III.Access to land and the right to housing

Introduction

This section examines Zambian land and housing legislation, alongside allied Government policy. The purpose is to highlight those iniquities in law and practice which are apparent in relation to the rights guaranteed under the Covenant. It will be divided into three major subsections. The first of these summarises recent changes in land law and housing policy. The second gives explicit consideration to how these changes have made it more difficult for the poor to gain access to land and diminished their enjoyment of the right to housing. The final subsection provides a brief account of the influence of the World Bank in shaping land law and Government policy in Zambia.

A. Recent changes in land law and housing policy

In 1975, the Kaunda Government introduced the Land (Conversion of Titles) Act which effectively precluded a market in land. A brief sketch of this background is useful in order to understand the fundamental change in attitude towards land ownership based on free-market principles ushered in by the MMD Government after its election to power in 1991. Underpinned by constitutional guarantees of the right to private property, the Lands Act (1995), in parallel with the National Policy on Housing, are the culmination of the MMD's drive to commodify land and housing. The immediate purpose of this subsection is to summarise the nature of this legislation and domestic housing policy in order to pave the way for a review of its impact upon the right to housing in the next.

1. The Land Act (1975) and amendments

In line with President Kaunda's Zambian Humanism - a broadly socialist doctrine - land law was extensively revised by the Land (Conversion of Titles Act) 1975. The Act framed three important principles: national patrimony was established over the land which belonged to the people of Zambia, held in trust on their behalf by the President; land was to be used to its fullest advantage; and land was not to be viewed as a commodity to be alienated for private gain. In short, the Act precluded the development of a free market in land.

Up until recently, three different types of land - reserves, trust lands and State land - have been recognised in Zambia under two broad types of tenure.[1] Land has either been leased directly or indirectly from the State or else, in the case of trust land and reserves, it has been allocated by local chiefs under customary tenure. Both types of tenure continue to form the basis of access to the land.

Following the 1975 Land Act, the ownership of all three types of land in Zambia was vested in the President. Although both reserve land and trust land continued to be administered by the chiefs, it was the State which gained the ultimate authority over all land transactions. An albeit limited number of freeholds were abolished altogether and replaced by statutory leaseholds. No land transactions of any type could take place without the consent of the President.[2] The State gained the power to fix the maximum sum to be received for land transactions which, in effect, set a maximum price for all land. The value of land was limited to 'unexhausted improvements' - in other words, money spent to improve the land in question - and its worth therefore bore no relation to the usual free market determinants: location, potential use, supply and demand.[3] Accordingly, undeveloped land was given no value at all.[4] Powers to cancel the lease on land which the leaseholder failed to develop was meant to ensure productive land was used to its potential while the valueless nature of land was meant to prevent speculation.[5]

After 1975, the basic system of land ownership in Zambia was, therefore, ostensibly clear-cut. First, both Zambians and foreigners could lease State land. However, each time a lease was granted, the consent of the President was required. Second, land could be allocated by the chiefs under customary tenure to Zambians on reserve or trust land, with the occasional grant of land to non-Zambians.[6]

The requirement of Presidential consent, delegated in practice to a department under the Commissioner of Lands, enabled the State to monitor all transactions and gave it a high degree of control over land transfers, ensuring that each was in accordance with the national land policy.[7] Yet the system, in the absence of guidelines as to when consent should

be granted or withheld, was criticised for its incoherence, its potential for arbitrary decisions and a lack of accountability.[8] Population growth fuelled demand for land. At the same time, the Land Act 1975 did not preclude non-Zambians from owning land and permitted the President to make grants of land. In 1985, a public outcry over the grant (later rescinded) of a large tract of 20,000 hectares to a foreign-owned company on which to grow wheat compelled the Government to introduce an amendment to the Land Act.[9] This made it illegal for non-Zambians to be granted or leased land. Exceptions were made for certain organisations - *inter alia*, charitable, religious, educational, philanthropic - but, due to the necessity to attract foreign businesses to Zambia, approved foreign investors were also allowed to hold land with the written consent of the President. This measure was criticised for curtailing free, unfettered investment in Zambia while simultaneously placing autocratic powers in the hands of the President in determining which investors were granted land.

2. Housing and land as commodities under the MMD Government

A number of wider objectives are woven through the MMD Government's reform of land law in Zambia and its introduction of a National Policy on Housing. First, the fostering of private sector investment in the economy, in particular foreign direct investment, is a primary concern. Investment which requires land, to include mining and export-orientated agriculture, requires stability and guarantees in respect of the ownership or use of such land. The MMD Government has therefore (a) bolstered the protection of land as private property under the Constitution and has guaranteed protection of land from State expropriation under the Investment Act and the Mines and Minerals Act. These moves are precursors to (b) the Lands Act (1995) proper which has sought to establish a free market for land in Zambia. Second, under the rubric of the rolling back of the State, there has been a concern with encouraging self-reliance and individual responsibility for many aspects of social provision, and with harnessing the private sector to provide public goods. (c) The MMD Government's National Housing Policy, launched in 1996, reflects this manifesto. It aims to assist in the provision of adequate, appropriate and affordable housing for the majority of Zambians.[10] The policy has been implemented primarily by transferring the ownership of former State housing stock to tenants and by seeking to involve the private sector in financing and building affordable housing. At the same time as the sale of State owned houses has generated revenue, it has also allowed the Government to withdraw from subsidising council and parastatal housing whose financing and upkeep are now the responsibility of each new owner. Furthermore, the long-standing obligation on employers under (d) the Employment Act to provide worker housing has been ended.

The Committee acknowledges that a State may employ both public and private sector measures to realise the right to housing provided that the combined measures deliver the right for everyone in the shortest possible time and reflect the use of maximum available resources.[11] Regardless of the state of development of a country, certain steps to realise the right to housing must be taken immediately: due priority must be given to social groups living in 'unfavourable conditions' and, correspondingly, policies and legislation should not be designed to benefit already advantaged social groups at the expense of others.[12]

The Zambian Government is therefore required to ensure that its drive to open up a free market in land and to shift the provision of housing from the public to the private spheres is compatible with its obligation to give priority consideration to the majority of Zambians living in poverty. The right of investors to own land under secure tenure must not be achieved by a denying the right to housing to squatters who have no choice but to reside upon land they do not own because of their poverty. When seven out of ten Zambians are poor, without the means to cover the cost of essentials other than food, then the allocation of land and housing by criteria other than market position is essential to safeguard those without the means to purchase property. The withdrawal of the Government from providing and maintaining public housing requires a reinvestment of the revenue realised in housing infrastructure if its overall obligation to allocate the maximum of its available resources to realising the right to housing is not to diminish. Furthermore, the disposal of public housing - which belongs ultimately to the people of Zambia - must be carried out fairly and without discrimination. The end of the domestic obligation upon employers to provide tied housing requires the Government, in conjunction with employers, to ensure that workers are paid a fair wage which enables them to afford decent housing.

a. Protection of the right to housing and land through the prism of private property: the Constitution of Zambia, 1991

Over the span of the First, Second and Third Republics, no version of the Zambian Constitution has explicitly protected the right to land. Neither has it entrenched a right to housing. This is in contrast to the constitutions of comparable African countries, some of which offer squatters limited protection from the violation of their rights.[13] In Zambia, the ownership and use of land is interpreted solely through the prism of the constitutional right to private property. Article

16(1) of the Constitution of Zambia (1991) guarantees the protection of private property and prohibits its compulsory acquisition unless by Act of Parliament and with the payment of adequate compensation. The 1991 Constitution does thereby increase the protection afforded private individuals and investors over the ownership of assets. An amendment to the previous constitution had stipulated that compensation for the acquisition of property was to be fixed at an agreed level by the National Assembly.[14] This situation is reversed and, once again, the level of compensation is now ultimately determined by the courts, opening the way for claims at a level which will effectively preclude widespread compulsory acquisition of land by the State.[15]

The exceptions to the protection offered from the deprivation of private property are listed in the Constitution. For example, the situation is envisaged where undeveloped land can be compulsory acquired without compensation.[16] Furthermore, the constitutional protection of private property cannot be used to thwart the implementation of a comprehensive land policy.[17]

b. Additional protection for investor-owned land: the Investment Act and the Mines and Mineral Development Act

i. *The Investment Act (1993)*

An Investment Centre was established in Zambia as a 'one-stop support facility' to assist investors in complying with relevant licensing arrangements and negotiating red tape.[18] Under the Investment Act (1993), the Centre will help an investor in applying for land in accordance with established procedures.[19] Providing land has not already been allocated, and has been demarcated for the purpose applied for, 'the authority responsible for the allocation of land shall, upon payment, by the investor, of the prescribed fees, charges, or rates, allocate the land to the investor...'. Registration and issuance of title follows.[20] The Investment Act also affords protection from the compulsory acquisition of investor property by the State.[21] The only exception is when acquisition is carried out for public purposes by an Act of Parliament in which case compensation must be paid at market value in the currency in which the investment was originally made.[22]

ii. *The Mines and Minerals Act (1995)*

The Mines and Minerals Act (1995), regulates both the exploration for, and the extraction of, minerals. It provides for both prospecting licences and mining licences. In respect of the former, an application for a license must be accompanied by a general description of the area to be prospected. A prospector need not acquire the land in question. Any holders of the land, although they may seek arbitration if they dispute the application, cannot block the grant of a license: ultimately, all land in Zambia is vested in the President.

In order to begin to extract minerals, a mining concern must obtain a mining license. The license is valid for twenty-five years and allows the holder use of the land above and below ground to extract minerals in the demarcated area (the Mine License Area) provided that land owned by others is not disrupted without their consent.[23] However, if this consent is unreasonably withheld, then the Director of Mines can intervene and adjudicate. Once a mining license has been issued, grazing and farming is permitted within a wider locality (the Mine Surface Areas), but not the building of houses and other structures by other parties. Mining companies will normally seek to acquire title to both the land to be mined and land surrounding the mine.[24]

When an existing ZCCM mine is purchased, the transfer of land title to the new owner is unproblematic. In the case of new mines, or the extension of those that already exist, an application for certificate of title must be made to the Commissioner of Lands. The land in question must be surveyed and demarcated.[25] If the land is unalienated State land, the alienation procedure is the same as that governed by the circular currently in force for all such transfers: please refer to subsection B(a).ii. This procedure has been recently revised in the interests of investors. The local council will decide the application and the Commissioner of lands will issue a 99 year statutory lease.

Where the land required is held under customary tenure, the consent of the local chief is required before the land can be converted to statutory leasehold and transferred to the mining company.[26] However, if this consent is withheld, the Mines and Minerals Act provides for Government intervention to decide the outcome. Moreover, the interests of a local elite around the chief may not necessarily coincide with those of subsistence farmers and other land users.

While the Mine and Minerals Act is designed, *inter alia*, to facilitate the purchase and use of land by mining companies and to ensure that they can do so without hindrance, an operator is required to act responsibly. A license holder is

obliged to exercise his rights 'reasonably' and 'except to the minimum extent necessary, for the reasonable and proper conduct of the operations concerned, shall not affect injuriously the interest of any owner or occupier of the land over which the rights extend.'[27] Mining companies are to pay fair and reasonable compensation if mining operations damage crops, trees, or buildings belonging to others.[28] However, the wholesale alienation of large tracts of land to a mine owner in the first place virtually eliminates the need to accommodate the interests of others on the land in question.

c. The Lands Act (1995)

The right to housing derives from the inherent dignity of the human person and 'should be seen as the right to live somewhere in security, peace and dignity.'[29] The Committee has therefore determined that it should be ensured to everyone without discrimination and regardless of economic status.[30] Neither should the right to housing be interpreted narrowly in terms of physical shelter nor should such shelter be viewed 'exclusively as a commodity.'[31] In contrast, the commodifcation of land and housing lies at the centre of the Lands Act. While clearly the realisation of the right to housing is far from precluded by the development of a free market in land, its full enjoyment is threatened when the majority of the population is impoverished and when there are few safeguards in place to allow those with limited resources to gain access to secure tenure.

The 1995 Lands Act was introduced to create a free market in land and abolish all obstacles to the sale, purchase and ownership of land. Under the Act, foreign companies are free to own land; land is accorded a value as determined by the market; transactions are streamlined by making Presidential consent a formality; restrictions on the conversion of customary tenure to leasehold tenure are removed; land leased by the Councils, with certain exceptions, reverts to the State; a Land Tribunal is set up to determine disputes over land; yet, at the same time, stark reference is made in the Act to the illegality of squatting and the likelihood of eviction.

Under the Lands Act (1995), all land remains vested 'absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.'[32] The question of absolute ownership, is not, therefore, of the greatest importance to Zambians and foreign investors alike; rather, concern centres upon the way in which the right to occupy and use land is determined by the law. The President may alienate land to any Zambian.[33] However, for the first time, it is a requirement under the 1995 Act that money must be paid for land when it is alienated.[34] The only exceptions to this are when land is to be used for a public purpose or when a person with customary tenure converts it to statutory leasehold, in which case no consideration is required.[35] In the absence of a fixed Government price or stipulations that undeveloped land has no value, it is left to the market to determine the price of land. The fact that all land, including undeveloped land, has a value may intrinsically restrict the power of the Commissioner of Land to repossess undeveloped land as the title holder may have a claim to compensation.[36]

The onerous task of obtaining Presidential consent for each and every land transaction becomes little more than a formality under the 1995 Act. While land cannot be sold or transferred or assigned without consent of the President, if consent is not granted within 45 days of filing an application, then it is deemed to have been granted.[37] In effect, consent becomes automatic. In transactions where permission is withheld, reasons must be given for refusal and there is a thirty day right of appeal to the Lands Tribunal.[38]

The significance of the move to market pricing and the *de facto* lifting of the requirement for Presidential consent for each land transactions is to encourage private sector investment, including that from overseas. The new Act sweeps away barriers to foreign ownership by explicitly providing for the alienation of land to non-Zambians.[39] Under previous legislation, such ownership was, with certain exemptions, prohibited. Even those exempted, including favoured investors, required the written permission of the President. The new Lands Act allows many categories of non-Zambians to own land and obtaining permission for them to do so from the President is no more than a formality.[40] Most importantly, in the context of economic liberalisation, land can once more be bought freely by non-Zambian investors and registered commercial banks.

d. The National Housing Policy

The Government's National Housing Policy (NHP), launched in 1996, addresses a housing crisis in Zambia of enormous magnitude. Its goal is to provide adequate and affordable housing for all income groups in Zambia.[41] The report in which the NHP is framed calculates that the country requires 846,000 homes to clear the backlog in housing caused by past population growth, homelessness and the need to replace substandard structures. Taking into account future population growth, a building rate of more than 110,000 units per year for the next decade is required.[42] Seventy per cent of the existing housing stock is informal and poorly serviced or not serviced at all. Almost two thirds of

Zambia's housing is in rural areas where the dispersed settlement pattern makes service provision difficult. Yet, in urban areas, dwellings are equally poorly serviced.

The Committee endorses whatever mix of public and private sector measures considered appropriate to satisfy a State party's obligations in respect of the right to adequate housing:[43]

> 'In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.'

In 1996, when the NHP was launched, eighty per cent of housing was owned by individuals and seventeen per cent by the State.[44] Sixty-nine per cent of housing was classified as informal. Once more, in parallel with the impetus within the Lands Act to encourage investment in land and its development, the market is to play a prominent role revitalising the housing sphere in Zambia. The delivery of housing is to be achieved by 'stressing private initiative whilst strengthening Government's role as the provider of [a] requisite enabling environment for sustainable housing delivery.'[45] A key concern is the degree to which private sector initiatives encouraged within the NHP are proving sufficient to provide adequate housing for all in the shortest space of time. In reality, it would rather appear that a shift from public to private housing in many Zambian towns and cities has diminished enjoyment of the right to housing.

In order to achieve the goal of affordable housing for all, the NHP outlines seven objectives: to attain the allocation of fifteen per cent of budget expenditure on housing development; to make serviced land available and streamline land allocation; to reduce burdensome building standards and regulations; to increase the use of local building materials; to assist the poor to acquire decent shelter by tackling the problem of affordability; to foster housing areas which are functional, healthy and pleasant; and to prepare a national housing policy implementation strategy.

In outlining the framework by which these objectives are to be implemented, the tendency within the NHP is to restate the objectives themselves. Nevertheless, a number of the Government's priorities and principles are apparent. First, there is recognition of the need to secure access to finance if new houses are to be built. The NHP seeks to mobilise private and public money, using the latter as seed capital. A market in housing requires not only a supply of property but also a secondary mortgage market. Second, the Government's strong support for the principle of home ownership and private sector housing is emphasised. A specific measure outlined in the NHP is to achieve the removal of rent controls in order to stimulate the private rental market and encourage investment in property. Likewise, the NHP seeks to remove the obligation in law upon employers to provide tied housing. The Employment Act was subsequently modified in accordance with this aim. Under the rubric of both home ownership and land delivery, site and service schemes are to be supported. The Housing (Statutory Improvement Areas) Act governing existing council site and service areas is earmarked for reform to allow the private sector to play its role in delivering market-orientated housing schemes. The upgrading of squatter settlements through community participation is given recognition within the NHP, but the Government qualifies its approach as 'discretionary'. Third, the Government affirms its belief that the development of infrastructure and services - from water supply, through sanitation to lighting and roads - will encourage housing development in the public and private sectors. Finally, as part of the overall NHP, the Government outlines a policy on rural housing.[46]

In reality, the policies promised in the NHP have not even begun to be delivered. The Government itself acknowledges that the NHP has made insignificant progress in its first three years in countering inertia in the building industry and admits that the housing sector is dormant.[47] In 1996, official records show that the total number of houses built by local authorities and the National Housing Authority was a mere 290 units.[48] The acute shortage of serviced land remains, building costs and finance charges are prohibitive, and housing finance is severely limited with only three established building societies issuing less than one hundred mortgages countrywide in 1997.[49] Property prices have continued to outstrip any rise in income in an economy where the majority of people work in the informal sector.

As if this stasis was not bad enough, there is evidence that progress towards the goal of adequate, affordable housing for the vast majority of Zambians has actually been reversed. Beyond reform in land law - the adverse consequences of which are discussed in their own right, but which are part and parcel of the NHP - the one housing policy which has been vigorously pursued is that of home ownership through the sale of Zambia's stock of in the region of 138,000 State-owned units houses and flats.[50] Parastatal, council, and government properties, which used to be maintained by the company or relevant authority and let to tenants and employees, are all up for sale. Yet because of the failure to deliver on other components of the NHP or else because of incompatible policies, the sell-off has proved a debacle in which the right to housing is frequently violated. The adverse consequences of the sale of public housing is examined in subsection B.3(b).

To revitalise the National Housing Policy, the President announced a new Housing Initiative in 1998. Once more its objectives - to revive housing construction, to upgrade unplanned settlements, and to create employment - while they remain laudable, are only meaningful if achieved. The initiative is based upon a familiar raft of measures which include

the use of local resources in building, the mobilisation of local finance, full cost recovery and partnership with the private sector. A unit within the National Housing Authority will aim to source and access housing finance to create a revolving fund. The plan is to use this money to construct new houses across all seventy two district councils, to create more serviced plots and to upgrade those unplanned settlements that are recognised under the Housing Statutory and Improvement Areas Act. As of January 1999, the only concrete progress had been the launch of a pilot project to develop housing in Lusaka through a public/private partnership.[51]

e. The Employment Act and worker housing

It has been a requirement in Zambia that an employer must make provision for housing and welfare. The President has described this as 'a heavy obligation' which has had the effect of fostering the dependency of workers on employers. Under the revised Employment Act, worker housing and welfare are now negotiable matters. Unless housing, or loans and mortgage guarantees to buy housing, are agreed in advance in a collective agreement, an employment contract or in the general conditions of service, an employer has no legal duty to provide them.[52] In the same way, the provision of medical services must be agreed with each employer who has no obligation to supply such services in law.[53]

In order to realise the right to housing under the Covenant, a Government is not, of course, required to ensure that employers, whether in the private or parastatal sector, provide homes for their employees. However, in a situation when the cost of housing, formerly met by the State through parastatal ownership of Zambian industry, has been transferred to employees, there is a case to be made that the Government has an obligation to ensure that transitional arrangements are in place to protect employees from a deterioration in respect of their right to housing. The Committee has determined that steps should be taken by State parties to ensure that the percentage of housing costs is commensurate with income levels.[54] The Government has stated that worker conditions in privatised firms must be the same or better under new ownership. However, the development agreements which determine the parameters under which such conditions, to include housing subsidies, are safeguarded do not adequately protect employee interests. There have already been instances in which attempts by the management of privatised firms to withdraw housing subsidies have sparked unprecedented social unrest on the Copperbelt - please refer to Section 2(IV) for further details.

B. Changes in land law and housing policy: repercussions for the realisation of the right to housing

Introduction

A critique of reform must be based upon how well laws and Government policy in support of a free market also protect or promote the right to housing and access to land for all. In a country where the vast majority of people are extremely poor, the allocation of land and housing cannot be based solely on market position and there must be protection of the rights of the vulnerable, including squatters. It will be argued that aspects of the Lands Act and the Government's National Housing Policy actively threaten the full realisation of the right to housing. There is also culpability by omission through the failure to tackle existing inequality.

