areas and 47.9 in rural areas. Further, 23.8 percent of the population live in houses with walls built from mud, with 7.4 percent of these being in urban areas and 33.7 percent in rural areas.

On housing habitability relative to durability of roofing, the Survey shows that 55.5 percent of the population live in houses with roofs built from thatched grass, with 7.2 percent of these being in urban areas and 82.2 percent in rural areas. Those living in houses with roofs built from metal iron sheets constitute 23.3 of the population and 40.1 of these are in urban areas and 14.0 in rural areas. Asbestos is also a common form of material used for roofing. The Survey shows that 19.1 percent of the population use asbestos roofing. Use of asbestos is 49.0 percent in urban areas and 2.6 percent in rural areas.

Lastly, for housing habitability relative to durability of floor, the Survey shows that nearly 60.0 percent of the population live in houses with floors built from earth sand. Sixteen (16) percent of these occur in urban areas and 86 percent in rural areas. While those living in houses with floors built from cement constitute 35 percent of the population. Other materials used are dung, ceramic and wood.

### **4.4 Institutional and Society and Tenant Perspectives**

This section is premised on field study surveys of institutional interventions, and the social and tenant realities of the right to adequate housing in Zambia undertaken in Mongu, Senenga, Kaoma, Monze, Livingstone, Kazungula, Lusaka, Kafue, Chongwe, Ndola, Kitwe, Chingola, and Chililabombwe. In terms of respondents, the field study survey comprised five (5) institutional and 675 individual household respondents. Institutional respondents were from Ndola City Council, Chingola and Mongu Municipal Councils.

#### **4.4.1 Institutional Tenant Perspectives**

Section 3.3.2 of Chapter Three notes that security of tenure on tenancy is provided in the Rent Act, and that the Act also provides for the appointment of Rent Controllers whose duties include making valuation assessment and carrying out any function or duty specified under the Act. In addition, section 4.4.1 of the same chapter notes that protection of habitability with respect to durability of housing against the vagaries of nature (like floods) is provided through the Town and Country Planning Act which delegates planning authority to local authorities governed by the Local Government Act of the Laws of Zambia.

The survey established that housing development in the selected towns is beset with problems. Land alienation for housing was observed to be the most problematic. This evidenced in Ndola City Council, for example, which is beset with near daily disputes due to double allocation of land for individual housing development. However, the Council normally resolves the problem by allocating alternative land to the concerned party. Proliferation of illegal settlements that do not comply to set building standards are also a major concern for the Councils. In 2007 and 2008, Ndola City Council demolished illegal dwelling units in Fiesta area near Chifubu. Noteworthy, however is that the Council acknowledges that some of the individuals that illegally constructed houses had bona fide building permissions from the Council employees.

A commonality observed on habitability relative to durability of housing is that all Councils surveyed argued that they do not have the capacity to enforce compliance to building standards, nor maintain minimum standards of health relative to waste disposal, drainage and sewerage systems.

Housing site development and maintenance is also a major problem for the Councils. Housing units are usually developed before the Councils have adequate resources to put in place good roads and drainage systems. This is chiefly because Councils are continually underfunded by the Government. Underfunding as a consequence further constraints the Councils' ability to stringently enforce housing development standards.

The result is that the majority of houses which are currently being built hardly engage the services of architects, surveyors, and engineers. These houses do not meet the basic requirements of well designed and laid out houses built from quality materials.

Lastly, none of the Councils surveyed have been building houses for the population in the last two decades, since their housing stock was sold in the mid 1990s. As noted earlier, this is chiefly due to underfunding from Government. Chingola Municipal Council, however, noted that it has plans to develop housing in what it terms the Chingola South Township. The Council intends to build more than 2,000 houses comprising high, medium and low cost housing.

#### **4.4.2 Society and Tenant Perspectives**

Tenancy in the surveyed groups constituted 48.8 percent being in rented housing and 43.5 percent in own housing. Tenancy of occupancy in rented housing comprises 95.0 in privately rented houses<sup>39</sup>, 2.3 percent in houses rented from the employer, and 2.7 percent in houses rented from a public company or body.

