

OXFAM GB IN ZAMBIA

**REPORT ON
LAND TENURE INSECURITY
ON THE
ZAMBIAN COPPERBELT**

November 1998

(Full electronic version, including maps, created May 2004)

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ACKNOWLEDGEMENTS

In August 1998, at the request of Oxfam GB, we conducted a fact finding mission into land tenure insecurity on the Zambian Copperbelt in the context of the privatisation, or sale, of the mines.

We would like to stress at the outset that while we have written a report for Oxfam GB, **this is not an Oxfam report, but rather a report which is intended to be accessible to anyone interested in, affected by, or concerned about issues of tenure insecurity on the Copperbelt today**

In carrying out this research we owe a very real debt of gratitude to the many communities and officials who gave up their time to share their knowledge with us. They did so with unfailing tolerance and good humour. In Chingola, Mufulira, Kitwe, Ndola and also in Lusaka we interviewed a wide range of communities and officials from Government (at district, regional and national levels), Councils, ZCCM, churches, trade unions, universities, local NGOs and CBOs, and Oxfam GB. **We had great admiration for many people we met who were struggling with huge problems with scant resources.**

Among so many it is invidious to pick out individuals, but we were particularly indebted in Chingola to Sam Ngosa, of the Kapisha Development Committee; in Mufulira to Bernard Chishimba and Simon Mwase, of the Mufulira Peri-Urban Development Framework; and in Kitwe to Mrs Eva Mazala and Mr Mupenda from the Ministry of Agriculture.

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METHODOLOGY

Oxfam GB requested this investigation of the impact of the privatisation of the mines on land tenure arrangements on the Copperbelt.

It did so as a result of rethinking its long-standing programme on the Copperbelt in an attempt to make it more effective and to find ways of measuring its impact more accurately. So Oxfam engaged a team of researchers to do some background studies to help give it baseline data for its new Copperbelt programme, due to start in 1999. These studies included extensive PRA (participatory rural appraisal) research among Copperbelt communities in Chingola, Mufulira and Kitwe, which revealed considerable anxiety and insecurity over land tenure. As a result of those expressed anxieties, and with the support and encouragement of many of those interviewed, it was agreed to carry out further enquiries into tenure insecurity.

The terms of reference were drawn up by individuals who had been involved in the PRA work and we followed those in the course of our interviews with communities and officials in August 1998.

The structure of this report is as follows:

Part I looks at the **general background** (historical, land, privatisation and legal) with greatest emphasis on the last two.

Part II examines the major **problems** (economic decline, the forests, ZCCM land, the Lands Act 1995 and democracy and party politics).

Part III focuses on **case studies** (Chingola, Mufulira, Kitwe and Solwezi Districts).

Part IV lists the key **questions** arising from this study.

Part V makes **recommendations**.

Part VI contains a **select bibliography**.

Part VII comprises two **appendices**.

Finally, the word 'squatters' appears frequently in this report; indeed examining the plight of squatters is its very *rationale*. We are aware that the word is sometimes considered derogatory and that some of the people so named would prefer to be called settlers or farmers etc. But the word is, and has long been, in common use, so we have used it, without inverted commas and without intending any disrespect.

I:

**THE
BACKGROUND**

1. HISTORICAL

The Copperbelt has dominated the history of Zambia since the first modern copper mines were constructed in the 1920s in the lightly populated Lamba country close to the Congo border. For much of the rest of the century copper has provided around 80 to 90 per cent of the value of Zambia's exports.

The mines were originally owned by the huge conglomerates Anglo-American Corporation and Roan (formerly Rhodesia) Selection Trust. They were nationalised by the Zambian Government of Kenneth Kaunda in 1969. Nearly 30 years later the successor government of Frederick Chiluba is trying to sell the mines. Potential buyers include Anglo-American.

Zambians from all over the country flocked to the Copperbelt, attracted by the relatively well paid jobs and good working conditions offered on the mines. Census figures for the early 1960s reveal an African urban population of over 400,000 and a European (predominantly South African) population of over 40,000. So swift was the change of lifestyle on the Copperbelt that colonial officials agonised endlessly about what they perceived as the evils of 'detrribalisation' and tried in vain to stem the massive rural-urban exodus.

The Copperbelt has always been politically the most volatile part of the country. Both Kaunda and Chiluba (a former trade union leader) have at different times enjoyed great political support, but also been confronted by great opposition, on the Copperbelt. In colonial times there was much racist behaviour from white miners, as well as notorious discriminatory rates of pay and an industrial colour bar; black miners were not allowed to do 'skilled' jobs until the 1950s. In response, a militant miners' trade union emerged which seriously challenged both mining and government officials in colonial and post-independence times. The Mineworkers' Union of Zambia was more successful than most other trade unions in Africa in avoiding cooption by government and providing something of an alternative power base.

The stereotype¹ of the Zambian miner is of a hard-drinking, quick-spending aggressive person, **accustomed to buying food rather than growing it** and enjoying a much envied range of facilities provided by the mining companies, including housing and schooling, clinics and hospitals, sports clubs and cinemas. They and their families rapidly became urbanised. Over time, many lost contact with their rural roots. In general, people came to the Copperbelt not to farm but either to mine or to find employment in the many companies and businesses which serviced the mines and the miners. In colonial times the mines were fed largely by commercial farmers in the Southern Province and across the border in the Belgian Congo. The Copperbelt has never enjoyed a reputation as an agricultural province, though today **officials claim there is huge potential waiting to be tapped.**

¹ It is a *stereotype* that remains alive and well on the Copperbelt, as it does in many mining communities throughout the world, though we do not subscribe to it.

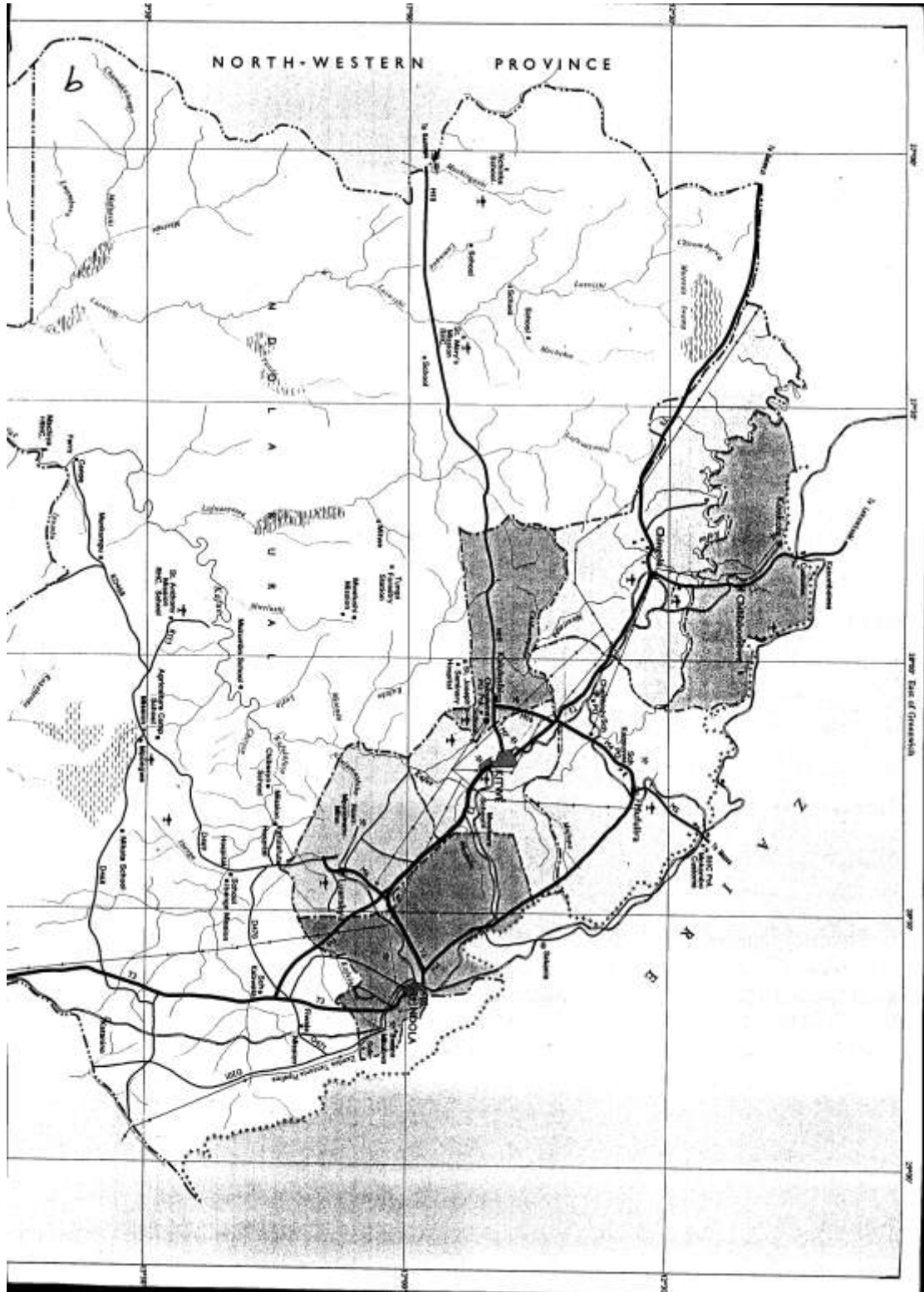
The Copperbelt shared in the massive urbanisation which followed independence in 1964. But the steady economic decline which began in the mid-1970s subsequently took a severe toll and the average annual population growth rates for the Copperbelt towns then slowed and were well below those of Lusaka in the 1980s and 1990s (see table below). In practice this means that many people have already abandoned the Copperbelt and yet, despite the massive amount written on so many aspects of Copperbelt life, noone really knows where they went to or what has become of them, though there are suggestions from some census data that many may have moved to Lusaka.

Annual Average Population Growth, Zambia: 1963-1990²

	1963 - 69	1969 - 80	1980 - 90
National population	2.5	3.0	3.2
Total urban: census	8.9	5.8	3.7
Total urban:		1965-80	1980-88
World Bank estimate		7.2	6.7
Lusaka	13.8	6.5	6.1
Ndola	9.5	4.0	4.0
Kitwe	8.4	2.6	2.4
Chingola	9.6	2.1	2.5
Mufulira	5.0	2.1	1.2
Luanshya	4.2	1.3	2.8

² Deborah Potts, 'Shall we go home? Increasing Urban Poverty in African Cities and Migration Processes', *The Geographical Journal*, **161**, 1995, 254.

COPPERBELT TOWNS



2. LAND

As in many parts of British-ruled Africa, a dualistic land tenure was established in Zambia. Along the original line of rail, especially in the Southern and Central Provinces, and in parts of Eastern and Northern Provinces around Chipata and Mbala, land was alienated to white settlers, initially under freehold, later under leasehold. To make way for these settlers, native reserves were created for Zambians in the 1920s (including the Lamba-Lima and Swahili Reserves on the Copperbelt) and in some cases people were forcibly evicted from their homes and pushed into those reserves.³ Though this process was never on the scale of that in Zimbabwe, it caused great distress in the areas where it occurred and it also left the ridiculous anomaly of many abandoned 'silent lands' to which no settlers ever came. But by the 1940s government officials were finally forced to recognise that their dream of a big influx of white settler farmers was not going to happen and so they rethought their policy.⁴ This culminated in the 1947 Native Trust Land Order in Council, which assigned some 40 million hectares as Native Trust Land, 'set apart in perpetuity for sole and exclusive use and occupation of the natives of Northern Rhodesia.' Crown Land, on the other hand, was 'certified as a result of ecological survey to be suitable for European development and all land known to contain mineral resources.'

So a land use map of the Copperbelt at the end of the colonial era depicts towns and mines (with racially segregated mine townships and municipalities) and, beyond the towns, European farms, Native Reserves, Native Trust Lands and Forest Reserves. A study published in 1967 noted that 'no real attempts had been made to encourage African farming, and the Crown Land areas...until recently have been reserved for Europeans only.'⁵

Racial segregation ended with colonialism and subsequent divisions have been based on income (or class) rather than race. But the impact of colonial thinking and town planning has left an indelible mark on the Copperbelt.

³ Robin Palmer, 'Land in Zambia', in Robin Palmer (Ed.) *Zambian Land and Labour Studies, Volume I* (Lusaka; National Archives of Zambia, 1973), 56-66.

⁴ Robin Palmer, 'Land Alienation and agricultural conflict in colonial Zambia', in Robert I Rotberg (Ed.) *Imperialism, Colonialism, and Hunger: East and Central Africa* (Lexington, Mass; Lexington Books, 1983), 89-112.

⁵ George Kay, *A Social Geography of Zambia* (London: University of London Press, 1967), 93.

3. PRIVATISATION

Kenneth Kaunda, in the spirit of the times, nationalised the copper mines in 1969, famously observing ‘now all Zambia’s wealth is ours.’ The spirit of the post-Cold War world is very different. Liberalisation and privatisation are being promoted world-wide. In Zambia, the MMD came to power in 1992 committed to supporting the new economic trends. So the plethora of very costly Zambian state marketing boards and parastatals has been rapidly dismantled, causing much dislocation, suffering and unemployment. Specific cases have been contested, especially where vested interests were threatened. But to privatise (in reality to sell) the copper mines has understandably provoked much resistance. The MMD consciously avoided pushing it through prior to the 1996 general election, fearing that its opponents would make political capital out of the selling off of the country’s major economic asset. Since the election, and with constant prompting from Zambia’s major donors, the Government, through its Privatisation Agency, has been engaged in trying to sell the mines piece by piece, but at the time of writing the key mines of Nkana and Nchanga still remain unsold. Most observers are highly critical of the Government’s endeavours in this regard.⁶

Throughout the 1990s privatisation of state owned assets has been heavily promoted by the IMF and World Bank. The main purposes of the privatisation programme have been to reduce the role of the state in the economy thereby improving business competitiveness and efficiency, to reduce the fiscal deficit by using the proceeds from the sales to pay external and domestic debt, and to generate new cash flows through investment and tax revenues. Privatisation has also been seen as an answer to the debt crisis. Since the early 1980s the external debt of developing countries has spiralled out of control, leading to years of macro-economic instability, painful adjustment, and low or even negative growth. As a result of this, **developing countries are no longer in a position to continue to support state owned enterprises.** After the debt crisis many state owned enterprises were under capitalised and became increasingly obsolescent.

Another factor that has influenced the importance of privatisation in the context of international development agreements has been the decrease in official aid flows and the increase in private capital flows to emerging markets. Whereas in 1991 official and private capital flows were roughly equivalent, by 1996 capital flows were overwhelmingly private. The perceived success of the East Asian economies and the failure of central planning in countries of the former Soviet Union and Eastern Europe was also critical. But privatisation has also been driven by **the pace of technological change which bypassed most state-run enterprises.** In theory significant sums of money have been released world-wide as a result of privatisation; between 1990 and

⁶ Theo Bull, ‘An incredible country’, *Profit*, 7/1, July 1998, 16-19; ‘Zambia: China reconnection’, *Africa Confidential*, 24 July 1998, 5-6; Theo Bull and David Simpson, ‘Mines mess meanders on’, *Profit*, 7/5, October 1998, 15; ‘Miners’ strike (Editorial Comment)’, *The Post*, 3 November 1998; Tony Hawkins, ‘Anglo deal will dig mines out of crisis - at a price’, *Financial Times*, 25 November 1998.

1996 revenues from the sale of state controlled assets amounted to \$115bn, but only \$3.8bn of this came from sub-Saharan Africa.

In the early 1990s the World Bank identified the mining sector as crucial to any strategy for generating economic growth and recovery in Africa. It deplored the fact that Africa's mining sector was under-performing - despite its extensive resources - and only attracted 5 per cent of exploration and capital expenditures of the world's mining industry.⁷ The World Bank proceeded to set out a strategy to encourage new investment: 'The main objective of donor intervention in African mining - whether through technical assistance or investment financing - should be to facilitate private investment and help reduce the country project related risks for the private investor.'⁸

The World Bank set out key areas for action. Donors should encourage African governments to adopt new mining and investment laws, guaranteed fiscal regimes, the right to repatriate profits, access to foreign exchange, the right to import goods and services, and protection against losing mining rights or legal title through undue termination or expropriation. Investment agreements should provide additional assurances to protect investors from 'unwarranted government interference.' African governments were issued with a list of actions to avoid, such as state ownership and control, mandatory provision of social services, and restrictions on negotiating wages. Employment reduction was identified as a prerequisite for successful privatisation.

While the overall aim of these drastic measures (which anticipate in many respects provisions in the Multilateral Agreement on Investment currently being negotiated by the OECD) was to improve government revenues, **the World Bank strategy is surprisingly silent on measures that might be necessary to protect the rights of vulnerable segments of society during the transition.**

The World Bank has made privatisation of state owned enterprises in Zambia a condition of its lending programme. It regards the privatisation of the parastatal mining company ZCCM (Zambia Consolidated Copper Mines Ltd) as essential not only for ensuring the rapid rehabilitation of the mining sector but also 'for providing a clear signal to investors of the Government of Zambia's commitment to private enterprise.'⁹ The objective of loans such as the Economic Recovery and Investment Promotion Credit (ERIP) was to support the implementation of sound macro-economic policies and strengthen the mining sector by privatising ZCCM.

Although there have been attempts to diversify the economy, copper has traditionally been Zambia's main export. Copper mining accounts for 85 per cent of the country's export earnings and almost 10 per cent of GDP. The extraordinary pressure on Zambia to privatise the mines is a reflection of the continuing importance of copper and other mining related revenues to the economy. **But ZCCM has lacked the capital to**

⁷ World Bank, *Technical Paper 181*, (Washington: World Bank African Technical Department, 1992).

⁸ World Bank, *Agenda for African Mining in the 1990s* (Washington: World Bank, 1990).

⁹ World Bank, *Private Sector Finance Group Investment Completion Report: Economic Recovery and Investment Promotion Credit* (Washington: World Bank, 1998).

invest in upgrading the mines and little new exploration has been carried out for 25 years. New investment is required to improve productivity.¹⁰

The World Bank and the Government agreed ‘minimum targets’ for social sector spending and ‘actual budget outlays in 1995 were at or above levels specified’ but reports by UNDP, UNICEF and others indicate these are insufficient to meet the most basic needs of Zambia’s poor.

International Development Association (IDA) Technical Assistance credits have also been vital to ZCCM’s privatisation. IDA’s support for private sector development is justified on the grounds that it is the engine of economic growth. In its *IDA 12 Report*, the World Bank claims to have learnt from past privatisation transactions what steps are needed to improve public information about the process. In particular it notes that there has been insufficient attention to policies to broaden share ownership and assure appropriate social safety nets and adequate redundancy and retirement benefits. With World Bank support, by the end of March 1997 divestiture proceeds in Zambia amounted to \$177m. Zambia’s programme was rated medium to high in eight performance indicators; transparency was rated highly. Yet the Zambia Privatisation Agency has been criticised for failing to publish details about the income generated from the sales of state owned assets, nor has it clearly indicated how the revenue was spent.¹¹

A \$2 million IDA project preparation facility financed the hiring of legal and financial advisers: the British merchant bank, Rothschilds. In its internal evaluation the World Bank admits that it underestimated the complexity of the sale and the time required to privatise ZCCM. Complex areas identified in the report as needing resolution include retrenchment of labour, the problem of ZCCM’s accumulated arrears, liability for past environmental damage, ownership of staff housing, and provision of social infrastructure and municipal services. But many of these issues have been neglected or inadequately dealt with by the Bank, the Government and the specialist advisers.

The British Government has helped to facilitate economic and structural reforms aimed at producing a substantial increase in private sector production, investment and employment.¹² In common with all major bilateral donors, the British Government has strongly argued for the rapid privatisation of ZCCM and other state owned assets. Its private sector development arm, the Commonwealth Development Corporation, CDC, has acquired some of these assets.