Article 11(1) of the Covenant refers to the right to *adequate* housing. The particular significance of the concept of adequacy is recognised by the Committee and certain aspects of the right must be taken into account when determining whether housing is adequate and, ultimately, in determining a State's compliance or non-compliance with the Covenant.[55] These include legal security of tenure, essential infrastructure, affordability, habitability and cultural adequacy.[56] Housing and land must be accessible to all those who are entitled to it and the targeting of provision to disadvantaged groups is emphasised.[57] Housing must be in a viable location with access to local services and employment[58].

The analysis which follows draws upon many of these requirements *vis-à-vis* the realisation or denial of the right to housing in Zambia. Access to land in the context of the transition to a free market is the subject of a first subsection. Consideration is given in a second subsection to the related issue of security of tenure. A third subsection examines two further aspects of the right to housing: the extent to which housing in Zambia is habitable and supported by adequate services and infrastructure; and the affordability of housing in the context of the Government's sale of all State-derived housing stock.

1. *Access to land*

Under article 11(1) of the Covenant, everyone has the right to housing which, *inter alia*, must be accessible to those who are entitled to it with some degree of priority consideration given to vulnerable groups in law and policy.[59] Under the rubric of accessibility, the Committee determines that 'within many State parties increasing access to land by landless or impoverished members of segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.'[60]

For the vast majority of Zambians who cannot compete effectively in the market place, such provision is crucial. In this respect, access to land through customary tenure is important, as is the extension of limited security of tenure to poor urban residents under the Housing (Statutory Improvement Areas) Act and to rural settlers under the Land Control, Agricultural Development and Agricultural Lands Act. Yet the Lands Act (1995) undermines customary tenure and a revision bought in by the MMD Government to the land alienation procedure discriminates against the poor when it comes to acquiring title to land. In respect of the sale of State houses, a person's place on the employment ladder or their purchasing power have become the prime determinants of allocation. There is an absence of primary legislation to define entitlement or guide priority consideration, and the whole process has become mired in inequity and malpractice.

a. Opening up customary areas to the market

i. Introduction: the need for a differentiated critique

According to the World Bank, over ninety-three per cent of available land in Zambia is held under customary tenure. Securing appropriate land for investment on the remaining seven per cent of State land in Zambia was described by the Bank as 'difficult and cumbersome.'[61] The solution in the view of the Bank and MMD Government has been to allow for the conversion of customary tenure into 99 year statutory leaseholds which offer security of tenure and can be transferred through the market. This creates an immediate tension as long-standing customary rights to land can be converted by an individual and sold once and for all. It is therefore recognised that 'the reforms have the potential to undermine traditional land tenure, thereby affecting a whole range of interconnected rights.'[62] It is for this reason that the Lands Act (1995) has proved so controversial in Zambia.[63]

The intention here is not to forward a blanket defence of customary tenure in Zambia in relation to human rights. Neither is the intention to dismiss customary tenure as antithetical to the human rights of certain disadvantaged groups. On the one hand, customary tenure can offer reasonably equitable access to the land for subsistence farmers based on other criteria than their position in the market place and their ability to pay. There is increasing recognition that the transformation of customary tenure is not always appropriate or welcome; that there are positive aspects to such tenureship in terms of the promotion of social responsibility and decentralised and locally-accountable decision making; and that communal land management can offer better protection of the environment as a single unit rather than its piecemeal erosion under individual titles.[64] Some African countries - for example, Uganda - have given constitutional protection to customary tenure.[65] There is recognition of customary tenure in certain international human rights instruments.[66] On the other hand, custom can also exclude certain groups from access to land or decisions over its use, offer limited security of tenure, and can restrict the inheritance of land to kin groups at a time of rapid population growth. At a time when traditional farming systems are breaking down, such customary tenure may be perceived as inflexible and as offering little incentive for the improvement of land or innovative management.[67]

Customary tenure covers diverse arrangements for access to land and its management which are administered by the chiefs in Zambia. The following is a general depiction of customary tenure in Zambia:[68]

> 'land is the property of a community that is administered by a socially legitimated authority, often a chief, as a trust. Land rights under customary law are capable of being passed on as an inheritance, yet at the same time, they are only temporary and in the end subordinate to the communal title. They can be transferred, or alienated, only to families, and alienation to someone outside the group is allowed only with the consent of the group. These traditional land rights can also be taken away by the chief. In principle, this would occur mainly as a sanction for certain drastic offenses by a member against the community (leading to the member's expulsion) or in the context of a dispute over land brought before the chief. But in practice this right of the chief can be indirectly misused to discipline disloyal members of the community — a by no means rare occurrence.'

To conclude anything meaningful about customary tenure *per se* in respect of human rights would require a level of detailed examination which is beyond the scope of this submission. The onus is therefore placed upon the degree to which land law in Zambia is suited to the protection of the interests of disadvantaged groups in the conversion of customary tenure. Three points are pertinent. First, customary tenure is itself undergoing modernisation and, when necessary, those aspects of custom which reinforce discrimination ought to be open to challenge in the courts.[69] Second, experience suggests that where customary tenure is being converted to western-based tenures, the interests of women are given scant consideration and are frequently undermined. Where the transition is to a free market in land with minimal regulation - as is the case in Zambia - then the rights of women and the poor tend to be directly and negatively affected. Third, and in addition to scrutinising equality in customary tenure, domestic land law should, of itself, offer certain safeguards that require consultation with all affected groups, especially those who are disadvantaged, and a mandatory consideration of the implications of conversion. The Lands Act and the associated statutory instrument on the conversion of customary tenure singularly fail in this regard.

ii. The Lands Act (1995) and the conversion of customary tenure

The Lands Act (1995) through repeal of existing legislation, abolishes the two categories of reserves and trust lands which are now both classified as 'customary areas'.[70] Landholdings within customary areas are given recognition.[71] The Act makes it clear that the rights enjoyed under customary tenure will continue to be protected despite the repeal of the existing dedicated legislation.[72] At the same time, the Act allows for the conversion of customary tenure into statutory leasehold.[73] Formerly, Reserves or Trust Lands under customary tenure could be transferred to statutory leasehold with the prior consent of the chief and the local authority. The requirement of consent remains under the Lands Act (1995) and, ostensibly, little has changed. On a closer reading of the new Act, this is categorically not the case.

While the Lands Act (1995) explicitly recognises the specific right of a person in possession of customary tenure to apply for conversion,[74] it also envisages the general case of a grant of leasehold on customary land. The section of the Act which vests all land in the President includes a subsection which lays down general provisos which must be adhered to before land under customary tenure can be alienated.[75] The implication is that, provided these provisos are met, then land under customary tenure can be converted to statutory leasehold and then alienated to anyone, to include developers and foreign investors.

The preconditions, specified in respect of an application for conversion require that the President must take into consideration local customary law on land tenure and must consult the chief and the local authority and 'any other person or body whose interest might be affected by the grant.'[76] The applicant for a leasehold must also have obtained the prior approval of the chief and local authority.[77]

To implement conversion as envisaged by the Act, a new Statutory Instrument 89 [hereafter 'SI 89'] has been introduced together with a new Lands Circular to inform councils and civil servants of the simplified conversion procedure.[78] There are two distinct mechanisms.

The first relates to an application to the chief from those with a right of customary tenure, or those using land in a customary area and who intend to settle for at least five years, to have his or her tenureship converted to a statutory leasehold title.[79] The chief may give or withhold consent.[80] Reasons for refusing consent must be communicated to the Commissioner of Lands.[81] When the chief gives consent, he sends a form to the local Council confirming both the applicant's status and that the rights of others are not infringed.[82] The Council reviews the application to convert *vis-à-vis* customary law and the Lands Act and makes a recommendation for acceptance or rejection to the Commissioner of Lands.[83] The Commissioner has the power to decide whether or not to accept the Council's recommendation and, ultimately therefore, whether or not to grant or refuse the application for conversion.[84] In practice, however, the decision of the Council is unlikely to be overturned. Overall, the conversion process is expedited, although the consent of the chief remains crucial.[85]

Of potential significance is the way in which SI 89 implements a second alienation mechanism by which a local council may apply to the Commissioner of Lands to convert customary land into leasehold tenure if it considers this to be 'in the interests of the community.'[86] It is assumed that this will encompass the situation where a leasehold is required by a developer who may approach a council to instigate conversion. While there is a requirement to consult the local chief and ascertain family or communal interests or rights, no reference is made in SI 89 to prior consent; however, as has been noted, the underlying Lands Act (1995) does specify that the chief's approval is required before land can be alienated.

iii. Conversion as a threat to access to land

There are three interrelated facets to the conversion process under the Lands Act (1995) which are cause for considerable disquiet: who has ultimate approval over conversion; the value of land as an incentive to convert; and the degree of consultation with affected persons.

1) The final decision on conversion

A crucial question is whether the local chief and/or council have an absolute veto over transactions of which they do not approve. A close reading of the Lands Act (1995) confirms that they do not. Any person aggrieved by a decision to refuse an application for title may appeal to the Lands Tribunal.[87] This has powers of decision over specific disputes and a power of adjudication on any matter affecting land rights or obligations under the Act, subject only to appeal to the Supreme Court.[88]The likelihood of a State-backed appeal is confirmed by the then deputy Minister of Lands: '[I]f a chief rejected the allocation which Government wanted, the matter would be referred to the land tribunal to determine.'[89]

While all land in Zambia is ultimately vested in the President, the State's right to alienate land is subject to the Lands Act (1995). Yet it is reiterated within the Act that all land is 'controlled and administered by the President for the use or common benefit, direct or indirect, of the people of Zambia.'[90] If the State felt that the conversion of customary tenure and the sale of land to an investor was in the interests of the country, then clearly this would conflict with the power conferred on a chief under the Act, if so minded, to refuse conversion. Furthermore, and notwithstanding constitutional protection of private property, the President has constitutional powers to administer or dispose of property in implementation of a comprehensive land policy or in implementation of a policy designed to ensure that statute law or 'doctrines of equity' are applied with substantial uniformity throughout Zambia in relation to interests in or rights over land.[91] When interpreted in the light of the Lands Act (1995), which emphasises individual ownership and removes bars to foreign ownership by investors, it is apparent that this clause may provide a basis to curtail the rights of those resisting the conversion of customary tenure if this was deemed to run contrary to a comprehensive land policy and undermine the principle of uniformity.

Of course, these fundamental issues are likely to be considered and decided in the course of deliberations by the Lands Tribunal and ultimately, perhaps, by the Supreme Court. The view has already been expressed that '[o]bjections to a possible withholding of consent take place before a land tribunal dominated by the State.'[92] For a fuller discussion of the operation of the Lands Tribunal, please refer to subsection 2(d).

2) Conversion motivated by profit

To concentrate exclusively on who has the final power of consent over conversion is, perhaps, to miss the point: the fact that powerful investors, with significant clout in the market, may legally acquire land, coupled with a situation in which local chiefs or individuals with extensive customary rights may be motivated by profit to convert tenure, raises the possibility of large tracts of land being held by private developers or commercial operators while the customary rights of local people to farm and use the land are effectively ended. Furthermore, the previous limit of 250 hectares on conversion of land for agricultural use is abandoned.[93] This limit constituted advise from the Minister of Lands but was not statutory; hence, it was exceeded. Nevertheless, the fact that no limit is envisaged under SI 89 must smooth the way for the acquisition of large tracts of land. The World Bank, notwithstanding its extensive backing of land reform, concedes the overall danger of conversion motivated by profit:

> '...unless carefully handled and closely monitored, the acceleration of the conversion of customary land to leasehold could result in the loss of land rights by smallholders, as influential individuals living under customary tenure extend their boundaries, proceed to obtain leasehold tenure, and possibly sell the leasehold to prospective developers.'[94]

The wider fear is that the existing socio-cultural system based upon communal rights and respect for the authority of the chiefs will be undermined by this market economy. What was a collective right or family right is converted by an immediate seller who may not represent the collective interest. Furthermore, 'the individual seller cannot represent the legal claims of future generations of the collective, rights which are enshrined in customary land tenure.'[95] Once land is converted and sold, former rights in perpetuity are lost.

3) A failure to consult affected people

While the chiefs, councils, applicants and the State all have statutory powers, however determined, to influence conversion, ordinary Zambians whose interests are threatened need only be consulted. Furthermore, below the level of

the Act, no procedure is laid down for this consultation. Hence the process will invariably be dominated by a local elite and the views of affected people who hold little sway - smallholders, poor settlers, women - are unlikely to be taken into consideration.

In contrast, expert opinion suggests that modern land law ought to provide legally-binding procedures for the registration and titling of customary rights which require the interests in land held by women in the household to be accounted for. There should be legally-binding procedures in the approval of sales which require attention to the impact of sale upon women and their children. There is recognition that land management and dispute mechanisms should be as decentralised and democratised as possible. Finally, the law ought to place limitations upon the power to alienate or expropriate land without proper hearings which should be directed to take special note of the rights of women in the area, and to compensate accordingly.[96] These benchmarks can be applied equally to protect the interests of other disadvantaged groups and the poor in general. The Committee itself has determined that the right of tenants and community-based groups to freedom of expression and the right to participate in public decision-making is 'indispensable if the right to adequate housing is to be realized and maintained by all groups in society.' In practice, and given existing hierarchies in Zambia, it is unlikely that such consultation will be meaningful, if it occurs at all.

b. Discrimination against the poor in the allocation of land and housing

General Comment 4 determines that, because the right to housing derives from the inherent dignity of the human person, it should be ensured to everyone irrespective of income or access to economic resources.[97] The existing mechanism by which land is allocated in Zambia has increasingly made it difficult, if not impossible, for poor people to gain full and immediate title to land.[98] When interpreted alongside the stipulations in the Lands Act (1995) that all land has value and the requirement that this value must be realised in the alienation of State land, then it is readily apparent that an ability to pay becomes the basis upon which most statutory leases are acquired. In respect of housing *per se*, there has been a rapid change in Zambia from a situation where the housing needs of a sizeable number of urban residents were met and subsidised directly or indirectly by the State to a situation where council, government and former parastatal housing is now up for sale. The problem is that the mechanisms used for disposing of this Government derived housing stock have been riven by inequity and have left many unable to pay the prices demanded or unable to access suitable finance without going into debt or, in the case of employees, trading away their terminal benefits and future livelihood.

i. The Procedure on Land Alienation

A *Procedure on Land Alienation* governs the allocation of leaseholds on plots of new land which a local council has demarcated for development, whether this is land adjacent to a town or city or is 'unscheduled' agricultural land - further details are given in the attached supplement. The alienation procedure, in line with the policy of decentralisation and 'the principle of participatory democracy,' effectively empowers District Councils to process applications and select who will be allocated a plot. Development plans for new stands are drawn up by the District Council, scrutinised by the Land Commission, then surveyed and divided into plots. The Council advertises the availability of the plots then selects successful applicants before making its recommendations to the Land Commission. Although the final decision on each council recommendation rests with the Commission - which issues the certificate of title - it is stipulated that council recommendations 'will be invariably accepted' unless unjust or contrary to the national interest.[99]

When the alienation procedure was introduced in 1985, the Land Act (1975), as amended, was in force. Hence undeveloped land had no value and all land had a maximum value. Although lease and development charges were always a factor, the fact that a large consideration *per se* was not required to secure a lease meant that those with less money, even if not the poorest, could acquire title. However, under the MMD Government, and prior to the introduction of the Lands Act (1995) the alienation procedure was revised to the detriment of poorer applicants. The focus here will be upon the inequity of this procedure; however, it is prudent to acknowledge that the origin of many land disputes lies as much in previous *ad hoc* allocations by ward councillors and local politicians - that is, in a failure to follow procedure - as it does in the application of unjust procedure. Misallocations and political interference is publicly acknowledged as the root cause of many disputes over land.[100] A case in point is the recent dispute over land on the Chichele plantation, Ndola, summarised in the text-box overleaf.

ii. Revision of the Land Alienation Procedure

Widespread public concern over the speed and fairness of the allocation system caused the entire land alienation procedure to be suspended in November 1991.[101] Delays in issuing title prevented successful applicants from using acquired land as collateral against which to borrow money for its development and the misallocation of land to those with purely speculative interests resulted in land remaining unused at a time of a shortage. The cost of renting land

escalated as a result. There was evidence of corruption and malpractice by officials and councillors in the District Councils and civil servants within the Department of Lands itself: 'some officials under the present system would receive bribes for facilitating the allocation of land to those who want to jump the queue or those who may not have adequate financial means to develop the plots within the stipulated period.'[102]

The Government adopted a revised land alienation procedure in April 1992. Despite the subsequent introduction of the Lands Act, (1995), it would seem that this is still in effect.[103] A recent 1998 review of land law, contained within a study of land tenure insecurity by Oxfam GB in Zambia, confirms the continued application of this amended *Procedure on Land Alienation*.[104] Indeed, it is stressed that the overall alienation procedure, dating back ten years, 'is not known by either the general public or even by many officials involved in land administration.'[105]

The amendments made in 1992 do seek to curb speculation by imposing time-limits on land development,[106] but they do not tackle malpractice or corruption. Public opinion is of the view that the wealthy continue to circumvent land allocation procedures.[107] Nor, given the dire shortage of council funds and the failure to allocate increased resources to the Surveys Department, do the revisions offer real solutions to the delays in obtaining title.[108] The revisions have, rather, made it much more difficult for the majority of poorer Zambians to acquire title on State land. District Councils are required to insist on proof of the ability of applicants to undertake the immediate development of any land before making their recommendation. Instead of the Commissioner of Lands moving straight to issuing an actual offer of land to an applicant, an offer in principle, valid for one month, is made. This requires the applicant to submit evidence that they have sufficient funds to develop the land as intended. In addition to proving their access to the necessary finance, applicants for unscheduled agricultural land are also required to provide a recommendation from an Agricultural Officer or similar official ascertaining that they are a *bona fide* farmer with the necessary tools and implements at their disposal. Failure to develop the land results in its forfeiture to the State.[109]

The Chichele plantation land dispute

200 families illegally occupying plots on the Chichele plantation near Ndola finally faced eviction in June 1997 following the loss of their appeal to the High Court against the order. The land had been allocated by the Council on 99 year leases in 1992 to 104 other applicants.[110] In August, the squatters assaulted court officials visiting the area to assess whether the land had been voluntarily vacated.[111] The dispute became highly politicised. The local MMD constituency chairman advised the squatters to defy the High Court ruling while the provincial MMD chairman argued that the law should be upheld while reconciling both parties. The Copperbelt Minister favoured an amicable solution outside of the courts.[112] An attempt to evict the squatters in November was aborted because the under-sheriff at Ndola conceded that there was nowhere to resettle those affected until plots in a nearby Forest Reserve were officially degazetted.[113] In March 1998, Ndola City Council appeared to capitulate: a local ward councillor issued a statement that the NCC had agreed to formally offer the land to the settlers while finding alternative land for those with title deeds to the plots.[114] However, this was denied by the NCC which maintained it had no legal powers to reverse the award of leaseholds made by the Commissioner of Lands. A decision was, however, reached to give the squatters land near the Dag Hammarskjoeld memorial site.[115]

iii. The allocation of land in rural settlement schemes

A subset of legislation aimed at controlling access to larger blocks of State land in rural areas exists. The Land Control, Agricultural Development and Agricultural Lands Act allows the Minister of Agriculture to designate State land for agricultural settlement schemes.[116] Land earmarked in this way - known as scheduled land - is then subdivided by the Department of Agriculture into administrative 'economic agricultural units'. People may apply for the leasehold title to plots which are allocated on the basis of recommendations from the local Agricultural Lands Board. Recommendations are then acted upon by the Commissioner of Lands who issues the formal offer and certificate of title. Leases used to run for 30 years before renewal was necessary. Under the Lands Act (1995), the shorter leases have been replaced by the standard statutory 99 year lease. Once more, the better connected a person is, and the better able they are to demonstrate that they have the means to develop and farm a plot, the more likely they are to be successful in their application. Should the land be deemed to have been abandoned - that is, it remains occupied or the farmer fails to achieve a reasonable standard of production for three years - notice may be served by the Agricultural Lands Board and the land grant forfeited.[117]

iv. Implications of the Lands Act (1995) for the allocation of land

The Lands Act (1995) must impinge upon the way in which land is allocated under existing alienation procedures. It is a requirement under the Act that money must be paid for land when it is alienated.[118] The only exceptions to this are when land is to be used for a public purpose or when a person with customary tenure converts it to statutory leasehold, in which case no consideration is required.[119]

In the absence of a fixed Government price or stipulations that undeveloped land has no value, it is left to the market to determine the price of land. This has at least two implications. First, in the allocation of State land by District Councils, leaseholds will have a market value and the ability of applicants to pay must become the prime consideration. This runs contrary to the requirement under the Covenant that the right to housing is ensured to everyone irrespective of their wealth. Second, the fact that all land, including undeveloped land, has a value may intrinsically restrict the power of the Commissioner of Land to repossess undeveloped land as the title holder may have a claim to compensation.[120] This may render as problematic steps under the revised procedure to prevent developers from holding undeveloped land while continuing to discriminate against those with limited financial resources at the outset. Far from the poor being accorded access to affordable land and housing and the vulnerable being given priority consideration, allocations of land with secure title are made solely on the basis of ability to pay on the open market.