<sup>39</sup> Includes those rented from a private company or estate agent.

**(a) Legal Security of Tenure**

Security of tenure by contract of tenure of occupancy constitutes 96.7 percent and 59.5 percent by contract of title of ownership. Fifty-five point two (55.2) percent of the respondents have verbal contract of tenancy of occupancy; 3.3 percent written contract with no signed copies and not witnessed; 35.2 percent written contract with signed copies and witnessed; and, 3.0 percent written contract with signed copies, but not witnessed. The other percent constitutes individuals that either reside in houses either because they are inherited, or they do not know if there is any tenure agreement.

On security of tenure by contract of title of ownership constitutes 55.0 percent of the respondents having statutory title; 20.3 percent some form of traditional title; and, 1.7 percent where statutory title is held by loan/mortgage institution. Twenty-three (23) percent of the respondents who said they have a contract of title were either still awaiting a contract of title; residing in an inherited house or institutional house; had a letter of offer, had a title dispute; had built their house on customary land; or the land was bought from the "Chairman". In the latter category some respondents observed that they have a "certificate of title issued by the Chairman". These mostly bought the land on which they built their houses from the "Chairman"<sup>40</sup>. Amounts paid range from Kwacha 350, 000.00 to Kwacha 1, 500, 000.00.

The few observed cases of forced evictions as monitored and reported by the Human Rights Commission (HRC) are mostly within traditional authority areas.

For instance, the HRC reports that:

Bufumu, Gilliard was on December 27, 2008 evicted from his traditionally acquired land in James Brown village in Kasama by the headman for unbecoming behaviour. Bufumu's rights to the land have, however, since been restored.

Mulenga, Bornface was on February 25, 2008 evicted from his land in Kasama by the paramount chief Chitimukulu. The case was, however, amicably resolved with the involvement of the HRC Commissioners.

Siyunyi, Nalukui Melody, was in 2009, evicted from land allocated to her by chief Namutwi in 1995 In Mongu. Nalukui took the case to the traditional court and lost. The Commission is still investigating the case as Nalukui is seeking compensation for the developments she had put on the land.

Lastly, on legal security of tenure, an assessment of the extent to which, in Zambia, international norms and standards on rights to adequate housing can be invoked in domestic courts, timeliness of dispute settlement, legal entitlements and local mechanisms can not be derived as no monitoring and reporting of these are undertaken.

**(b) Affordability.**

Affordability of housing for those that rent relative to proportion of monthly household housing expenditure to total monthly household income shows that 4.2 percent of the respondents who have no housing allowance spend more than 75 percent of their monthly income on housing; 18.6 percent spend 50 to 75 percent; and, 77.2 percent spend 25 percent and less.

Two point four (2.4) percent of the respondents that said they get housing allowance spend more than 75 percent of their monthly income on housing; 12.2 percent spend 50 to 75 percent; and, 85.4 percent spend 25 percent and less.

<sup>40</sup> The term chairman is a popular reference to council ward chairmen in the communities.

With respect to affordability of housing for owner occupiers, where it is outright ownership, 7.5 percent observe that they spent about 75 percent of their annual income to build the house, 31.9 percent spent 50 to 75 percent, and 60.6 percent spent 25 percent and less.

Those that are servicing a house loan 8.7 percent spend 75 percent of their monthly income to service the loan, 13.0 percent spend 50 to 75 percent, and 78.3 percent spend 25 percent and less.

All those that are servicing a house mortgage spend 25 percent and less of their monthly income to service the mortgage.

On affordability of housing relative to cost of building materials like cement, bricks, roofing, interior fixtures and external fixtures, the following are the percent frequencies for respondents that observe that these materials are expensive: cement, 31.9 percent; bricks, 15.0 percent; roofing fixtures, 24.6 percent; interior fixtures, 11.8 percent; and, external fixtures (windows, doors, etc), 11.8 percent

### **(c) Habitability**

The habitability function of crowding<sup>41</sup> among the survey respondents shows that 3.7 percent of the respondents live in a dwelling house of one person per room; 54 percent where there are up to two persons per room; 50.6 percent three to five persons per room; 6 percent, six to eight persons per room; and 3.7 percent, more than eight persons per room.