¹⁰ According to the *Implementation Completion Report for the ERIP Credit*, in 1993 ZCCM produced 403,000 tons, in 1995 this dropped to 307,000 tons and in 1996/7 it stabilised at 315,000 tons. Falling production has been accompanied by a drastic fall in the price of copper: in December 1995 copper fetched 133 cents per pound, but by December 1997 it had fallen to 80 cents. Recently it was 70 cents. As a result, the Government of Zambia’s receipts from copper sales have declined from \$851m in 1995 to \$613m in 1997.

¹¹ ‘Will Privatization help make Zambia wealthy?’ *Fact Sheet 3*, ‘Privatisation in Zambia: What it means for the Majority’, *Rights and Accountability in Development*, Oxford 1998.

¹² *British Development Assistance to Zambia*, (Harare: British Development Division in Central Africa, Department for International Development, July 1997).

Responsibility for the sale of state owned enterprises has been vested in the Zambia Privatisation Agency. The task of the ZPA, which was established in 1992 under the Privatisation Act, is to ensure that state owned enterprises are sold to those with the expertise and capital to run them on a commercial basis.

ZPA is also responsible for monitoring the privatisation process, although most of the emphasis has been on the rapid sell-off of state owned enterprises, not on examining the companies' post-privatisation performance or the social impacts of the sales. ZPA is supposed to ensure that an investor lives up to all agreements and commitments made in the negotiations for the sale of each company, including terms of payment, liabilities assumed, capital to be invested, treatment of employees, and conditions of service at least comparable to their parastatal terms.¹³

For each sale, the ZPA is assisted by an independent, specialist negotiating team. This system is supposed to guarantee that the sale is free from political interference. But, in the case of ZCCM, the procedures were altered when Francis Kaunda, a former chief executive of ZCCM, was appointed by the President to head the ZCCM Privatisation Negotiating Team.¹⁴ Since then, negotiations over the sale of ZCCM's assets has been handled directly by senior Government officials and ZCCM management, which many people, including the World Bank, have seen as having had a disastrous impact in slowing the sales of the mines.

Although some of the smaller mines were sold during 1996 and 1997, the key to the successful privatisation of ZCCM remains the sale of the Nkana and Nchanga Divisions. In June 1998 negotiations to sell Nkana/Nchanga to the international Kafue Consortium, which included the Commonwealth Development Corporation, collapsed. The ZCCM negotiating team was criticised for having a short term preoccupation with the cash price when their priority should have been to secure the future of copper mining in Zambia by attracting new investment. Zambia is being heavily penalised for its failure to sell the mines: at the Consultative Group meeting in May 1998, the donors made its \$530m assistance conditional on completion of the privatisation of ZCCM. Many miners have been put on part time and ZCCM, which is in danger of defaulting on its debts with domestic and foreign banks, is also failing to pay its local suppliers, which is having a serious ripple effect throughout the local economy. Currently ZCCM 'is in a desperate position with losses running at between \$1m and \$2m a day.'¹⁵

The social dimensions of economic policy reform implementation have been very severe. The statistics on poverty, inequality and social indicators present a very grim picture. Poverty levels were already high even before the reforms began. In 1991 about 70 per cent of the population was estimated to live in poverty. Since then, the situation has worsened and, in 1993, 74 per cent of all Zambians were living below the poverty line. Further, the top 5 per cent of the population had 46 per cent of all the national income and the bottom 23 per cent had only 1.7 per cent of the

¹³ Zambia Privatisation Agency, *Transparency in the Privatisation Programme* (Lusaka: ZPA, 1997?).

¹⁴ 'Who is in charge of privatisation?', *Fact Sheet 2*, in *Rights and Accountability in Development*, Oxford 1998.

¹⁵ Theo Bull. 'Column: Economy Watch', *The Post*, 16 November 1998.

income, according to the *Household Budget Survey of 1993/94*. **Under structural adjustment real allocations to the social sectors on a per capita basis have been declining. So has social safety net spending in what has been a crucial transition period.** According to UNDP, total government expenditure declined in real terms from K2,618m in 1991 to K912m in 1994. Between 1990 and 1994 actual expenditure figures on the social sector declined by 53.8 per cent.

According to UNDP, existing poverty alleviation and reduction programmes have little relevance to the overall needs of the country. All such programmes are riven with problems: recent evaluations of the food for work programmes indicate that deserving beneficiaries are not receiving benefit, while the undeserving are. Clientelism is evident in Public Welfare Assistance Schemes. In May 1995 a Health Care Cost Scheme was initiated to try to ensure that noone would be denied access to health services on grounds of inability to pay user fees. However UNDP found that the scheme was inadequately funded and that there was ‘confusion in the selection of beneficiaries’.¹⁶

This is the context of privatisation in which this study is located.

¹⁶ UNDP, *Zambia Human Development Report, 1998* (Lusaka: UNDP, 1998).

4. LEGAL

a) INTRODUCTION

The legal background to this study is necessarily complex. This section highlights the major developments which affect and influence both people and key issues on the Copperbelt today.

Land has been a major source of conflict and war throughout history, not least in colonial Africa. Land (and other) law in Zambia is heavily based on English law, which evolved in very different circumstances. Hence many Zambians fail to understand when told they are now squatters on land on which they have lived for many years. Or why, when they get title to land, they must not trespass on someone else's land for fear of a jail sentence. They also often fail to appreciate the extent of control which title gives an individual owner. The problem of squatting exists not just on the Copperbelt, but elsewhere in Zambia, in many other countries in Africa and indeed throughout the world. **But it has been brought to prominence by the Government's privatisation programme which involves selling the mines and the land around the mines, thus enhancing the vulnerability of squatters.**

Under the 'principle of reception', British colonial rule at the stroke of a pen extended the application of English law to a colonial territory. Under the English (Extent of Application) Act, Cap 4 of the Laws of Zambia, common law, equity, and English statutes that were in force in England as at 17 August 1911 were given force of law in Zambia. In effect, English land law of that time automatically became Zambian land law. In 1925 a good deal of English land law was found to be anachronistic and was thus repealed, but this did not apply to Zambia.

Repeal was needed in England because much land law had evolved over the centuries from the feudal system, under which kings had rewarded followers with grants of land. The latter were tenants-in-chief, who in turn granted land to others in return for services. There were conflicts over the rights to minerals between kings and feudal lords. The feudal system is the background against which modern principles of land law in Zambia sprang. The principle of vesting all land in one person (the President) from whom others rent it echoes the English feudal system established in 1066 by William the Conqueror.

Title deeds and registration, currently much in demand on the Copperbelt, are also derived from the English legal system. The concept of registration was introduced in South Australia by Robert Torren to deal with the problem that not all land was subject to statute, as some was governed by customary law. The result has been the development of parallel systems in countries which have adopted the system, such as Zambia. The Torrens system spread to countries which use English land law and methods of conveyancing.

Registration of deeds developed before registration of title under the old system of conveyancing. A deed is a written instrument recording a transaction affecting a right

attached to a property. Registration of deeds is the registering of these transactions and recording them. Registration of title is the recording of the title itself, called primary tenure. The basic doctrine of land law at common law established a system in which title to land was proved by the production of a deed recording the history of transactions affecting the land. That system was steadily overtaken by one based on the registration of title to land. In areas in which the latter system is in operation, such as at the Lands and Deeds Registry in Lusaka, all transfers of title are required to be by way of a change of entry in the register in favour of the transferee, and gradually title to land in the area is entered on the register.¹⁷ A registered title is thenceforth guaranteed by the state.

In England optional registration of title was introduced in 1862. It was made compulsory on all transactions in 1897. Thereafter, dealings in land had to be carried out under the new system, which is similar to the Lands and Deeds Registry Act (1948) in Zambia, which requires the registration of all transactions in state land.

The British Colonial Office took over the government of Zambia (then Northern Rhodesia) in 1924 from the British South Africa Company, which had obtained land and mineral concessions in the 1880s and 1890s from Lewanika in the west and Kazembe and other chiefs in the east. The BSA Company's land rights were transferred to the Crown but it retained its mineral rights (which in the event turned out to be highly lucrative) down to independence in 1964.

In 1928 a series of Orders in Council, later renamed the Zambia (State Lands and Reserves) Orders 1964, were passed, setting up native reserves for the exclusive occupation of Africans under chiefs, who were given powers to allocate land. The general practice over the years has been that individuals, rather than whole communities or clans, have been allocated land in reserves, which are governed by local customary law.

There are many different statutes dealing with land holding and mining in Zambia today. The most relevant for this report are the

Lands Act No.29 of 1995
Town and Country Planning Act, Cap 475
Lands Acquisition Act, Cap 296
Lands and Deeds Registry Act, Cap 287
Land Survey Act, Cap 293
Housing (Statutory and Improvement Areas) Act, Cap 441
Agricultural Lands Act, Cap 292
Forests Act, Cap 311.
Mines and Minerals Act No.31 of 1995
Prescribed Minerals and Commissions Act, Cap 332.
Mine Townships Act, Cap 472
Mines Acquisition Act No.28 of 1970

¹⁷ This replaced the former cumbersome system of investigating and deducing title under private conveyancing.

b) THE CONSTITUTION

The *Zambian Constitution* is the basic and most senior document in the country but, in contrast to South Africa and Uganda, it does not expressly protect the right to land, only the right to property. Under Article 16, the President can violate an individual's right to property by implementing 'a comprehensive land policy'. Article 16 (z) is the clause behind the introduction of the *Land (Conversion of Titles) Act, Cap 289 of 1975* which abolished freehold tenure. Since 1975, all land in Zambia has been held under a uniform system of tenure, statutory leasehold, with a maximum of 99 years. It can also be held under customary tenure.

Neither the Constitution nor ordinary statutes make reference to squatters, unlike the *South African Constitution*, which states that they cannot be removed without a court order and after alternative land has been found for them. The *Zambian Constitution* may have been mute on this because some protection was provided in existing legislation dealing with reserves and Trust Lands. But these categories of land have now been repealed which means that the protection has been repealed with them.

c) THE LANDS ACT, No.29 OF 1995

To understand the full significance of the important 1995 Act it is necessary to say something of the 1975 Act which preceded it.

Kaunda's Government did not view land as a commodity to be alienated for private gain. Instead land should be maintained as part of Zambia's national heritage and be used to the maximum advantage. The intention of the 1975 *Land (Conversion of Titles) Act* was to remedy the exorbitant price of vacant state land. It gave the President power to fix the maximum amount received under any transaction. The Act not only gave the State power to control land transactions, it also imposed minimum development standards, failure to meet which could result in a lease being cancelled.

The Act also limited the value of land to 'unexhausted improvements', which meant that in determining the value or price of land, factors such as forces of supply and demand, location, or potential use value were disregarded. **It introduced the notion that bare or undeveloped land has no value.** But the Act failed to define adequately 'unexhausted improvements' and certain costs such as service charges and surveyors' fees were not recoverable.

Demand for restrictions on owners' rights to encumber and alienate land grew in the 1980s. The *Land (Conversion of Titles) (Amendment) (No 2) Act, No 15 of 1985* restricted the Government from parcelling out land to foreigners. It made it illegal, with some exceptions,¹⁸ for non-Zambians to be legally granted or leased land. Section 15 of the *Lands Acquisition Act of 1990* permitted the compulsory acquisition of underdeveloped land without payment of compensation.

¹⁸ Such as approved investors, non-profit charitable organisations etc, to whom the President had given written authorisation.

The new Lands Act, No.29 of 1995 has been controversial. When it was first debated in 1994, it succeeded in dividing the country in ways second only to the Constitutional controversies. The philosophy behind the Land Act was contained in the MMD's 1990 *Manifesto*, which said:

‘The MMD shall institutionalise a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private ownership of land as well as to be an integrated part of a more efficient land delivery system. To this end, the MMD government will address itself to the following fundamental land issues. A review of the Land (Conversion of Titles) Acts of 1975 and 1985, the Trust Lands and Reserves Orders-in-Council of 1928-47 ...in order to bring about a more efficient and equitable system of tenure conversion and land allocation in customary lands; land adjudication legislation will be enacted and coordinated in such a way that confidence shall be restored in land investors...the MMD shall attach economic value to undeveloped land [and] promote the regular issuance of title deeds to productive land owners in both rural and urban areas.’

In July 1993 a National Conference on Land Policy and Legal Reform was convened in Lusaka with stakeholders from various parts of the country to chart the way forward. In September the Ministry of Lands told the Cabinet it had drafted amendments to the land laws. In 1994, the Government introduced the bill in the National Assembly, but MPs from all sides of the House cried foul and refused to support it, fearing popular opposition. Sensing possible defeat in the House, the Government withdrew the Bill ‘to allow for consultations.’

In some parts of the country government officials, including the Minister of Lands, were threatened with beating if the Bill went ahead. But in 1995 the Land Bill was reintroduced to parliament and duly enacted into law. UNIP MPs walked out of the session that debated the Bill but not before one, Lavu Mulimba, contended that Government was not acting sincerely by bringing the Bill to the House before adequate consultations had been held, as promised by the President, in his Opening of Parliament, and by the Minister of Lands, on withdrawing the Bill the previous year. But nevertheless the Government went ahead and adopted it. Its main features are:

- The abolition of the categories of reserves and Trust Lands, which are now subsumed into what is broadly termed ‘customary areas’. It would appear that the (limited) protection previously due to occupants of reserves and Trust Lands has also gone.
- The major concern of the Lands Act has been to remove all obstacles that impinge on the right to free alienation of land.
- Although customary landholdings are recognised in law, customary tenure may be converted into leasehold tenure under Section 4 (1).

- Land in customary areas can be bought and sold with certain provisos. Before customary land can be alienated (converted into statutory land) the applicant must consult the chief and the local authority in the area and ‘any other person or body whose interest might be affected by the grant’ (Section 3 (4) (b) and (c)). **While this clause could potentially be very useful to settlers living on or around mine land, much will depend on how it is interpreted.**
- **The attachment of value to undeveloped land reverses the principle in the 1975 Land (Conversion of Titles) Act. Even bare or virgin land, under the 1995 Lands Act, has economic value. In practice, this provision considerably restricts the power of the Commissioner of Lands to repossess undeveloped but titled land. Owners of such land may have a claim for compensation. This aspect of the new Act does not appear to have been widely understood either by the general public or by government officials.**
- **The new Act alters the principle of ‘prior Presidential consent’ which was required for any dealing in land, but had led to many delays in land transactions. Now consent is still a requirement but it is a formality** which is given almost on the same day of application, since the Department of Lands no longer has to ascertain the value of land or improvements, which is now left to the market to determine. It is deemed to have been granted after 45 days if the applicant does not get it granted by Lands officials.
- **The Act omits to make any kind of provision for squatters, many of whom have been settled in particular areas for long periods of time. Section 9 starkly prohibits the unauthorised occupation of vacant land and anyone so doing is liable to be evicted. The landlord simply applies for an eviction order which can have immediate effect.**
- **Section 15 of the Lands Act sets up a Lands Tribunal to settle land disputes.** ‘Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.’ The Tribunal has the authority to conduct enquiries and make awards and decisions relating to any land disputes. A person whose complaint is being considered by the Tribunal has the right to appear in person or to appoint a legal representative. Anyone bringing a frivolous case may be liable to pay costs. An appeal to the Supreme Court to overturn a decision by the Tribunal can be made, but must be lodged within 30 days. Access to the dispute settlement mechanism is supposed to be relatively simple and the costs involved are meant to be negligible. However, **although the Lands Tribunal is now working, it is so starved of funds that it can hardly perform its functions. Thus far the work of the Tribunal is scarcely known to the general public. Most of the people we interviewed were unaware of its existence or, if they were, did not know how to go about lodging a complaint.**
- **For many of the people we met, the most important aspect of the Land Act is that it is a mechanism for getting titled land.** Many people would like to get titled land but do not know how to go about it. The mechanism for alienation of land under the Act is so complicated that ordinary mortals cannot use it. **The**

Commissioner of Lands, based in Mulungushi House in Lusaka, is the official on behalf of the President who gives out land, having been delegated this power in 1964.¹⁹ It is only in cases of applications for land by foreign nationals that the President has to personally approve an allocation, otherwise he does not see them. One of the problems with **the Lands Commission is that it is overly centralised and cumbersome**. An effort was made to counter this problem by opening an office for the Copperbelt in Ndola, which would remove the necessity of all applications for alienation of land and registration of titles and deeds having to be referred to Lusaka. However, although the office was opened in 1995 it has only just been made operational. It is therefore too early to assess what impact it will have.

d) PROCEDURES FOR ACQUIRING LAND: CIRCULAR No.1 OF 1985

The formal procedures for acquiring land tenure vary depending on whether it is in a customary area, on state land, land controlled by the local council, scheduled agricultural land, or forestry land. The procedure for getting land from the state is outlined in Circular No.1 of 1985 (see Appendix 2). This was issued by the Ministry of Lands after persistent complaints from the general public about the difficulties of acquiring land. It covers both state and customary land, although the procedures for the two are somewhat different. It is worth stressing that though the circular is now over 10 years old, it is not known either by the general public or even by many officials involved in land administration.

According to Circular No.1, a person wishing to obtain land in a customary area must first secure the approval of the local chief then apply to the local council enclosing the chief's letter of approval. This is only required when the applicant wishes to obtain a title deed to the land. Once approved, the council will send the minutes of the Committee and Full Council meeting to the Commission of Lands, together with a sketch plan containing a rough description of the land in question and its decision. Thereafter, it is up to the Commissioner of Lands to decide whether or not to approve the application. One of the key conditions in the Circular, often ignored by the Commission, is the requirement that in customary areas no one will be granted land in excess of 250 hectares. In practice, this has happened on several occasions. The Commissioner blames the chiefs and councils for making recommendations above the allowed ceiling. But they claim that some applicants only come to them after they have been to the Commissioner of Lands, the Minister and the President and, in effect, have had their plans already approved.

e) ACQUIRING SECURITY OF TENURE IN URBAN AREAS

People's aspiration to acquire security of tenure in urban and peri-urban areas is fraught with problems. Historically housing in Zambia has been tied to employment

¹⁹ Statutory Instrument No 7 of 1964 delegated powers to alienate land to the Commissioner of Lands, subject to the direction of the Minister responsible for land matters.

and most urban workers were tenants. The colonial administration viewed African workers in the towns as temporary residents, but it lacked sufficient resources either to repatriate men who remained in town once they completed work contracts, or were laid off and lost their housing, or to send women and children, who kept arriving, back to the villages.

‘A battery of legal ordinances on rural-urban migration, employment and housing contributed further to the notion of African men as units of labour, without dependants, who would return to the countryside when no longer employed in the cities. The 1948 African Urban Housing Ordinance, which opened up the construction of married housing, did not grant women housing in their own right. A woman’s right to urban residence and to municipal housing reached her through her husband, and as proof of the status of the union, a marriage certificate had to be produced.’²⁰

On the Copperbelt, as housing and housing allowances were allotted to mine employees, the majority of whom are men, wives got access to housing through their husbands. Once widowed they have no claim to housing in their own right.

In the mid-1960s, in order to reduce the low-cost housing backlog, the Ministry of Local Government and Housing instructed all local authorities to plan 30 per cent of their housing as site-and-service schemes. Local councils were to provide services (plot pegging, water, sanitation and roads), while residents were to build their own houses according to pre-designed plans. But funds allocated to such schemes were limited and not all residents could afford the costs required to participate.

Because unauthorised squatter compounds kept proliferating, the Government introduced in 1974 the Housing (Statutory and Improvement Areas) Act, Cap 441. This provides for the control and improvement of housing in Statutory Areas and in Improvement Areas. It allows councils to issue certificates of title and occupancy licences which give some degree of security of tenure in land they administer. The Act enables residents of site-and-service areas to obtain occupancy licences of up to 99 years, while those in upgraded and overspill areas could hold occupancy titles for a shorter period (33 years in Lusaka, on the Copperbelt usually 10 years). ‘By these rulings, plot-holders in previously unauthorized areas became tenants of the state and were given some security against the threat of demolition for the first time in Zambia’s urban history.’²¹ The 1975 Land (Conversion of Titles) Act also established security of tenure for plots on which residents owned houses and enabled them legally to transfer the occupancy title to a new owner when selling the house. **But the bewildering array of different titles which confer very different degrees of land security are not always clearly understood by the holders. The occupancy titles councils provide to poor residents in reality offer very scant protection against eviction and demolition of their homes. Yet most of the people we interviewed in poor urban compounds were under the mistaken impression that these titles gave them full security of tenure.**

²⁰ Karen Tranberg Hansen, *Keeping House in Lusaka*, (New York: Columbia University Press, 1997).