2. Security of tenure and protection from forced eviction

Security of tenure which guarantees protection against forced eviction is one of the factors identified by the Committee which must be taken into account in determining whether or not a person enjoys the right to adequate housing under the Covenant.[121] This security extends to those occupying vacant land or living in informal settlements. Domestic law and policy in Zambia is seen, increasingly, to run contrary to this requirement. (i) The Land Act (1995) introduces a section which reinforces the illegality of squatting in a country where there is no constitutional protection of a right to housing or basic squatters rights. (ii) Provision which has been made to accommodate squatters under previous administrations through the Housing Act (Statutory and Improvement Areas) and through the degazetting of Forest Reserves affords inadequate security of tenure and is undermined by subsequent law and practice. (iii) An increase in the disconnection of essential services, intimidation and evictions by local authorities is a reality as homes becomes unaffordable in the wake of liberalisation and privatisation. Furthermore, there have been instances of the mass forced eviction of squatters living in shanty townships built on urban and peri-urban land - land which now has commercial value. (iv) In relation to the sheer number and complexity of disputes over land, the newly established Lands Tribunal appears entirely overwhelmed and ineffective.

Forced evictions have also been planned and carried out by parastatals and the new owners of recently privatised businesses. However, a consideration of these violations is postponed until Section 2(IV) when both the State obligation to protect human rights is reviewed alongside the argument that such companies have a direct responsibility to observe human rights standards.

a. The illegality of squatters

The Committee, in its interpretation of the right to housing, lists a variety of tenures, *inter alia*, informal settlement, including occupation of land or property:[122]

> 'Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees protection against forced eviction....States parties should...take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.'

The contrast with the Lands Act (1995) which prohibits the unauthorised occupation of land, is stark:[123]

> (1) A person shall not without lawful authority occupy or continue to occupy vacant land.
> (2) Any person who occupies land in contravention of subsection (1) is liable to be evicted.

Those people who occupy vacant land over which others have title - whether this is unalienated State land, State land over which others have been granted a lease, Forest Reserves or other protected land, or customary areas where others have tenure - do so illegally in respect of Zambian law. People living in such squatter settlements have no title, little or no protection under the law and, indeed, are liable to eviction. The Lands Act (1995) not only omits to protect an

inherent right to housing but places undue emphasis, at the level of primary legislation, on the unlawful occupation of land. This is not counteracted by the Zambian constitution which affords no protection of the right to housing or access to land, nor does it offer basic protection of squatters rights. Indeed, previous legislation offering limited protection from eviction is repealed.[124] Yet, at the same time, it is a fact that many Zambians must live in squatters settlements if they are to survive at all.

b. Degraded security of tenure

In the urban setting, within Statutory Improvement Areas (SIAs), insecurity is manifest in the degraded tenure offered to residents. Furthermore, a clause in the Lands Act (1995) may restrict or even preclude the designation or expansion of SIAs. In respect of encroachers in rural and peri-urban areas into Forest Reserves, the barriers to security of tenure and protection from eviction are almost insurmountable. A strictly controlled programme of degazetting exists, but, in any case, this represents only a first step prior to applications for individual title through the Procedure on Land Alienation.

i. Statutory Improvement Areas

The Housing (Statutory and Improvement Areas) Act was introduced in the first place to accord squatters some degree of security of tenure and limited protection from eviction. Yet the right to adequate housing is far from guaranteed in council areas because of a complex system of tenureship which encompasses significantly different levels of security and insecurity. Often people, including many poorer urban residents, believe they own full title to land when this is not the case.

The type of title offered and the security of tenure conferred depend upon whether residents live in areas designated by the Council as Statutory Areas or whether they live in Improvement Areas. In the former, the Council may let land to residents and their *bona fide* dependants.[125] Statutory Housing Areas tend to be established settlements, somewhat better served by infrastructure and amenities. This is reflected in the type of tenure accorded: residents may, eventually, be issued with a council certificate of title to their property. However, the reality for most residents is one of delay, frustration and ultimate confusion over their status.

Improvement Areas cover less well developed council land which is earmarked for gradual upgrading.[126] People may use land and build their own houses provided they have been issued with an occupancy licence by the Council.[127] The maximum length of an occupancy title is fixed at thirty years, but they are commonly of much shorter duration.[128] In the Copperbelt, occupancy licences are issued for ten years and authenticated by Land Record Cards. In all cases, occupancy licences offer little legal protection against eviction or the demolition of homes because neither searches into the underlying ownership of the land have been undertaken nor the boundaries legally defined. As a consequence of this degraded legal status, land or housing under occupancy titles is not recognised by banks as collateral.[129]

Even in Statutory Areas, tenure is far from secure. The council's certificate of title, even though it is valid for 99 years, remains of limited legal value because, once more, full searches are not undertaken by the council nor boundaries defined by a detailed survey.[130] The council's certificate of title should not be confused with the certificate of title for full 99 year statutory leaseholds which give the greatest security of tenure under Zambian law. These can only be issued by the Registrar and Commission of Lands once the ownership of the land in question has been ascertained, the plot has been demarcated and surveyed in accordance with the Land Survey Act, and has been allocated a registration number.

ii. Forest Reserves

The Forests Act empowers the Government to set aside land to create Forest Reserves. These areas allow for conservation and the controlled development of forest resources for the benefit of the nation. The Forest Act provides for the establishment and management of National and local Forests, for the conservation and protection of forests and trees, and for the licensing and sale of forest produce. People are not permitted to settle in Forest Reserves and the use of forest resources, in particular the trees themselves, is strictly controlled. There is limited provision for the protection of individual rights in recognition of long-standing human activities in the forest.[131] However, it is acknowledged that the existing Act does not allow for public or community participation to encourage better local level management of reserves.[132] The basis for a new Forest Act was prepared in 1999.

Pressure for land in Zambia has inevitably meant that people have encroached into Forest Reserves and the problem is particularly severe along the line of rail provinces, including the Copperbelt.[133] The underlying fear of eviction remains, as recently manifest in the Copperbelt communities of Kamfinsa, Sakania, Mpima, Mwekela over the impending eviction of hundreds of peasant farmers who have settled in Forest Reserves on the Zairian border near Mufulira for

many years.[134] Some squatters in rural or peri-urban areas may benefit from moves by certain local authorities to get such reserves degazetted, thus allowing for the official demarcation of plots and settled agriculture.

The President is vested with powers to de-gazette Forest Reserves for the purposes of human settlement, but the mechanism for doing so is drawn-out and strictly controlled.[135] From the standpoint of conserving natural resources, this is understandable; however, this must be balanced against the fact of encroachment which is itself the result of landlessness and impoverishment[136]. Local officials often make the request for degazetting. In the first instance, their recommendation that an area be degazetted is heard by the Council and representatives from the local Department of Agriculture. If the recommendation is approved, a resolution is forwarded to the Provincial Permanent Secretary and the Provincial Forestry Officer. Their recommendations are sent to the Department of Forestry which in turn forwards its opinion to the Minister through the Permanent Secretary. The Minister takes the final decision on whether an area should be degazetted. If the request is granted, the President gives formal consent and a statutory instrument is issued to remove the status of a forest reserve.[137]

The Permanent Secretary in the Ministry of Environment has conceded that a lack of funds and unwarranted claims for land by non-squatters descending on an area in a rush for land has disrupted resettlement schemes in degazetted Forest Reserves.[138] It also must be noted that, despite the length of the procedure, degazetting is only a necessary first step in obtaining title to land. People must then apply for title and negotiate what, for the many poor settlers, must seem the almost insurmountable hurdles given effect through the *Procedure on Land Alienation*. An abortive attempt in 1995 to assist local councils in the demarcation of plots showed the impossibility of sustaining such a programme in the absence of adequate finance.[139]

c. Council evictions, intimidation, the disconnection of essential services in violation of basic human rights

The threatened or actual violation of the right to housing and other basic human rights by local councils is manifest in three ways: first, in the disconnection of essential services and the threat or practice of eviction in order to collect desperately needed revenue form unpaid rents and rates; second, in the particular problems caused by the non-payment of outstanding balances on council houses sold under the Government's drive to private home ownership; and third, in forced evictions arising as the result of urban development and the enforcement of planning regulations. Recent instances of these evictions are documented in the accompanying text boxes.

Disconnections and evictions in respect of unpaid arrears

The milieu in which parastatals such as ZCCM are considered as an extension of Government and thereby came to administrative understandings with the local councils is rapidly altering as the mines are privatised - please refer to Section 2(IV) which considers this transition. Local councils are in urgent need of finance to pay not only for existing service provision, but also for the added burden of their new responsibilities. Beyond the implications for habitability and the adequacy of essential services and infrastructure, this circumstance also leads to an increased incidence of disconnections and the actual and threatened eviction of residents who fail to pay service charges which they cannot afford.

Extensive strikes in twenty towns and cities in early 1997 by council workers over disputed pay demands threatened to paralyse the country. In Kitwe, the City Council passed a resolution to embark on mass evictions and disconnections in an effort to raise revenue to meet its employee wage bill.[140] The Town Clerk admitted in a consultative meeting held to find solutions to the problem of disconnections and evictions that an outbreak of cholera in the town could not be avoided unless almost half of the K7.4 billion owed in water rates was collected from defaulters.[141] Water treatment chemicals were predicted to last a further six days and the council opened a cholera centre in anticipation of an epidemic. The meeting had been convened by local MMD district officials after receiving persistent complaints from residents that the council had served warrants of distress on those defaulting on the payment of rates to enable bailiffs to collect the monies owed and had disconnected water to Ndeke township in an effort to force payment.

Chingola Municipal Council issued a final warning to residents to pay outstanding bills or face civil action in the form of warrants of distress and eviction orders. The Council confirmed it had formed a task force to collect arrears and had already embarked on a disconnection exercise against those failing to pay water charges.[142] In May 1998, Ndola City Council began large-scale evictions to recover millions of Kwacha in long-standing arrears from tenants in council-owned properties not earmarked for sale. Ten families, owing K50 million, were evicted from the Masala Chinese Complex by council and State police. Others in Itawa Flats faced similar action.[143]

It must be reiterated that whether the right to housing is enjoyed or denied depends upon the availability of essential services including safe drinking water, sanitation, and energy for cooking, heating and lighting.[144] The deliberate disconnection of services - especially water supply - must constitute not only a violation of the right to housing, but also the right to health. It even threatens the right to life, for example by increasing the vulnerability of residents, and especially infants and young children, to diseases such as cholera and dysentery.

The Committee has determined that 'instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.'[145] The Committee has provided clarification of what constitutes legal protection against forced eviction. Of concern here are those requirements of particular pertinence to the prevailing *de jure* and *de facto* situation in Zambia. A State party should adopt laws which provide the greatest possible security of tenure - in this essential respect, as has been documented, the Zambian Government has neither provided such protection for sitting tenants nor for squatters in urban or peri-urban areas.[146] A State party shall also ensure the right to adequate compensation for loss of real or personal property for those affected by evictions.[147] Furthermore, recourse to the law and procedural protection of those served with eviction orders should be provided.[148]

As a corollary, it is important to recognise that not every eviction constitutes a forced eviction in violation of the right to housing depending upon whether or not these safeguards are in place:[149]

> Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.[150]

The problems created by the sale of council houses

The council housing stock, which local authorities have been obliged to sell under the national policy of home ownership, no longer yields a rental income. Furthermore, a new phenomenon is the increasing number of evictions of council tenants who have exercised their right to buy, often paying an initial deposit, but who have then defaulted on subsequent payments. Councils are pursuing defaulters for payments of arrears in the form of rent in lieu of debt and are threatening to evict those unable to pay.

On 20 May 1997, Lusaka City Council (LCC) announced that tenants buying council houses would be given to the end of the month to clear arrears or else be charged rent on their homes. 390 residents of Libala township had paid a ten per cent deposit on houses costing between K2m - K3m but could not pay the balance because many had not received Government or company retrenchment packages. Only a few buyers employed in stable businesses had access to company loans. Residents requested an extension of the repayment period to four years, but the LCC ruled this out. Fears abounded that council rents could double in order to claw back arrears.[151]

In the same month, Chingola Municipal Council announced that it would take action against tenants who had not responded to the offer to buy their homes yet were no longer paying rent to the council.[152] A flood of disputed claims over the sale of council houses prompted Kitwe City Council to issue a thirty day ultimatum to residents to either reoccupy a property of else forfeit it to the sitting tenant. This announcement threatened a wave of intimidation and extrajudicial evictions.[153] In Mongu, 266 houses were offered for sale to sitting tenants. All took up their purchase option; yet, by the end of April 1997, almost a year later, only 56 buyers had paid in full and had been offered certificates of ownership.[154] In Livingstone, by the same date, 6500 out of 7000 houses had been sold. However, the Town Clerk confirmed that not only had no deposit or payment been received for 500 properties, but that others, after making a downpayment, had not made further required contributions in lieu of rent.[155] Out of 229 houses offered for sale by Solwezi council, 44 houses built before 1959 attracted a 100 per cent rebate and were transferred to the tenants. The Town Clerk confirmed in court in April 1997 that, in respect of the remainder of the sales, eighteen buyers had not paid in full, although six of them had paid deposits.[156] A number of tenants had not responded to the offer of sale. Twelve repossessions had already been carried out.

In a number of other towns, for example, Kabwe and Chongwe, local councils threatened mass evictions and repossessions of property where sales had not been completed by the specified deadlines at the end of 1997.[157] Many civil servants living in council houses, unable to secure promised Government loans, found themselves faced with such action. The Ministry of Local Government, at the behest of the Civil Service Union of Zambia, issued a directive to local councils to extend the payment period, but the underlying problem of finance provision remained unresolved while, at the same time, local authorities continued to be starved of funds.[158] The saga continues and, while it does so, there is no security of tenure for those affected. In May 1998, Ndola City Council was once more urging tenants buying their houses to pay the balance owed to the council by the August deadline or face eviction.[159]

There are grounds for arguing that local councils in Zambia have been engaged in forced evictions in violation of the right to housing. In respect of those evicted for the non-payment of rent, rates, service charges and purchase balances, there are specific circumstances which, when allied to the prevalence of widespread, extreme poverty, constitute reasonable cause. The fact that local authorities are compelled by Government policy to dispose of their housing stock means that council tenants may no longer rent and have therefore had little choice but to purchase homes which they cannot afford. Many householders are reliant upon their terminal benefits or upon Government finance to purchase their homes and are placed in a highly vulnerable position when payment is not made. For detailed consideration of the compatibility or otherwise of the arrangements for the sale of State-derived housing stock with the right to housing under the Covenant, please see subsection 3(b) below.

In respect of the mass eviction of residents and the demolition of property which has taken place in urban and peri-urban land in Lusaka earmarked for improvement or development, this has taken place without due legal process. The procedural protection which must be applied in relation to forced evictions, should, *inter alia*, include an opportunity for genuine consultation with those affected, to include the exploration of feasible alternatives to eviction with a view to avoiding, or at least minimising, the need to use force.[160] It should also provide for adequate and reasonable notice for all affected persons prior to the scheduled date of eviction.[161] Furthermore, procedures should be in place to ensure that the authorities or third parties supply timely information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used.[162] Finally, the provision of legal remedies to those served with eviction notices is essential:[163] where possible, legal aid should be made available to enable persons to seek redress from the courts.[164] The reality is that most Zambians are simply too poor to pay legal costs or else are unaware of how to seek an injunction and judicial review. The alternative means of redress - the Lands Tribunal - is reviewed in the next subsection.

Urban development and the demolition of illegal structures

A number of illegal structures have mushroomed in Lusaka's Kanyama, John Laing, Ngombe, Misisi, George, Chawama, and Kalingalinga townships. In an effort to control and contain a situation which is seen as discouraging commercial investment while threatening public health, the Zambian authorities have succumbed to the use of forced evictions in the past and have been criticised by the Committee in this regard.[165]

In an event likened to the razing of newly constructed squatter housing during the MMD's first week in government in 1991, Lusaka City Council carried out demolitions and the forceful eviction of squatters from an area adjacent to Kalingalinga township in Lusaka in September 1996.[166] Within a year later, people were again erecting structures on plots which the vice-chairman of the Kalingalinga Resident's Development Committee claimed had been allocated to the community by the council after being repossessed. They were unable, however, to furnish documentation to support their claim, prompting their local MP to urge for the education of people on land issues so that they knew that the only way to obtain legal title was through certificates of occupancy or statutory leasehold. The LCC responded that it had not allocated any residential plots in the areas concerned and that any illegal structures would be demolished.[167]

In April 1997, the LCC served eviction notices on squatters living on allocated commercial land in a corridor along the Kafue Road in Lusaka's hinterland.[168] In the following month, the Council was ordered by the Lands Tribunal to complete the eviction and demolish illegal structures within three months.[169] The squatters claimed that they had been allocated the land by an official in the former UNIP administration. In the same month, the City Council began night operations to burn down the stalls of unlicensed street vendors in the city. The area targeted was between Chelston and Northmead on the Great East Road, but similar action was to be undertaken by the Council throughout Lusaka.[170]

Lusaka City Council has accused politicians of lacking the will to deter illegal development while blaming the Council in public for carrying out evictions.[171] Indeed, many believe that vested political interests lie at the heart of the problem of unplanned settlements when local cadres and MPs make unofficial land allocations to garner support. The Council remains chronically under-resourced. In March 1999, it announced that it was effectively bankrupt, owing creditors K20 billion while it debtors owed the Council K20 billion.[172] It has a plan to expand Lusaka through the purchase of farmland around the city, but has no funds whatsoever to compensate the landowners who hold 99 year leases. In terms of staff, the LCC has only three qualified planners against the nineteen it requires and a chronic shortage of transport which has prevented them from doing their job effectively.[173] In response to this situation, the Council has called for legislation to enable land to be delivered quickly to people in peri-urban areas and for the removal of tax on building materials. Imaginative solutions need to be found to the vicious circle in which impoverished residents either refuse or are unable to pay for inadequate basic services which deteriorate further as a consequence of the lack of available funds for reinvestment.

d. The Lands Tribunal

For the first time, a Lands Tribunal, made up of land professionals and presided over by a High Court judge, is established in Zambia under the Lands Act (1995).[174] The Tribunal has powers to inquire into and make awards and decisions in any dispute relating to land under the Act, including the determination of compensation.[175] Beyond specific disputes, it may also generally inquire and adjudicate on any matter affecting land rights and obligations.[176]

Appeals to the Lands Tribunal are initiated by a person who is aggrieved by a directive or decision of a person in authority.[177] The Act defines such a person in authority as the President, Minister or the Registrar.[178] To lodge an appeal, a person needs the date, reference number and particulars of the decision or directive and a description of the land in dispute, including, where appropriate, a plan identifying the land.[179] The question that a person wants determined by the Tribunal and the grounds of their appeal must be stated.[180] This is important because, once a hearing has begun, the grounds of appeal cannot, generally, be changed.[181] Under most circumstances, the Tribunal meets in public.[182] Anyone appearing before the Tribunal may do so in person or though an appointed legal representative at their own expense.[183] Evidence is presented orally or, with Chair's consent, by affidavit.[184] Any person aggrieved by a decision of the Tribunal may appeal, within thirty days, to the Supreme Court.[185]

The practical barriers which prevent many Zambians from gaining access to the Lands Tribunal are numerous and considerable. Not least is the fact that very few Zambians know if the Tribunal is of relevance to their claims to housing or land or if it is accessible to them. This notwithstanding, the Tribunal conceded in November 1997, after only one year in operation, that it was overwhelmed by the number of cases before it given its level of resources. By that time, the Tribunal had received 83 complaints. Of these, 51 cases were still pending, 10 cases had been settled amicably, and 8 cases had been dropped. The Tribunal had therefore reached judgement on only 14 complaints in twelve months. Practical barriers, including lack of transport, and the failure of lawyers or parties to the proceedings to appear at the designated time were blamed for hampering the Tribunal in its attempt to expedite proceedings.[186]

The Tribunal meets at places and times determined by the Chairperson.[187] In practice, it has met in mainly in Lusaka. This makes it very difficult for people from many other parts of the country to attend because of the time and expense involved, even though a determination may be made and costs may be awarded in their absence.[188] Where redress mechanisms are centralised, women and other disadvantaged groups find it difficult to get access to the forum and, as a consequence, their claims are not heard and their rights are given less consideration.[189] The majority of impoverished Zambians are faced with a daily, all consuming struggle to make a living. Although the Tribunal is meant to resolve disputes at minimal cost, most people, when faced with the choice of making an appeal themselves or through a lawyer, will either baulk at the first option or will not have the necessary funds to hire representation.[190]

In respect of the rulings of the Lands Tribunal, it is beyond the scope of this report to determine their likely impact on the realisation of the right to housing in Zambia. However, it is pertinent to note that all Tribunal decisions will be arrived at within the parameters of Zambian law, in particular the Land Act (1995) which is itself antithetical to the aspects of the right to adequate housing. Attention is drawn to one recent ruling.

In May 1997, the Lands Tribunal ordered Lusaka City Council to demolish houses and evict 92 squatters from land allocated to a commercial developer in Misisi township, situated along the Kafue Road in Lusaka.[191] The squatters claimed that the land had been allocated to them by a UNIP official in the Second Republic, yet a search revealed that there was no record of title deeds having been issued. The LCC director of planning stated that the council had never approved residential plots in the township, but was criticised by the Tribunal for allowing the problem to escalate by not taking action earlier over the illegal occupation of the land. However correct in the context of Zambian land law, such decisions by the Tribunal do little to address the underlying problem whereby poor residents are misallocated land, often paying corrupt officials in the process, then reside in an area for years in the mistaken belief that they possess security of tenure.[192] Others may settle on land in the full knowledge that they do so illegally, but their poverty leaves them with little or no choice.