An urban-rural comparison shows that only 23.5 percent of the respondents live in a house where there are up to two persons per room, while in urban areas there are 34.5 percent of houses where there are up to two persons per room. This translates to more than 74 percent of individuals in rural areas living in a house where there are more than three (3) persons per room and an occurrence of more than 65 percent in urban areas.

Further, on durability of housing, the survey shows that the proportion of households living in permanent structures is 65.5 percent. An urban-rural comparison constitutes 14.8 percent in rural areas, and 71.14 percent in urban areas. In addition, 26.8 percent respondents observe that the wall, roofs and floors in their houses are durable, while 76.8 percent in urban areas contend the same. Seventy-seven point eight (77.8) percent of the respondents observe that they have availability of sufficient space around the house.

Lastly, the Survey observes that availability of site drainage is worse in unplanned settlements when compared to formal settlements, and even housing in rural areas. Only 43.0 percent of the respondents observe that they have adequate site drainage. Plates 6.0 to 10 show site drainage after floods in parts of Lusaka and Mongu.

### **(d) Availability of Services, Materials, Facilities and Infrastructure**

The field survey respondent proportion of households with access to potable water comprises 79.3 percent; those with access to adequate sanitation 50.6 percent; households with energy for cooking, heating and lighting 54.1 percent; and, 47.9 percent households with refuse disposal/collection.

<sup>41</sup> That is, average number of persons per room.





Plate 6.0 Housing Site Drainage in Mongu



Plate 7.0 Housing Site Drainage in Kuku - Lusaka





Plate 8.0 Housing Site Drainage in Misisi - Lusaka



**Plate 9.0 Housing Site Drainage in Misaki - Lusaka**

### (e) Location

The Survey observations on existence of adequate access to social services like education and health; and, existence of adequate access to economic services like workplaces, and markets, are shown in Table 6.0 below.

**Table 6.0 Respondent Perception of Access to Social and Economic Services**

<b>A. Adequate Access to Social Services</b>	<b>% Responses</b>
Schools	90.2
Health services	79.5
Arts and Culture	33.0
<b>B. Adequate Access to Economic Services</b>	
Employment opportunities	39.7
Place of work	55.0
Main Road	89.0
Agricultural Land	16.7
Market/Shops	86.7

### 4.5 Retrospect

This chapter provided perspectives on the right to housing in Zambia by discussing the institutional and social country context and evidence-based perspectives on institutional interventions, and the social and tenant realities of the right.

The chapter shows that housing provision relative to the total populations is severely inadequate as more than two thirds of the housing is in the form of traditional housing in rural areas which mostly do not comply with international norms and standards of housing, though can be deemed cultural adequate. Housing provision through housing financing is also constrained by high interest rates.

On the perspectives on the statutory housing development regulation functions of councils, the chapter shows that councils are not performing to the expected levels, and hence the persistence and prevalence of housing that do not comply to housing standards.

Further, the chapter has shown that although there are legal instruments seeking to protect tenancy the proportions of the population with existing legal contracts of tenure within the population is inarguably undesirable.

In addition, the chapter has shown that affordability of housing premised on monthly income varies from acceptable proportions of monthly income to those that can constrain an individual's sustainable livelihood.

Lastly, habitability in terms of crowding is modest as nearly half of the population live in dwelling house of more than three persons per room. Habitability is also not adequate in terms of site drainage as most houses, in particular in unplanned settlements are highly vulnerable to the vagaries of nature like flooding.

# CHAPTER FIVE

## CONCLUSIONS

### AND RECOMMENDATIONS

#### 5.1 Conclusions

The 2009 Annual State of Human Rights Report on Right to Adequate Housing recognises that housing forms an indispensable part of ensuring human dignity, and fulfilment of other socio-economic rights enshrined in international instruments.

The Report used the assessment criteria of the right to adequate housing that comprise legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and, cultural adequacy.

