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**Land Policy and the Urban Land Market in Zambia:**  
Property Rights, Transaction Costs, and Institutional Change

By

Maliti Musole

BSc (Land Econ.) (Zambia), MLE (Aberdeen),  
MRes (Land Economy) (Aberdeen)  
Registered Valuation Surveyor (Zambia), MSIZ

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**Correction Sheet**

**Note:** corrections, as instructed by the examiners, are at Appendix 9.1 (p. 348-364).

## **Abstract**

This study examines, comparatively, the effects of Zambia's post-colonial (1975 and 1995) land policy reforms on the urban land market transactions. It focuses on land delivery, land transfer and exchange, and land valuation and pricing. The central thesis of the study is that land policy reforms matter even for the urban land market. Proceeding from this premise, the study conceptualises the effects of land policy on the land market as one set of institutions (namely, land policy reforms) modifying or radically restructuring (and, hence, impacting on) the other set of institutions (viz. property rights and the land market generally).

Grounded in the new institutional economics approach, the conceptual framework focuses on property rights, transaction costs and institutional change. The philosophical framework is post-positivist. Methodologically, the research design is largely qualitative and employs a multiple data collection and analysis strategy. Central to this methodological approach are the concepts of critical multiplism and triangulation.

The overall research findings suggest, overwhelmingly, that land policy reforms matter to urban land market transactions. More specifically, the study finds that, in so far as land delivery is concerned, both the 1975 and 1995 reforms had a similar detrimental impact. However, their effects differed markedly in specific areas with regard to land transfer and exchange, on the one hand, and land valuation and pricing, on the other. In particular, the latter reforms were less pernicious than the former. Consequently, the study recommends land policy reforms that minimise the policy-generated detrimental effects identified in the land market operations. The effects in question naturally revolve around property rights and transaction costs.

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**Author's Declaration**

The work in this thesis has been composed by the author and is not substantially the same as any other work submitted by this author for a degree or diploma with any other university or educational establishment. The data and information gathered and the conclusions made by the author in thesis constitute original research. Where work of other individuals is involved, it is expressly cited and referenced appropriately. No work in this thesis is the product of collaboration with another author.

.....  
Signature/Date

**Abbreviations and acronyms**

GRZ	=	Government of the Republic Zambia
Lands Act 1975	=	Land (Conversion of Titles) Act, 1975
LAZ	=	Law Association of Zambia
MMD	=	Movement for Multi-Party Democracy
MoL	=	Ministry of Lands
NIE	=	New Institutional Economics
SIZ	=	Surveyors' Institute of Zambia
UNIP	=	United National Independence Party
VSRB	=	Valuation Surveyors Registration Board
ZLA	=	Zambia Land Alliance
ZNBS	=	Zambia National Building Society

## Chapter 1: Introduction

Land is one of the most important elements in human settlements development; it is the starting point for all development. Therefore, any constraints to the supply of land impacts negatively on human settlements development, and thus on socio-economic development generally (UNCHS-Habitat, 1991, p. 3).

### 1.1 Preamble

Zambia has had two land policy reforms<sup>1</sup> since independence in 1964.<sup>2</sup> The first reforms, in 1975, introduced far-reaching changes in land law and property ownership. These changes included conversion of freeholds into leaseholds; abolition of sale, transfer and other alienation of land for value; and restrictions on land transactions. Consistent with the Government's economic liberalization policy in the 1990s, the second wave of reforms, in 1995, attempted to reverse much of what had been introduced in the 1975 reforms. Arguably, these policy changes affected the operation of urban land markets and land development process significantly. This study therefore seeks to examine the effects of the said reforms on urban land market transactions so that future policy decision-making could be better informed.

---

<sup>1</sup> 'Land policy reform' here simply refers to the fundamental shift/change in government policy on land matters, particularly on land use, ownership and administration.

<sup>2</sup> In the past four to five years, the government has yet again been thinking of making further policy changes (see, for instance, The Draft Land Policy 1999 published in 2002). The debate to restructure the existing land policy is, however, ongoing.

## 1.2 Research problem

Zambia is a developing country with relatively vast land resources and a rapidly expanding population.<sup>3</sup> It is one of the highly urbanised countries in the Sub-Saharan Africa (see Table 1.1).