²¹ Karen Tranberg Hansen, *Keeping House in Lusaka*, (New York: Columbia University Press, 1997).

Councils on the Copperbelt issue Land Record Cards for residents in Improvement Areas. The Act left it to councils to determine the length of the licences, so they vary. According to council housing officials on the Copperbelt, in practice once a person has been granted a licence it is usually for an unlimited period. In theory, once an area has been designated an Improvement Area, the council anticipates that during that initial 10-year period the residents will upgrade their homes and then the council can reclassify it as a Statutory Area and provide residents with 99-year leases. In Kitwe we were told that the council's criterion for designating an Improvement Area is that there must be more than 2,000 households on the site. If a person wants to sell his home, he goes to the council to get the Land Record Card altered.²² Although there is not supposed to be a charge, officials sometimes demand one.

Apart from the two kinds of leases offered by councils, the Commissioner of Lands also provides a *provisional* certificate of title because of delays in obtaining land surveys. The full 99-year certificate of title, which naturally offers residents the greatest security, can only be issued by the Registrar and Commissioner of Lands once the ownership of the land has been ascertained, a full survey has been carried out, and the plot has been allocated a number. People holding Land Record Cards, provided that they can afford the councils' survey fees, can obtain a 99-year lease from the council.

In a council area where there is state land that the state wishes to alienate to the public, Circular No.1 of 1985 requires that the council or Lands Commission advertise the land in the daily press and the council conducts interviews from which it selects a minimum of 3 names per plot to submit to the Commission together with survey diagrams. The procedure is shorter than applications for customary land because there are no traditional rulers involved. However, town clerks admitted that the criteria they use for allocating these plots in effect discriminate against the poor. One of the councils' blanket requirements, for example, is the production of a bank statement as proof that the applicant has the means to develop the land. This requirement is applied even for small plots of about 2 hectares. The system of plot allocations also discriminates against women. ASAWA (the Association for the Advancement of Women in Africa), one of the NGOs working on the Copperbelt, told us that they had entered over 200 applications on behalf of poor women, the majority widows, but none had been given land by the council.

f) DEMARCATION AND PLANNING PERMISSION

One of the most important aspects of land alienation is the subdivision of pieces of land before alienation or demarcation. Many squatters we met were asking for demarcation of 'their' land in order to get title deeds, but no one really knew what was involved in this or why it took so long to demarcate the land. Only a few had some idea of the reasons behind the delays in getting title.

²² Evidence of Director of Legal Services, Kitwe Council, 18 August 1998

There are at least two statutes involved in carrying out subdivisions of land or demarcations. Before 1995, the Land (Conversion of Titles) Act was also involved and delayed the whole process because all subdivisions etc. needed prior presidential consent. Under the new 1995 Lands Act this is no longer the case. However, one must first have land surveyed under the Land Survey Act and a survey diagram produced which should be attached to an application for a 99 year lease. If the land for which an application has been made is not demarcated, the applicant will be granted a 14-year lease by the Commissioner of Lands once the application is approved, provided there is a sketch plan (rough diagram) accompanying the application.

We found that many provisional titles or occupancy licences have only limited value. For example, the 14-year provisional certificate of title (for land that has not been demarcated), the 99-year certificate of title and the Land Record Card, both of which are issued by councils (without searches into ownership being undertaken or boundaries being legally defined) to settlers in Statutory and Improvement Areas, are all regarded with great suspicion by financial institutions. They are not really accepted as collateral in the same sense as the 99-year certificate of title issued by the Registrar and Commissioner of Lands at the Department of Lands. The Land Record Card is worst of all, as no one regards it as title. Sadly, holders of these instruments mistakenly believe them to be valid indicators of title to their land.

Once a person has obtained a title deed they can go ahead and develop the land. However, if the development requires the construction of a house or structure, permission is required from the Town and Country Planning Authority. This is given after surveyors have surveyed the land and produced a survey diagram or sketch plan. There is a town and country planning authority in each province, while City Councils like Lusaka, Ndola and Kitwe also double as planning authorities for land within their jurisdiction.

We found many people on the Copperbelt waiting for ‘demarcation’ of their land or for ‘title deeds’, but caught up in the quagmire of the land tenure system. Often settlers had paid money to government departments towards demarcation expenses, but many years later the land has remained undemarcated. Unless it is demarcated, the Commissioner of Lands cannot look at the applications for title and in fact would not even have received them.

g) THE AGRICULTURAL LANDS ACT, CAP 292

At independence there was a desire to stimulate growth in agriculture through land reform. Measures such as the Land Control, Agricultural Development and Agricultural Lands Act, Cap 292, imposed certain controls over land use. In particular, it provided a mechanism for designating state and private land for agricultural use.

The Minister of Agriculture has powers to make the declaration in statutory form and, in the case of privately owned land, with the consent of the owner. Once it has been

declared, the land is divided by the Department of Agriculture into 'economic agricultural units' for ease of administration. After the land is scheduled, it comes under the Ministry of Agriculture for purposes of administration, though titles to settlers on the land still have to be obtained from the Commissioner of Lands, acting on recommendations from the Agricultural Lands Board. This is what are commonly called '**Agricultural Settlement Schemes**', which exist in various parts of the country; we visited some on the Copperbelt. The idea is for the Ministry of Agriculture to focus its attention on such areas when providing technical services to farming communities and so be better able to measure their rate of success or failure. A land holder in an agricultural area used to get a 30-year lease from the state which could be renewed. One of the principal aims of the 1995 Lands Act is to introduce a uniform leasehold system, which means that such leases are now upgraded to 99-year leaseholds.

The Agricultural Lands Act provides a penalty where a person does not use the land for agricultural purposes. When land in a state grant is abandoned (for example if an owner fails to maintain occupation of the land or a reasonable standard of production for more than 3 years), the Agricultural Lands Board may serve notice on him or her to reoccupy the land.

h) THE FORESTS ACT, CAP 311

Land may be set aside for the specific purpose of creating Forest Reserves. These have been a feature of Zambian land law since colonial times, but one should not forget that pre-colonial African societies had often practised effective forms of forest conservation methods, some of which are still in use today.²³

The Forests Act, Cap 311 (now under revision) is an important piece of legislation. Its main objective is to provide a framework for the conservation and development of forests, which (like land, minerals and water) are 'owned' by the President, in whom they are vested on behalf of the people. This means that the President has power to give directions on how forests should be utilised for the good of the country. Section 8 of the Act provides for the establishment of national forests by the President and for their dis-establishment, powers previously enjoyed by colonial authorities. Section 25 provides for the protection of trees by order of the minister.

Once a forest area has been established by the President, the rights and freedoms of humans are restricted to allow the trees a chance to grow unmolested. Forests give birth to water and hence life, but people do not always understand this because of the many uses to which they can put forests, so there has been a constant struggle between people and nature. While the idea of creating a forest area is to limit people's right of residence and movement, it is recognised that there may have been human activities there, so Section 11 (5) of the Act tries to provide protection to individual rights.

²³ For example, apart from injunctions imposed by village elders on those who abused forests, there were many taboos surrounding certain trees and forests so that people believed something bad would happen if they played in those trees or forests. Fears surrounding burial places meant that trees there would grow largely unaffected by human activities.

In recent years the President has frequently been asked to de-gazette forests to allow for human settlements. The process for doing this is deliberately long and complex, perhaps to frustrate those seeking to achieve it. In Chingola, we found council officials wrongly believing that the letter they received from the Ministry of Environment, which ‘approved’ the de-gazetting of a Forest Reserve to allow for human settlement, had completed the process. In law, the procedure actually takes longer and until the President has issued the statutory instrument in connection with a de-gazetting, the land legally remains a forest area.

It is local officials who normally initiate the process of de-gazetting. Their recommendations are submitted to the council and the local Department of Agriculture. The council resolution is submitted to the Provincial Permanent Secretary who studies it with the Provincial Forestry Officer, after which it is taken to the Department of Forestry, now based in Lusaka. This Department makes recommendations to the Minister through the Permanent Secretary. Finally, the Ministry position is submitted to the President for action.

It has been the general experience in Zambia, as in many other parts of the world, that the state has been unable to supervise the conservation and development of forests effectively. Many of Zambia’s forests are on the Copperbelt, where they were originally established to conserve catchment areas and to grow timber for the mines and other industries. But demographic pressures in recent years and now the biting economic problems have forced people to invade the forests in search of livelihoods. As a result very few have remained intact.

i) THE MINING TOWNSHIPS ACT, CAP 472

From their inception, mining companies realised they needed to establish housing for their workers. So the Government passed legislation to allow them to develop housing estates and administer them in much the same way as town councils. They came to comprise a privileged ‘state within a state’, though in colonial times freedom of movement was highly circumscribed. In these townships, mining companies were given powers to control the movement of people, check the spread of prostitution and disease, evict anyone found loitering, arrest people walking naked, etc. In effect they were empowered under the Mining Townships Act to regulate the life of miners like a government. These mining townships now contain significant numbers of squatters.

j) THE MINES AND MINERALS ACT No.31 OF 1995

The Mines and Minerals Act is the main law for regulating mining in Zambia, though there is also the Prescribed Minerals Commission Act which regulates the mining of prescribed minerals such as emeralds. The Mines and Minerals Act provides for two types of instruments that a person may obtain; a prospecting licence and a mining licence. Anyone wishing to explore an area for minerals under the Act first applies for an exclusive prospecting licence. Normally he would accompany the application with

a general description of the area where it is intended to carry out prospecting. Since land is vested in the President, the holders of land in the area cannot refuse the grant, although if they feel aggrieved they can ask for arbitration, which is now provided under the Act.

If successful, prospectors may be granted a mining licence to mine the stones. At this stage, miners would normally want to acquire both land to be mined and land surrounding the mine. So, in addition to the mining and prospecting licences issued by the Ministry of Mines, miners also need to apply for a certificate of title from the Commissioner of Lands. Surveyors are required to survey the land applied for and to demarcate it. If it touches on customary land, the chief's consent is also needed before going to the Commissioner of Lands through the local authority. If it is unalienated state land, the Commissioner can exercise discretion and decide either to act on the application directly or ask the council to decide and then advise him.

In short, a miner needs at least two types of rights. The first is the right to mine from the Ministry of Mines and then a certificate of title for either 99 years (if the land is already surveyed) or 14 years (if it is not); in the latter cases the certificate comes from the Department of Lands. In technical language, the certificate of title or title deed is known as a 'surface mining right' because, unlike the mining right, it only allows the miner to utilise the land for 'surface purposes' of a non-mining nature. However, officials at the Lands Department who issue it do not know it by this name; they know it simply as a title deed or certificate of title, although the term 'surface mining right' is very widely used in mining circles. Additional land adjacent to the actual mining area is needed in most cases because mining usually takes place over many years and can involve the employment of thousands of people, with a consequent need for housing compounds, offices and the like. To obtain this, mining companies must go to the Ministry of Lands for a title deed. In Chingola and Kitwe the land currently held by ZCCM comprises inner Mine Licence Areas surrounded by much larger Mine Surface Areas.

Mine licence holders are obliged by the Act (Section 57) to exercise their 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 those rights extend.' Section 61 provides that if damage to crops, trees, or buildings is caused as a result of mining operations, the company shall be liable to pay fair and reasonable compensation .

New companies applying for a large scale mining licence are required to prepare an environmental plan which should include proposals for the prevention of pollution, the protection and reclamation of land and water resources, and for eliminating or minimising the adverse effects of mining operations on the environment. The applicant also has to produce an environmental impact statement. Large scale mining licences are granted for 25 years and can be renewed. The holder of such licences are obliged to carry on their operations 'with due diligence' and in compliance with the environmental plan. The mining area can be enlarged at any time subject to approval by the Minister.

k) THE MINES AND MINERALS (ENVIRONMENTAL) REGULATIONS 1997

These Regulations provide that an environmental project brief should be prepared before any exploration or mining operations begin. The brief should set out the environmental impact and provide information on remedial action. It is submitted first to the Director of Mines Safety who after 10 days makes recommendations to the Environmental Council of Zambia. The Council has 40 days to inform the Director of its decision. If the Director determines that the operation is likely to have a significant impact on the environment he will ask the developer to prepare an environmental impact statement. The first audit on the impact of any exploration or mining operation must be conducted within 15 months of commissioning such exploration. **The Minister has powers to exempt a developer from these environmental requirements on such conditions as he may determine.** Under Section 68 ‘Except for any proprietary information, the public shall have access to project briefs, environmental impact statements and comments made by the public hearing reports kept by the Director.’

l) WORLD BANK GUIDELINES ON INVOLUNTARY RESETTLEMENT

Later sections of this report will focus on the position of squatters. But in this legal section it is appropriate to examine World Bank development guidelines on involuntary resettlement. The Bank acknowledges that the potential for violating individual and group rights under domestic and international law makes compulsory resettlement unlike any other project activity, because ‘involuntary resettlement may cause severe long term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out.’²⁴ Carrying out resettlement in a manner that respects the rights of affected persons is not just an issue of compliance with the law, but also constitutes sound development practice. Based on its experience of the lessons it learnt from large scale development projects in the 1970s, the Bank adopted a resettlement policy in 1990 whose key elements state that:

- Involuntary displacement should be avoided or minimised whenever possible because of its disruptive and impoverishing effects.
- Where displacement is unavoidable, the objective of Bank policy is to assist displaced persons in their efforts to improve, or at least restore, former living standards and earning capacity. To achieve this, preparation and execution of resettlement plans should be integral parts of project designs.
- Displaced persons should be compensated for their losses at replacement cost, given opportunities to share in project benefits, and assisted in the transfer and in the transition period at the relocation site.
- Resettlers and the ‘hosts’ (i.e. the community already living in the vicinity of the relocation site) should participate in planning the resettlement.

²⁴ OD 4.30, Involuntary Resettlement, para 2, June 1990.

The policy is to be applied to all development projects that displace people involuntarily, ‘such as construction or establishment of dams, new towns or ports, housing and urban infrastructure, **mines**, large industrial plants, railways or highways, irrigation canals, and national parks or protected areas.’

The Bank is currently in revising its guidelines but is still obliged to ensure that:

- a) Resettlement be conceived and executed as a development activity;
- b) Affected people should share in project benefits;
- c) These policies should apply whether or not the Bank is financing the part of the project involving resettlement;
- d) The initial focus should be to find viable alternatives to avoid the need for resettlement or, where it is found necessary, to minimise its impact.

The revised resettlement policy includes a reference to mine or plant closure that results in the physical dislocation of communities or the deprivation of their livelihoods. In such cases it is ‘good practice’ for the borrower to consider a resettlement plan along the lines set out in the policy. The new policy also clearly states that the Bank will seek to ensure that ‘land, housing, infrastructure and other compensation are provided to displaced people who may have usufruct or customary rights to land or other resources taken for the project. Customary and formal rights are recognised in providing assistance under this project. The absence of legal title to land is not a bar to compensation or other resettlement assistance.’²⁵

On the Copperbelt, however, there is no indication that the Bank, despite its long-standing technical and financial support for the privatisation of ZCCM, has implemented these guidelines. This study has revealed that no adequate resettlement plan has been prepared by the Government, ZCCM and the new owners, and that currently there is almost no assistance provided to families who are evicted from mine land. Under Zambia’s Mining Environmental Regulations (1996) all new, proposed and existing mining operations are required to develop Environmental Impact Statements. In March 1997, a series of Environmental Impact Statements were produced for each of the 13 ZCCM Mining Licence Areas, which address the likely socio-economic impacts of mine closure. These official studies noted that in many areas informal settlements had grown up within the surface rights and mine licence boundaries and expressed concern about the potential for conflict over the future of the squatter settlements between the councils, local political representatives and the owners or users of the land. The studies recommended that urgent consideration should be given to planning the future of squatter settlements on mine land with sufficient lead time to negotiate solutions with squatters, non-governmental support groups and relevant government departments, especially local government.’²⁶

²⁵ OP 4.12,5(b), Involuntary Resettlement, June 1990.

²⁶ For example, ZCCM, *Nkana Mining Licence Area - ML3, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 19 March 1997.

m) INTERNATIONAL HUMAN RIGHTS STANDARDS ON THE RIGHT TO ADEQUATE HOUSING AND THE ISSUE OF FORCED EVICTIONS

The Zambian Government has ratified the International Covenant on Economic, Social and Cultural Rights, which seeks to promote, protect and fulfil the right of everyone to an adequate standard of living, including the right to adequate housing. In its General Comment No. 7 (1997) the UN Committee on Economic, Social and Cultural Rights has advised governments that evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. 'Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.'

The Committee has also taken the view that international agencies should scrupulously avoid projects which 'involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project to ensure that the rights contained in the Covenant are duly taken into account.'

In the Programme of Action, which was adopted at the World Summit for Social Development in Copenhagen 1995, governments agreed to select wherever possible development schemes that do not displace local populations and to design an appropriate policy and legal framework to compensate the displaced for their losses, to help them to re-establish their livelihoods and to promote their recovery from social and cultural disruption.

n) THE GENDER DIMENSION OF LAND TENURE PROBLEMS

During Oxfam's participatory rural appraisal earlier this year it was found that very few women own land because they are unable to raise funds or credit. Most women who were interviewed were found to be either poor or extremely poor. They tended to be dependent on support from their children for their survival. On the Copperbelt women engage in piece work because they simply do not produce enough for their own subsistence. In those cases where a family has been able to acquire land, the husband will pass it to his sons or brothers. The houses also belong to the men. Women's access to productive resources is therefore mediated through men; their fathers, brothers, husbands and sons. We found that many women were afraid of being driven out of marriages. Where customary law persists, once a marriage has been dissolved, women are not entitled to receive property or maintenance for themselves and their children.

There is some evidence to suggest that retrenchment programmes driving men out of wage labour may have the effect of displacing women from the most lucrative of the activities in which they now engage in the informal sector. Market trading is one of the very few income generating options available. Women tend to cluster in the least profitable trades, vegetable and fruit vending, and their profits are low. The informal sector has an overwhelming focus on distribution through trade, not small scale

manufacturing. The bottom rung of the informal trading economy is already crowded by women who buy in order to resell, offering a rather uniform range of articles for sale.

On the Copperbelt, where ZCCM housing and housing allowances are allotted to the predominantly male employees, wives get access to housing through their husbands. Widows are normally given one month to vacate mine houses after their husbands die. With the sale of mine houses to sitting tenants who are miners, spouses and other non-ZCCM employees will have no right to remain and no opportunity to buy the property. In exceptional cases, recently bereaved widows, who have not received the benefits due to them on the deaths of their husbands, could theoretically be offered the house to buy. But it is highly unlikely that they would have sufficient funds or access to credit to enable them to take advantage of this limited opportunity.²⁷

Normally on a husband's death, property devolves on his descendants not his wife. 'When a husband dies his matrilineal relatives may descend on the urban household, grabbing all it contains and sometimes claiming the house itself... **In spite of the Intestate Succession Act (1989), allowing widows and children some access to resources, there is sufficient evidence that prevailing ideology often makes the new act ineffective in practice.**'²⁸ **Such practices mean that urban wives cannot expect security in old age.**

In the formal resettlement areas women's rights to security of tenure are equally precarious. We interviewed one woman, Lita Beni, who was 62 years old. She had occupied her plot in Kakolo, near Kitwe, since 1970. Although she was initially squatting on the land, when Kakolo was designated a resettlement scheme she filed papers to acquire legal title to her plot. But the papers appear to have been mislaid and when in 1994 the plots were allocated, despite the fact that she had built a house on the land, her plot was given to a more recently arrived male settler. Kakolo is a government land resettlement programme, run by the Department of Resettlement, in the Office of the Vice President. 'The scheme aims to give free land to persons who wish to engage in productive agriculture on land to which they will have a title deed. It is a strategy by which the Government attempts to put idle arable land to the production of food thereby increasing the nation's food security.'²⁹ The Department of Resettlement provides access roads, schools and health centres. It ensures that agricultural extension services are provided and encourages the extension of loan facilities to the settlers. But the scheme lacks sufficient funding, demarcation is a very slow process and credit is very difficult to obtain without formal title. We were reassured by the chair of the Kakolo Farmers Association and the Kakolo residents' committee that Mrs Beni would be given her land and the male farmer would be moved to another plot within a month.