3. Housing in Zambia

This subsection is itself divided into two main parts corresponding to distinct aspects of the right to housing. First, consideration is given to the state of Zambia's housing stock: whether homes are habitable, connected to essential services and infrastructure, and are within reach of schools, clinics and other social amenities. Second, and in the context of the Government's policy of selling all parastatal and public housing, attention is focused upon the issue of affordability.

Adequate housing must be in a location that allows access to employment options, health-care services, schools, child-care centres and other social facilities.
[General Comment 4, *The right to adequate housing*, para. 8(f)]

Access to employment

Between 1992 and 1997, Government statistics show that 80,000 jobs have been lost during liberalisation, privatisation and reform of the public sector. Most formal sector employment, and hence recent job losses, are concentrated in urban centres in Lusaka and the Copperbelt.

Under the World Bank backed Public Sector Reform Programme, the intention is to shed no fewer than 57,000 jobs - a staggering 40 per cent of the public sector work force. Over 15,000 casual daily employees were retrenched from the civil service in 1997/98.

The vast majority of Zambians earn their living in the informal sector. In the region of 3 million people, or 80 per cent of the economically active workforce, now earn their living or supplement their income by working in the informal sector. A recent survey of informal trading in Kitwe in the Copperbelt estimated that the rate of entry into informal sector trading increased by 400 per cent between 1991 and 1995.

Few of those earning a living in the informal sector do so out of choice. In a survey of traders, of those who gave a reason for starting up a small business, less then two in every ten said that they had done so because they actually preferred to work in the informal sector. Indeed, 65 per cent of informal sector workers in Lusaka have never experienced formal sector employment.

> "The compound was rife with testimonies of firings, sudden lay-offs by local industries and mass retrenchment, leaving an impression of a compound confronting the harsh realities of structural change in the economy very abruptly, with little time to adjust."
> [Observation on Chipulukusu shanty, Ndola, World Bank, *Poverty Assessment*, 1994]

Most informal traders come from shanty settlements and live in high density housing. The majority of informal traders are women and a disproportionate number of female divorcees and widows appear in the surveys. Hence a sizeable proportion of female headed households make a living in this way.

Overall access to services

Poor people are deprived of access to services and have few household assets. The World Bank set out to examine the extent of this deprivation. It chose sixteen essential areas including: access to social services; to information; to potable water; to education; the availability of electricity; the ownership of household goods; income; shelter; and access to sanitation. On average, all Zambians were denied access to eleven out of sixteen of these essentials. In the Copperbelt, people fared better and, on average, were denied access to eight - or about half - the services or assets examined in the study.

The study shows a significant level of deprivation in all Zambia's provinces. The Copperbelt fared slightly better because of the paternal attitude of ZCCM which supported services and welfare measures in the past. With privatisation, this situation is likely to change for the worse. ZCCM has traditionally serviced not only its own compounds, but has also entered into informal arrangements with town councils to provide basic amenities to other residents. There is strong evidence that the new private sector owners will not take on these responsibilities in the longer term with the result that service provision in the Copperbelt towns will inevitably get even worse for the urban poor. Most poor residents in the Copperbelt are now found in unplanned squatter settlements on the periphery of urban centres where they lack legal status and therefore any service provision.

> "It has often been assumed, given the "urban bias" in Zambia's development, that urban populations have been better served by health and education services. Declining revenues and increasing population pressures during the 1980s mean that if this was once the case it is certainly not the current situation....the urban poor are either under-served or, in illegal settlements, not served at all."
> [World Bank, *Zambia: Poverty Assessment*, 1994]

Too many different actors - central government ministries, local council departments, parastatals and the private sector - are involved in supplying urban services with the result that nobody is sure who is responsible for which areas of provision. This creates ideal conditions for a 'two tier' system in which the poor lose out. Overall, simply too few resources and too little money is devoted out of Government spending to providing services for the poor.

Transport

Most urban compounds in which the poor live are without transport services altogether. Bus and taxi firms avoid certain areas because the roads are unsurfaced and peppered with potholes and because the customer base is small. This is not because poor city dwellers do not need transport - on the contrary, they require access to central markets, jobs and services - but because they cannot afford high fares. Where services do exist, on top of the expense, they are often irregular and overcrowded.
`
Six out of every ten residents indicated that cost was the biggest constraint on their use of urban transport. The result is that nine out of ten people living in the compounds and shanties walk to fetch water, to local markets, to the clinic, to school or into the town centre itself. The situation is so bad that even arranging transport for funerals is very difficult.

The poor state of transport, together with restrictive land use zoning, makes it difficult for local people to develop a business in the compounds.

Inadequate roads and lack of transport is a problem not only within Zambia's cities, but it also a problem which exists both between cities themselves and between towns and the surrounding countryside. It makes it difficult for farmers to get their produce into the markets. Removal of transport subsidies and Government marketing services has made the problem worse. Once middle men have shipped produce to market and taken their cut, farmers get less and the urban poor pay more for their food.

Furthermore, the inadequacy of communications severely restricts the mobility of labour. For example, the privatisation of ZCCM may create pockets of expansion - although this is by no means guaranteed - but even then it is difficult to see how people will be able to commute from nearby towns to take advantage of any new opportunities. Their only option will be to uproot and many may not be able to afford to do so, especially since significant numbers of people will have sunk their money into buying a home.

> "In real terms, urban transport costs have risen out of all proportion to incomes. For those using transport, costs consume an average of 17 percent of non-food expenditure. In Chawama, 71 percent of the very poor cannot afford to use transport services at all."
> [World Bank, *Zambia: Poverty Assessment*, 1994]

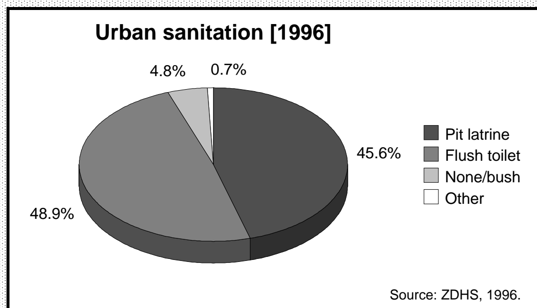
An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

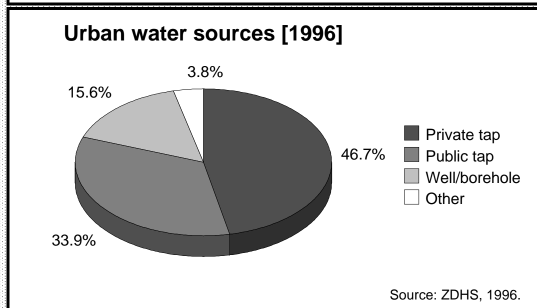
[General Comment 4, The right to adequate housing, para. 8(b)].

Water & sanitation

While better than in the countryside, overall access to water supplies and sanitation in urban areas in Zambia has deteriorated over the last twenty years.

- In the early 1970s, 86% city dwellers had access to safe water.
- The World Bank recorded that access had fallen to 66% in 1990, although Government estimates for recent years put the figure at around 75%.





- In rural areas, 30 to 40% of the population have access to safe drinking water.
- Latest Government figures for 1997 indicate that 12% of urban residents, 30% of those living in peri-urban areas and 88% of those in rural areas do not have access to adequate, safe, convenient sanitation.

Water and sewerage infrastructure in many Copperbelt towns was installed up to three decades or more ago to serve a small urban elite. It cannot meet the needs of the large numbers of poor people in the cities of today and is falling into disrepair. This lowers its capacity still further.

The proportion of households who now depend on unprotected wells and boreholes in Copperbelt towns has more than doubled since the 1970s and around a fifth of people now draw their water from these unprotected sources.

The contrast is not only between urban areas and rural areas: there is also significant variation in the quality of water supply depending upon where you live within a town or city. The neighbourhoods in which more affluent residents live are the best served. The number of properties with piped water and flush toilets in these areas makes the overall statistics on urban water supply and sanitation appear more respectable. In contrast, low income urban areas are officially served by standpipes serving up to 25 households, but the World Bank confirms that field visits show many of these to be out of operation. Indeed, real levels of access to safe water and sanitation to the urban poor are largely unknown, especially when considering provision in the shanty compounds. It is people living in these settlements, classed by the authorities as illegal, who suffer the worst deprivation. As a consequence, there is no obligation on the local authorities to provide services as a matter of course.

- In an area like Chawama - a poor but legal residential area of Lusaka - 80% of residents are dependent on public taps and 95% use latrines or buckets.
- In George Compound, Ndola, where the City Council deems most settlement to be illegal, a study by the development agency CARE in 1995 revealed that four households share each well and five households share each pit latrine. People are well aware of the risks associated with makeshift provision.

This situation of inadequate water supply and sanitation has a severe impact on the poor:

> "In Chipulukusu, people attributed the outbreaks of diseases such as cholera and dysentery to the dirty water from the wells, which they understood were infused with the dirt from the latrines close by."
> [World Bank, *Zambia: Poverty Assessment*, comment on Chipulukusu compound, one of the poorest areas of Ndola]

- An increase in the incidence of water borne diseases in Zambia has been described as one of the 'most glaring outcomes of the decay in urban infrastructure'. Lack of access to, and the quality of, water supply and sanitation has led to an outbreak of cholera in George Compound in 1991 and there have been other serious outbreaks of cholera in recent years, notably in Kitwe and Lusaka.
- Women are frequently responsible for providing the household with water, so they suffer the most when it comes to ensuring a decent supply. Even if, for the majority of urban dwellers, water sources are less than one kilometre away, queuing for water and carrying it back home still takes up valuable time. The frustration and demands on women are compounded by the fact that supplies are often erratic or even out of order.
- While official service charges set by the local council have, in the past, been nominal, recent trends suggest that:

> "The department is not getting any returns on its water services extended to squatter compounds. This goes also with low cost housing areas."
> [*Report of the Acting Director of Water and Sewerage Services*, Kitwe, 1994]

⇨ Prices are on the increase. In Kalingalinga compound, water charges increased from K10 per household to K300 per month in 1991. Charges on non-communal taps, at K3000 per month, were ten times the standard price.

⇨ Private landlords often charge inflated prices for access to water and other services.

⇨ As the system deteriorates, and because local councils do not have the resources for repairs, people are paying more for failing service. In the case of Kitwe Council, in 1994 it officially supplied just over 18,000 low cost houses. Numerically, these units make up two-thirds of its revenue base for water charges, although rates for high cost housing and commercial properties are higher. Some residents are now refusing to pay while others are too poor to pay. Hence the base from which local councils get their revenue is falling and in the following year they have even less to spend on basic services. The cycle of decline begins again.

⇨ The water sector has been opened up to commercial operators under the recent Water Supply and Sanitation Act of 1997. Local councils will be responsible for the overall management of water and sewerage provision, but will contract out the actual running of services to commercial companies. Commercial provision has begun in Lusaka. In the Copperbelt, the first phase of a pilot project on the Copperbelt has seen eight town councils form three joint companies to run water and sewerage services. The ultimate aim is to share-out the cost of provision in rural areas, but recover costs from consumers in urban centres. In the absence of due safeguards, the realisation of the basic right of all, including the urban poor, to adequate, serviced housing will be jeopardised. The National Water Supply and Sanitation Council (NWASCO), the body responsible for regulation of the sector and the setting of tariffs, is not yet operational. (For further information, please see Section 2(IV)).

a. Denial of the right to housing: habitability, location, services and infrastructure

i. Declining housing conditions vis-à-vis the obligation to take steps

For the right to housing to be realised, the Committee has determined that homes must be in a location which allows for access to employment and services and that the house itself should contain basic facilities essential for health, security, comfort and nutrition. The contrast with the inadequacy of housing in Zambia, as evidenced by the indicators and accounts given in the accompanying boxes, is stark. The overriding conclusion must be that the vast majority of people in Zambia do not enjoy a right to adequate housing.

The key question is whether the Zambian Government is meeting its obligations under the Covenant by ensuring that the right to housing is *achieved progressively*, and *without discrimination*, by *taking steps* to see that this is the case to *the maximum of its available resources*.[193] The Committee has determined that the obligations under the Covenant apply despite externally caused problems 'and are perhaps even more pertinent during times of economic contraction.'[194] Specifically in relation to the right to housing:

> '..a general decline in living and housing conditions, directly attributable to policy and legislative decisions by State parties, and in the absence of compensatory measures, would be inconsistent with the obligations under the Covenant.'[195]

The indicators cited appear to record a general decline in living and housing conditions *vis-à-vis* habitability and availability of services. The datum against which the current legislative changes and policy initiatives of the MMD Government can be judged has its origins in previous decades under the UNIP administration. An acute shortage of low-cost housing in the 1960s prompted the Zambian Government to instruct all local authorities to plan thirty per cent of housing as site-and-service schemes.[196] The councils were to provide water, sanitation, and roads to demarcated plots upon which residents would build their own houses. However, the costs on both sides proved to be prohibitive. As a result, unauthorised squatter settlements grew. In response, the Government of the day introduced the Housing (Statutory and Improvement Areas) Act in 1974. This remains in force and is accommodated within the Lands Act (1995).[197] Under the Housing Act, the Minister of Lands may confer the status of a Statutory Housing Area or an Improvement Area on land owned by the Council on the basis of an approved plan.[198] Within these designated areas, the Council may subdivide land, erect buildings and improve services.[199] The council is empowered to issue certificates of title and occupancy titles to plots upon which residents have built their own houses.[200] This brings settlers, by degree, within the protection of the law. A critique of the tenureship offered within SIAs has already been made; here the immediate focus is upon how the MMD's revisions to the Lands Act and how its National Housing Policy have so damaged local government finance as to render the delivery of adequate services by local councils almost impossible.

ii. The National Housing Policy and its detrimental impact on local government finance

The Covenant requires a State party to take necessary steps to achieve the full realisation of the right to housing. Such steps 'will almost invariably require the adoption of a national housing strategy' which matches resources to housing objectives and sets out the responsibilities and time-frame for the implementation of the necessary measures.[201] Furthermore, the Committee has determined that: '...steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies...with the obligations under article 11 of the Covenant.'[202]

In contradistinction, there has been no meaningful attempt by the MMD Government to reconcile its objective of home ownership as a central plank in its National Housing Policy with the desperate need of local authorities to maintain their financial base to pay for local services. In the opinion of the Auditor-General, the decision of central government to dispose of local authority housing stock to sitting tenants 'deprived the council[s] of the necessary revenue to meet the cost of their operations.'[203] Income from the rental of houses has been an essential component of council budgets. As soon as the directive to sell council houses was issued, council tenants took this as a signal to stop paying rent. As houses are actually sold, they are removed forever from the rental revenue base. The downpayments realised from the sales, representing only a small proportion of the money owed, is nevertheless exceptional income which has been diverted into the Housing Trust Fund controlled by central Government. Those who have exercised their right to buy are in debt, unable to pay the outstanding balances on their homes. There is virtually no access to mortgages or suitable finance. Councils, with no money to meet operational costs or even pay staff, have therefore renewed their efforts to collect rents in lieu of payments for council houses or to recoup monies owed from those who have not paid their rates. Impoverished residents in many towns and cities - Lusaka, Kitwe, Ndola, Chingola, Kabwe, Chongwe *et cetera* - have been served with warrants of distress allowing bailiffs to enter their homes, or have been disconnected from essential services. Many have been served with eviction orders. This wave of civil action and repossessions completes a vicious

circle in which the security of tenure offered by home ownership has been subverted, so that those exercising their right to buy are now evictees. The fact remains that people had no choice but to attempt to buy what they could not afford. Government policy dictated that the houses must be sold, if not to sitting tenants, then to any other person in the market place.

The Governments response to this self-created crisis in local government finance has been heavily criticised by the Auditor-General. The Local Government Act of 1992 allows the Minister to make grants to local councils for the discharge of their functions. The Act also requires that an audit is undertaken and that each council is furnished with a copy of the resulting report. In the financial year 1996, the Government earmarked K2bn in funds for local councils. However, the money was to be allocated on the basis of an audit which was designed to establish the level of indebtedness of each council and furnish them with a bankable business plan to streamline their operations and reduce their claims on central government. The grant did not, therefore, represent cleared funds as it was to be used to repay existing local authority debts to Government.

In a review of the exercise, the Auditor-General raises serious concerns over how the consultant auditors were hired, how they were paid, and how they conducted the actual audit. Contrary to Financial Regulations, payments from the account were made on the basis of the signature of one official. Indeed, the account was under the control of very senior staff in the Loans and Investment section of the Ministry of Finance instead of regular office staff. This arrangement side-stepped effective controls. An unauthorised payment was made to an individual with no apparent involvement whatsoever in the exercise.[204] No accounting books, including cash books, were maintained nor were reconcilliations carried out. The consultants were paid fees and a 2 per cent commission on the savings made to central government by furnishing business plans which resulted in reduced council claims. Yet the apparent saving of K1bn declared by the consultants was net of statutory payments and was therefore incorrect and significantly overstated. No independent evaluation of the feasibility of the business plans was carried out by the Ministry of Local Government and Housing. Most damaging to the credibility of the exercise was the fact that '[e]nquiries revealed that, the plans were in most cases prepared without the involvement of the councils making it doubtful as to whether the plans would be accepted by the final users.' [205] The Auditor-General concluded that '[a]lthough an amount of K2 billion was made available to clear the indebtedness of councils, it is doubtful whether the intended objective of improving the operations of the councils was realised.'[206]

iii. The diversion of land-derived income from local councils to central government

The Land Act (1995) is likewise implicated in the failure of central government to reconcile its free-market agenda of land and housing reform with the requirements of local government. The Act alters the basis upon which the ground rent from leaseholds is collected. Ground rent is payable to the President on all land alienated by the State.[207] A stipulation is introduced whereby all land leased by a Council is surrendered to the President and, where a council is subleasing land to others, their lease is automatically switched to the President, under the same terms as before.[208] Annual ground rent, set at a rate to be prescribed by statutory instrument, is now paid to the President.[209] This change will have an adverse impact upon local government finance and the ability of councils to provide services at a time when their burden of responsibility is increased given inevitable moves by private sector companies to withdraw from providing services which once fell squarely within the remit of parastatals.

While this surrender of Council land and ground rent does not apply to areas leased for the Council's own use or to land held under the Housing (Statutory Improvement Areas) Act, these poor areas do not constitute a significant revenue base.[210] Overall, the new Lands Act (1995), by channelling ground rent to central Government, precludes the redistribution of money from richer to poorer areas within a town or city. Furthermore, provision made within the Act for the establishment of a Land Development Fund for the opening up of new land for development does not offset this criticism.[211] The Land Development Fund is made up from three sources: money earmarked by Parliament; three-quarters of the money realised by the sale of State land under the Act; and half of the ground rent collected from all land.[212] The remaining half of money collected from ground rents is automatically subsumed into the Government's coffers and is thereby lost in respect of the development of local services. This may be compensated for by an initial influx of funds from the sale of State lands, but, as with the sale of any state asset, it is of paramount importance that money in the Fund is properly accounted for.[213] Councils wishing to develop land in their locality must now apply for money to the which is controlled by central Government.[214] This reverses the principle of decentralising the power to raise finance and advance local-level decision making, as championed under other aspects of the reform program in Zambia; and it places the Ministry of Lands as a gatekeeper on funds.

b. The sale of State-owned housing

The Government's objective, as part of its National Housing Policy, to stimulate private ownership is being implemented through the sale of almost the entirety of its State-owned housing stock. Zambia's public housing falls into four categories: approximately 78,000 council houses;[215] housing for Government workers numbering some 9000 units;[216] 40,000 ZCCM houses; and 10,000 houses belonging to other parastatals.

Overall, the drive to home ownership has been characterised by a disregard for the social dimensions to the sale and has thereby diminished enjoyment of the right to housing in Zambia. The chaos which has reigned in the sale of all types of public housing stems in part from (i) the absence of a legal framework or due process. (ii) At the procedural level, the rules devised for determining who does and who does not have a right to buy have been grossly unjust and open to abuse. There has been extensive violation of the overarching principle of non-discrimination. In practice, the sale of parastatal, ZCCM, council and Government pool houses has been so characterised by inequity, malpractice, corruption and even intimidation resulting in the forced eviction of *bona fide* tenants, that the President has been forced to intervene to suspend the sales on more than one occasion. (iii) Furthermore, the transition from public to private housing on such a scale warrants a significant degree of preparation which has been almost entirely lacking in the Zambian context. Even when offers to buy are made and accepted, certain groups are denied access to the necessary finance while others are promised the use of Government loan facilities which have failed to materialise. This has resulted in a situation where even those who have been successful in exercising their right to buy are saddled with debt while those unable to pay have been caught up in a wave of secondary evictions. (iv) The sales have been an economic and social fiasco. Neither the pledges made to reinvest the sale proceeds in improving housing nor the obligation to target resources at housing provision for the vulnerable have been fulfilled.