Table 1.1 Urbanisation levels in southern and eastern Africa, 1960s-2000s (percentages)

Country	1960s	1970s	1980s	1990s	2000s
Angola	11 <sup>60</sup>	14 <sup>70</sup>			60-70 <sup>01</sup>
Botswana <sup>(a)</sup>		9 <sup>71</sup>	18 <sup>81</sup>	46 <sup>91</sup> (24)	54 <sup>01</sup>
Burundi		4 <sup>79</sup>			
DRC		22 <sup>70</sup>	32 <sup>84</sup>		
Kenya	8 <sup>62</sup>	15 <sup>79</sup>	18 <sup>89</sup>		
Lesotho	5 <sup>66</sup>	11 <sup>76</sup>	14 <sup>86</sup>		
Malawi	5 <sup>66</sup>	8 <sup>77</sup>	11 <sup>87</sup>	14 <sup>98</sup>	
Mozambique			13 <sup>80</sup>	29 <sup>97</sup>	
Namibia		25 <sup>70</sup>		28 <sup>91</sup>	
Rwanda		5 <sup>78</sup>			
South Africa	47 <sup>60</sup>			54 <sup>96</sup>	
Swaziland	11 <sup>66</sup>	15 <sup>76</sup>	23 <sup>86</sup>	23 <sup>97</sup>	
Tanzania		13 <sup>78</sup>	18 <sup>88</sup>		
Uganda	8 <sup>69</sup>		9 <sup>80</sup>	11 <sup>91</sup>	
<b>Zambia</b>	<b>21<sup>63</sup></b>	<b>29<sup>69</sup></b>	<b>40<sup>80</sup></b>	<b>39<sup>90</sup></b>	<b>36<sup>00</sup></b>
Zimbabwe	19 <sup>69</sup>		26 <sup>82</sup>	31 <sup>92</sup>	

Source: Potts (2005, p. 588)

Notes: 1. The superscripted figures indicate the actual dates. 2. Due to the unique nature of Botswana's urbanisation, two figures were recorded for 1990s. The figure in brackets was arrived at using a *functional* definition for urbanisation (for further details, see Potts, 2005).

As in most of the Sub-Saharan Africa, the rate of population growth, combined with a declining economy, has put tremendous pressure on urban housing and land markets. In

<sup>3</sup> Zambia has a landmass of about 752,000 square kilometres (GRZ/MoL, 2002) and a variable average population growth rate of 2.4 to 3.1 percent (see Table 3.1 in chapter 3).

Zambia, although there are relatively vast undeveloped land resources in and around urban centres, most urban populations live in informal/unplanned settlements. Planned settlements and land (developed or undeveloped) with planning permission and formal land rights are in limited quantity, virtually in all urban centres. Table 1.2 gives some statistical data on the state of the informal housing problem in some of the African cities. In Lusaka, Zambia, it shows that half of the population lived in the informal settlements as at 1983. The situation has not improved since then. In a recent report, for example, it was estimated that “about 70 percent of Lusaka’s [the Capital City] population live in poor, unplanned settlements comprising 20 percent of the city’s residential land” (World Bank, 2002a, online).<sup>4</sup>

Table 1.2 Slum/informal housing in selected African cities

Country	City	Estimated population	Population in inadequate Housing (percentages)
Ethiopia	Addis Ababa	3,243,000	90 <sup>1969</sup>
Ivory Coast	Abidjan	1,189,000	60 <sup>1964</sup>
Kenya	Nairobi	2,628,400	23 <sup>1984</sup>
Morocco	Casablanca	3,236,000	70 <sup>1971</sup>
Nigeria	Lagos	2,542,000	83 <sup>1975</sup>
Senegal	Dakar	1,896,000	60 <sup>1969</sup>
Somalia	Mogadishu	681,000	77 <sup>1967</sup>
Tanzania	Dar-es-Salaam	2,480,000	65 <sup>1981</sup>
Tunisia	Tunis	1,479,000	33 <sup>1975</sup>
Zambia	Lusaka	1,524,000	50 <sup>1983</sup>

Figures in superscript indicate the reference year for the statistic.

Source: Malpezzi and Sa-Aadu (1996, p.138)

It has been pointed out (see, for instance, Malpezzi, 1990; Malpezzi and Sa-Aadu, 1996) that the problems in housing market, particularly the persistent expansion of the informal settlements, are caused by problems in the input, rather than production, markets. The

<sup>4</sup> Statistical data compiled earlier show that Lusaka urban had the following population living in unauthorised compounds or as squatters, viz. 26% (1954); 19% (1957/8); 15% (1963); 37% (1969); and 45% (1973) (see Seymour, 1976, p. 30).

most critical of such markets is the market for land (Malpezi and Sa-Aadu, 1996).<sup>5</sup> The problem with formal land markets is that they appear to be 'failing' to adequately allocate land resources among the various income groups. One reason for this state of affairs, as observed elsewhere (see, for example, Dowall, 1991), is that land developed in full compliance with government rules and regulations is scarce, expensive, and therefore inaccessible for a majority of households.<sup>6</sup> As for those who are able to participate in the formal land markets, they, too, find that such markets are not operating efficiently (that is, smoothly and timely).<sup>7</sup> For example, transactions take considerable time to complete, and there are cumbersome and costly processes to wade through (Chinene *et al.*, 1998; Mulwanda and Mutale, 1994; Kaunda, 1993; Mushota, 1993; and many others). So, compellingly, we are prompted to ask: what precisely is obstructing the smooth operation of these markets? One of the factors that have been identified as the key impediment in the operation of land markets and land development process is public policy.