The Government's expectation that people should go back to the land - in the absence of any additional incentives - is not likely to be heeded by women who are reluctant to

²⁷ Evidence of Tom Njovu, Industrial Relations Bureau, ZCCM Kitwe, 18 August 1998.

²⁸ Karen Tranberg Hansen, *Keeping House in Lusaka*, (New York: Columbia University Press, 1997).

²⁹ Department of Resettlement, Office of the Vice-President, *The Land Resettlement Programme*. The scheme is a continuation of the Land Resettlement Programme introduced during the Second Republic.

return to rural areas for a variety of reasons. Returnees are expected to meet claims on their savings from rural relatives; failure to do so may result in witchcraft accusations; some women refuse to accompany their husbands into rural retirement because there is a customary expectation that on his return to the village a man will take a second wife; women who have spent most of their lives in towns know little about rural farm work; by common consensus rural life is hard and understandably women do not want to take on drudgery of collecting firewood and water and stamping grain. **Most women would prefer to remain in town, supporting themselves from small scale trading. Widows are reluctant to move to rural areas because they are unwilling to be 'inherited' by a relative of the deceased husband. But most of all women are fearful of losing the degree of autonomy that urban life provides.**

II:

THE

PROBLEMS

1. ECONOMIC DECLINE AND GOING ‘BACK TO THE LAND’

The key issues on the Copperbelt for this study can be encapsulated in two short quotations. A ZCCM environmental study of 1997 suggested that **‘The socio-economic history of Zambian copper mining has to be reversed, and this will have to be done very quickly.’**³⁰ The implication is that while much past Copperbelt social history has revolved urban working and living conditions, the future is likely to be marked by yet further retrenchment of miners with the result that they - and many more who relied on their purchasing power - will be obliged, *faute de mieux*,³¹ to take heed of Kaunda’s old slogan and ‘go back to the land’³² in search of alternative livelihoods.

The second quotation comes from a woman member of Chiswili Development Committee in Mufulira, who said:

‘The problem is the land issue. If we don’t fight for it now, what will our children do? We don’t have anywhere to go. If we don’t have land we can’t develop.’³³

Her concern was echoed by large numbers of people we spoke to across the Copperbelt. **The many constraints to this ‘going back to the land’ are the principal subject of our inquiry.**

It was abundantly clear that we were seeing the Copperbelt at a time of acute economic and social uncertainty, nervousness about the future, and growing and visible poverty. It is well known that the copper mines have been shedding workers for some years now. This is illustrated by the fact that the Mineworkers’ Union of Zambia (MUZ) estimates that it now has only around 37,000 members, compared to 60,000 twenty years ago. In Chingola, ZCCM estimated that over 1,000 mine jobs have been lost since 1991 and that 10 companies have closed with reputed job losses of over 600. **While many miners have been made redundant, many more put have been put on standby but never called back to work. There is every expectation that this trend will continue with the current chaotic piecemeal privatisation of the mines.** In response to our specific questioning, *nobody* in any of the community groups we met expressed a belief that the new owners of the mines would promote new development, new jobs, new economic opportunities, or indeed any positive spin-offs. Instead we found a widespread belief that privatisation will result in yet more unemployment and so less money circulating; in rising crime; in

³⁰ ZCCM, *Nchanga Mining Licence Area - ML10, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 18 March 1997.

³¹ For want of better alternatives.

³² They are trying to move back to the land, in sharp contrast to what some observers see as a general trend towards de-agrarianisation across the continent. Deborah Fahy Bryceson and Vali Jamal (Eds), *Farewell to Farms: De-Agrarianisation and Employment in Africa*, African Studies Centre Leiden, Research Series **10** (Leiden: 1997).

³³ Evidence of woman member of Chiswili Development Committee, Mufulira, 10 August 1998.

more competition for land; in more overtrading;³⁴ and in more closures of businesses reliant on the mines. The only optimistic voice we found was that of Fanwell Nduna, the Permanent Secretary for the Copperbelt Province, who believed that while there may be short term losses of mine jobs, in the long run jobs will increase as retrenched miners opened up new areas and employed a few people, thus increasing production. Economists sometimes sound more optimistic, pointing out for example that ‘massive investment will be needed, not just by Anglo but by all the other, mainly mining juniors, to stabilise production’ and revive ‘what remains of Zambia’s manufacturing base on the Copperbelt.’³⁵

The people now looking for land are essentially urban dwellers. Overwhelmingly they have lived all their lives (or at least the majority of their adult lives) on the Copperbelt, normally in one specific town. So they told us that had not the slightest intention of ‘going back to the village.’ In Chingola, we were asked ‘How can Mr Lengwe go back to his village? None of his age group will be there. Still less, how can his children go there? They have no knowledge of rural life.’³⁶ At Chimfinsa in the Luano National Forest, Chingola, where people had begun settling in 1979, we were told ‘We can’t go back to our villages. This is our village now.’³⁷ This was a refrain we heard constantly. Another was **the desire not to be too far distant from a clinic, a school or a church, which meant not moving too far from town, and a strong desire for improved communication (bridges, roads etc.) to town.**

Even allowing for the fact that the census figures cited above (page 8) show that many people have in fact abandoned the Copperbelt over the last 20 years, and that what we were seeing was a snapshot picture of a particular moment, still **the notion of relocating the majority of such people in deeply rural resettlement areas, which occasionally appeals to planners, appeared to us to be inappropriate.**

Another aspect of economic decline which was very obvious was **the desperate lack of resources at all levels; government, councils and ZCCM.** When we visited the Chingola Council offices, there was only one computer (for accounts) and a single photocopier for an office of hundreds. The examples could be multiplied. All councils used to rely on ZCCM to pay their way; the monthly cheque was eagerly awaited.³⁸ Now ZCCM cannot pay its own way. **So the capacity to identify, for example, what land might be available for re-designation will require donor support.**

All decision makers are being stripped of funding at a time when they need more resources to come with the huge social problems likely to arise from the sale of the mines.

³⁴ There is already a huge problem of overtrading on the Copperbelt, which will certainly get worse as more people are laid off from the mines. We heard repeated calls for a tomato canning factory as one response to this.

³⁵ Tony Hawkins, ‘Anglo deal will dig mines out of crisis - at a price’, *Financial Times*, 25 November 1998.

³⁶ Evidence of commercial farmers, Chingola, 8 August 1998.

³⁷ Evidence of Chimfinsa squatters, Chingola, 6 August 1998.

³⁸ Councils also relied on ZCCM informally to carry out a myriad of functions, such as upgrading roads.

2. CONFLICTS IN THE FORESTS

The conflicts over forest land on the Copperbelt, which we heard so much during our enquiries, are of course by no means unique. As this report is being written, stories appear almost daily in the Kenyan press on what is described as ‘the forestry crisis,’³⁹ complaining of the Government’s failure to protect the forests, of indignation at forest land being given to ‘politically connected people,’⁴⁰ and with some writers arguing that privatisation is the answer and others stressing the role forests play in the well-being of urban environments. Huge portions of the Karura Forest near Nairobi have been ‘secretly allocated to private developers, provoking a violent confrontation’ and the intervention of the Greenbelt Movement of Professor Wangari Maathai, while 930 hectares have been de-gazetted from four forests, creating ‘a nationwide furore.’⁴¹ Further afield, in England conflicts over forests are said to date back to the time of Magna Carta in 1215, while in Scotland, with its long history of displacement of people, forests have entered current political controversies over land use.

The scholarly literature on the African environment contains some stimulating work by James Fairhead and Melissa Leach on West Africa, which claims that long-standing concerns about the dangers of deforestation have been greatly exaggerated, and that much received wisdom is open to question.⁴²

In colonial Zambia a Forestry Department was first established in 1947; previously forest officers had been attached to the Department of Agriculture. It was tasked to carry out a forest policy, which involved in part:

- a) To place under permanent Government control all the forest areas needed to protect the land against desiccation and erosion and to maintain the flow of rivers.
- b) To reserve, under Government’s general control, sufficient forest land to supply the forest produce required for the people’s homes, farms and local industries on a sustained basis without making revenue the first consideration.
- c) To see that the Territory’s forest resources are economically used and not wasted.
- d) To spread among the population an understanding of the value of the forests.

By the end of 1958, about 25,000 square kilometres, or 5% of the whole country, had been established as forests. About half these had been properly surveyed and mapped. On the Copperbelt, ‘a large timber concession is being worked by a timber company

³⁹ *Daily Nation*, 5 November 1998.

⁴⁰ *Daily Nation*, 26 November 1998.

⁴¹ In addition, ‘Conservationists and 12 parliamentarians burnt down property valued at Sh 40 million to protest construction work in the forest.’ Earlier a group ‘invaded the forest and set on fire three earth movers, a lorry, a site office and a ten-room prefab and four other construction machines.’ *Daily Nation*, 10 November 1998.

⁴² James Fairhead and Melissa Leach, *Reframing Deforestation: Global Analyses and Local Realities - Studies in West Africa* (London: Routledge, 1998); James Fairhead and Melissa Leach, *Misreading the African Landscape: Society and Ecology in a Forest-Savanna Mosaic* (Cambridge: Cambridge University Press, 1996); Melissa Leach and Robin Mearns (Eds), *The Lie of the Land: Challenging Received Wisdom on the African Environment* (Oxford: James Currey, 1996).

responsible for all timber supplied to the copper mines, whose wood requirements normally exceed 2,000,000 cubic feet per year in timber and large mining poles, apart from variable and often very large demands for firewood.' **There was an 'ever-increasing demand among Africans for charcoal,** both because it is an economical fuel to use and because firewood is bulky and expensive to carry to the growing centres of population.'⁴³

In 1967 about 30% of the Copperbelt comprised 'Forest Reserves and Protected Forest Areas, whose prime purpose is to supply timber for the mines and other commercial consumers.' Because only a third of the forest areas was capable of producing suitable trees and timber was a heavy, bulky commodity 'as much suitable land as possible on or near the Copperbelt has been reserved for forestry.' Charcoal was being increasingly used. About 1,200 people were engaged in burning charcoal under licence from the Forestry Department. Immigrants from Angola and the Congo introduced the industry on a large scale, while others came from Malawi and Zimbabwe. Most were members of the Professional United African Charcoal Burners Union. In addition to organised burners, there was 'a smaller number of others who operate without permission on a part-time basis and who cut timber where they can. They occupy illegal squatter encampments or alternate between temporary shelters in the bush and more permanent homes elsewhere.' Others were involved in 'unauthorized cultivation, especially in areas adjacent to the main towns.'⁴⁴ **It is useful, when looking at current concerns with charcoal burners and forests, to be aware that they have such an antiquity.**

Current statistics, unreliable though they may be, reveal that of the Copperbelt Province's 3,132,760 hectares, some 543,647 hectares are currently designated as Forest Reserves. These are divided into national and local forests. Most of these reserves were created during the 1950s specifically to serve the interests of the copper industry, both for burning and for pit props, though some were established as late as the 1970s.

The past decade and a half, we were told, has seen a great intensification of the process, first noted in the 1960s, for retrenched or retired miners and others to leave the urban compounds and head for the forests to engage in charcoal burning, which guaranteed a relatively quick and secure means of making money. Once there, many received *de facto* recognition from Forestry Department staff who licensed them to cut so many trees within a given period. **After some years the trees usually disappeared and the people were told to leave. Instead they mostly chose to stay and turned to farming. At which point they became illegal squatters, since farming is not allowed in National Forests. But again *de facto* recognition of their position often came from Ministry of Agriculture staff, who offered advice and**

⁴³ W.V. Brelsford (Ed.), *Handbook to the Federation of Rhodesia and Nyasaland* (Salisbury: Government Printer, 1960), 319-21.

⁴⁴ George Kay, *A Social Geography of Zambia* (London: University of London Press, 1967), 94. The historian of mining in Southern Africa, Ian Phimister, was born and brought up in Mufulira in the 1950s. He recalls large bags of charcoal piled up on the roadside for sale and, on being asked at primary school what he wanted to do when he grew up, replied 'a charcoal burner'.

support to people in these essentially peri-urban communities who often had very limited agricultural skills or experience.

The result today is that some thousands of people (noone knows how many with any degree of precision) are now illegally settled on land designated as forest land. So considerable pressures have built up to have some of the forest areas de-gazetted, as in Kenya and elsewhere, and hence available for farming. This has already happened, *de facto* at least, in Chingola, Mufulira, Luanshya and Ndola Districts. People in and out of government behave as though the cases put forward for de-gazetting are already *de jure*, but in fact, as mentioned earlier, the formal legal process is a very long one, which culminates in requiring the President's approval.

As soon as there are even rumours of a possible de-gazetting, people start to move onto the land. One result is that land supposedly designated for miners facing retrenchment has already been occupied by squatters. Pressure comes both from the squatters themselves and from MMD politicians who see them as important voters. All the forest squatter communities we met reported that they had polling stations nearby; polling districts reflecting where people actually live rather than where they are supposed to live. **The squatters tend to be solid MMD voters and many asserted to us that 'Chiluba has promised that we can stay here and that we will not be moved.'**

In such a situation, there are inevitable conflicts between government agriculture and forestry staff, with Agriculture generally pushing for de-gazetting and Forestry desperately trying to defend the forests against further encroachment. A list of Forest Reserves in the *Copperbelt Provincial Forestry Action Programme, 1998-2018* (see page 40) contains their status, which include words such as 'encroached', 'heavily encroached', 'depleted', 'almost depleted', 'degraded', 'partially degraded' and, just occasionally, 'intact'. As one forester put it, 'Everyone wants to do farming now because of the high cost of living and retrenchments. So everyone goes to the forest. Government can't stop this. What sanctions are there? According to law, they should be arrested and prosecuted.'⁴⁵ Provincial Agriculture officials in Ndola fear a further rush of retrenched miners into farming in the forests when the mines are finally sold.

Though the squatters we met in the forests are using the land on a small scale, it is clear that they are able to sustain themselves from their own production. Many had fled from nearby squatter compounds like Kapisha in Chingola before settling in the forests and do not want to go back because of the hunger that is prevalent there.

Some argue that a key factor is that some of the forests contain the headwaters of the Kafue, which runs the whole length of Zambia and is a priceless national asset. Concerns have already been voiced about falling water levels down-river. Wider concerns have been raised about the possible impact of wholesale cutting of trees on the traditionally heavy rainfall which the Copperbelt enjoys.

⁴⁵ Evidence of Agriculture and Forestry officials, Chingola, 7 August 1998.

Because of the obvious failure of the policing approach to forests, and perhaps because of the unpopularity that carrying out this thankless task has caused, a new Forestry Act has been proposed which will, for the first time, involve local communities in the management of the forests, along lines already pioneered with wildlife. The Forestry staff we met talked enthusiastically of involving all stakeholders in the management of the forests, which cannot be done under the terms of the present Act. The issue has been under discussion for the past 3 years and is in line with ideas of community based natural resource management being promoted within the SADC region by IUCN and others.

Forest Reserves in Copperbelt Province⁴⁶

<i>Name of Forest</i>	<i>Area (ha)</i>	<i>Status</i>
LUANSHYA		
1. Muva Local Forest	3 216	Partially degazetted
2. Masansa National Forest	1 149	
3. Lufubu Botanical Reserve	63	
4. Roan Local Forest	3 853	Degraded
MUFULIRA		
1. Kasaria Forest Reserve	6 273	Encroached
2. Njiri Forest Reserve	6 698	Heavily encroached
3. Lumina Forest Reserve	4 530	Encroached
4. Ngala Forest Reserve	2 752	Intact
5. Muflulira Forest Reserve	6 568	Heavily encroached
6. Nsato Forest Reserve	15 000	Encroached
KITWE		
1. Mwekera National Forest	17 887	Under pressure
2. Misaka National Forest	28 321	Depleted
3. Maposa Local Forest	10 021	Depleted
4. Ichimpe National Forest	10 141	Depleted
5. Karibu Local Forest	174	Depleted
6. Nkana North		Depleted
7. Chisenga National Forest	4 706	Depleted
CHINGOLA		
1. Lushishi National Forest	6 393	Encroached
2. Luano National Forest	13 944	Settled in
NDOLA		
1. Ndola West	2 140	Under ZAFFICO plantations
2. Chichele	2 560	Under ZAFFICO plantations
3. Misaka	28 400	Under ZAFFICO plantations
4. Kasafwe	2 270	Almost depleted
5. Miengwe	8 094	Intact
6. Bwana Mkubwa	1 704	Depleted
MASAITI		
1. Katanino	4 532	4 131 ha marked for degazation
2. Songwe Welala	5 698	4 131 ha marked for degazation
3. Chondwe	3 223	Partially degraded
CHILILABOMBWE		
1. Hippo pool	5 500	Degraded
2. Nsato	15 216	Intact
3. Border	6 900	Partially degraded
4. Dome	3 622	Intact
5. Kafwila National Forest	12 800	Intact
6. Kilala	2 066	Depleted
7. Kameza	7 228	Half still intact
8. Konkola National Forest	3 845	Intact

⁴⁶ Copperbelt Province, *Provincial Forestry Action Programme, 1998-2018*.

3. SQUATTERS ON ZCCM LAND

There are also many thousands of squatters currently living on ZCCM land who may be forced to move because of the sale of the mines. ZCCM is the huge parastatal company set up to manage all the mines on the Copperbelt, after they were nationalised by Kaunda in 1969. It has been both an employer and a service provider on a huge scale. As a recent report put it:

‘ZCCM has established a corporate culture which extends past a work place involvement. As an employer, it provides for all an employee needs: shelter, hospitals and medical assistance, education for children, subsidised food, free electricity, water and transport and a number of subsidised items including burial arrangements for the dead.’⁴⁷

As Zambia’s biggest land owner after the state, ZCCM never thought that its assets might one day be stripped. So it allowed many of its former workers to settle and farm under licence within its Mining Surface Areas. In terms of their agreements, these tenants were supposed not to erect permanent structures but many have in fact done so. The Surface Areas, frequently much larger than the Mining Licence Areas surrounding the mines themselves,⁴⁸ comprise land which ZCCM and the previous private owners, Anglo-American and RST, staked out for possible future mining development. The size of the Surface Areas has ebbed and flowed over the years because of the inevitable uncertainties surrounding all mining activities. Whether or not as a result of this, their boundaries today are often not well known by officials.

In theory, there is potential to reschedule some of this land and make it available to settlers. ZCCM was originally favourably disposed towards this, we were told, but following the collapse of the deal with the Kafue Consortium, it is now inclined to cling to the land as an asset to offer to new potential buyers. With the Zambian Government now being pressed by all donors to sell the mines, the question of these squatters on ZCCM land has come to the fore. All potential purchasers, we were told, wanted to buy the mines and the mining land ‘unencumbered’, i.e. with all the tenants removed.⁴⁹ Negotiations on this were said to be ‘quite emotive’ in the cases of Nkana (Kitwe) and Nchanga (Chingola).⁵⁰ Anglo-American, with its long experience of Zambia, was the only potential buyer to take a more pragmatic approach.

⁴⁷ John Lungu and Mitulo Silengo, *The Socio-Economic Assessment Impact of Privatization on the Zambian Copperbelt: The Case of Mufulira and Konkola*, Department of Planning and Land Economy, Copperbelt University, for Institute of Natural Resources, University of Natal, May 1997, 3.

⁴⁸ In Chingola, for example, the Mining Licence Area covers 11,500 hectares, while the Mining Surface Area is 30,890 hectares. ZCCM, *Nchanga Mining Licence Area - ML10, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 18 March 1997.