The house sales are considered under the rubric of accessibility and affordability *vis-à-vis* the right to housing as well as other aspects of a State party's obligations in realising this right: due legal process and the overarching principle of non-discrimination.

i. The absence of a primary legal framework

The Committee has determined, in the context of measures designed to satisfy a State parties obligations in respect of the right to adequate housing, that while many of these will involve resource allocations and policy initiatives of a general kind, nevertheless 'the role of formal legislative and administrative measures should not be underestimated....'.[217] Furthermore,

> 'The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to...allegations of any form of discrimination in the allocation and availability of access to housing...'[218]

A former Legal Affairs minister has called upon the Government to introduce a Housing Act as a legal basis for the implementation of its housing empowerment policy.[219] Urgent guidance from Parliament and the courts is needed to determine a just definition of a sitting tenant; the categories of Zambians who are or who are not entitled to buy the housing units; the position of non-Zambians in the process, especially those who are established residents, refugees or long serving expatriate public officers; and to address the issues of pricing and conveyancing. The process as implemented was viewed as so tainted by irregularity and so lacking in transparency that its suspension by the President was predicted.

At a press conference on 13 March 1996, the President intervened on the issue of housing, decreeing that all council houses and government pool houses should be sold to sitting tenants. In response to claims that the prices set by council's when selling houses were too high, the President embarked on a tour of major towns. Opposition parties accused the President of cheap politicking and gerrymandering, using the sale of council houses to buy votes in advance of the 1996 parliamentary and Presidential elections.[220]

The Presidential decree on the sale of council houses has been described as an arbitrary assumption of power and authority by the President.[221] The Local Government Act recognises the autonomy of councils: it has been argued that the intervention of the President over the sale of council houses contravenes this principle. Under section 67 of the Act, a council is entitled to dispose of its property. Once a council has met and reached its decision confirming its intention to sell, it is required to seek the approval of the Minister of Local Government and to submit a valuation report. This procedure accords a council the autonomy to decide whether it wishes to dispose of property and to initiate the process. In order to implement the President's decree, a circular dated 2 May 1996 was issued by the Ministry of Local

Government to all councils. This constituted both a directive to offer for sale all council houses and guidance on how the purchase price should be determined, together with terms and conditions governing the sale. A number of councils subsequently met to adopt the circular by resolution and requested the formal approval of the Minister of Local Government, as advised in the circular.[222] However, this post-dated approval of the circular has no bearing on the fact that councils had no choice but to comply with the Presidential directive and were required to offer their entire housing stock for sale at prices determined by central Government.[223]

According to the Presidential decrees and Cabinet decisions authorising the sale of state-owned houses, sitting tenants are to be accorded the right to buy. However, in the absence of dedicated legislation to guide the conduct of the sales, this principle has frequently been disregarded. The sale procedures drawn up in respect of both ZCCM and Government pool houses have given priority to direct company employees and existing civil servants over workers falling into other categories, even when they are a sitting tenant. The Lusaka High Court determined in July 1998 that those wishing to be afforded the right to purchase Government houses must be both a sitting tenant and a Government employee. The case had been bought by UN employees occupying Government houses who had been denied the right to buy and threatened with eviction orders instigated by the Housing Committee at the Ministry of Works and Supply. The defence had argued that the guiding principle in law and practice in Zambia was that a sitting tenant had the right of first refusal. The court ruled that the Constitution did not prohibit any person, the Government included, from dispensing of property in the manner they saw fit.[224] An appeal against the decision was filed in the Supreme Court. At the same time, the Lands Tribunal was asked to consider whether it had jurisdiction to intervene in the case.[225]

ii. Discrimination and inequity in the sale procedures

Once the President had decreed that all council, government and parastatal houses and flats were to be sold to tenants, a number of agencies were tasked with drawing up modes of sale for the different categories of houses. Local authorities began to sell their housing stock in the same year. At the same time, modalities for the sale of Government pool houses were put in place and the actual sales commenced in 1997. The Zambia Privatisation Agency, as part of its mandate to conduct the sale of State owned enterprises, is responsible for the sale of parastatal housing. In contrast, reaching the decision to sell ZCCM houses proved to be more complex. An initial plan to sell mine houses to the incoming buyers met with immediate resistance from the Mineworkers Union of Zambia. In keeping with the decision to sell other Government-derived housing stock to sitting tenants, the President finally announced that ZCCM houses should be sold to miners. Typically, ZCCM, and not the ZPA, has handled its own houses sales.

Irrespective of the agency involved, little or no guidance has been given by central government over how the house sales are to be conducted with the result that each organisation has devised its own procedures. This has resulted in both stark internal injustices in the way in which the sales have been handled and in obvious inequities between the different systems. In reviewing the sale of all categories of housing stock, it is paramount to recall the Committee’s application of the principle of non-discrimination to the right to housing:

> ‘The right to adequate housing applies to everyone....In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.’[226]

Discrimination is prohibited in respect of, *inter alia*, social origin, property or other status. The Committee has further determined that the full enjoyment of other human rights, *inter alia*, the right to participate in public decision-making, is indispensable if the right to adequate housing is to be realised by all groups in society.[227] Yet, in Zambia, the procedures to sell the State’s public housing stock have been unilaterally determined by the agencies concerned to the benefit of privileged parties and to the detriment of minority groups who have not been consulted over the mode of sale. While ‘States parties should...take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups’ the modes of sale adopted in Zambia have undermined the rights of sitting tenants and heightened insecurity.[228] States are obliged to guarantee legal protection against forced eviction, harassment and other threats.[229] In contrast, the sale of all categories of public housing in Zambia has been conducted in an atmosphere of intimidation. The threat and use of eviction against sitting tenants has been commonplace.

1) The sale of council houses

As has been noted, the decision to sell the entire housing stock of local councils was taken by the President without consultation in a way which undermined their autonomy under the Local Government Act to dispose of their assets. The adverse consequences have been twofold. First, council income has been reduced in both the short and long term, thereby diminishing the resources available for the upkeep of essential local services. Second, the intervention of the President has created inequity in that different prices have been set for broadly similar homes.

Certain cash-strapped councils, on a piecemeal basis, had already begun to sell a small part of their housing stock to raise vital revenue. Several examples can be cited.[230] In Livingstone a prior programme existed to sell 8.5 per cent of council houses. The decision to sell part of the housing stock was taken to counter a severe financial crisis faced by the council. The council had not considered selling all houses, only enough units to raise the funds immediately required. Solwezi council had prior plans to sell 35 houses to clear outstanding debts. Kitwe council had passed a resolution in 1993 to sell part of its old housing stock to raise funds to build new houses and develop the city. The council wished to sell just 5 per cent of its stock of 13,000 houses in a pilot scheme.[231] It must be noted that such existing programmes to sell selected houses were small-scale, designed to meet specific funding objectives, and were instigated at the local level. Other councils, such as the authority at Mongu, had no intention of selling council houses.[232]

In the limited number of cases where local authority houses were already being sold to tenants, the prices asked had been determined by the valuation department.[233] For the most part, application of the circular and directive significantly reduced the purchase price through the application of discounts and rebates. Under the new arrangements, the houses were to be valued by the Government valuations department using a number of criteria including the age of the property, its physical condition, any structural defects, a discount for maintenance or repairs carried out by the tenant, and the forces of supply and demand.[234] Substantial discounts, ranging from 20 per cent to 100 per cent for low cost houses depending on the date of their construction, were to be applied to this valuation.[235] Additional discounts were offered to tenants with a long history of occupancy and a good tenancy record. To cite the example of Yeta compound in Mongu, houses built between 1971 and 1980 were valued on a block basis at K2.2 million.[236] After applying the discounts in the circular relating to age and length of tenancy, the price was reduced to K1.1 million. A further 20 per cent reduction for prompt payment within 60 days bought the price down further to K900,000. However, each house was eventually sold for considerably less as a direct result of the President’s pre-election tour.

In the short term, the house sales have failed to generate revenue for use by the local councils in furthering social development, for example, by improving municipal services or by investing in new housing schemes for the poorest.[237] The Government's intervention in the sale of council houses, in addition to its perceived populist appeal, can be interpreted as a move to control and capture some of the revenue generated from the sales. Early in 1997, the Minister for Local Government and Housing, acting on information that money had been used in other ventures, warned councils to pay the proceeds from the sale of council houses into the Housing Trust Fund, as specified in the sale procedure issued by central Government.[238]

The Government circular set out terms under which tenants, after the payment of an initial 10 per cent deposit, were to be given eighteen months during which to pay the balance of the purchase price. During that time the council was to be prohibited from charging rent *per se*: rather payments were to be collected and the amount received subtracted from the outstanding balance. This arrangement has, of course, had an immediate and adverse impact upon council income. The town clerks of several major councils are on record verifying that one of the main components of council revenue prior to the sell-off was rent.[239] Overall, the sale of houses has permanently removed this source of long term sustainable income, making the councils reliant upon Government grants, rates, personal levies, and trade licences for their funding. Furthermore, despite the price reductions and the grace period, a significant number of residents have not been able to make payments or settle their debts. In a certain cases, as has already been noted, this had led to evictions.

There is undoubted merit in setting prices at an affordable level. However, it must be iterated that the blanket discounts fixed by central Government in the circular related primarily to the age of housing and not to principles of social justice; rather the Presidential directive and further personal interventions have created inequity. For example, the President visited Mongu in September 1996 and pegged the price of all houses at K750,000.[240] No other valuation took place: the new prices were described as a ‘pronouncement’. When the discount was applied, the price was further reduced to K600,000. The President’s intervention must represent a clear breach of an already questionable procedure. Council residents in Kitwe was visited on more than one occasion by the President, both before and after the circular of 2 May 1996 was issued. As a result of the President’s tour, tenants channelled complaints to the council which resulted in the purchase price being lowered. The Town Clerk verified that the council was happy with this arrangement; however, it would have been politically difficult for the council to reject an appeal which had Presidential backing.

The Presidential directive has also created legal confusion. Prior to the directive, certain council tenants in a number of towns had already signed deeds to purchase their homes at a higher price, raising the question as to whether there was a legal basis upon which the agreed price could be changed.[241] The Town Clerk for Kitwe, when asked if those sold houses earlier at higher prices had complained, replied that the council had explained the situation and had not been sued by anyone. The decision of residents not to sue is likely to reflect the difficulty and expense in brining a case to court.

2) The sale of Government pool houses to civil service employees

The sale of Government houses was approved by Cabinet in April 1996 and a Committee of Permanent Secretaries was appointed to work out the modalities of sale to civil servants. By mid-September 1996, a valuation of the housing-stock was underway prior to an announcement on how the sales were to be conducted. The rules, when they were announced, favoured currently employed civil servants over other categories of sitting tenants. Although the Minister of Works and Supply reassured recently retired civil servants that they would be eligible to participate in the sales, this raised uncertainty for retirees of longer-standing still occupying Government houses. At the same time, an initiative to identify State-owned houses currently occupied by parastatal employees so that these could be sold to civil servants provoked considerable anxiety.[242] Civil servants on transfer feared that they would lose out on buying houses in good repair which they currently occupied.[243] The Government did agree to provide loans to all civil servants at predetermined interest rates to enable them to buy or build houses.[244] While this was, of course, welcomed by Government workers, it was perceived as unjust by those buying parastatal or council houses who had little no access to loan facilities.

The sales rapidly created great uncertainty amidst accusations of serious malpractice. It became apparent that the majority of the offers of sale had been made in Lusaka itself and unscrupulous officials in the Ministry of Works and Supply were alleged to have initiated the unjust eviction of sitting tenants, including unpaid and underpaid retirees, so that they themselves could prosper from the sale of the vacated houses. In the office of the Copperbelt Province Permanent Secretary, a racket was exposed in which favoured junior civil servants were being offered houses while senior colleagues were not accommodated.[245] The Civil Service Union of Zambia had earlier iterated that those in the higher echelons of power did not have an exclusive right to buy houses at the expense of all other civil servants. It now charged that senior civil servants had been instigating the eviction of juniors while the National Union of Public Service Workers wrote to the President expressing its concern over how the house sales were being conducted. On 26 June 1997, the President suspended the sale of Government houses because of widespread malpractice, corruption and the harassment of sitting tenants.[246] It was subsequently alleged that MPs had become tenants of houses they did not occupy, in apparent contravention of the Parliamentary and Ministerial Code of Conduct Act.[247] Opposition politicians even accused MMD ministers of prospering from the sales.[248] Meanwhile, both civil service unions, together with the Zambia Congress of Trade Unions, welcomed the suspension of the sales while seeking reassurances that the offers of sale made to *bona fide* tenants would stand.[249]

The Government house sales recommenced under revised rules, but the process remains dogged by controversy and inequity. In May 1998, the Government issued eviction notices on sitting tenants in Mpika District Council pool houses, giving them two weeks to vacate their homes. Those affected were former classified daily employees (CDEs) retrenched in the previous year. Such workers, although sitting tenants, were denied the right to buy under rules drawn up for the allocation of pool houses to civil servants.[250]

3) The disposal of ZCCM housing

In 1996, the plan was simply to sell mine houses to the private sector buyers of ZCCM.[251] As late as February 1997, the decision still had not been taken whether or not to give employees the opportunity to purchase their houses as sitting tenants. The MUZ expressed anger that, in its view, a management briefing had implied that mine houses would not be sold to occupying tenants but that the issue would be decided by the prospective buyers.[252] The MUZ foresaw the new owners engaging in speculation by selling the housing stock at unaffordable prices. The accusation was even voiced publicly that prohibitive pricing would be used in order to establish exclusive white suburbs.[253] The announcement that all ZCCM houses would be sold to miners and other tenants was made in early July 1997:[254] given the MMD's wider home ownership policy, and the stance of the MUZ, it is difficult to see how miners could have been excluded from the sale.

In light of the fact that negotiations over the privatisation of ZCCM has not been conducted by the ZPA, it is not altogether surprising that the sale of 40,000 mine houses is being handled directly by the company. It is, however, regrettable that the sales have not been implemented by an independent body nor handled in the same way as those concerning other parastatals. ZCCM's announcement in December 1997 of the schedule of sale and order of priority for the disposal of houses caused immediate anxiety and consternation among employees of subsidiary companies and teachers occupying mine houses.[255] The policy was, first, to award houses to ZCCM employees as sitting tenants; second, to source and sell properties to unhoused ZCCM employees; and, finally, to give consideration to employees of subsidiary companies and other interested parties. This ran counter to the Government's policy of giving sitting tenants first refusal to buy their homes. Some sitting tenants, despite a Presidential statement warning against eviction or victimisation, have been threatened with, or suffered, forcible eviction from their homes amid accusations of ZCCM employees attempting to buy more than one property. Teachers and employees of ZCCM subsidiaries have proved particularly vulnerable in this regard as a result of the policy adopted by the company in prioritising the sale of houses to miners.[256] The Zambia National Union of Teachers immediately issued an appeal to the President to intervene in the

sale of ZCCM houses so that teachers in mining communities would not be deprived of their homes. The inequities in ZCCM's stated policy were stark: in the case of subsidiaries, many were one hundred per cent owned by ZCCM and many employees had been transferred from ZCCM mining divisions in previous years, taking with them existing housing entitlements and conditions of service. Accusations were made that earmarked properties were offered to senior officials at ZCCM Corporate Head Office in Kitwe.[257]

The potential for further inequity and conflict is created by the circumstances of those who have retired, or else were retrenched several years ago, but who remain in company houses. They were either never afforded the opportunity to purchase their houses or else offers of sale were never honoured, yet many such people now constitute sitting tenants. Any lump sums or terminal benefits that retirees or retrenchees once had have been eroded by successive devaluations of the Kwacha and most have no money left to buy their houses, even were they afforded the opportunity to purchase them. A case in point are the ex-miners and their families at Bwana Mkubwa faced with eviction from houses which many have occupied for more than twenty years as ZCCM seeks to allocate their homes to existing miners.

In March, ZCCM sold nearly 2000 houses without informing the sitting tenants of houses at Bwana Mkubwa in Ndola.[258] As a result, 200 existing residents - most of them ex-ZCCM miners who had worked at the Bwana Mkubwa Mine prior to its closure in 1983 - were faced with eviction by the new homeowners.[259] Many residents had letters dating back to 1993 when ZCCM, keen to rid itself of the liability of deteriorating housing stock which had been condemned by the council for demolition, agreed to sell houses to their existing tenants. Many of those faced with eviction had rented their homes for more than twenty years and most had maintained their homes following the assurance of sale given to them by ZCCM.[260] The company responded by reiterating its policy of allocating property rented to non-miners to those existing miners who were not currently housed by the company.[261]

During April 1998, the new owner of the Kansanshi prospect, Cyprus Amax of the USA, were implicated in the dispute over the allocation of houses. The local branch of the MUZ accused ZCCM of disregarding the Presidential directive over the sale of houses and of depriving miners of the opportunity to purchase their homes. It was alleged that ZCCM had issued letters offering the houses to miners and had signed contracts, but then had sat on the paperwork because the new owner of the mine, Cyprus Amax, had directed the company to reserve all habitable houses for their use as part of the purchase.[262] The miners themselves had all been retrenched at the beginning of the year. Forty-two almost completed houses were subsequently demolished by Cyprus Amax on the grounds that they were poorly built, located in a mining area and liable to collapse due to the use of explosives in exploration for copper. This episode is reviewed in more detail in Section 2(IV) which considers the actions of private companies *vis-à-vis* the Covenant.

In Kitwe, there were reports of many families living in former ZCCM houses facing immediate eviction because of their inability to pay the high rental charges of up to K400,000 (circa. $280) per month demanded by new landlords.[263] Yet to accord with the principle of affordability under the right to adequate housing, the Committee has determined that tenants should be protected by appropriate means against unreasonable rent levels or rent increases.[264] In some instances, senior officials from ZCCM and subsidiary companies had bought the houses ahead of sitting tenants.[265]

In mid-April 1998, the first cases involving disputed claims over ZCCM houses were filed before the Lands Tribunal and injunctions were issued restraining ZCCM from prematurely and wrongly denying tenants an offer of sale before the tribunal reached its determination.[266] On 29 April 1998, the Minister for Mines and Mineral Development announced the suspension of the sale of all ZCCM houses with immediate effect and ordered ZCCM to halt the eviction of all sitting tenants. The suspension would remain in force until ZCCM management adopted 'correct and acceptable procedures'. The Government was forced to act having been inundated with complaints about the inequity of the policy adopted by ZCCM and amidst repeated allegations that ZCCM and MUZ officials had engineered the sales to allow them to buy more than one house. The vested interest of the higher echelons of the MUZ is apparent by their immediate and unequivocal opposition to the Government's suspension of the house sales. The MUZ President went as far as to challenge the authority of the Minister to halt the process, arguing that the current system of allocation had been agreed after negotiations between the MUZ and the company.[267] President Chiluba had reassured the MUZ at its annual conference at the beginning of the year that it would continue to be actively involved in implementation of the programme to sell ZCCM houses.[268] The suspension was not retroactive and therefore did not apply to completed transactions. The MUZ claimed that eighty per cent of the contracts of sale had already been signed. In contrast, opposition parties and the breakaway Zambia National Union of Skilled Mineworkers (ZNUSM) welcomed the Government's decision and condemned the MUZ for its opposition to the suspension.[269]

4) ZPA and the sale of parastatal housing

The ZPA concedes that it has received no detailed guidance from Government over how to dispose of the stock of parastatal housing beyond an indication that 'as a general rule, houses should not be included in the privatisation of companies.'[270] Social housing attached to parastatals has been treated solely on the basis of a financial asset on a

company's balance sheet. Whenever possible - that is when a company is solvent - the ZPA has therefore split the houses from the core business in each sale and retained them so that they can be sold to sitting tenants.[271]

There are, however, many instances where the ZPA has not been able to achieve this objective. Without their housing stock, certain companies would have a net negative worth, and hence, to make their privatisation viable, requires selling the core business and houses as a single package.[272] An increasing number of parastatals fall into this category. Where a parastatal is insolvent, any attempt to sell capital assets such as housing may prompt a legal claim by the company's creditors. As of July 1998, ZPA named fifteen companies where houses would need to be sold at their full market value in order to pay creditors.[273] If such houses are to be sold at a discount to sitting tenants and employees, the ZPA warned that money would be needed from the Treasury to achieve this.[274] Some State owned enterprise, such as ZIMCO, UBZ and Zambia Airways, have been placed under receivership, in which case their residential housing stock is not being sold by the ZPA at all, but by liquidators who are required to realise the highest value possible to meet creditor claims.[275] The implication is that certain ex-employees and sitting tenants must compete with third parties to buy such houses and may not, therefore, be able to meet the asking price.[276] Finally, even when a company is solvent, the housing stock may be jointly owned by private shareholders or else have been pledged to secure a loan and will not, therefore, be available for sale by ZPA unless the loan is first repaid.[277]

Whereas ZCCM houses and Government houses have been sold at discounts in order to mollify powerful vested interests close to Government and neutralise wider political opposition,[278] ZPA is required by law to sell parastatal housing at market value.[279] This is inequitable and, understandably, has created resentment and the continual challenges of valuations by tenants. Establishing the market value of houses is far from clear-cut and is undermined by random Presidential determinations which skew market forces.[280] Vested interests within individual parastatals have sought to use the concept of market value to their own advantage. In late August 1997, following an injunction against Zambia Railways to stop them carrying out evictions, the High Court ordered the company to sell houses to retrenched sitting tenants. However, it was reported in the press that the Zambia Railways management began to carry out evictions in November 1997 in defiance of this ruling. The company returned deposits to those sold houses at a price determined by a Government valuer and demanded payment at a 'market price' decided by the company.[281] Yet any action by the Government to reduce the price of the remaining parastatal housing stock would create its own problems and therefore seems most improbable. Not least of these would be the loss of revenue to the Government and the requirement that an agency mandated to sell at a discount be set up outside of the ZPA. Furthermore, those in housing belonging to insolvent parastatals would still be required to pay market value and those who have already done so would feel doubly aggrieved.[282]

While many companies have been sold and transferred to their new owners, the houses associated with them have not been sold and thus have 'an undefined status' because of the Government's failure to reach a decision on their disposal. ZPA's view on the property management arrangements is that they are 'unstable and should not be allowed to continue.'[283] In most situations the houses are still occupied by employees who have been unwilling or unable to pay the already sub-economic rentals. The privatised companies have no motive to maintain properties they do not own and the housing stock is deteriorating due to uncertainty over who is responsible for their upkeep.

iii. The inadequacy of transitional arrangements

In defining its adequacy, the Committee has determined that housing should be affordable and subsidised where necessary to make it available to the poor.[284] There is a case to be made in the Zambian context - which has seen a shift from direct and indirect State subsidy for council and parastatal housing to a situation in which the cost of housing now falls squarely on owner-occupiers - that the State has a twofold obligation: first, to ensure that transitional arrangements are in place to cover the transfer of the cost of housing from the State and parastatal employers to former tenants and employees; second, to use the resources freed from house sales to subsidise housing for vulnerable groups. The former obligation is given immediate consideration while the question of social assistance in the context of the drive to home ownership is examined in a final subsection on the house sales debacle.