First, the Report observes that the derived problems in fulfilling, protecting and securing the right to adequate housing are, in part, inherent in the country's inability to comprehensively redress the colonial historic footprints and disjunctions in housing development strategies.

Second, notwithstanding the impact of the colonial historic footprints and disjunctions in housing development, it is acknowledged that the government policy and legal frameworks in Zambia can be argued to manifest intent by the State take appropriate steps to ensure the realisation of the right to adequate housing. But, the Report shows that the simple existence of these frameworks have not evidentially translated in the fulfilment and protection of the right.

Third, enforcement of the legal instruments likely to result in the fulfilment and protection of the right to adequate housing is undesirable, and that interventions so far instituted to redress the situation have not been significant since the majority of the population still live in housing that does not comply with minimum international norms and standards of adequate housing. Further, security of tenure is evidently problematic as a significant number of the population do not have legally binding contracts of tenure. The obtaining economic environment, also serves to constrain institutional intents of housing financing likely resulting in better housing for the population.

Lastly, the Report shows that though affordability of housing relative to monthly income varies, in severe instances, this can constrain an individual's sustainable livelihood. In addition, habitability in terms of crowding is modest, though the country has not defined the minimum desirable number of persons per room. Further, the Report has shown that habitability severely inadequate in terms of site drainage.

#### 5.2 Recommendations

The observations in this 2009 State of Human Rights Report in Zambia on the right to adequate housing necessitate that, for individuals to fully enjoy this right, the Republic of Zambia should endeavour to, on:

- (a) Legal security of tenure.
  - Ensure that legal definitions entitlements and local mechanisms are reinforced, and their existence is sufficiently proclaimed.
- (b) Availability of services, materials, facilities and infrastructure.
  - Ensure that institutional interventions are urgently put in place to ensure that a high proportion of housing units have access to potable water, sanitation; energy for cooking, heating and lighting; and, refuse disposal/collection.

(c) Affordability.

- Take deliberate interventions to reduce the costs of housing development, and the materials used, thereof.

(d) Habitability.

- Ensure that authorities delegated with making provisions for housing development and compliance to the set building standards are adequately financed so that they can carry out their responsibilities effectively. Mechanisms should be found to assist the development of better housing in traditional areas.

(e) Accessibility. [Institutional]

- Ensure institutional policy frameworks targeting housing assistance are implemented, and that such frameworks should prioritise assistance to all disadvantaged groups of society.

## Appendix I

### (a) EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART III. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL

#### 11. FUNDAMENTAL RIGHTS AND FREEDOMS

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, assembly, movement and association;
- (c) protection of young persons from exploitation;
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### 12. PROTECTION OF RIGHT TO LIFE

(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(2) No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case --

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
- (d) in order to prevent the commission by that person of a criminal offence.

#### 13. PROTECTION OF RIGHT TO PERSONAL LIBERTY

(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:

- (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
- (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of an order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained –

- (a) for the purpose of bringing him before a court in execution of an order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

#### **14. PROTECTION FROM SLAVERY AND FORCED LABOUR**

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purpose of this Article, the expression “force labour” does not include-

- (a) any labour required in consequence of a sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens

the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) any labour reasonably required as part of reasonable and normal communal or other civic obligation.

#### **15. PROTECTION FROM INHUMAN TREATMENT**

No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment.

#### **16. PROTECTION FROM DEPRIVATION OF PROPERTY**

(1) Except as provided in this Article, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;

(c) in execution of judgements or orders of courts;

(d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;

(e) as an incident of a contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;

(f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;

(g) by way of the vesting of enemy property or for the purpose of the administration of such property;

(h) for the purpose of -

(i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;

(ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;

(iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or

(iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;

(i) in consequence of any law relating to the limitation of actions;

(j) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;



- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision of the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of the land, the carrying out thereon –
  - (i) of work for the purpose of the conservation of natural resources or any description; or
  - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;
- (u) where the property consists of any licence or permit;
- (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
- (w) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases –
  - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
  - (ii) in terms of any law vesting any such property or rights in the President;
- (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or right enjoyed by Chiefs and persons claiming through and under them, shall apply with substantial uniformity throughout Zambia;
- (z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
  - (a) in terms of any law relating to –
    - (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;
    - (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a

person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies, or securities.