⁴⁹ If the new owners are foreign, as is likely, the President will be personally required to deal with their application for title deeds under Section 3 (3) (b) of the 1995 Lands Act, as read with Act No. 39 of 1993. Also, under Section 3 (5) of the Lands Act, it is provided that ‘all land in Zambia shall, subject to this Act, or any other law, be administered and controlled by the President for the use or common benefit, direct or indirect, of the people of Zambia.’ This is an important obligation on the President which he can use to the benefit of settlers.

⁵⁰ Evidence of ZCCM, Kitwe, 18 August 1998.

The numbers of such squatters has become something of a political issue, with very different figures being banded about. In Chingola, the Town Clerk told us he believed there were 15-20,000 squatters on ZCCM land in the District, while a ZCCM report asserted that there were less than 4,000.⁵¹ In Kitwe the comparable figures were over 15,000 and under 5,000.⁵² Again, as in the forests, no one knows for certain. As yet there has been no major policy statement on the issue, which some would like to see. What is certain is that, as insecurity grows, people are furiously passing the buck and **there is a serious lack of coordinated planning to deal with this issue across the Copperbelt.**

ZCCM's initial solutions were either political sensitisation or the use of arms,⁵³ but it has since adjusted its thinking. **We have sympathy with councils which are being stripped of funding (from government and from the mines) at a time when they need *more* resources to help people cope with the huge social problems likely to arise in the very near future.**

Given the political complexities, it is clear that councils will be extremely reluctant to cooperate with any demands from ZCCM for the removal of squatters from its land. One official suggested that such a decision would need to come from the President himself because of the great sensitivity.

⁵¹ Evidence of Chingola Town Clerk, 7 August 1997; ZCCM, *Nchanga Mining Licence Area - ML10, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 18 March 1997. See also ZCCM, *Report on Illegal Settlements in Mine Areas*, June 1997.

⁵² Evidence of Acting Deputy Director of Housing, Kitwe, 18 August 1998.

⁵³ ZCCM, *Report on Illegal Settlements in Mine Areas*, June 1997.

4. THE LANDS ACT No.29 OF 1995 AND ABSENTEE LANDLORDS

The problems are compounded yet further by the new Lands Act No.29 of 1995, discussed earlier (pages 18-21). The Act was passed following a great deal of pressure from the World Bank and much browbeating of internal critics - a Bill the previous year had been dropped following great controversy. Ironically, proponents of the Act argued that by giving land a value and opening an official (as opposed to unofficial) market in land, it would encourage greater security, greater investment in land and greater productivity. In short, it would be good news for Zambia. **But the new Act is in fact a charter for absentee landowners. It imposes no constraint or penalty on those who fail to develop their land. This is in contrast to earlier legislation which required owners to show some development within 18 months.**

On the Copperbelt there are as number of 'farming blocks' opened up by Kaunda's Government in the 1970s and 1980s as part of his 'back to the land' rhetoric. UNIP supporters, it is alleged, were rewarded with farms to which they were given title deeds. Large numbers did not, and have not, taken up their farms, partly because the promised inputs were never delivered by the government. As a result many squatters have moved onto and are farming such land. In Chingola, at Kamiteta only 10 out of 52 plots are occupied by the legal owners while at Kafibale the figure is 15 out of 62. The squatters are pressing hard to be given individual 'title deeds' - a term which we found to have very elastic meanings on the Copperbelt. They say the lack of title deeds and tenure security is retarding their development and their productivity. Most agricultural officials agreed with this assessment.

A rational response, in a context in which people are desperately looking for land, would be to force absentee owners to either develop their land or surrender it, as Agriculture staff in Chingola and Kitwe have 'pushed and pushed' for and as the squatters themselves demand. 'People are crying for land. Agriculture should be given powers to repossess and big areas should be cut into small plots'⁵⁴ was one cry, and 'undeveloped land should be re-possessed and given to sitting tenants'⁵⁵ was another. **But things are becoming more difficult because some of the original absentee owners, seeing the new demand for land, are starting to sell off their plots - though not to the squatters, who now find themselves liable to be moved without compensation for any improvements they may have made.** It was suggested that it is unlikely that the Government, despite the fact that it needs to retain the squatters' votes, would entertain any amendment of the Lands Act for fear of antagonising donors and investors,⁵⁶ particularly at a time when it is trying to sell off its 'jewel in the crown.'

⁵⁴ Evidence of Kaminsundu block farmers, Chingola, 3 August 1998.

⁵⁵ Evidence of Kafibale block farmers, Chingola, 5 August 1998.

⁵⁶ On the grounds that it might be construed as an attack on private property.

5. DEMOCRACY, SECRECY AND PARTY POLITICS

On the Copperbelt the decline of an urban complex once dedicated exclusively to mining is causing acute social problems, as it has in many other parts of the world. But in Zambia **the situation is compounded by the relative lack of democratic space, open debate and freely available information.** Clearly there is a need for some secrecy and delicacy in negotiations surrounding the sale of the mines. But both the Mayor of Kitwe and a member of the Chamber of Commerce told us they were given no details of the proposed sale of Nkana to the Kafue Consortium, despite the fact that it would have huge implications for the town. Such secrecy is scarcely conducive to effective contingency planning.

Nor is fear helpful; a group of farmers in Mutundu, Mufulira, complained ‘We know nothing about what’s happening. We’re told nothing by our MPs. We feel impotent. We are living in fear.’⁵⁷ **We encountered a very great deal of fear and uncertainty ascribed to insecurity of tenure.**

Tenure issues are also bedevilled by party politics. For example, last year ZCCM advised squatters on its land in Chingola to leave. UNIP promptly seized the opportunity to exploit the situation and persuaded many people to tear up their MMD cards. The MMD rapidly drew conclusions from this. Some observers go so far as to believe that its very survival may well depend on its sensitive handling of this issue. There are certainly votes to be won from taking the part of the squatters and encouraging them to stay wherever they are, regardless of the consequences. But, as in Zimbabwe, this can be a very dangerous game to play, for **licensing a ‘first come, first served’ land grab could have huge implications.** In the end the Mayor of Kitwe acknowledged, **‘What actually determines decisions on whether to move people is political expediency.’**⁵⁸

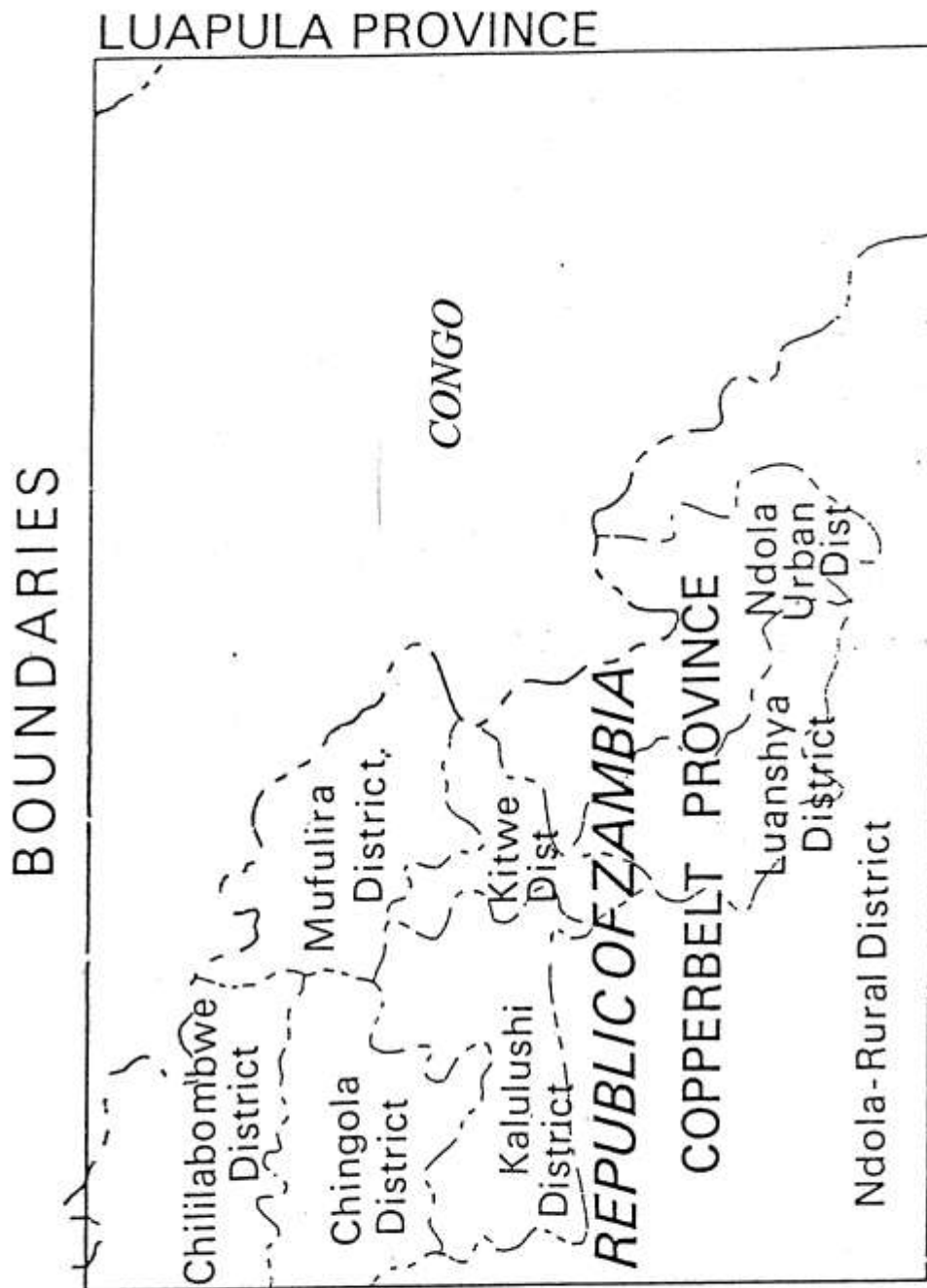
⁵⁷ Evidence of Mutundu farmers, Mufulira, 11 August 1998.

⁵⁸ Evidence of Mayor of Kitwe, 18 August 1998.

III:

**CASE
STUDIES**

COPPERBELT DISTRICT BOUNDARIES



1. CHINGOLA DISTRICT

STATISTICS⁵⁹

Total area	167,800 ha
Population (1998 estimate)	202,294
Population (1990 census)	161,062
State land	23,542 ha
Forest Reserve	25,916 ha
ZCCM land	33,500 ha
Nchanga Mine Surface Area	30,890 ha
Nchanga Mine Licence Area (ML10)	11,500 ha
Reserve Land	2,374 ha
Arable land	141,884 ha
Cultivated land	86,700 ha
Name of mine	Nchanga
Estimated mining community	67,984
Employed by the mine (August 1996)	8,606
Mine houses occupied by ZCCM employees	8,000+
Squatters on ZCCM land (ZCCM estimate 1996)	3,873 ⁶⁰
Squatters on ZCCM land (Council estimate 1998)	15-20,000
Mine townships	9
Municipal townships	11
Recognised illegal settlements	9
Informal settlements (Kapisha & Luano)	2
Length of graded feeder roads	116 km
Length of ungraded feeder roads	100 km
Length of uncleared roads	205 km

Everyone we spoke to in Chingola acknowledged that there was a major problem of squatters, especially in the east of the District. They have been allowed, even encouraged, to settle both on ZCCM land and on forest land for many years past. Many squatters firmly believe that President Chiluba has promised them that they can stay where they are. They tend to be are strongly critical of their councillors who have failed to represent them or to fight for their interests. The vast majority are demanding individual ‘title deeds’, which they believe will give them security and an incentive to become more productive as well as enabling them to bequeath land to their children.

⁵⁹ Based on dubiously reliable statistics in: ZCCM, *Nchanga Mining Licence Area - ML10, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 18 March 1997; *Basic Data for Copperbelt Province* [from Provincial Ministry of Agriculture, Ndola].

⁶⁰ This figure does not include people on short term renewable tenancy agreements.

Many of the forests have now been destroyed by charcoal burners, who often originally cut trees under licence from the Forestry Department, then turned to farming and received support and advice from the Department of Agriculture. Agriculture recognises people once they have built a house; they can then provide them with extension services. They record the produce of squatter farmers. But squatters, though recognised in this way, are ineligible for credit.

There is a good deal of confusion about whether certain forests have been de-gazetted or not. Most officials spoke of 1,400 hectares of Luano Forest Reserve having been de-gazetted and a proposed de-gazetting of 2,000 hectares of Luswishi Forest Reserve. In fact, the full legal process takes longer and requires Presidential assent. **The records show that the last legal de-gazettings in Zambia, signed by the President, were in 1992.**

A concern was expressed that forests affecting the headwaters of the Kafue river, a major national resource, should not be tampered with. The Minister for Environment and Natural Resources visited Chingola recently and said that because existing de-gazetted areas had not been fully used, no more land could be de-gazetted from the forests for the present.

There is a good deal of confusion about people who have had their farming plots demarcated by Agriculture but have been waiting many years for titles.

There is also much uncertainty about land boundaries and whether certain areas are within mining, council or state land. This is partly because ZCCM's own maps are not available to government officials, still less to the public. As a gesture towards transparency and open government, we include copies of these maps in this report.

There is a great deal of absentee landlordism on the farming blocks (titles to which were mostly given in 1984), much resentment about this and about the fact that, with the new rush to claim land, landlords are increasingly selling, not to squatters (or sitting tenants, as they consider themselves), but to others with the ready cash. As soon as a plot is sold, squatters are liable to be moved without any compensation for growing mango trees and the like. There is now a widespread fear of eviction. At Chipushi it was said 'people come to shake us every year,' while 9 farmers at Kafibale were told not to plant next season because the land now belongs to a new owner.

There are strong demands from the squatters that those actually working the land and making a living from it should be given title. This was particularly the case in Kafibale farming block, where people said they were all living on the land there and did not still have one foot in Kapisha, in town. Out of 62 plots, only 15 are legal owners and 47 plots are occupied by squatters; at Kamiteta, the figure is 10 legal owners out of 52. Agriculture officials have recommended that the land of absentee landlords be repossessed; they said they have 'pushed and pushed' for this. But in legal terms it was easier to re-possess land before the 1995 Land Act than it is now.

At Kamiteta, where farmers formed a cooperative and got title deeds as a cooperative in 1989, the people feel secure, but there was a strongly articulated demand from the more successful farmers for individual title. They cannot sell their plots or receive compensation for any improvements if they do leave, as the cooperative does not have the resources to buy them out and it was written into the original constitution that anyone leaving would receive only a token payment of K5,000.

There appears to be a steady exodus from the Kapisha compound, with a population of around 17,000, to peri-urban rural settlements. Most of those we spoke to who had moved were glad to have done so. They associated Kapisha with hunger and unemployment. One woman reported that her children were now better fed than before, while a man said that money lasted much longer than in Kapisha. But many people still had a foot in both camps, hedging their bets or 'straddling' as economists call it. There was a strong belief that, wherever they were, people wanted access to a clinic, a school and a church, and they constantly pressed for better communication (meaning roads and bridges) to town.

The Town Clerk said it was better to re-designate areas rather than move people. Council is thinking seriously about upgrading Kapisha to a Statutory Area, which the local MP has been pushing for. It has grown so big that you can't shift people, he said. A water supply project, supported by the World Bank and Norad, involving the sinking of boreholes, is being extended to Kapisha. There is an active residents' development committee, KADECO.

Land Records Cards, issued by the Council's Housing Department, are supposed to be given to people in Kapisha. Instead they are being kept by the Council. The Council is losing crucial revenue from ZCCM, from central government and also because municipal markets have now been privatised.

A ZCCM study estimated that over 1,000 mine jobs have been lost since 1991 and that 10 companies have closed with reported job losses of over 600. There are 63 listed ZCCM suppliers and contractors in transport, engineering, construction, general and service supplies who would be vulnerable to any mine closure.

The Town Clerk said the Council was told that investors wanted to buy Nchanga mine 'without encumbrance'. But he said Council has 'no intention of taking on the squatters.' Last year it had started negotiating with ZCCM, but feel it is ZCCM's problem because it allowed people to squat on the land without taking any action. Council has formed a District Task Committee to look at how to resolve the issue.

There are settlements with permanent structures within the Mining Surface Area, but ZCCM's information about them was totally inadequate. It said there were only 3,000 people there on 19 squatter settlements (see map, page 51), but in fact there are 15-20,000. So the problem is immense. Council asked ZCCM to conduct a fresh census. The Town Clerk felt they have all been going round in circles on the question of possible resettlement.

In the past, Mine Surface Areas have been transferred to Government to allow resettlement. ZCCM extended its boundaries into the forest areas; Kamuchanga was originally a forest area. Why can't ZCCM reduce its Surface Area, he asked? It would resolve the Kamuchanga problem. ZCCM originally wanted to surrender 1,700 hectares in Muntimpa in the south-east, but then stalled because of the delay in selling Nchanga Mine.

2. KITWE DISTRICT

STATISTICS⁶¹

Total area	77,700 ha
Population (1998 estimate)	1,200,000
Population (1990 census)	490,000
State land	34,664 ha
Forest Reserve	20,175 ha
ZCCM land	9,800 ha
Nkana Mine Surface Area	
Nkana Mine Licence Area (ML3)	11,800 ha
Reserve Land	Nil
Arable land	25,700 ha
Cultivated land	7,004 ha
Name of mine	Nkana
Estimated mining community	108,000
Employed by the mine	9,132
Mine houses occupied by ZCCM employees	11,180
Squatters on ZCCM land (ZCCM estimate 1997)	15,900
Squatters on ZCCM land (Council estimate 1998)	11,706 ⁶²
Population of illegal settlements, including ZCCM land	88,462
Mine townships	10
Municipal townships	12
Recognised illegal settlements	8
Length of graded feeder roads	55 km
Length of ungraded feeder roads	305 km

Kitwe is a small, densely populated district lying in the centre of the Copperbelt. The town itself is surrounded by residential areas which in turn are ringed by commercial zones, making the search for land complicated.

As elsewhere, **there has been a great increase in recent years (mainly since 1995) of people going into farming and trying to acquire land following retrenchments at Nkana mine and elsewhere. 'It's the only alternative people can think of.' But most farmers remain 'week-end farmers' with one home in Kitwe and another in the forest.**

⁶¹ Based on dubiously reliable statistics in: ZCCM, *Nkana Mining Licence Area - ML3, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 19 March 1997; *Basic Data for Copperbelt Province* [from Provincial Ministry of Agriculture, Ndola].

⁶² This figure does not include people on short term renewable tenancy agreements.

Absentee landlordism is a major problem, blocking people from obtaining title to plots. Some absentee owners are said to be former UNIP politicians and councillors.

Agriculture officials have written to the Council recommending that about 40 such farms should be re-possessed and given to those wanting to farm. They have won a few cases, but, in legal terms, these fell under 'withdrawal of offers' rather than owners with title deeds.

There is a great deal of politics involved in land and housing in Kitwe. Squatters are seen as important voters, so there is no political will to move them for fear of lost votes.

Squatters have fiercely resisted eviction. The Council's Housing Department says it would be very difficult now to conduct a survey because people are suspicious and hostile. In November 1997, aware that existing figures for squatters were out of date, the Council tried to conduct a new survey with ZCCM in St Anthony's, but were chased away. One official lost his spectacles.

In the past the Council had reasonable relations with ZCCM squatters, but once the issue of evictions emerged they have encountered a lot of hostility and St. Antony's people are said to encourage others to resist eviction.

There is no controversy between the Council and ZCCM, but Council has warned ZCCM of the dangers of eviction, though it feels it cannot force ZCCM to compensate people. There has been no major policy statement from a high office on squatters on ZCCM land, so they are still doing things within the old policy, which has been overtaken by events. **The current official position is that ZCCM squatters will have to move, though one ZCCM official believed that in many cases there were no good grounds for shifting people.**

If new investors insist that people are evicted, we were told that orders for this would have to come from the highest authority, the President, but that he would be highly unlikely to agree to this. It would also require support from the police.

The Mayor said that the Council had agreed to settle people squatting on ZCCM land, but wanted ZCCM to put in infrastructure first. He said the squatter problem had not been an impediment to past attempts to sell Nkana Mine.