For those people in Zambia living in tenured accommodation, most have either benefited from housing provided by Government or parastatal employers or else have paid rent on a council home. These arrangements are of long-standing. Hence the shift to an ethos of home ownership requires a change in the mind-set of tenants. It requires informing people about their new responsibilities to repay loans, to maintain housing, and, in some cases, to take over the payment of rates which have previously been met *en bloc* by parastatals. It also requires ensuring that arrangements are in place to allow tenants access to the finance needed to buy their homes and ensuring that alternative provision is made to fund local councils as their revenue base is undercut by the loss of rental income from council housing.

A citation from a report which examines the socio-economic impact of the privatisation of ZCCM encapsulates all of these problems. Parallel observations would apply to the sale of council and other parastatal houses.

> While the sale of mine houses may allow former miners to survive in [a] familiar environment, the nominal rents they were accustomed to will be replaced by rates and other utility bills which are alien to them. The result would be people living in houses without electricity and water because they will fail to pay for these services. Where there are no proper finance agreements for employees, experience has shown that former tenants have opted to sell the houses and relocate to 'shanty' townships....The question of who takes over provision of social services when the housing stocks are sold is also important to address. The idea that the council would absorb these responsibilities is farfetched. This is because the councils are completely incapable of taking on these extra responsibilities of supplying water, collecting refuse and maintaining roads.[285]

Preparation for a transition of this magnitude from public to private housing in Zambia has been totally inadequate. In the context of affordability, the focus here is upon the actions and omissions of the Zambian Government in respect of the arrangements which have been put in place to allow people to pay for houses. A consideration of whether sufficient preparations have been made for the running of essential local services is deferred until Section 2(IV). In the rush to sell, privatisation threatens to precipitate a crisis in social provision in many towns because of the failure to disentangle parastatal from municipal services and to plan, where necessary, for the transfer of responsibilities.

1) An inability to pay

The reference to adequacy under article 11(1) requires that housing is not only accessible to those who need it but is also affordable:

> 'State parties should establish housing subsidies for those unable to obtain affordable housing, *as well as forms and levels of housing finance which adequately reflect housing needs*.'[286] [Emphasis added].

The Government has frankly acknowledged that the reality in Zambia has been very different:

> 'a large majority of the Zambian people cannot afford to pay the economic rent or price for a decent house;...only a few employers have availed [sic] house loans at subsidised interest rates and only to their own employees;...the slow land delivery system for housing has prevented private sector finance houses from releasing loans to the sector at acceptable rates;...there is no housing finance capital market to ensure [an] easy flow of key requisites for house building or home ownership; and the Government has played an insignificant role in the mobilisation of housing finance.'[287]

It is precisely these and related problems that the National Housing Policy has sought to rectify. It is therefore regrettable that the MMD Government has been unable to deliver on it pledges. Rather, its policies to encourage housing finance have foundered at the same time as the President has pressed ahead with a drive to home ownership. The result has been a scramble for housing in an environment without available finance. These mismatched policies have, in combination, proved antithetical to the realisation of the right to housing and it is inevitable that those with the least money or influence have lost out. The vast majority of tenants in parastatal or government pool housing simply cannot afford the cost of purchasing a house at market value due to a lack of cash. The solutions which are on offer may place people in a highly vulnerable position. They fall into two broad categories: first, arrangements whereby a Government employee's terminal benefits or retirement package is used to offset the purchase cost of a house; second, a very limited number of home loans are available.

2) Using terminal benefits in lieu of a cash payment

The Government has a vested interest in reaching an accord whereby terminal benefits may be applied towards the purchase price of a house as it forestalls the need to find cash sums to finance a redundancy or retirement package now or in the future. This mechanism has also been used extensively to fund house purchases in ZCCM and a multitude of other parastatals. Retrenchees often have little or no option in accepting such an arrangement and may be coerced into buying a house whose true market value is difficult to determine, in an area where employment prospects are most likely bleak. Furthermore this ad hoc system, such as it is, presents a multitude of problems.

The overriding difficulty is that many retrenchees, whether Government or parastatal workers, have simply not been paid the terminal benefits owed to them. ZPA concedes that, in certain instances, the entire package of terminal benefits payable to a retrenchee will fall short of the asking price for the house in which they are a tenant.[288] Sometimes a temporary solution can be found. For example, an agreement was reached between the board of the Zambia Revenue Authority and the Government to halt the mass eviction of former Customs and Excise workers from ZRA houses. The

workers had been transferred to the ZRA but many, on losing their jobs, had not been paid their terminal benefits and hence were unable to complete the purchase of Government pool houses.[289] However, on many occasions when retrenchment packages are delayed or insufficient, those owning the properties - to include councils, liquidators, and other Government agencies - are insisting on payment for houses. Retrenchees and retirees are being threatened with repossession or even evicted from their homes in an atmosphere of confrontation. A ZPA brief speaks of the problem of the 'dislocation of sitting tenants' without the cash to buy. It concedes that external financing is not available and that limited ZPA finance is determined on a case by case basis.[290]

3) The chronic shortage of housing finance

The Government promised an overhaul of the housing finance sector in its National Housing Policy.[291] It is now three years since this was launched. Within such a time-frame, it is unrealistic to expect that the many deep-seated barriers to creating a viable system of housing finance in Zambia would have been overcome. The Government has not been able to create the economic conditions of low inflation and low interest rates to enable private banks and building sector to supply relatively cheap loans. The mortgage market requires a large deposit base and a sophisticated banking system which can balance short and long-term maturities and hence is virtually non-existent in Zambia.

However, the MMD Government can be criticised for the lack of initial progress and it ought also to be censured for its irresponsibility in launching a drive to home ownership by disposing of its public housing stock in the absence of any developed mortgage system. In 1997, the Zambia National Building Society issued mortgages worth a paltry K359m to just ninety-two successful applicants.[292] In order to place this dearth of housing finance in perspective, it must be recalled that in excess of 130,000 state-owned houses are up for sale. In the period from the launch of the Government's home ownership scheme in 1996 to February 1999, the ZNBS lent money to just 410 sitting tenants to enable them to acquire houses in Lusaka. Those paying into a regular savings account with the society are eligible for a mortgage loan. However, the system is all but irrelevant for most home buyers as monthly payments of K50,000 must be made into the account for two years before the society will lend. Most formal sector employees, let alone the vast majority working in the informal sector, cannot afford to contribute this amount each month. As one civil servant commented: 'My salary is K100,000. What will my family eat if I pay ZNBS K50,000 every month?'[293]

The Government has failed to make public finance available for housing loans or to persuade employers to initiate their own schemes. The managing director of one of Zambia's few building societies has noted that 'only a few employers have availed subsidised house loans to their employees, even though they have been willing to provide heavily subsidised housing to the same employees.'[294] In the public sphere, there are stark inequities in who is and who is not eligible for State-backed finance. The arrangements for selling houses to civil servants include the provision of Government loans whereas no such facilities are made available to teachers wishing to purchase their homes.[295] The Zambia National Union of Teachers has estimated that over ninety per cent of teachers have been unable to secure loans to build or buy a house.[296] In reality, teachers and civil servants alike have found themselves in a similar position. The Government has not been able to deliver on its agreement to make loans available to civil servants, leaving many in the position where they have paid a deposit on their homes but now cannot find the money to pay the balance of the purchase price. Those civil servants who are sitting tenants in houses owned by local authorities have been particularly hard hit as councils, desperate for revenue, have sought to extract rent in lieu of outstanding payments.

In November 1997, Kabwe Municipal Council threatened mass repossessions of council houses whose purchase by tenants, including many civil servants, had not been completed. The Permanent Secretary for Central Province intervened, asking for an extension of the sale deadline.[297] The Council, while recognising that the Government's failure to deliver loans to civil servants to enable them to buy their homes was the root cause of the problem, insisted it could not delay completion. Civil servants faced the same situation in Chongwe where the absence of a Government loan facility threatened to prevent them buying their homes by the December 1997 deadline. A Cabinet circular of 15 August 1997 had assured civil servants that loans would be forthcoming, yet local authorities were adhering to their original timetable because they had not received notification from the Ministry of Local Government to do otherwise.[298] The Civil Service Union of Zambia (CSUZ) won a reprieve for its members and the Ministry of Local Government issued a directive ordering local councils to extend the deadline and stop evictions. However, the CSUZ remained locked in negotiations with the Government to secure vital loans to allow civil servants to pay for their homes.[299]

In the parastatal sphere, the situation is no better. According to ZPA, 'every effort is made to allow employees and retrenched employees to purchase the houses.'[300] Yet ZPA has sold only a very a limited number of houses - less than 200 by August 1997 - through its own mortgage plan. However, this is predicated on purchasers finding 35-40 per cent of the purchase costs in cash or as an offset against redundancy payments.[301] ZPA suggests extension of this scheme because it allows the Government to realise the full value of housing over time while enabling tenants to afford the purchase price. Furthermore, it puts tenants of houses belonging to unencumbered companies, as well as those in houses owned by insolvent companies, on a broadly equal footing as the latter can compete to meet the market asking price.[302]

However, the shortcomings are readily apparent. First, the scale of the scheme is totally inadequate given the number of people requiring finance. Second, initial repayments are designed to be 'slightly more than the market monthly rent'.[303] ZPA concedes that many people cannot pay their existing rent: they certainly will not be able to do so should they lose their jobs. Third, the scheme fosters indebtedness. The vast majority of tenants will be required to use their terminal benefits as a down-payment. Even so, many will not be able to find the initial cash consideration for the deposit. Finally, the mortgage term is massively compressed and the balance of the sale price must be paid within six years.

iv. The lack of a social dimension to the sales in respect of the right to housing

While a figure for the total worth of Zambia's public housing stock is not readily available, it is possible to arrive at an estimate. The ZPA calculated in mid 1997 that the inventory of parastatal housing which it had sold or was in the process of selling was worth $20-30m equivalent.[304] Extrapolating from this figure - and assuming the parastatal stock is made up of a broadly equivalent cross-section of properties - then a reasonable estimate of the average value of each property in 1997 was equivalent to $2500. Hence the total value of the entire Government-derived housing stock would have been in the broad region of $250 to $350 million before the application of discounts.

Once more, the Government's stated rationale for the sale of housing-stock is portrayed as suited to promoting social objectives. First, to create large-scale home ownership and a capital base for future generations; and, second, to use the sale proceeds and repayments to fund water, sewerage, and other improvements in all urban areas.[305] Given the inequity cited above, there is little to suggest that large-scale home ownership is, of itself, meeting a social objective. On the contrary, the process has been discriminatory and many home buyers are in debt. Furthermore, there is little evidence to back the claim that the sale proceeds are being earmarked for spending on social infrastructure.

The amount of revenue collected from the sale of government and council houses is many magnitudes lower than the sum that might be expected. The application of discounts and rebates, especially in the sale of council houses, does not explain the shortfall. The figures are, however, extremely sketchy and it is incumbent upon the Government to furnish full information. In October 1996, the Government announced that 5,045 council houses had been sold by local authorities since January of the same year.[306] The proceeds realised from these sales amounted to K667 million (circa. $530,000). By February 1997, K2 billion (circa. $1.5 million) had been collected. The announcement of this figure was accompanied by a warning from the Minister of Local Government and Housing warning councils not to divert sale proceeds into other ventures.[307] From the sale launch in September 1996 until its suspension in June 1997, 1259 offers to buy Government houses had been made to civil servants. By that time, only 47 purchasers had paid for their houses in full while 323 more were paying by instalment through salary deductions.[308] Financial arrangements to cover the bulk of the sales were not, therefore, in place. Figures detailing the amounts realised from this sale of Government pool houses are sketchy: by June 1997, K416m had been released from the sale of such houses in Lusaka. Payment in full had netted just K390 million (circa. $312,000).[309]

Arrangements for the use of revenue from the sale of parastatal or ZCCM housing have, by design, all but precluded their use in social funding. Proceeds from the sale of parastatal houses handled by ZPA should be paid into the Privatisation Revenue Account. Even if this were the case, it inconceivable that such funds would be used to improve or subsidise housing for vulnerable groups. Privatisation proceeds have largely been reabsorbed in the running of the ZPA or else have been diverted into other Government accounts. They have not been used for social ends. Furthermore, the ZPA claims success 'in most cases' in excluding the housing stock from the sale of the core business, thus freeing homes for sale to employees and tenants; yet, by the end of 1997, the Agency had sold no houses direct to employees or sitting tenants but had rather cashed in or otherwise used their asset value.[310] Out of fifty-six privatised parastatals listed by ZPA in an annex to its housing report, only in 12 cases can the houses be sold unencumbered as opposed to a total of 44 instances where either insolvency forced an asset sale or else the houses could not be sold separately because of prior claims or because the viability of the sale was dependent on the asset value of the housing stock.[311] In the case of ZCCM, the proceeds from house sales have been set against liabilities owed as terminal benefits and pension payments or else any cash generated has been reabsorbed into the company's account. On the one hand, while using proceeds from the sale of social housing to pay off liabilities may meet an economic rationale, on the other hand, and in rights terms, the practice must be highly questionable. It represents a sleight of hand in which those occupying houses are required to subsidise company liabilities in order to make the sale of a company attractive to investors or else pay off creditors in the case of liquidation.

The social promise of providing people with a source of private capital through home ownership and of using the sale proceeds to fund infrastructure improvements in all urban areas has not been fulfilled. In August 1997, the ZPA warned that 'these opportunities will only be realised if Government takes appropriate steps to capture and reinvest these funds. Unless Government immediately takes steps to grant ZPA or a suitably designated and professionally staffed Government organisation to take control of the parastatal housing stock, the opportunity will be forgone [sic] forever. Once the control of the houses is secured the future uses of the capital can be decided by Government, but there may be

little housing capital left if delays are allowed to continue.'[312] The Agency's bleak vision has been realised. A parallel conclusion applies to the sale of council and government houses.

C. The influence of the World Bank upon land reform and housing policy

Introduction

The Bank claims that land reform is part of the strategy for alleviating poverty in Zambia. Reform is premised on a 'market-orientated system for land tenure' and the Bank's prime concern is that 'securing appropriate land for investment remains difficult and cumbersome'.[313] For the millions of Zambians who live in informal settlements or who are subsistence farmers with little or no cash income and who are denied credit, access to land with secure title and to affordable housing is unlikely to be achieved in a free market. At issue is not the principle of the market, but rather whether its operation is accompanied by appropriate safeguards to protect the right to housing of those without market power and by regulation to ensure equity in the housing sector. In the absence of such balancing measures, the Bank/MMD agenda on land reform offers greater opportunities for those with economic power to gain security of tenure over land while reducing access to land for the poor and protection of the rights of those forced to occupy land illegally in order to survive. The Bank and Government must both be made answerable for this situation.

Under article 22 of the Covenant, as determined by the Committee, it is incumbent upon the Bank to consider the advisability of its assistance in contributing to the effective progressive realisation of economic and social rights. It was therefore negligent of the Bank to use adjustment lending to support and actively advance land and housing reform before it had satisfied itself that measures were in place to ensure the right to housing of all Zambians, including the poor and disadvantaged, was protected and advanced. Two aspects of the Bank's operations are reviewed. The first concerns its pursuit of an agenda of land reform in Zambia. The second focuses on specific action to foster a private market in housing.

1. The use of Bank conditionality to advance land reform

Land reform, culminating in the Lands Act (1995), has been pursued by the Bank through agreements with the MMD Government across three adjustment credits and one sector investment program. The aspects of the Lands Act (1995) which diminish protection of the right to land and housing for the majority of poor Zambians are manifold: the conversion of customary tenure without due safeguards to protect the rights of those in local communities and smallholders; reinforcement of the illegality of squatting; and further undermining of local authority finance and autonomy by diverting ground rent to the centre. Once more, detailed stipulations and conditions in a number of loan agreements provide grounds for concluding that the Bank is culpable alongside the Government for certain aspects of land law reform which have resulted in the violation of economic and social rights.

The component of PIRC II designed to promote a framework for private sector development required, amongst other actions, a Government review of land ownership in Zambia and the adoption of a plan to develop a properly functioning market for commercial land. This was made a condition of third tranche release.[314]

The land reform agenda was carried forward under ESAC which '...sought to develop a more liquid market for Government-owned land while building up the institutional capacity to carry out longer-term (and more politically charged) reforms of the lands held by tribes and local authorities.'[315] The Government faced concerted Parliamentary opposition to what the Bank's Operations Evaluation Department has described as 'an overly ambitious and controversial land reform package' which went further than 'the more modest proposal that had been expected during credit appraisal and negotiation'.[316] It was the proposed amendments to land law to allow for the conversion of customary tenure to leasehold tenure which could then be held by, amongst others, foreign investors, which met with the greatest opposition. Given the political resistance to this aspect of reform, the Bank granted a waiver so that second tranche ESAC funds could be released.[317] It acknowledged that fulfilling tasks and meeting deadlines that involved a 'third party, such as parliament,...proved difficult to implement. in a timely fashion.'[318] In other words, parliamentary democracy posed a problem to the Bank in driving through project implementation. Further action on land legislation was therefore to be supported under the Bank's Agricultural Sector Investment Program. This saw the controversial Lands Bill through to its enactment.

Under the rubric of 'fostering private sector growth,' the Bank set out an agenda under its ESAC II credit for the implementation the Lands Act (1995). Substantial progress in this regard was made a condition of second tranche release of the credit.[319] Specific requirements included reducing the backlog of applications for numbered plots and speeding up the issuance of leases which was characterised by the Bank as 'stifling the market and hampering the development of the private sector.'[320] A further stipulation was the functioning of the Lands Tribunal.[321]

A positive development sought by the Bank under ESAC II was for the recognition of informal settlements in urban areas and their full legalisation.[322] The Government was supposedly 'to take all actions in its power to move forward with the process of recognition and declaration of informal urban settlements as a condition of the Second Tranche Release.'[323] However, there is no evidence that the Government action plan for the regularisation of informal settlements referred to in the appended Letter of Development Policy has been developed or implemented.[324]

The Bank, having used extensive conditionality under successive credits to advance land reform, was nevertheless fully aware of its dangers. It has acknowledged that the changed legislation could result in powerful individuals extending their customary rights before converting land to leasehold tenure to be sold on to developers.[325] In the process, smallholders and poor settlers would lose their access to land. The Bank puts its faith in the Lands Tribunal to safeguard against the possible loss of rights. However, it is of the utmost importance to emphasise that the process the Bank outlines is entirely legal under the Lands Act (1995). Indeed, the *raison d'être* of the Act was to facilitate a free market in land by accelerating conversion and facilitating access to land by investors. The Lands Tribunal can only address inequity in the application of the law; it cannot remove inequity inherent within the legislation.

2. Bank measures to foster a private housing market

The requirements in Zambia for employer-provided housing and other mandated fringe benefits are viewed by the Bank as impeding labour mobility and discouraging the development of private housing. In its *Letter of Development Policy* appended to ESAC II, the Government agreed, in the context of its National Housing Policy, to work out modalities for the disposal of its housing stock in 1996.[326] Furthermore, ESAC II supported the revised Employment Act which repealed the requirement on employers to provide housing or a housing allowance to employers.[327]

Once more, criticism of centres on the failure by the Bank to consider the consequences of these reforms. It should have taken steps - perhaps through technical assistance - to ensure that preparations were in place to safeguard equity and the right to housing. It is inconceivable that a transition of such magnitude was driven through in the absence of an equitable sales mechanism and before a system of affordable finance to allow council tenants and employees to purchase their homes was in place.