(3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

#### **17. PROTECTION FOR PRIVACY OF HOME AND OTHER PROPERTY**

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justified in a democratic society.

#### **18. PROVISIONS TO SECURE PROTECTION OF LAW**

(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence –

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts

himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority –

(a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or

(b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that

law;

(c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(d) clause (2) to the extent that it is shown that the law provides that –

(i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and

(ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;

(e) clause (2) to the extent that it is shown that the law provides that a trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;

(f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (2) and clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in detention.

(14) In its application to a body corporate clause (2) shall have effect as if the words “in person or” were omitted from paragraph (d) and (e).

(15) In this Article “criminal offence” means a criminal offence under the law in force in Zambia.

## **19. PROTECTION OF FREEDOM OF CONSCIENCE**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent, or, if he is a minor, the consent of his guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by the community or denomination or from establishing and maintaining institutions to provide social services for such persons.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question

makes provision which is reasonably required –

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion:

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justified in a democratic society.

## **20. PROTECTION OF FREEDOM OF EXPRESSION**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.

(2) Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
  - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
  - (c) that imposes restrictions on public officers;
- and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

## **21. PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION**

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officers; or



(d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration;

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

## **22. PROTECTION OF FREEDOM OF MOVEMENT**

(1) Subject to the other provision of this Article and except in accordance with any other written law, no citizen shall be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means –

- (a) the right to move freely throughout Zambia;
- (b) the right to reside in any part of Zambia; and
- (c) the right to leave Zambia and to return to Zambia.

(2) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –

- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition or restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not to be reasonably justifiable in a democratic society;
- (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
- (c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or
- (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

## **23. PROTECTION FROM DISCRIMINATION ON THE GROUND OF RACE, ETC.**

(1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression “discriminatory” mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Clause (1) shall not apply to any law so far as that law makes provision –

- (a) for the appropriation of the general revenues of the Republic;
- (b) with respect to persons who are not citizens of Zambia;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
- (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision or law as is referred to in clause (4) or (5).

(7) No thing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised by clause (2) of Article 17, clause (5) of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

(8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

#### **24. PROTECTION OF YOUNG PERSONS FROM EXPLOITATION**

(1) No young person shall be employed and shall and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

(2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.

(3) No young person shall be the subject of traffic in any form.

(4) In this Article "young person" means any person under the age of fifteen years.

#### **25. DEROGATION FROM FUNDAMENTAL RIGHTS AND DETENTION**

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23, or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, or measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.

**(b) EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART IX. DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A CITIZEN**

(As amended by Act No. 18 of 1996)

110. (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the Application of Directive Principles of State Policy

- (a) development of national policies;
- (b) implementation of national policies;
- (c) making and enactment of laws; and
- (d) application of the Constitution and any other law.

(2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

**111. DIRECTIVES NOT TO BE JUSTICIABLE**

The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

**112. DIRECTIVE PRINCIPLES OF STATE POLICY**

The following Directives shall be the Principles of State Policy for the purposes of this Part:

- (a) the State shall be based on democratic principles;
- (b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;
- (c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- (d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- (e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- (f) the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
- (g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
- (h) the State shall strive to provide a clean and healthy environment for all;
- (i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and sustainable manner for the present and future generation; and
- (j) the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

**113. DUTIES OF CITIZEN**

It shall be the duty of every citizen to-

- (a) be patriotic and loyal to Zambia and to promote its well-being;
- (b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- (c) foster national unity and live in harmony with others;
- (d) promote democracy and the rule of law;



- (e) vote in national and local government elections;
- (f) provide defence and military service when called upon;
- (g) carry out with discipline and honesty legal public functions;
- (h) pay all taxes and duties legally due and owing to the State; and
- (i) assist in the enforcement of the law at all times.

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