What actually determines a decision on whether or not to move people, the Mayor admitted, was political expediency.

According to the minutes of a Council committee of May 1997, there are over 15,000 people living in Kamakonde, on ZCCM land, yet according to ZCCM's survey there are only 4,794. The Council has no idea what methodology ZCCM used in its census.

As a result of an earlier study on illegal settlements, each ZCCM Division has been allowed to recruit more land rangers and inspectors to police their land.

Last year ZCCM did a geological survey of the Surface Area to look at future potential, after which it was decided to cut up Luto (Lot M33) at the western end and put the dumping site in the south-east corner of this block of land. In the past it has been hiving off some of the land and houses in the Surface Area to Council. But it will formalise this new area and have properly demarcated plots, managed by ZCCM. The long term view is to surrender it to the state. ZCCM wants to allocate it to those willing to settle there in smallholdings, especially people who are going to be retired or retrenched.

There are a number of squatters in forest areas, some of whom have been there for 20 years. They constitute the largest proportion of farmers registered by the Department of Agriculture. They have been given the firm impression that the government supports them, through extension officers, and that they can stay. One official spoke of squatters feeling 'empowered' by Chiluba to stay in the forests.

In 1995 about 400 hectares of the Mwekera National Forest were de-gazetted and part of Misaka has been proposed for de-gazetting.

Charcoal burning was said to be the easiest way of making money quickly in a context in which poverty is growing.

Former top officials have got land and built houses in the forests!

At Luto, there were clear tensions between better and poorer off members of the Kafue Multi-Purpose Cooperative, which was established in 1976. The first arrivals got the largest plots. The cooperative has a block title deed, which prevents individuals from getting loans. People appreciated the security and resources obtained in the past, but some felt it had now outlived its purpose and were pushing for individual title.

There were demands in Kakolo resettlement scheme (see Welcome Speech in Appendix 1) that the processing of title deeds be speeded up. It was found that crucial forms had been lost in the Town Clerk's office and 'settlers expressed indignation at this development. They were utterly surprised to learn that a process they thought was going ahead had stalled due to bureaucracy.' They spoke strongly and repeatedly about the need for title to enhance their development, to get loans, feel secure, and bequeath property to their children. We were told that records were very badly kept between 1980-90, so many title deeds have gone missing.

The Mineworkers' Union of Zambia (MUZ) has had some briefings from Government over negotiations on the sale of the mines, but it is very worried. It has an agreement on terms and conditions with ZCCM, but recognises that a new buyer may not abide by them. MUZ is very happy that its members have been able to buy their houses, which has cushioned the blow of privatisation. Previously lack of shelter for former

miners had led directly to destitution. Having their own homes will stop the mushrooming of shanty towns, MUZ believed.

The decision to sell houses to the miners was taken because ZCCM wanted to reduce its benefits packages to its employees; it didn't have sufficient liquidity.

A big shopping complex was halted because the sale of the mine fell through.

The Council prefers to upgrade areas rather than resettle people and to encourage people to settle as much as possible in designated areas and have them serviced. But decisions on which areas to upgrade, we were told, are mostly the result of political pressures.

There are two types of houses - those with individual title and those with block title. The ones on individual title are being processed through the state. The block ones will be brought to the Council, which can issue a 15-year title to allow time to do the cadastral surveys and then get state title. Titles can be speeded up. ZCCM is applying pressure. There will be about 40,000 houses on the market overall.

Agriculture officials complain of long delays in Lusaka following demarcation of plots. The decentralised Lands office in Ndola is not yet operational.

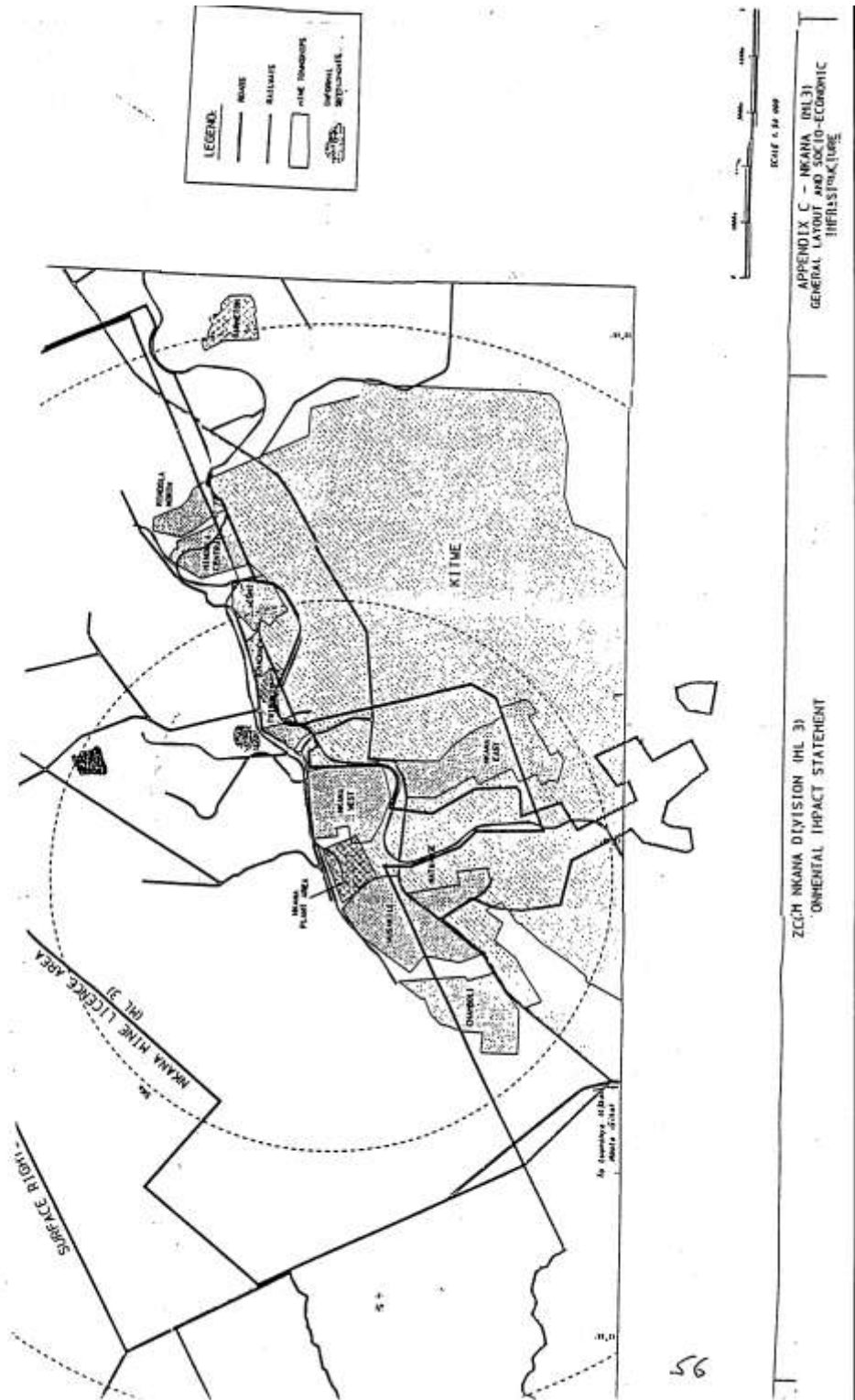
One Agriculture official said they don't get information from Lands, they have to piece things together and **everyone is dealing with one small part of the overall problem.**

Agriculture staff had not heard of Land Circular No.1 of 1985, which gives policy guidelines on land allocation. We gave them a copy.

One or two councillors were said to be active, but generally they do not bring the views of their constituents to Council and do not report back to them.

'You have to find your own market now,' said one farmer wistfully.

ZCCM MAP OF NKANA DIVISION, KITWE



3. MUFULIRA DISTRICT

STATISTICS⁶³

Total area	163,170 ha
Population (1998 estimate)	200,000
Population (1990 census)	272,240
State land	35,402 ha
Forest Reserve	35,402 ha
ZCCM land	20,667 ha
Mufulira Mine Surface Area	30,890 ha
Mufulira Mine Licence Area (ML15)	20,667 ha
Reserve Land	nil
Arable land	127,768 ha
Cultivated land	81,421 ha
Name of mine	Mufulira
Estimated mining community	82,112
Employed by the mine	6,504
Mine houses occupied by ZCCM employees	10,219
Squatters on ZCCM land (ZCCM estimate 1997)	112 ⁶⁴
Mine townships	4
Length of graded feeder roads	5 km
Length of ungraded feeder roads	107 km

There is no acute problem of squatting on ZCCM land. There are only an estimated 112 squatters in two settlements, Valley Dam and Gymkhana. There is plenty of land available in the District on which people can be resettled and the Council has undertaken to do this if necessary. But people want to be continue living near town.

It seems that ZCCM has policed its land more effectively than in Chingola and so kept illegal squatters to a minimum. ‘We have patrols that go out to prevent squatting,’ said one ZCCM official. ZCCM has allowed 254 legal farming tenants on its land, mostly former workers. They pay a rental of K2,000 or K2,500 per year, a fee not revised for 5 years. They are not supposed to put up permanent structures, but many of them have. ZCCM is ‘under no circumstances...under any obligation to pay compensation for any improvements upon the said premises.’

The relatively low numbers of people residing in illegal settlements on ZCCM land do not however include people who have been given short-term renewable tenancy agreements, like the ex-miner, 68 year old Dominic Mwenya and his wife. (See his

⁶³ Based on dubiously reliable statistics in: ZCCM, *Mufulira Mining Licence Area - ML15, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 27 February 1997; *Basic Data for Copperbelt Province* [from Provincial Ministry of Agriculture, Ndola].

⁶⁴ This figure does not include people on short term renewable tenancy agreements.

Tenancy Agreement and Land Record Card on pages 61-2). He has been farming on land owned by ZCCM in the Valley Dam area, since his retirement 12 years ago. Being an ex-miner (from 1952 to 1985), he disputes management claims that they are farming in a dangerous area near the magazine dump. According to Mr Mwenya his plot is 4-5 kilometres away. He felt that it was impossible for him to return to his village having spent such a long time away. His own family is dispersed and he needs a plot to guarantee his survival. **He is now extremely worried about the future because without warning ZCCM have told tenants like him that they are not going to renew tenancy agreements after this growing season. Without a plot of land he simply will not be able to survive.**

According to records at the Lands and Property Management Section of ZCCM, the company has 246 legal farming tenants on mine land in Mufulira. So the numbers of people liable to be affected by a change of ownership at Mufulira is likely to be considerably higher than the official figures would suggest.

As a consequence of ZCCM land being blocked, people looking for land have tended to concentrate on the forests, some of which were created as late as the 1970s. There has been the usual pattern of people moving in originally as charcoal burners, cutting all the trees, then staying to farm illegally. Then there is pressure from Agriculture to de-gazette some of the forests.

800 hectares from Mufulira Forest Reserve and 2,000 hectares from Njiri Forest Reserve have been de-gazetted, though, as in Chingola, this has not received final legal Presidential approval. The only two intact forests are Lumina and Ngala. This was because they were right on the Congo border and Zambians were afraid of the insecurity there. Now trees are being cut by Congolese, with whom the Forestry Department has had discussions. Agriculture now want all of Nsato Forest Reserve (15,000 hectares) de-gazetted. Forestry say there is Council land available as well as some abandoned formerly white-owned farms towards the Congo border. Both the Mayor and the Town Clerk say that squatters in the forest areas are not a serious problem.

There are a number of illegal settlers on farming blocks who are being faced with eviction, as absentee landlords exploit the new and growing demand for land from retrenched miners. The Council says it has land on which to resettle those evicted.

There are also the customary long delays of people waiting for individual title. Again, people hesitate to invest in the land because of insecurity of title.

Chiswili settlement, which dates back to 1952, is being threatened by a neighbouring farmer. For the first time since the settlement began, people are afraid of being evicted. There is a similar situation at Minambe.

Chandamali Forest was first settled in 1978. People have faced eviction orders in 1989 and again in 1994 and are still struggling to get plots demarcated.

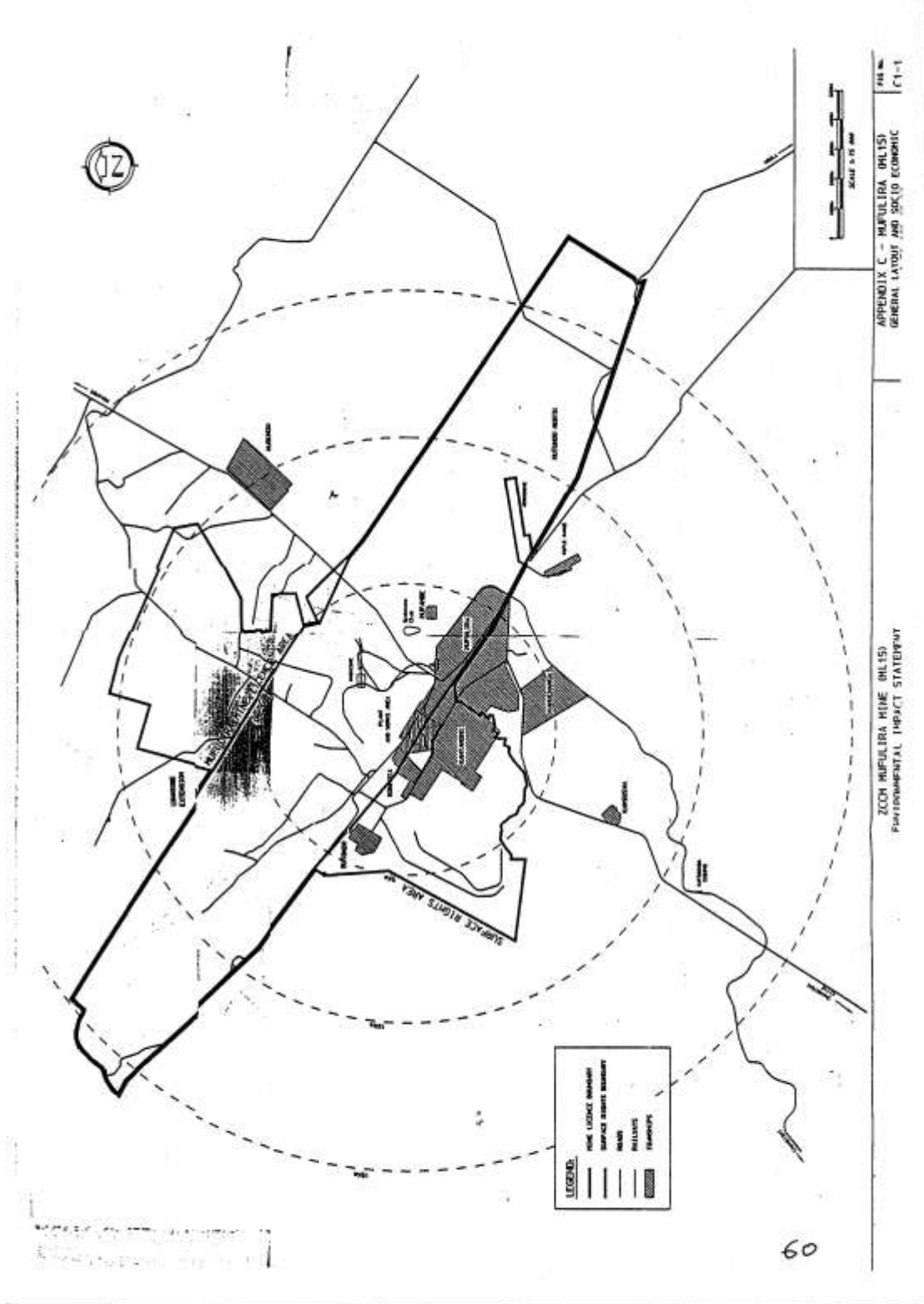
Most people have not seen their MPs or councillors, though the Mayor responded to such complaints by asserting that travel is expensive and the areas to be covered are very large.

Agriculture is trying to encourage cheaper methods of irrigation, such as the treadle pump. But the market is already flooded and the money people make from selling vegetables is not enough for them to buy fertiliser.

A map from Land Husbandry of farms around Luansobe contains the wording: ‘This area is underlain by copper mineralization. There are no plans at present to mine this. This could change. Therefore do not allocate this land for farming.’

There are fears at Minambe over privatisation: ‘We have already seen retrenchments. It will contribute to a high rate of crime. Investors will bring new technology, so one person will do the work formerly done by 10. There will be less income and money in circulation when miners are paid at the end of the month.’

ZCCM MAP OF MUFULIRA MINE



TENANCY AGREEMENT, MUFULIRA

2 May 1997

Mr K D Mwenya
C177 Minambe
Mufulira

Dear Sir

Tenancy of small holding farm no. 40 B Minambe.

We refer to your application and now offer you the Tenancy of the above strictly on an annual basis.

The following terms and conditions will apply:-

- a) The Company reserves the right to the unrestricted use of the premises for any purpose whenever this becomes necessary.
- b) Under no circumstances shall the Company be under any obligation to pay compensation for any improvements upon the said premises.**
- c) No structural development by the Tenant will be permitted without prior consent by the Company.**
- d) At the end of each calendar year you will be required to indicate whether or not you require the tenancy to be renewed. The decision to renew or not to renew is the prerogatory of the Company.**
- e) Payment of an annual rental of K2,000 for 1998/99 season.
- f) Subletting is not permitted.
- g) It is a condition of this offer that no refund will be paid and no compensation will be paid if the Tenancy is terminated by the Division for breach of non observance of any term contained in the Tenancy.

Yours faithfully

Lands Officer
Zambia Consolidated Copper Mines Limited
Mufulira Division

ZCCM

MINES LAND RECORD CARD

MUFULIRA COPPER MINES

Lot No. 979/M.

Locality Mufulira River.

This is to certify that Mr. Dominic K. Mweenya (photo attached)

(a) has ...(illegible because of his photo)...Farm...

(b) has permission to reside temporarily on undemarcated plot no 40 in the above-named locality.

ABSTRACT OF CONDITIONS OF TENANCY

The tenant will:

1. Pay a rent of K20.00 at the times agreed.
2. Maintain the beacons and boundaries of the farm.
3. Farm the land according to good farming practice, including soil conservation.
4. Use the land only for farming eg. not use it or allow it to be used for any trading, beer selling, lodging, or public entertainment.
5. Not allow anyone to occupy, use or reside on the land except (no) NIL paid full-time employees.
6. Not sell wood off the land without first obtaining the Company's permission.
7. Carry out at his own expense any instructions given by a Medical Officer.
8. Not sublet, assign, sell or pass an interest in this tenancy to any other person.

Signed Date 19/6/87
for Mufulira Copper Mines

4. SOLWEZI DISTRICT

STATISTICS⁶⁵

Total area N-W Province	12,614,091 ha
Population Solwezi District	198,000
Population Solwezi Town	52,000
Forest Estate N-W Province	2,417,707 ha
Kansanshi Mine Surface Area	7,200 ha
Kansanshi Mine Licence Area (ML11)	4,244 ha
Area actively mined	51 ha
Name of mine	Kansanshi
Employed by the mine (December 1996)	185
Commercial farmers (+20ha) (NWP)	121
Emergent farmers (5-20ha) (NWP)	1,452
Small scale farmers (-5ha) (NWP)	19,070
Informal settlements - not on mine land (Zambia & Chawama)	2

Kansanshi Mine has operated intermittently since 1905, initially as an underground mine and since 1969 as an open pit. Kansanshi was the first significant ZCCM package to be sold. The sale to Cyprus Amax, America's second largest copper company, was completed in March 1997. **We believe that events in Solwezi since the sale of the mine merit inclusion in this report because of the insight it provides on the working of the relevant legislation, in particular the Mines and Minerals Act. The change in ownership of the mine has had an immediate impact on people's access to land and has profoundly affected people's right to housing.**

Large-scale mining at Kansanshi had ceased in 1986, but small-scale operators (under contract to ZCCM's Nchanga Division) were allowed to continue working. Cyprus Amax bought 80 per cent of the mine; the remaining 20 per cent still belongs to ZCCM. Cyprus Amax has an arrangement to pay only \$3 million over a two-year exploratory phase after which it can withdraw. The eventual full sale price is \$28 million.