Action which has been taken by the Bank has proved misguided. The Bank acknowledges that 'under ESAC, the Government approved in-kind payment (in the form of government owned houses, vehicles and land) as part of severance packages, to reduce the cash outlay associated with retrenchment.'[328] Yet the use of parastatal assets to compensate workers in lieu of terminal benefits has proved catastrophic and socially irresponsible. For the most part, this practice has involved selling houses to workers and offsetting the value of a property against terminal benefits. This has resulted in situations where employees are presented with no alternative but to purchase a house, often in areas where employment prospects are bleak; it has left some retrenchees virtually destitute, with little or no cash element to their retrenchment package; others are left in negative equity when the worth of their entitlement does not cover the purchase price of a house; yet more - especially the employees of subsidiary companies and community teachers - have been forcibly evicted from their houses as company employees are installed in houses according to arbitrary and grossly unjust rules imposed by the management of parastatals such as ZCCM. The fact that such action is ultimately predicated on the terms of a loan agreement serves to underline the Bank's complicity in a policy which has led to untold misery and the widespread violation of the right to housing.

Notes

[1] Independent Zambia inherited three categories of land from the colonial system. First, reserve land was set aside for African residents. Access to this land was on a communal basis and was administered by the tribal chiefs who allocated land under customary law. Reserve land accounted for thirty-six per cent of land in Zambia. Second, trust land was also settled by Africans, but on a non-tribal basis. Furthermore, land under this type of tenure could be set aside for public use and land grants made to non-Africans on a limited basis. Trust land accounted for fifty-eight per cent of land and was, once more, administered and allocated by the chiefs. The third type of land was State land. This constituted six per cent of all land and was administered by the State through the Commissioner of Lands. Titles for plots of State land were granted as leaseholds or, less often, as freeholds.
[2] Land (Conversion of Titles) Act, 1975, section 13(1): 'no person shall subdivide, sell, transfer, assign, sublet, mortgage, charge or in any manner whatsoever encumber or part with possession of the land...without the prior consent in writing of the President.'
[3] 'Unexhausted improvements' was deemed under the 1975 Land Act to exclude non-recoverable service charges and surveyor fees.
[4] The principle that land had no intrinsic market value caused two problems. First, two prices were paid for prime land: that determined by the Government; and a much higher price, paid unofficially to a seller. Second, the lack of a formula to determine the value assigned to land by the Government led to malpractice. On occasion, the Minister used his sweeping powers to intervene to change the price recommended by the government's own valuers in certain transactions. See Kaunda (1989-92), 'Ownership of Property Rights in Land in the First Two Republics of Zambia: An Evaluation of Restrictions on Free Alienation and Some Lessons for the Future'.
[5] The power of the State to cancel tenure on undeveloped land was augmented by section 15 of the Lands Acquisition Act of 1970 which allowed the compulsory acquisition of underdeveloped land without compensation.
[6] There was also provision for Zambians to apply to the President for the leasehold to land in customary areas, provided this met with the approval of both the chief and the local authority.
[7] Under Statutory Instrument No.7 of 1964, the Commissioner of Lands is empowered by the President to make dispositions and grants of land (subject to special directions from the Minister of Lands). The Procedure on land alienation under Land Circular No.1 of 1985 passes these powers to the District Councils who are made responsible for processing applications, selecting suitable candidates and making recommendations.
[8] Kaunda (1989-92), p.68. There was no channel within the 1975 Land Act to appeal against the decision of the Commissioner of Lands in refusing applications for land, in preventing certain transactions, or in determining the value of land. Furthermore, obtaining consent for each and every transaction through multiple layers of centralised bureaucracy, coupled with the need for Government valuers to determine the worth of each parcel of land in the absence of a market, caused inevitable delay.
[9] Land (Conversion of Titles) (Amendment) (No.2). For an account of its introduction, see Kaunda, (1989-92).
[10] Ministry of Local Government and Housing (1996), *National Housing Policy.* [Hereafter *NHP*].
[11] *GC 4*, para. 14.
[12] *GC 4*, paras. 10 and 11.
[13] For example, the right to land is protected in the constitutions of South Africa and Uganda. Furthermore, the South African Constitution stipulates that squatters cannot be removed without a court order and until alternative land has been found for them.
[14] Constitutional (Amendment) (No.5) Act No.33 of 1969, new article 18, permitted the compulsory acquisition of abandoned or undeveloped land relating to absent or non-resident owners.
[15] Constitution, 16(3).
[16] Constitution, 16(2)(j).
[17] Constitution, 16(2)(y).
[18] The functions of the Investment Centre are defined in the Investment Act (1993), section 5.
[19] Investment Act (1993), section 32 (1).
[20] Ibid., section 32 (2).
[21] Ibid., section 35 (1).
[22] Ibid., section 35 (2).
[23] For example, the Mines and Minerals Act (1995) specifies the distance which workings must be from land or buildings belonging to others.
[24] A mining concern which holds certificate of title to land may still only carry out extraction in the specified Mine License Area. Titled land beyond this in the Mine Surface Areas may be used for mine buildings, processing facilities, mining townships, spoil heaps and mine tailings. However, existing mines in the Copperbelt often have very extensive Mine Surface Areas which encompass tracts of agricultural land and bush.
[25] When land has not been surveyed, a 14 year lease can be issued.
[26] Mines and Minerals Act (1995), section 56(1)(c).
[27] Ibid., section 57.
[28] Ibid., section 61.
[29] *GC 4*, para. 7.
[30] Ibid., para. 6.
[31] Ibid., para. 7.
[32] Lands Act (1995), section 3 (1).
[33] Ibid., section 3 (2).
[34] Ibid., section 4 (1).
[35] Ibid., section 4 (1) re waiver of payment for conversion; section 4 (2) re public purpose.
[36] If the right of title holders to compensation, under these changed circumstances, were to be established, this would prove so expensive as to render compulsory acquisition of undeveloped land impractical. See Hansungule, Feeney, & Palmer (1998), *Report on Land Tenure Insecurity on the Zambian Copperbelt,* p.20. In contradistinction to Hansungule et al., the Lands Acquisition Act, 1970, which is not repealed by the Lands Act (1995), allows in section 15 for the compulsory acquisition of undeveloped land without compensation. However, this legislation was enacted when undeveloped land had no market value. Article 16(2)(j) of the 1991 Constitution also excepts, in accordance with the law, abandoned, unoccupied, unutilised or undeveloped land from protection under the right to private property and compensation.
[37] Lands Act (1995), section 5 (1) and (2).
[38] Ibid., section 5 (3) and (4).
[39] Ibid., section 3 (3).
[40] Lands Act (1995). Sub-clauses under section 3 (3) (a) - (k) allow, *inter alia*, non-Zambian residents, registered non-Zambian cooperatives and companies meeting certain share-ownership conditions, and foreign non-profit making organisations to own land.
[41] *NHP*, para. 4.1.
[42] Ibid., para. 3.2(a) - (e).
[43] *GC 4*, para. 14.
[44] State-derived housing covers that owned by central Government (5 per cent of total stock), District Councils (6 per cent), and parastatals (6 per cent). See *NHP*, para. 3.2.
[45] *NHP*, para. 1.0.

[46] The rural housing policy seeks to develop skills in villages for upgrading houses, to provide basic services and infrastructure, to run demonstration programmes to popularise new types of housing, and to produce guidelines on decent housing for employees on commercial farms. See *NHP*, para. 5.7.
[47] Speech by the President on the occasion of officially launching the Presidential Housing Initiative and commissioning the demonstration project at Chainama, Lusaka, January 1999.
[48] *ER 1996*, p.82. Of the total, 250 were built in a local authority scheme in Ndola and 40 more by the National Housing Association.
[49] Pan-African Building Society, Finance Building Society, and Zambia National Building Society. The figures for mortgages are given in the *ER 1997*, table 3.2, p.75.
[50] The figure of 138,000 is derived from ZPA figures on the number of parastatal (including ZCCM) houses to be sold - a total of 50,000 - to which must be added in the region of 88,000 council and government houses. The latter figure is based on percentage estimates given in the 1996 *National Housing Policy* for council houses; and the number of government pool houses to be sold to civil servants, as cited in 'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
[51] A first phase of the Housing Initiative seeks to commission housing for demonstration projects at three sites in Lusaka. Development of a total of 4000 homes is planned at Chainama, on degazetted land in the Lusaka North forest, and on a site between the Kafue road and Copper Chalice Road in the south of the city. Private sector contractors have been invited to build affordable housing using materials sourced as cheaply as possible from participating suppliers. The results of the pilot project will determine how new homes will be built under the Housing Initiative. See Speech by the President on the occasion of officially launching the Presidential Housing Initiative, op. cit.
[52] Employment (Amendment) Act 1997, section 19.
[53] Ibid., section 21.
[54] *GC 4*, para. 8 (c).
[55] Ibid., para. 8.
[56] Respectively ibid., para. 8, subclauses (a) - (d) and (g).
[57] Ibid., para. 8(e).
[58] Ibid., para. 8(f).
[59] Ibid., para. 8(e). Among others, the Committee draws attention to the elderly, children, the disabled, the terminally ill, those who are HIV positive, and the mentally ill. Yet everyone who is poor is vulnerable and, invariably, many of the disadvantaged groups mentioned are concentrated within the ranks of the poor.
[60] *GC 4*, para. 8(e).
[61] *PIRC & ESAC PAR*, para. 1.12.
[62] 'The goal of the reforms is to make undeveloped land more accessible to foreign and local investors and to give commercial farmers greater security in their ownership rights....Thus, one has to view the new law and its goals in the context of economic liberalization. Yet the reforms have the potential to undermine traditional land tenure, thereby affecting a whole range of interconnected rights.' (Schmid (1998), 'Controversial New Land Reform Law in Zambia').
[63] For a summarised account of the controversial passage of land reform, see Schmid (1998).
[64] Wiley (1998a), 'Implications of the Uganda Land Bill 1998 for customary tenure'. See, in particular, Section 7 - Customary ownership is a valuable tenure system in modern Africa.
[65] Article 237, Constitution of the Republic of Uganda, 1995.
[66] See, for example, the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107), especially articles 11, 12(1) and 13; ILO Indigenous and Tribal Populations Convention, 1989 (No. 169), especially articles 14 and 17. The UN Draft Declaration on the Rights of Indigenous Peoples (E/CN.4/Sub.2/1994/2/Add.1) also recognises the right to customary tenure. In particular, see articles 10, 25 and 26.
[67] *PSHDZ*, pp. 28 - 29.
[68] Schmid (1998).
[69] 'In light of the fact that much discrimination arises through customary practice, make it unlawful for any practice in land ownership which discriminates on the basis of gender. This is one of the most important foundations for prompting improved customary practice in matters of land rights.' Wiley (1998b), 'Implications of the Uganda Land Bill 1998 for Women,' Section 2 - Expected provisions in a modern agrarian land law, subsection on specific provisions, 1 (c).
[70] As defined in ibid., Section 2.
[71] Continued recognition and protection against infringement is given both to land holdings under customary tenure (Lands Act (1995), section 7 (1)) and to the rights and privileges of persons under such tenureships (section 7 (2)).
[72] In particular, The Zambia (State Lands and Reserves) Orders, 1928 to 1964; and The Zambia (Trust Lands) Orders, 1947 to 1964.
[73] Lands Act (1995), section 3 (4) and section 8.
[74] Ibid., section 8(1): conversion may be by leasehold grant by the President, other title grant by the President or by any other law (section 8 (1) (a) - (c)).
[75] Ibid., section 3 (3) re alienation to non-Zambians; subsection (4) on fulfilment of general conditions for the conversion of customary tenure.
[76] Ibid., section 3 (4) (a) (b) and (c).
[77] Ibid., section 3(4)(d). Section 8 (2) specifies that land may only be converted after the approval of the chief and local authorities, or the Director of National Parks and Wildlife Service in the case of a game management area, and when identified on a map showing the exact extent of land to be converted. The only valid titles are those confirmed by the chief and granted by the President (section 8 (3)).
[78] The Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument 89 of 1996. The new Lands Circular, dated 12 April 1996, updates that part of the original *Procedure on Land Alienation*, Lands Circular No.1 of 1985, (as amended) dealing with the conversion of customary title.
[79] SI 89, section 2(1).
[80] Ibid., section 2(2).
[81] Ibid., section 2(3).
[82] Ibid., section 2(4).
[83] Ibid., section 3(1) - (2).
[84] Ibid., section 3(3).
[85] Under the previous Land Circular No.1 of 1985 (as amended), a person with customary rights or using customary land applying for conversion required both the written consent of the Chief in whose jurisdiction the land is located and the consent of the District Council to the proposed change of status. If either the chief or District Council withheld consent, the application could not proceed. The recommendation of the District Council, together with its authenticated minutes, the chief's letter, and approved layout plans for the plot in question, were then forwarded to the Commissioner of Lands for final approval. A recommendation of the District Council was to be 'invariably accepted' by the Commissioner of Lands.
[86] SI 89, section 4.
[87] Ibid., section 6.
[88] Lands Act (1995), section 22 re powers of the Lands Tribunal; see section 29 re appeal to the Supreme Court.
[89] Deputy Minister of Lands Edward Shimwandwe, cited in Schmid (1998).

[90] Lands Act (1995), section 3 (5).
[91] Constitution, article 16(2)(y).
[92] Schmid (1998). The quotation continues: 'The influence of the chiefs is confined to the phase of conversion into leasehold. The possibility apparently exists that the chiefs could be included in the tribunals. But they are not explicitly mentioned in the law. The system of checks and balances ends here. Much will be dependent on the rules of evidence that will be specially developed by the chief justice for these land tribunals, and on actual implementation.'
[93] Land Circular No.1 of 1985 (as amended), Section D(v).
[94] *ESAC II R&R*, para. 53.
[95] Schmid (1998).
[96] Abstracted from Wiley (1998b), 'Implications of the Uganda Land Bill 1998 for women,' Section 2 - Expected provisions in a modern agrarian land law, subsection on general requirements.
[97] *GC 4*, para.7.
[98] Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992.
[99] Lands Circular No.1 of 1985, para. 3 (or para. 4 in the amended Circular).
[100] 'Opinion,' *Times of Zambia*, 6 August 1997; see also 'Opinion,' *Times of Zambia*, 22 October 1997.
[101] Memorandum from the Minister of Lands, circulated to the Cabinet in March 1992.
[102] Ibid., para. 12.
[103] Lands Circular No.1 of 1985, as amended by Circular No. La/11202, dated 15 April 1992. A subsequent Lands Circular of 12 April 1996 updates the procedure on the conversion of customary tenure. See fn. 78 above.
[104] Hansungule et al. (1998), *Report on Land Tenure Insecurity.* In particular, see 'Procedures for acquiring land: Circular No. 1 of 1985,' p.21.
[105] Ibid., p.21.
[106] On issue of the final offer and certificate of title, the lessee then has to commence development of any land within six months and move to occupation within a specified period depending on the type of land in question. Failure to comply with these time limits means that the land reverts to the State. In the case of urban land, evidence of occupation is required within eighteen months; for land within 12 kilometres of urban areas or land beyond District Council boundaries, including land for commercial agriculture, the period for occupation/use is set at two years.
[107] 'Opinion,' *Times of Zambia*, 25 November 1997.
[108] In the memorandum, the onus is placed upon the District Councils to notify the Department of Lands through the provincial Lands Officers of undeveloped land so that it can be entered as such on the land register. There is a requirement that District Councils identify land for future developments and have such land serviced and numbered so that it can be easily identified for allocation to would be developers. This is unrealistic given the resource base of the councils. Furthermore, the memorandum acknowledges that a major logjam in issuing title deeds is caused by the inability of the Survey Department to complete the required cadastral surveys because of lack of adequate resources. Two offices of the Commissioner for Lands - one in Ndola, dealing with Copperbelt, Northern, North Western and Luapula provinces, the other in Lusaka catering for the other five provinces - will process all approvals and issue the title deeds. The Ndola office did not open until 1995 and only became operational in 1998.
[109] The offer of land makes it clear that, before title deeds are issued, the lessee must produce evidence, to be confirmed by the Agricultural Officer at the end of a two year period, that reasonable development of the land has been carried out. Article 16(2)(t)(ii) of the 1991 Constitution provides the basis for the forfeiture of land.
[110] '200 illegal squatters face eviction,' *Times of Zambia*, 19 June 1997.
[111] 'Squatters stone officials,' *Times of Zambia*, 6 August 1997.
[112] 'Opinion,' *Times of Zambia*, 8 August 1997; see also 'I Ordered settlers to stay put - Official,' *Times of Zambia*, 8 August 1997.
[113] 'Ndola bailiffs won't evict Chichele squatters,' *Times of Zambia*, 24 November 1997.
[114] 'Council backs out...squatters to stay put,' *Times of Zambia*, 17 March 1998.
[115] 'Meshi wrangle erupts again,' *Times of Zambia*, 20 March 1998.
[116] For unalienated State land, the Minister of Agriculture issues a simple statutory declaration that the land has been designated for agricultural development. In the case of State land on which title has already been transferred, the consent of the owner is sought.
[117] In addition, penalties are imposed under the Agricultural Lands Act upon leaseholders who fail to use the land for agricultural purposes.
[118] Lands Act (1995), section 4(1).
[119] Lands Act (1995), section 4(1) re waiver of payment for conversion; section 4 (2) re public purpose.
[120] The Lands Acquisition Act, 1970, which is not repealed by the Lands Act (1995), in section 15 allows for the compulsory acquisition of undeveloped land without compensation. However, this legislation was enacted when undeveloped land had no market value. If the right of title holders to compensation, under these changed circumstances, were to be established, this would prove so expensive as to render compulsory acquisition impractical. Cf. Hansungule et al. (1998), p.20.
[121] *GC 4*, para. 8 (a).
[122] Ibid., para. 8(a).
[123] Lands Act (1995), section 9.
[124] This warning to squatters is not in doubt: any ambiguity over whether squatters retain rights under previous legislation is removed. Although the Act is at pains to point out that customary rights remain valid - and this despite the repeal of the underlying legislation - it is immediately stipulated that section 9 applies. There is no recourse, therefore, to the limited protection afforded to all occupants of reserves and trust lands under The Zambia (State Lands and Reserves) Orders, 1928 to 1964 and The Zambia (Trust Lands) Orders, 1947 to 1964.
[125] Housing (Statutory and Improvement Areas) Act, 1975, section 5 (1) (c).
[126] Ibid., section 38 (c). There is no fixed criterion for designating an Improvement Area; for example, in Kitwe the council set a threshold of at least 2000 homes. A council may apply to upgrade an Improvement Areas to Statutory Housing Areas once a sufficient number of residents have upgraded their homes.
[127] Housing (Statutory and Improvement Areas) Act, section 39. Any houses erected must meet approved specification (section 40).
[128] Ibid., section 39 (3).
[129] Hansungule et al. (1998), p.24.
[130] Housing (Statutory and Improvement Areas) Act. It is only a requirement that a house, building or plot is identified by reference to its number on the large-scale Statutory Housing Area Plan (section 13 (2)).
[131] Forest Act, CAP 311, section 11(5).
[132] See, for example, Environmental Council of Zambia (1994), *Zambia: State of the Environment Report, 1994*, p. 98.
[133] For a recent report on the issue of settlement in forest areas on the Copperbelt, see Hansungule et al. (1998), especially pp. 36 ff.
[134] 'MP to settle land row,' *Times of Zambia*, 14 march 1997.
[135] Hansungule et al. (1998), p.26.
[136] On the state of degradation of Zambia's Forest Reserves through encroachment and uncontrolled logging see *'Zambia's vast tourism wealth, but...,' Times of Zambia*, 20 July 1998.
[137] Hansungule et al. (1998), p.26.