Just prior to the sale, Kansanshi was managed by a subsidiary of ZCCM, the Copper Mining Enterprise Trust Ltd (COMET) and received technical assistance from ZCCM's Nchanga Division. The mine is situated 10 kilometres north of the town of Solwezi, the provincial capital of North-Western Province. It is about 150 kilometres north-west of the Copperbelt. The Mine Licence Area covers 4,244 hectares, but mining activities so far affect a much smaller area of only about 51 hectares. Much of the land surrounding the licence area of Kansanshi falls under the authority of traditional chiefs. Cyprus Amax has indicated that it wishes to extend the mining area and has obtained the prior approval of the chiefs and local authorities. We were told

⁶⁵ Based on dubiously reliable statistics in: ZCCM, *Kansanshi Mining Licence Area - ML11, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 6 March 1997.

that consultation with the affected communities was inadequate. Generally poverty is not as great in Solwezi as on the Copperbelt because more land is available for agriculture. But this may change as there is something of a boom in prospecting for minerals in the Province. Unlike mining areas on the Copperbelt, economic activity in Solwezi district has not been dominated by mining. Peasant agriculture and the civil service are more important to the local economy.

In January 1998, less than one year after the sale and with very little warning, the remaining workers at Kansanshi were told that the small-scale copper production had to be closed down. According to the Bishop of Solwezi, the Rt Rev. Noel O'Regan, the miners had been given the impression by ZCCM that they would be able to continue to work there for a considerably longer period. Cyprus Amax, which indicated that it is planning to extend the open cast mining operation, claimed that it needed to clear the area for exploration. We were not sure that this accorded with Cyprus Amax's Environmental Policy which states that it places 'a high priority on environmental considerations in planning, constructing, operating and closing facilities as well as in evaluating new business opportunities.'⁶⁶ Most of the workers were living inside the Mine Licence Area in mine houses with their families.

Although the miners at Kansanshi were originally given letters of offer to purchase the mine houses by Nchanga Division and had even signed contracts to do so, Cyprus Amax apparently objected and directed ZCCM to reserve all habitable houses for the company's use. The offers were then withdrawn and Cyprus Amax, through ZCCM Nchanga, paid them compensation of between K600,000 and K1,200,000. There is a strong case to be made that miners at Kansanshi, in being denied the possibility of acquiring mine houses, have suffered discrimination. The Mineworkers' Union of Zambia (MUZ) explained that in other areas, where, for example, there were insufficient mine houses available, miners were allowed to purchase houses in other mining towns which had a surplus.

At the beginning of 1998 Cyprus Amax announced its intention to demolish the high density houses in the licence area. The majority of the workers were declared redundant and told to leave the mine area. Demolition work started in February or March 1998. In June Cyprus Amax issued final eviction notices, giving 6 August as its ultimatum. According to local people there was no willingness to negotiate with the miners - it was a question of 'take it or leave it'. The miners were isolated, and people did not really even know who they should be negotiating with. They began to move out in June. The number of people affected by the evictions was around 930 (about 150 workers and their families). Although the company agreed that people would be allowed to take some of the materials from their houses, many were not able to do so because they were moving out of the area and unable to transport them. ZCCM paid some of the miners at least some of their terminal benefits (between K6 million and K20 million), but it was not sufficient for them to buy new houses.

⁶⁶ Cyprus Amax Minerals Company, Environmental Policy, signed by Milton H. Ward, Chairman, President and Chief Executive Officer.

According to the Bishop of Solwezi, many retrenched miners used the money unwisely because no counselling was available. Some put it into doomed commercial ventures, like buying taxis, only to find the cars they had acquired were not roadworthy. Most failed to use their terminal benefits to buy houses, with the result that whole families are now living in cramped accommodation and have suffered a sharp deterioration in their quality of life. Most of these impacts had been anticipated in the ZCCM-commissioned environmental impact statements, which noted that ‘many retrenchees struggle to cope with retrenchment’ and that ‘reckless spending of retrenchment benefits and the frequent failure of ill-considered business ventures’ is common among retrenched workers.⁶⁷ The Kansanshi impact statement also reported that ex-miners might move into the informal settlements around Solwezi because of a wish to remain close to services such as health centres and schools. No measures were taken to cushion the impact. It is believed that some people have moved out of the district. Many have been repatriated. Cyprus Amax, through ZCCM, paid for their transport. We tried unsuccessfully to obtain information from Nchanga Division about the level of compensation given to the miners.

Cyprus Amax has actively enlisted support from senior local officials. After the January 1998 floods, in which 600 low cost houses were washed away and many people were left homeless, the company donated K80 million to the Council for relief work. Materials from the demolished mine houses were donated to the Council to be used for re-housing flood victims.

We visited the mine compound and saw a demolition crew at work. Many of the abandoned gardens had mature fruit trees: avocados, guavas and bananas. We also saw the Basic school, which was about to be demolished, and a demolished health clinic. The destruction of good quality homes is quite shocking in a country like Zambia, which has a housing deficit of 846,000 houses.

Apart from the demolition of mine houses and the eviction of miners and their families, Cyprus Amax is also in the process of demolishing the Catholic church at Kansanshi which belonged to St Kizito Parish, Solwezi. The church served the wider community around the mine area, not only those living inside the mine compound. The local population was about 500 and, according to the parish priest Father Antonio Cavalio, it was an important centre. In March 1991, ZCCM Nchanga Division wrote a letter confirming that the Franciscan Fathers of St Kizito Parish had been given permission some years earlier to occupy land inside the Mine Licence Area and was now being encouraged to build a permanent structure which was ‘to serve the needs of the local Christian community.’⁶⁸ The letter from Nchanga Division’s Property Management Department provided the Parish with a certificate of exemption from registration under the Land Perpetual Succession Act, Cap 288 of the Laws of Zambia. ZCCM assured the Franciscan Friars that it had ‘no objection to their continuing to develop the plot.’⁶⁹ According to Father Cavalio they had only

⁶⁷ ZCCM, *Kansanshi Mining Licence Area - ML11, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 6 March 1997.

⁶⁸ ZCCM, *Kansanshi Mining Licence Area - ML11, Environmental Impact Statement, Appendix C, Socio-Economic Issues*, 6 March 1997.

⁶⁹ Letter from W.L.A. Yasini, Administrative Secretary, ZCCM Nchanga Division, 27 March 1991.

completed building the church the previous year at a cost of K7-8 million. Although they were allowed to remove the roofing sheets, Cyprus Amax refused to discuss the matter with Father Cavalio and threatened to charge the parish if the church was kept open. **Cyprus Amax and ZCCM have so far refused to provide any compensation.**⁷⁰ **This may be in contravention of Section 61 of the Mines and Minerals Act**, which states that if damage to crops, trees or buildings is caused as a result of mining operations, the company shall be liable to pay fair and reasonable compensation. Section 57 may also be relevant, as it obliges the licence holder 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 those rights extend.’

The former miners, many of whom had no option but to return to Mansa, Kasama or Mbala in Luapula and Northern Provinces, were bitter and traumatised. They had lived in Kansanshi for most of their lives. Some had ‘bought’ small holdings with a view to securing their retirement. They lost all that too. Parents have had to choose between disrupting their children’s schooling or keeping them in school in Solwezi but splitting up the family. The miners were only given about three months’ notice, which, in the absence of any adequate assistance and counselling was not sufficient. As the Bishop said, **‘If Cyprus Amax had started to use the land straight away, people would have understood. But it’s just lying idle. If development of the mine does not go ahead, then a lot of property and lives will have been destroyed for nothing.’ We believe the Zambia Privatisation Agency should engage in proper monitoring of those workers who have been repatriated to ascertain their circumstances.**

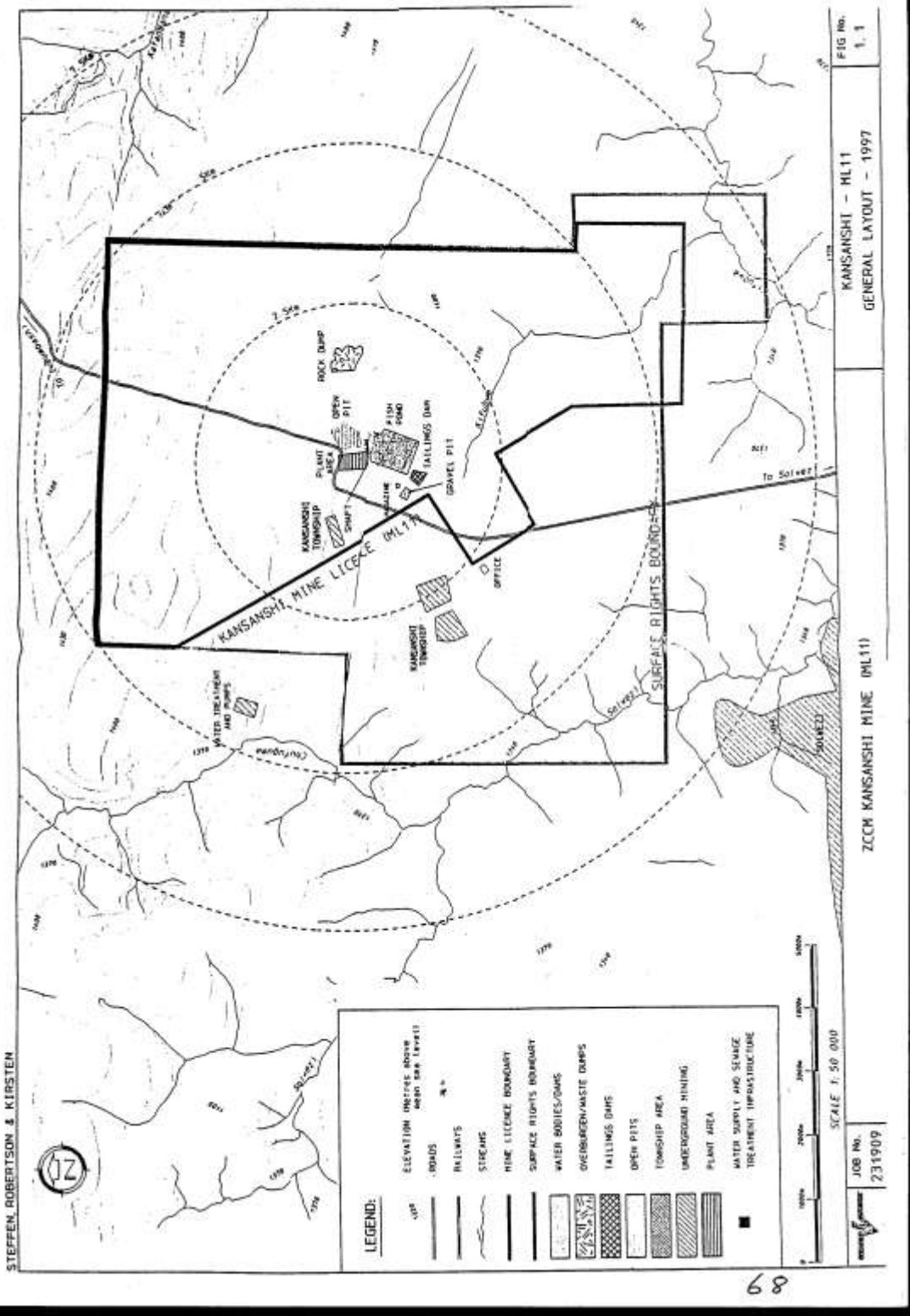
A number of other villages, like Kyafukume and Kametele, are under threat from Cyprus Amax’s plans to expand its mining activities. The most immediate threat is to Mushitala Village, which is about 1 kilometre from the mine compound and is apparently located on mine land. It has a hospital, a church and a school. The company went to the Chief to obtain his consent. In February 1998 he called a meeting to inform the villagers that they would have to move by the year 2000. **Local people were not in a position to challenge the Chief** in these circumstances. They are to be relocated in Mbonge, a forested area. Cyprus Amax will cover their transport costs and provide a new school and hospital. A weakness of the 1995 Mines and Minerals Act is that it excludes directly affected communities from having any say over mining developments. Under Section 56 (1) c, licence holders only require ‘the written consent of the chief and the local authority for the district in which the village is situated.’ There is no requirement to even consult the affected communities. However, Part VII, Section 68 of the Mines and Minerals (Environmental) Regulations 1997 gives the public the right to obtain copies of the project briefs and environmental impact statements which all mining prospectors/developers are supposed to prepare. **We would recommend that local NGOs request copies of these directly from the company or the Minister of Mines or the Environmental Council of Zambia.** But the Minister has the power to exempt a developer from these environmental requirements.

⁷⁰ Report on Kansanshi Chapel, St Kizito Parish, Solwezi, September 1998.

The Town Clerk of Solwezi informed us that the Council planned to use the donation from Cyprus Amax to open up new areas for relocation. The Council started moving some of the flood victims (650 families in all) in April 1998. It is now demarcating 1,000 plots in a new site-and-service area called Kasamba where people will be allowed to build permanent structures. He confirmed that **materials from the demolished mine houses have been donated to flood victims**. The Council will allocate plots in the first place to the flood victims, then to people living in the existing shanty compounds of Zambia and Chawama, and finally to former miners. People will be given 14-year leases. The Africa Housing Fund will help with a pilot programme in Solwezi.

The Council does not think that the Cyprus Amax operation will have much impact on the community. The mine is distant from the town in a forest area. The biggest problem for the Council is the loss of the K4.5 million in rents from ZCCM. But Cyprus Amax has asked the Council to provide it with land to house its temporary work force, most of whom will be construction workers. Cyprus Amax intends to build permanent houses with a water supply, sewage points and boreholes to accommodate 2,000 workers. Once the main construction work is over, Cyprus Amax anticipates that it will only require houses for 400 workers. Any surplus houses will be given to the Council. While the promise to build new accommodation and provide services which will eventually be transferred to the Council is welcome, it appears to us that, given the comparatively small numbers of people involved, Cyprus Amax could have rehoused the retrenched miners and their families in a nearby community.

ZCCM MAP OF KANSANSHI MINE, SOLWEZI



IV:

**SOME
QUESTIONS**

SOME QUESTIONS

Here are a few of the general questions which arise out of this study, responses to some of which are to be found in the recommendations which follow in part V.

- **How can the interests of squatters on the Copperbelt best be supported?**
- **Are there dangers in encouraging wholesale squatting?**
- **How have multi-party politics affected squatters?**
- **What should be done about the forest reserves on the Copperbelt?**
- **How can the problem of absentee landlords best be addressed?**
- **How can relevant decision makers cooperate more effectively?**
- **Can new buyers of mines be lobbied in the interests of squatters?**
- **How might ZCCM be encouraged to protect tenants when selling its surface rights to new buyers?**
- **How can the poor be included in the formal allocation process?**
- **Should NGOs help *communities* to buy land, given the overwhelming demand for individual tenure?**
- **How best can *de facto* security of tenure be turned into *de jure* security?**
- **Can procedures to re-designate land be streamlined?**
- **What can be done to improve infrastructure so that peri-urban communities gain better access to towns?**
- **What positive roles can donors play?**
- **Do the answers to tenure problems ultimately lie on the land - or in urban renewal?**

V:

RECOMMENDATIONS

RECOMMENDATIONS

The recommendations are divided into two sections. The first concerns issues arising from the sale of ZCCM, while the second makes more general recommendations for legislative and procedural changes.

The Zambian Mining Regulations (1996) require all new, proposed and existing mining operations to develop Environmental Impact Statements (EIS). Consequently, ZCCM commissioned *Environmental Impact Statements* for all of its Mining Licence Areas. One component was the preparation of plans for decommissioning and closure. **In our view many of the mitigatory measures proposed in the *Environmental Impact Statements* which were published in February and March 1997 merit careful consideration by ZCCM, the Government, the Zambian Privatisation Agency, the owners of newly privatised mines, local authorities, the World Bank and the wider donor community.** Although it is hoped that few mines will actually close and that new areas will open up with increased levels of investment, some of the impacts on the mining communities described in the statements - such as a reduction in levels of employment, increased pressure on land and mounting insecurity about the future of illegal settlements on ZCCM land - are already being felt. **We believe that a coordinated response is needed from different government departments, the new investors and ZCCM (with appropriate levels of support from the donor community) to resolve some of the problems identified in this *Report on Land Tenure Insecurity on the Zambian Copperbelt*.**

1. THE SALE OF ZCCM

- **A high-level task group representing government, industry, local authorities, labour, NGOs, and representatives of the affected communities should be set up to formulate a regional development strategy.** Given UNDP's role in promoting policy dialogue on social and poverty issues in developing countries we hope that UNDP and/or UNICEF might consider organising a preliminary round table on the Copperbelt on the issue of land tenure insecurity in the context of the privatisation of ZCCM.
- **As a matter of urgency the future of squatter settlements on mine land must be clarified.** Our study indicates that at present the authorities do not have adequate information on which to base their resettlement plans. There would appear to be a misplaced confidence among some officials that the squatters can easily be accommodated on council land. But we found major discrepancies between ZCCM and local councils as regard how many people are living in informal settlements on mine land.
- **The first priority is for the World Bank to begin to implement its resettlement guidelines (OD 4.30) and assess the numbers of squatters who are entitled to compensation and/or other forms of assistance as part of its support to Zambia's privatisation programme.** World Bank resettlement specialists should carry out a full land acquisition assessment.

- **At the same time the Zambian authorities, possibly under the auspices of the Commissioner of Lands, should undertake an inventory of all ZCCM owned land on the Copperbelt to ascertain which surface areas might, subject to agreement of the ZPA, be surrendered to the state** in the way that ZCCM mine houses have already been and made available for squatters. While some areas have already been surrendered in this way, we believe that there is scope for a more generous response. Such a move would not only provide the Government with a solution to the problem of informal settlements, it would also reduce the risk of social unrest that might easily develop should squatters believe that the authorities wish to conduct wholesale evictions from mine lands.
- **We recognise that some people who are residing in dangerous areas or areas designated for exploration will have to be relocated.** Adequate time will be required to negotiate a long-term solution with the squatters, industry, local government, and the ZPA. NGOs, church bodies and the relevant government departments should participate in a local planning forum which would forward proposals to the Commissioner of Lands. Such squatters we believe would be entitled to World Bank assistance under the Involuntary Resettlement guidelines.
- **Government should consider repossessing ZCCM surface mining land (not mining licence land) which is populated by human settlements and confirm the latter by extending normal legal recognition to them.**
- **Those squatters living in mining areas for a long time and with the full knowledge of ZCCM should be compensated.** It is the law in Zambia that the landlord who allows people to squat on his land unchallenged is bound to compensate squatters for improvements to the land. So, while a landowner can evict a squatter from his land, he has a duty in equity to compensate him for improvements. This is not currently happening.⁷¹
- **Adequate compensation would also have to be provided either from ZCCM or the new mine owners for any improvements carried out (such as the construction of houses, businesses and churches). Appropriate incentives would also have to be offered to encourage squatters to relocate.**
- **For those squatters who may not be accommodated on surface areas and others who may subsequently be displaced through the privatisation of the mines, Government should as a matter of urgency secure sufficient land from nearby forest areas** which the Forestry Department may make available for human settlement, particularly in those forests which already have human settlements.

⁷¹ We note that in the minutes of the Task Force on Squatter Areas, ZCCM had considered providing some limited form of compensation to squatters (e.g. the provision of 'old iron sheets' and transport). This would not be considered adequate compensation under the law. Compensation would have to take into account the improvements squatters made to the land and their immediate losses resulting from having to vacate their plots. The disturbance that would be caused by eviction should be recognised in monetary terms as compensation by ZCCM or the state.

- **For those people who are already settled in degraded forest areas there seems to be general agreement that they should be allowed to remain there and for the forest to be de-gazetted.** It could then be redesignated an agricultural settlement scheme. Outstanding applications should be swiftly resolved. However, given the vital importance of forests to the ecology of the area, efforts are needed to help regenerate the forest estate and to train forest department officials and settlers in agro-forestry techniques. **De-gazetting all remaining forest areas cannot be considered a sustainable solution to the land tenure problems of the Copperbelt.**
- **To reduce pressure on land, greater efforts should be made to provide mine employees and other people facing the likelihood of retrenchment with training and counselling so that they can make better use of retrenchment packages.** If, as is anticipated, new satellite industries develop over time on the Copperbelt, it will be important to retain skilled workers or to help them develop new skills.
- **There is an urgent need of credit facilities for low-income families.** Consideration needs to be given to the difficulties in obtaining access to credit for those people who do not have 99-year leases of full title issued by the Registrar of Lands in Lusaka. There is evidence that the 14-year provisional certificate of title, the 99-year leases issued by councils (which will, it seems, be the type of certificate issued for nearly all ZCCM employees who have acquired mine houses), and the Land Record Cards provided by the councils to settlers in Improvement Areas are not readily accepted as collateral by credit institutions.
- **The World Bank should consider providing funds to bridge the transition from free services in former mining and council-owned compounds to fully paid services.** Some regulatory mechanism should be established to ensure that the service charges in urban areas are in line with people's capacity to pay.
- The ZPA should take a more active role in monitoring implementation of the social and environmental commitments undertaken by the new investors as part of the development agreements. **As part of its commitment to transparency,⁷² the ZPA should publish yearly reports on implementation of the development agreements.**
- **Additional funding to help local councils upgrade squatter settlements in urban areas is urgently required as they are not at present able to provide basic services to communities. With commodity prices at levels not seen since the 1930s recession, we believe that, at the next Consultative Group meeting, the donor community needs to re-examine its assistance strategy to Zambia.** We believe that there has been an unrealistic reliance of private investment flows to bring about a swift regeneration of the economy of the Copperbelt.

⁷² On transparency and local participation in environmental projects, see Patricia Feeney, *Accountable Aid: Local Participation in Major Projects* (Oxford: Oxfam, 1998).

- **Agricultural resettlement should be maintained as a option but the current Land Resettlement Scheme does not really provide sufficient support to retired or retrenched workers and their families.** The Government no longer supplies hoes, axes, seeds, fertilisers, mealie meal or funds for clearing one hectare of land in the first year. The Government does not have funds to provide basic infrastructure and services to sites. Donors and new investors jointly need to consider ways of meeting this shortfall.
- **We believe that some consideration should be given by the Government in consultation with appropriate expert bodies, NGOs and community representatives as to the possibility of amending the 1995 Lands Act to provide squatters with rights of occupancy and/or in appropriate circumstances to grant them full tenure.** If injustice is to be avoided, the Lands Commission in its adjudications should be authorised to take into consideration social criteria, such as whether an area has a substantial number of persons who have lived there for a significant period of time, or that despite the lack of security of tenure, people have invested in their homes and businesses and made attempts to improve the area through their own efforts.
- **NGOs on the Copperbelt could consider ways of improving their support to communities wishing to secure land or obtain title.** Given the shortage of officials available for demarcations, perhaps NGOs could be given training to carry out this work (as has proved effective in Brazil). This would reduce one of the obstacles to securing titles.
- **NGOs might consider producing a simple guide on land tenure procedures for use by local communities and their advisers.**

2. LEGISLATION

The Constitution and the Lands Act 1995

- **The Constitution should be amended in the Bill of Rights to provide protection to the rights of occupancy of squatters who have been in undisturbed possession of land for a long time, which time should be defined in a law of general application.**
- **The Constitution should expressly provide for compensation to squatters who are arbitrarily deprived of their rights to occupancy as in the above paragraph.**
- **The Lands Act 1995 should specifically recognise the right of occupancy and the principle of compensation for a violation of a recognised right to occupy land.**

Evictions

- **The Constitution should provide for a restriction on the power by judicial officers to order evictions by requiring the applicant or the State to provide alternative land before an eviction order could be issued.**

Procedures for land alienation

- **Procedures for demarcation of land and issuing titles need to be streamlined and speeded up.** It has been Oxfam's experience worldwide that where land markets are unregulated, the interests of women in land, along with those of other institutionally weaker and resource poor groups, tend to be directly and negatively affected. It has also been the experience that where land management and dispute agencies are highly centralised, as they are presently in Zambia, women and other disadvantaged groups find their rights less well supported. While the opening of the Commissioner of Lands office at Ndola may help, the size of the task is so great that the donor community should consider providing appropriate levels of funding. Particular efforts should be taken to increase the sensitivity of officials and community representatives to the potential discrimination against women and other vulnerable groups in the allocation of plots and the demarcation and titling process.
- **The principle of equality of women and men protected in the Zambian Constitution and international law applicable to Zambia should be expressly recognised in the Lands Act 1995 and similar statutes.** In particular, procedures governing land alienation and land ownership should be based on the principle of non-discrimination, but in order to redress the gross disadvantages facing women affirmative action should be taken by officials when considering applications for land.
- **Procedures for demarcation of land and issuing of titles need to be streamlined and speeded up.** The Lands Act 1995 and other relevant statutes should contain time limits within which internal processes relating to numbering, demarcation, titling etc. should be completed.
- **Procedures for de-gazetting forests should be shortened to address anxieties among squatters in forest areas.** In particular, the Forests Act should provide for de-gazetting by the Minister, subject to advice by stakeholders, rather than by the President, as at present.

Compensation

- **The Government should amend the Bill of Rights in the Constitution in order to expressly provide for compensation for any violation of the rights of recognised squatters.**

Duration of estates

- **The Lands Act 1995 contains the principle that there must be one uniform estate, the 99 year lease. But under the Housing Act, councils have the power to grant 99-year leases under the Head Lease system and Land Record Cards for varying periods. We believe that the Housing and Lands Acts (to the extent that they conflict) should be harmonised.** In particular, the principle of uniformity of estates in the Lands Act 1995 should extend to land under the Housing Act in order to conform to the principle of non-discrimination. Holders of Land Record Cards must be issued with titles of adequate security just like any other land holder, irrespective of their age, their gender, or their poverty.

Limitation of allocated land

- While changes in the systems of allocating resource use rights are inevitable as population pressure causes increased competition for scarce resources, there is increased political pressure to grant exclusive resource use rights to individuals. **But there is a danger when moving directly from a traditional system to a private property system of excluding some of the people who previously enjoyed traditional rights over land and resources. There is evidence to suggest that the requirement on purchasers of customary land ‘to consult with any other person or body whose interest might be affected by the grant’ is not being strictly adhered to.**
- **In customary areas to safeguard the interests of the wider community there should be a statutory requirement that any developments on land or purchases can only be made after consultation with all the adult members of the village or community. Their wishes should be given a high priority in any decision about relocation and their needs for basic services and transport respected.**
- **The Lands Commissioner or Tribunal should carry out an investigation to ascertain whether the rights of traditional resource users are being adequately protected under the new system and to provide an interpretation of how *bona fide* consultations should take place.**
- **The Lands Act 1995 should specify some limitation to the amount of land an individual applicant in customary areas may be allocated at a given time. This would act as a safeguard against arbitrary allocations and corruption by land delivery systems.**

VI:

**SELECT
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SELECT BIBLIOGRAPHY

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VII:

APPENDICES

APPENDIX 1

A Welcome Maiden Speech by the Kakolo Resettlement Scheme Farmers Association, Kitwe, on the Occasion of a Visit to Kakolo Resettlement Scheme by Government Officials on 18 August 1998

The Kakolo Resettlement Scheme Farmers Association which recently applied for registration and hopes to be duly registered soon warmly welcomes you to Kakolo Resettlement Scheme and hope that your visit will bring to us some news of reassuring nature.

Ladies and Gentlemen, the Association has been formed in order to try and tackle and co-ordinate farming and developmental aspects in our scheme.

The Kakolo Resettlement Scheme Farmers Association will co-operate with Government and other Non-governmental organizations in all matters that are involved in bringing development to Kakolo so that our living standards are improved.

To this effect, the Association wishes to take advantage of your visit to this area by highlighting some of the problems we have in our scheme so that as government officials, you will be able to appreciate these problems and provoke thought in your minds on how to go about solving each one of the problems and we list the basic needs here under:-

Preamble

The Kakolo Resettlement Scheme has 110 plots of five hectares each and we have an average of five people per household. The population for the scheme is estimated to be about 500 and those in the surrounding areas who are expected to benefit from the resettlement scheme facilities (if and when available) are estimated to be at least 800. In all, we should be thinking of about 1300 people living in an area which is at least fifteen kilometres from Zamtan on the Kitwe-Ndola road and at least six kilometres from Kapoto Compound in Kitwe East where facilities are available.

The basic facilities that we need include the following:-

1. Lack of Medical Facilities

The nearest clinic is at Kapoto Compound, at least six kilometres away. A patient, including a pregnant women is expected to walk to Kapoto for treatment and for antenatal, postnatal and under five clinic attendances. Those who suddenly fall very ill simply die in their houses because they fail to walk. (Refer to 4 below).

2. Lack of Basic School and Teachers

Our area has no proper educational facilities and teachers. Our children cannot walk to Kapoto due to the young age. What we have is something like a school which has been built by parents on self help basis and one parent has offered to help at a token fee per child per month and attendance is on very irregular basis since parents themselves are aware that it is not a proper but just a casual facility.

3. Lack of Clean Water

The scheme lacks clean water supply.

4. Lack of Roads and Bridge at Mufuchani

The scheme has no road for motor vehicles to link it to Kafue River at Mufuchani. What is there is a bush path. An initial road to Mufuchani suitable for motor vans and cars cannot cost more than K6,000,000 through a P.U.S.H. scheme and participation from Kakolo residents is expected to be very overwhelming.

The Mufuchani area is a very busy area. An average of twenty people cross the Kafue at Mufuchani in every five minutes between 06.00 hours and 21.00 hours. It is the Association's considered view that while financial resources are being sought for a big bridge planned for the future, a small bridge made of steel bars and of ten tonnes or less can be constructed for the time being at the point where Jambo road ends and this can be used in the meantime.

5. Lack of Security

A small Police Post is necessary.

6. Title Deeds

The processing of Title Deeds should be speeded up so that the farmers can start using the same in their day to day planning activities.

The Association is more than confident that as you go back you will carry with you an indelible impression of our problems here at Kakolo Resettlement Scheme and that you will attend to or refer this speech to the other relevant authorities who will in turn get in touch with us via the Kitwe District Agricultural Co-ordinator's office.

Thank you.

cc. Kitwe District Director of Health
Kitwe District Educational Officer
Area Councillor
MP - Kwacha Constituency
MP - Kanfinsa Constituency
Provincial Resettlement Officer
DACO - Kitwe

APPENDIX 2

REPUBLIC OF ZAMBIA

MINISTRY OF LANDS AND NATURAL RESOURCES

Procedure on Land Alienation

Land Circular

No 1 of 1985

INTRODUCTION

This Circular is intended to lay down general policy guidelines regarding the procedure all District Councils are expected to follow in the administration and allocation of land.

2. Your attention is drawn to the fact that all land in Zambia is vested absolutely in His Excellency the President who holds it in perpetuity for and on behalf of the people of Zambia. The powers of His Excellency the President to administer land are spelt out in the various legislations some of which are; The Zambia (State Land and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 and 1964 and the Land (Conversion of Titles) Act No. 20 of 1975 as amended. His Excellency the President has delegated the day-to-day administration of land matters to the public officer for the time being holding the office or executing the duties of Commissioner of Lands. Under Statutory Instrument No. 7 of 1964 and Gazette Notice No. 1345 of 1975, the Commissioner of Lands is empowered by the President to make grants or dispositions of land to any person subject to the special or general directions of the Minister responsible for land matters.

3. Pursuant to the policy of decentralisation and the principle of participatory democracy it was decided that District Councils should participate in the administration of land. To this effect, all District Councils will be responsible, for and on behalf of the Commissioner of Lands, in the processing of applications, selecting of suitable candidates and making recommendations as may be decided upon by them. Such recommendations will be invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.

4. Accordingly, the following procedures have been laid down and it will be appreciated if you shall ensure that the provisions of this Circular are strictly adhered to.

A. PREPARATION OF LAYOUT PLANS

- (i) The planning of stands for various uses is the responsibility of the appropriate planning authority of the area concerned. Once a chosen area

has been properly planned, the planning authority shall forward the approved layout plans to the Commissioner of Lands for scrutiny as to the availability of the land.

- (ii) Upon being satisfied that the layout plans are in order, the Commissioner of Lands shall request the Surveyor-General to number and survey (or authorise private survey) the stands.
- (iii) Thereafter, a copy of the layout plan showing the order of numbering, shall be sent back to the District Council and the planning authority concerned.

B. ALLOCATION OF STANDS

- (i) Stands recommended for allocation to the Commissioner of Lands will be assumed to have been fully serviced by the District Council concerned. If the stands are not serviced, the District Council shall give reasons for its inability to provide the necessary services before the recommendations can be considered.
- (ii) Before stands are recommended, the District Council concerned may advertise them in the national press inviting prospective developers to make applications to the District Council in the form appended hereto and numbered as Annexure A.
- (iii) On receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make its recommendations in writing to the Commissioner of Lands giving reasons in support of the recommendations in any case where there may have been more than one applicant for any particular stand, or where an applicant is recommended for more than one stand.
- (iv) On receipt of the recommendation(s) from the District Council(s), the Commissioner of Lands shall consider such recommendation(s) and may make offer(s) to the successful applicant(s), sending copies of such offer(s) to the District Council(s) concerned.
- (v) Where the District Council is not the planning authority, an applicant whose recommendation has been approved by the Commissioner of Lands shall be directed, in a letter of offer in principle, to apply for and obtain planning permission from the relevant planning authority before a lease can be granted.
- (vi) If the District Council is aggrieved by the decision of the Commissioner of Lands, the matter shall be referred to the Minister of Lands and Natural Resources within a period of thirty days from the date the decision of the Commissioner of Lands is known, who will consider and decide on the appeal. The Minister's decision on such an appeal shall be final.
- (vii) No District Council shall have authority in any case to permit, authorise or suffer to permit or authorise any intending developer to enter upon or occupy any stand unless and until such developer shall have first received the letter of offer, paid lease fees and the development charges, and has obtained planning permission from the relevant planning authority.
- (viii) Prior to the preparation of the direct lease, the District Council concerned shall inform the Commissioner of Lands the minimum building clause to be inserted in the lease.

- (ix) Prompt written notification of the relevant particulars upon the issue of a certificate of title shall be given by the Commissioner of Lands to the District Council concerned.

C. UNSCHEDULED AGRICULTURAL LANDS

- (i) Any State Land required for agricultural use shall be notified to the Commissioner of Lands so that its status and availability can be determined. Once the Commissioner of Lands is satisfied that the land in question is available the Department of Agriculture in consultation with the District Council shall be requested to plan the area into suitable agricultural units. The layout plans duly approved by both the Department of Agriculture and the District Council concerned shall be submitted to the Commissioner of Lands for survey and numbering.
- (ii) Once the District Council is in possession of information from the Commissioner of Lands regarding the numbered farms or small-holdings the procedure outlined in paragraph 4B(ii) (iii) (iv) and (vi) above shall apply. And the application form to be completed by the applicants shall be as per Annexure 'C'.
- (iii) No District Council shall have authority in any case to permit, authorise, or suffer to permit, or authorise any intending developer, to enter upon or occupy any agricultural farm or small-holding unless and until such developer shall have first received the letter of offer and has paid the lease fees.

D. RESERVES AND TRUST LANDS

- (i) In the Reserves and Trust Lands, the powers of the President, in making grants or dispositions of land, are limited by the requirement to consult the local authorities affected by such grants or dispositions of land.
- (ii) Local authority, in the Orders, has been administratively understood to mean the Chief and the District council. This means, therefore, that the consents of the Chiefs and District Councils shall continue to be the basis for any approval of applications for land in the Reserves and Trust Lands.
- (iii) As has been the practice before, to ensure that a local authority has been consulted, the Commissioner of Lands will insist that each recommendation is accompanied by the following:
 - (a) written consent of the chief under his hand;
 - (b) extracts of the minutes of the Committee of the Council responsible for land matters embodying the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary;
 - (c) extracts of the minutes of the full Council with the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary.
 - (d) four copies of the approved layout plan showing the site applied for, duly endorsed and stamped by the Chief, Chairman of the Council and the District Executive Secretary.

- (iv) The preparation of the layout plan showing the area applied for, should be done by persons possessed with the cartographic know-how. At Annexure 'B' of this circular is a model layout plan which provides the necessary details for an acceptable layout plan.
- (v) It has been decided, for the time being, not to allocate more than 250 hectares of land for farming purposes in the Reserves and Trust Land areas. The District Councils are, therefore, advised not to recommend alienation of land on title in such areas in excess of 250 (two hundred and fifty) hectares as such recommendations would be difficult to consider.
- (vi) In each case recommended to the Commissioner of Lands, the recommending authority shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights have not been affected by the approval of the application.

E. APPLICATION FOR LAND BY NON-ZAMBIANS

- (i) You are now aware that under the Land (Conversion of Titles) (Amendment) (No. 2) Act of 1985 no land can be alienated to a person who is not a Zambia. However, under the same Amendment, a non-Zambian can be granted a piece of land if his application has been approved in writing by His Excellency the President.
- (ii) To obtain the approval of His Excellency the President, a non-Zambian wishing to own a piece of land will be required, in the first place, to submit his application to the District Council concerned for scrutiny. In considering the application, the District council will be at liberty to solicit for as much information as possibly from the applicant about the intended development.
- (iii) When recommending the application to the Commissioner of Lands, the District Council shall be required to give full back-up information in support of or against the applicant in addition to the following:
 - (a) extracts of the minutes of the Committee of the Council responsible for land matters, embodying the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and the District Executive Secretary;
 - (b) extracts of the minutes of the full Council, with the relevant resolution and showing who attended the meeting, duly authenticated by the Chairman of the Council and the District Executive Secretary; and
 - (c) four copies of the approved layout plan, showing the site applied for, duly stamped and endorsed by the Chairman of the Council and the District Executive Secretary where the site has not been numbered.

5. *Consultations* – Development projects of great significance both to the district and the nation, shall be referred to the Provincial Authority for guidance before communicating the decision to the Commissioner of Lands.

6. *Decentralisation of Lands Department* – Necessary plans to further decentralise the various aspects of land administration and alienation to the Provincial Headquarters have been made. These plans will be operational as soon as funds are available.

7. *Reserved Powers* – The Minister responsible for lands shall have the right in any case or cases or with respect to any category or categories of land, to modify, vary, suspend or dispense with the procedure outline above or any aspect of same as he may see fit in the circumstances.

F. CHELA,
Minister of Lands and Natural Resources

- cc The Rt Hon. Prime Minister
- cc Hon. Chairman of the Rural Development Committee
- cc Administrative Secretary, Freedom House
- cc All Hon. Members of the Central Committee in charge of provinces.
- cc Hon. Minister, Ministry of Decentralisation, Lusaka.
- cc Hon. Minister, Ministry of Agriculture and Water Development, Lusaka.
- cc Hon. Minister, Ministry of Legal Affairs, Lusaka.
- cc All Chairmen of District Councils.

ANNEXURE ‘A’

Government of the Republic of Zambia

LANDS DEPARTMENT

Application for Residential/Commercial/Industrial/Special User Stand in the
..... council area

(To be completed in duplicate and both copies submitted to the District Executive Secretary,District Council).

First choice: Stand No

Town.....

Other choices: Stand No

.....

If more than one stand is required because of the scale of the proposed development give details here

.....

If the area applied for is not numbered, provide four copies of the approved layout plan.

APPLICATIONS BY INDIVIDUALS

Name (in block letters)

Address

Age..... birth place

Nationality

National Registration Card Number

Date and place of issue
Residence in Zambia (non-Zambians) from
Passport No, (non-Zambians)
Date and place of issue
The name of the mortgagees
If you do not intend to borrow, state your sources of income with which to finance
development. (Provide evidence)
.....
Occupation
Full description of type of development proposed on the stand applied for
.....
Will the proposed building be owner occupied?
Estimated cost of proposed development: K.....