[138]'Ministry cites hurdles,' *Times of Zambia*, 11 October 1997.
[139]Ibid.
[140]Continuation of article 'Miners sound warning bells,' *Times of Zambia*, 15 February 1997.
[141]The actual amount immediately required was K3.1 bn. See continuation of article 'Lusaka medical workers threaten to strike,' *Times of Zambia*, 24 March 1997.
[142]Continuation of article 'Lusaka issues ultimatum,' *Times of Zambia*, 21 May 1997.
[143]'Ndola starts massive evictions,' *Times of Zambia*, 15 May 1998.
[144]*GC 4*, para. 8(b).
[145]Ibid., para. 18.
[146]The Committee has determined that 'legislation against forced evictions is an essential basis upon which to build a system of effective protection' and 'should include measures which...provide the greatest possible security of tenure to occupiers of houses and land...' (see *GC 7*, para. 10). The measures must also 'conform to the Covenant' and 'be designed to control strictly the circumstances under which evictions may be carried out.'
[147]*GC 7*, para. 14.
[148]Ibid., para. 14.
[149]'Forced evictions' are defined in *GC 7*, para. 4 as '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.'
[150]*GC 7*, para. 12.
[151]'Lusaka issues ultimatum,' *Times of Zambia*, 21 may 1997.
[152]Continuation of article 'Lusaka issues ultimatum,' *Times of Zambia*, 21 May 1997.
[153]'Council issues houses ultimatum,' *Times of Zambia*, 29 August 1997.
[154]See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' *The Post*, 30 April 1997.
[155]See the testimony of Mr. Chibbota, Town Clerk of Livingstone, reproduced in 'Presidential Petition,' op. cit.
[156]See the testimony of .Mr Mumbi, Town Clerk of Solwezi. The figures, as cited in the transcript of the proceedings reproduced in *The Post* newspaper, are purportedly to February 1996. However, as neither the Presidential decree nor the circular directing the sale of all council houses were issued until March/May 1996 respectively, it must be assumed that the date of February 1996 is erroneous.
[157]See, for example, 'Hold your fire,' *Times of Zambia*, 13 November 1997.
[158]'Council houses grace period!' *Times of Zambia*, 2 December 1997.
[159]'Ndola starts massive evictions,' *Times of Zambia*, 15 May 1998.
[160]*GC 7*, para. 16(a); also *idem*, para. 14.
[161]Ibid., para. 16(b).
[162]Ibid., para. 16(c).
[163]Ibid., para. 16(g).
[164]Ibid., para. 16(h). Other procedural safeguards are: '(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise...'
[165]A submission to the Committee from a Zambian NGO (ZWOSAG), supported by the Centre on Housing Rights and Evictions, resulted in the Committee raising the matter of planned evictions with the Government. A number of evictions were averted. For an account of this exchange, see Kothari (1995), 'The United Nations Speaks out on Forced Evictions'.
[166]'Opinion,' *Times of Zambia*, 7 September 1996.
[167]'Mulenga condemns squatters,' *Times of Zambia*, 4 December 1997.
[168]'City Council to demolish illegal structures,' *Times of Zambia*, 17 April 1997.
[169]'Kick out squatters,' *Times of Zambia*, 8 May 1997; also 'Opinion,' *Times of Zambia*, 8 May 1997.
[170]Continuation of article 'Now Lusaka cuts red tape,' *Times of Zambia*, 12 May 1997.
[171]'Are Lusaka shanties forever?,' *Times of Zambia*, 22 October 1996.
[172]Finance and general purposes committee chairman, councillor Bwalya Chiti , cited in the *Daily Mail*, 24 March 1999.
[173]'Are Lusaka shanties forever?,' *Times of Zambia*, 22 October 1996.
[174] Lands Act (1995), Part IV - The Lands Tribunal, sections 20 - 29. A chairman and deputy chairman, both qualified High Court judges, are supported by an advocate, a planner, two surveyors, and a maximum of three persons from the private and public sectors (section 20 (2)). All are appointed by the Minister of Lands. The members of the Tribunal are appointed on terms and conditions as specified in their letters of appointment (section 20 (4)). The Tribunal may appoint its own assessors to assist it in determining any matter under the Act (section 21).
[175] Lands Act (1995), sections 22 (a) and 22 (b), respectively. The Tribunal reaches its decisions by majority determination (section 23 (3)) . At least five members, including either the Chairman or the Deputy Chairman, must be present (section 23 (2)); furthermore, members or assessors with a personal interest in a matter under discussion are excluded (section 23 (4)).
[176]Lands Act (1995), section 22 (c).
[177]Ibid., section 15 (1).
[178]Ibid., section 15 (2).
[179] The Lands Act (The Lands Tribunal) Rules, Statutory Instrument 90, 1996, section 3.
[180] SI 90, section 3(e). As referenced in the Act and related Statutory Instruments, the Lands Tribunal is most likely to deal with those situations in which the consent of the President to sell, transfer or assign land has been refused (section 5 (4)); where the Government has issued a certificate of re-entry to repossess land when it believes the terms of a lease have been broken (section 13 (3)); or when an applicant for the conversion of land from customary tenure to leasehold has been refused permission by the Commissioner of Lands to do so, perhaps because the chief or local authority has not given its consent (Statutory Instrument 89 of 1996, section 6).
[181] SI 90, section 15. Grounds not stated in the notice of appeal may only be introduced if the Tribunal thinks it is just.
[182] SI 90, section 9 stipulates that the Tribunal shall meet in public unless, after an application from party to the proceedings, it directs that all or part of the proceedings shall be held in Camera.
[183] Lands Act (1995), section 25.
[184] SI 90, section 12.
[185] Lands Act (1995), section 29.
[186]Continuation of article 'Ndola bailiffs won't evict Chichele squatters,' *Times of Zambia*, 24 November 1997; see also 'Opinion,' *Times of Zambia*, 25 November 1997.
[187] SI 90, section 8 (1).
[188]Ibid., section 22.
[189]Wiley (1998b), 'Implications of the Uganda Land Bill 1998 for women,' Section 2 - Expected provisions in a modern agrarian land law, subsection on general requirements.
[190] The expenses and costs of the Tribunal are met out of funds earmarked by Parliament (Lands Act (1995), section 27); however, the costs of all

parties, including the Government, may be awarded against an applicant if their submission is considered frivolous or vexatious (Lands Act (1995), section 26; see also SI 90, 26).
[191] 'Kick out squatters,' *Times of Zambia*, 8 May 1997; also 'Opinion,' *Times of Zambia*, 8 May 1997.
[192] *Vis-à-vis* customary rights, the Tribunal reached a compromise ruling in a case brought by a commercial farmer who sought to evict local people from his land in Ndola Rural. The farmer had been awarded the title deeds with the written consent of the late local chief. However, the present chief alleged that this consent had been fraudulently obtained and that his subjects had a right to settle on the land. The Tribunal ruled that villagers occupying the land before the sale in August 1997 could remain, as agreed with the landowner. However, new settlers could not be moved into the area nor should villagers interfere with the farming operations. See 'Squatters stay, rules Lands Tribunal,' *Times of Zambia*, 16 April 1998.
[193] ICESCR, article 2
[194] *GC 4*, para.11; see also *GC 2*, para.9.
[195] *GC 4*, para. 11.
[196] Hansungule et al. (1998), p.22.
[197] The general requirement under the Lands Act (1995) is that all council owned land is to be surrendered to the President (section 6(1)); however, land held by a council under the Housing (Statutory Improvement Areas) Act is exempted (section 6(3)).
[198] Housing (Statutory and Improvement Areas) Act, section 4 and section 37 respectively.
[199] Ibid., sections 5 (1) (a) and (b); section 38 (a) - (c).
[200] Ibid., section 7 (1); section 39.
[201] *GC 4*, para.12.
[202] *Idem.*
[203] Auditor General (1998), *Report of the Auditor-General on the accounts for the financial year ended 31 December 1996*, p.69.
[204] K35m was paid to Zambia Police on the basis of a handwritten note from the Inspector General of Police.
[205] *Report of the Auditor-General*, p.70.
[206] Ibid., p.71.
[207] Lands Act (1995), section 4 (1).
[208] Lands Act (1995), section 6 (1) and (2), respectively.
[209] Lands Act (1995), section 6 (2). See also section 14(1) on the setting of ground rent. The failure to pay incurs a penalty of 25 per cent on outstanding rent (section 14 (2)).
[210] Lands Act (1995), section 6 (3).
[211] Lands Act (1995), Part III - The Land Development Fund, sections 16 - 19. The Fund is established in section 16 (1). Its use is specified in section 18 (1).
[212] Lands Act (1995), section 16 (2) (a) - (c).
[213] Lands Act (1995), section 19. The Act stipulates that an Annual Statement of income and expenditure is to go before the National Assembly.
[214] Lands Act (1995), section 18 (2) on council applications for money. The Fund is managed and administered by the Minister for Lands and vested in the Minister of Finance (section 17).
[215] Figure based on *National Housing Policy* estimate of 6.0 per cent of Zambia's total housing stock of 1.3 million housing units belonging to district councils in 1996.
[216] 8,798 pool houses out of the Government's stock of 15,798 units were earmarked for sale. See 'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
[217] *GC 4*, para. 15.
[218] Ibid., para. 17(d).
[219] See 'Mushota advises State: Enact housing Act,' *Times of Zambia*, 30 March 1998.
[220] 'FTJ criticised over the sale of houses,' *The Post*, 19 March 1996.
[221] 'The law report: Presidential house sales frightening,' *The Post*, 20 March 1996.
[222] Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraph B.
[223] In Livingstone, the Council met on 23 April in advance of the formal issue of the circular. The Council was aware of the content of the circular and sought to pre-empt it by adopting a procedure which, although aimed at disposing of the entire housing stock, set different prices and terms. Most significantly, the council resolved that tenants should pay rent until they had paid for their house in full. The council received special approval on 9 July 1996 from the Minister of Local Government allowing it to apply this procedure rather than that outlined in the circular. The council claimed that its procedure was advantageous to tenants who would be required to pay less for their homes. However, residents argued for the application of the rebates, as set out in the circular. When the council refused to compromise, a delegation of residents successfully sought and received the intervention of the central Government in Lusaka. The Ministry of Local Government instructed the council to apply the rebates.
[224] 'Outsiders out - court,' *Times of Zambia*, 24 July 1998.
[225] 'Non-civil servants fight for Government houses,' Zamtoday, 6 November 1998.
[226] *GC 4*, para. 6.
[227] Ibid., para. 9.
[228] Ibid., para. 8 (a).
[229] Ibid., para. 8 (a).
[230] See the transcript of court proceedings, reproduced in 'Presidential Petition,' *The Post*, 30 April 1997.
[231] The rationale was that the sale of houses to tenants would transfer maintenance costs to residents. The loss in rent would be offset by this transfer and by the collection of rates. The council had applied for, and had been granted, approval from the Minister of Local Government, in accordance with section 67 of the Local Government Act, early in 1994. By the time of the Presidential decree and subsequent circular of 2 May 1996, the council had sold 530 houses. See the testimony of Mr. Simwinga, Town Clerk of Kitwe, transcript of court proceedings, reproduced in 'Presidential Petition,' op. cit.
[232] Prior to the Presidential directive and circular of 2 May 1996, it has been confirmed in court that the council had no intention to sell houses. See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
[233] See, for example, the testimony, reproduced in 'Presidential Petition,' op. cit., of Mr. Chibbota, Town Clerk of Livingstone; Mr. Mumbi, Town Clerk of Solwezi; and Mr, Simwinga, Town Clerk of Kitwe.
[234] Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraph F.
[235] The discounts for low cost houses were 100 per cent for houses built before 1959; 40 per cent for houses built between 1960 and 1970; 30 per cent for houses built between 1971 and 1981; and 20 per cent for houses built between 1981 and 1990. Different discounts applied to medium and high cost houses.
[236] See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
[237] For example, the Mongu Town Council had plans to build more houses, but, after the sale, had no money to do so. Solwezi had hoped to pay off debts with proceeds from its original sale of selected houses; however, even after all its housing stock was sold as a result of the directive, the Town Clerk confirmed that the debts remained outstanding. In part this was because the council had intended to realise money from certain older houses

which were subsequently transferred to tenants at a 100 per cent rebate. Please refer, *intra*, to the main text. See also the testimony of Mr. Mumbi, Town Clerk of Solwezi, reproduced in 'Presidential Petition,' op. cit.
[238]See 'K2 billion realised from the sale of council houses,' *The Post*, 21 February 1997. The circular requires the council to maintain a register for audit and public inspection and to open a revolving fund for continued housing development. See the Circular for the revised procedure of selling council houses, Ministry of Local Government and Housing, 2 May 1996, paragraphs L and M.
[239]See, for example, the testimony of the Town Clerks of Mongu, Livingstone and Solwezi, reproduced in 'Presidential Petition,' op. cit. The Town Clerks of Mufulira and Chililabombwe confirmed the same in interviews with RAID conducted in January 1998.
[240]See the testimony of Mr Muyakwa, Town Clerk of Mongu, reproduced in 'Presidential Petition,' op. cit.
[241]See 'The law report: Presidential house sales frightening,' *The Post*, 20 March 1996.
[242]Continuation of article 'Squatters ring-leaders caught, charged,' *Times of Zambia*, 11 September 1996.
[243]Ibid.
[244]The Government handbook on the Civil Service Home Ownership Scheme stipulates that land will be allocated to those civil servants who do not benefit from the sale of pool or council houses. A fund was to be used to enable the Commissioner of Lands to identify and service suitable sites.
[245]'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.
[246]'Houses sales suspended,' *Times of Zambia*, 27 June 1997.
[247]'Mushota advises State: Enact housing Act,' *Times of Zambia*, 30 March 1998.
[248]'Name ministers grabbing houses,' *Times of Zambia*, 30 June 1997.
[249]'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.
[250]'Wives protest against evictions,' *Times of Zambia*, 23 May 1998.
[251]ZCCM (1996a), *Employee Privatisation Update*, Number 1, p.4 and p.10.
[252]ZCCM (1997a), *Employee Privatisation Update*, Number 2, p.4. The MUZ's response is outlined in their (1997) briefing *ZCCM Privatisation: Areas of Concern to Miners*, pp.10 ff.
[253]A. Sakala, 'Miners sound warning bells,' *Times of Zambia*, 15 February 1997.
[254]See 'Sale of ZCCM houses to start next week,' *The Post*, 4 July 1997.
[255]Announced by the Manager of Corporate Affairs, Sam Equamo. See 'Miners first, says ZCCM,' *Times of Zambia*, 1 January 1998.
[256]'Teachers being used,' *Times of Zambia*, 11 August 1997.
[257]Letter from Ndola Lime employee, 'Mr President, please sort out ZCCM houses mess,' *Times of Zambia*, 9 April 1998.
[258]The contract of sale and conditions was written on March 3, 1998 and signed by ZCCM lawyers and the new tenants.
[259]The mine tailings are being reworked in the Bwana Mkubwa Project, the new owners of which are First Quantum of Canada. The assets were sold in June 1996 outside of the main ZCCM sale packages. The company has taken on 100 staff and has built a new extraction plant which began production in March 1998. It was the first company to be granted a license - covering 5800 Ha near Ndola - under the new Mines and Minerals Act. See First Quantum media releases, *Canada News Wire*, 22 April 1996, 21 June 1996, 4 September 1996, 4 December 1996, 14 April 1997, 20 June 1997, 2 July 1997, and 26 August 1997. See also 'Investors pump in $30m,' Times of Zambia, 24 March 1998.
[260]'200 Bwana Mkubwa tenants face eviction,' *Times of Zambia*, 4 April 1998.
[261]Miriam Zimba, 'ZCCM charts house sale modality,' *Times of Zambia*, 16 April 1998.
[262]'Pruned Kansanshi miners cry for houses,' *Times of Zambia*, 13 April 1998.
[263]Reported in a feature 'Ndola starts massive evictions,' *Times of Zambia*, 15 may 1998.
[264]*GC 4*, para. 8 (c).
[265]See 'Ndola starts massive evictions,' *Times of Zambia*, 15 may 1998.
[266]'Three tenants take ZCCM to Lands Tribunal over house sales,' *Times of Zambia*, 15 April 1998.
[267]'Mine houses sale halted,' *Times of Zambia*, 30 April 1998.
[268]Speech by the President to the 17th bi-annual conference of the Mineworkers Union of Zambia, held 22nd - 25th January, 1998.
[269]'Houses 'freeze' hailed,' *Times of Zambia*, 1 May 1998.
[270]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.1.
[271]There are a few instances, on large farms growing cash crops, where estate houses have been simply sold with the business. This happened, for example, in the sale of the Zambia Coffee Company, Zambia Sugar and Kawambwa Tea. See ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 2, para. (e).
[272]Ibid., p.1, (b).
[273]ZPA (1997f), 'Sale of Parastatal Housing Stock,' Attachment 2.
[274]Ibid., p.3.
[275]*Idem.*
[276]A case in point concerns 120 ex-Zambia Airways employees who were granted an injunction to prevent their eviction from former company houses. The situation had arisen because of a dispute between the liquidators and the estate agents appointed to sell the houses over the payments realised and conditions in the contracts of sale. The Judge ruled the tenants had purchase rights and that a decision taken jointly by the liquidators and agents to rescind contracts of sale so that the houses could be sold to other parties was unjust. However, at the time of reporting, the issue was yet to be resolved. (See 'Ex-Zambia Airways workers win injunction,' *Times of Zambia*, 12 February 1998).
[277]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.2. ZPA has found itself in the position of having to swap properties for money owed to creditors in order to keep a company solvent prior to its sale. Where parastatals are jointly owned, the other shareholders will have a claim on the proceeds of the sale of the company. In such cases, to realise their interest, shareholders often sell their proportion of the housing stock with the core business.
[278]Government workers are offered a discount of 2 per cent on the price of their house for each year of service. ZCCM's pricing policy is also based on years of employment and high discounts are on offer to certain employees.
[279]'Wherever possible, the sitting tenants are offered the houses. In accordance with sections 22 and 23 of the Privatisation Act, the houses are to be sold at the fair market value.' (ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p.2).
[280]In the absence of public sale, this value ought to be determined by independent private sector valuers. In actual fact, as the ZPA itself is precluded from carrying out valuations, it has made use of the Government's own valuers.
[281]'Retrenchees apprehensive,' *Times of Zambia*, 11 November 1997.
[282]ZPA (1997f), 'Sale of Parastatal Housing Stock,' p. 5.
[283]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.
[284]*GC 4*, para. 8 (c).
[285]Lungu & Silengo (1997), 'The socio-economic assessment impact of privatization on the Zambian Copperbelt: the case of Mufulira and Konkola,' Issue 4: Housing.
[286]*GC 4*, para. 8(c).
[287]Abstracted from the *NHP*, Current Housing Issues and Constraints, section 3.8.
[288]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 5 para. (d).
[289]'Govt halts evictions,' *The Post*, 27 October 1998.

[290]ZPA (1997d), 'Summary of ZPA's Parastatal Housing Activities,' para. 6.
[291]*NHP*, section 5.1 ff.
[292] *ER 1997,* p.75.
[293]Theole (1999), 'House Keeping'.
[294]PABS managing director, Goodwin Kapema, at the launch of a teachers' Self-Help House Loan Scheme, as reported in 'Home ownership scheme respite to teachers' woes,' *Times of Zambia*, 1 July 1998.
[295]'Teachers being used,' *Times of Zambia*, 11 August 1997.
[296]The Self-Help House Loan Scheme for teachers was launched in June 1998 by the ZNUT in conjunction with the Pan African Building Society. A monthly contribution from teachers is paid into a pooled fund from which money will be lent in rotation to those participating in the scheme. The Union will act as loan guarantor to enable members to borrow at a minimum rate of interest. Its viability will depend upon whether teachers can make regular contributions to the fund from out of their already over-stretched salaries and whether sufficient funds can be mobilised in time to buy houses which are up for immediate sale. ('Home ownership scheme respite to teachers' woes,' *Times of Zambia*, 1 July 1998).
[297]'Hold your fire,' *Times of Zambia*, 13 November 1997.
[298]Ibid.
[299]'Council houses grace period!' *Times of Zambia*, 2 December 1997.
[300]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.
[301]Ibid., p. 4.
[302]ZPA (1997f), 'Sale of Parastatal Housing Stock,' pp. 4 - 5.
[303]ZPA (1997d), 'Summary of ZPA's Parastatal Housing Activities,' paras. 7 - 8. ZPA's intention is to package mortgages in groups once 'a positive payment history has been established' which are then and sold to commercial investors.
[304]ZPA (1997f), 'Sale of Parastatal Housing Stock,' p.3.
[305]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' pp. 2-3.
[306]'Govt sells 5,045 houses,' *The Post*, 14 October 1996.
[307]'K2 billion realised from the sale of council houses,' *The Post*, 21 February 1997.
[308]'Government houses: Dream deferred,' *Times of Zambia*, 5 July 1997.
[309]Ibid.
[310]ZPA concedes that the only houses it had sold were in relation to liquidations, to pay off creditors, to realise proceeds for minority shareholders or to include houses with the core business in sales to investors in order to maintain a positive value for companies during negotiations. See ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.
[311]ZPA (1997f), 'Sale of Parastatal Housing Stock,' Attachments 1 - 3.
[312]ZPA (1997c), 'Executive Briefing Paper on the Sale of Parastatal Housing Stock,' p. 3.
[313]*PIRC & ESAC PAR*, para. 1.12.
[314]Ibid., para. 2.12.
[315]Ibid., para. 2.23. To pursue the objective of land reform, the Government agreed to establish a Land Identification Committee and a central administration responsible for developing a comprehensive land policy.
[316]*PIRC & ESAC PAR*, para. 3.2.
[317]Ibid., para. 3.2. Overall, under ESAC the Government did successfully reduce property transfer tax from 7.5 to 2.5 per cent and passed legislation in 1995 allowing the subdivision of leaseholds into subunits with separate titles and the simplification of land registration. See *PIRC & ESAC PAR*, para. 3.20.
[318]*PIRC & ESAC PAR*, para.3.1; also para. 5.6.
[319]*ESAC II R&R*, para. 44.
[320]Ibid., para. 45; also para. 57(e).
[321]Ibid., para. 44; also para. 57(d).
[322]Ibid., para. 47.
[323]Ibid., para. 48; also para. 57(f).
[324]*ESAC II R&R*, Letter of Development Policy, Annex J, para. 64. The envisaged action plan appears, even at the outset, to have a limited scope focused upon Lusaka.
[325]*ESAC II R&R*, para. 53.
[326]Ibid., para. 46; also *idem*, Letter of Development Policy, Annex J, para. 65.
[327]*ESAC II R&R*, para. 49; also *PSREPC R&R*, Evolution of Policy Reform Agreements, Annex E, table C.
[328]*PIRC & ESAC PAR*, para. 3.19.