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<sup>5</sup> For discussion of the problems in input markets, especially on price distortions caused by restrictive government regulations of land, credit, building materials and labour, see Renaud, 1987; Malpezi, 1990; Dowall, 1991; Doebele, 1994; Pamuk and Dowall, 1998; Pamuk, 2000

<sup>6</sup> This suggests that supply-side of the land market in the formal sector is not readily responding to different levels or categories of demand. If the land market were functioning properly (a) those that have developed 'surprisingly high quality structures' in informal sectors (a phenomenon observed by Mayo *et al.* (1982) in Egypt and many other countries including Zambia); and (b) the many gainfully employed people residing in these settlements, for instance, could have been captured in the formal sector.

<sup>7</sup> Even some government institutions promoting investment in the country (such as the Investment Centre) appear to have taken cognisance of this fact. The following quotation from the Investment Act 1993 appears to be an acknowledgement that the supply-side of the land market may fail to respond (by providing the right quantity, at the right time, in the right place, and at the right price) to invest demand. The Investment Act 1993 – Part VI Services reads: "Section: 2. [Land] (1) The Centre shall assist an investor in identifying suitable land for investment and shall assist the investor in applying to the responsible authorities for the land in accordance with established procedures." <http://zamlia.zamnet/acts/1993/invest93.htm>. The argument here is that if the land market were functioning properly, there would not be any need for the Investment Centre to engage itself in assisting prospective investors acquire land, as the land market would easily allocate land to such users.

The colonial era, for instance, was blamed for excluding the majority of the people from formal land markets on racial and other discriminatory grounds (see, for example, Kironde, 2000; Deininger and Binswanger, 1999; Mushota, 1993; Palmer, 1973a & b). After independence, such policies were removed but the problems of access<sup>8</sup> persisted. The free movement of people to urban areas in the post-colonial era and the inability of the formal employment sector to absorb them aggravated the land supply problems and encouraged the dichotomous (formal and informal) urban development pattern.

When faced with the overwhelming land supply constraints, particularly the concomitant problem of raising land prices and land speculation, policymakers in Zambia at the time attributed most of these challenges to open market pricing (see GRZ, 1975a; Law Development Commission, 1981). Consequently, in 1975, land reforms were hastily promulgated to regulate prices and the operation of the land market. Twenty years later, the first post-colonial reforms were found also to have adverse effects.<sup>9</sup> Fresh reforms were, thus, formulated in 1995 to correct the deficiencies observed in the previous policies. In spite of these policy changes, the problem of urban land scarcity persists at an epic scale.<sup>10</sup> The big, ineluctable question must, therefore, be: why does land-scarcity persist at such a grand scale in the midst of the seemingly bountifully delimited (or expandable) urban centres? Is land delivery under these circumstances operationally efficient? What, precisely, have the post-colonial land policy reforms wrought? This is the crux of the matter in this study.<sup>11</sup>

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<sup>8</sup> Note that: "Access to land is a pre-condition to equitable and efficient urban development. Achieving this for low-income households under conditions of market-led development strategies presents particular challenges and opportunities". Payne, G. <http://www.gpa.org.uk/> (accessed 2007)

<sup>9</sup> See, for instance, the various papers and submissions in the 'Report of the National Conference on Land Policy and Legal Reform in the Third Republic of Zambia' (Ng'andwe, 1993).

<sup>10</sup> The Commissioner of Lands (see Zulu, 1993a; Banda, 1981), the Surveyors' Institute of Zambia (1981), Jorgensen (2003), and many others have explicitly or implicitly acknowledged this problem.

<sup>11</sup> There have been a number of studies, commentaries and reviews on various aspects of land policy or land reform in Zambia (for example, Mvunga, 1977, 1980, 1982; Law Development Commission, 1981; Banda, 1982; Halcrow Fox, 1989; Kajoba, 1990, 1998; Mushota, 1993; Zulu, 1993a & b; Kaunda, 1993, 1995a & b; Mulwanda and Mutale, 1994; Roth, 1994, 1995; Kambenja, 1997; Chinene *et al.*, 1998; Chulu and Beele, 2001; Smith, 2001; Adams, 2003; Jorgensen, 2003). Some of these provide a good reference

The urban land market is one of the important markets in the economy; if it does not function properly, it can affect many other economic activities. Employment, housing, industrial and commercial development are a good example of such economic activities. Indeed, as Payne (1997) has rightly noted dysfunctional urban land markets can hurt the poor much more than the rich.

Urban land markets exert a major impact upon the ability of lower income groups to obtain access to adequate shelter and services. When they do not function well, the poor suffer more than anybody else. (Payne, 1997, online)

In Zambia, for instance, it was observed (see National Housing Authority, 1990; various submissions in Ng'andwe, 1993; SIZ, 1981) that despite the 1975 land policy measures of ignoring land value and state control of property prices, property prices continued to spiral upwardly beyond the reach of the majority of the urban dwellers.<sup>12</sup> The state interference with the free market operations did not help matters at all.<sup>13</sup> Instead, it complicated property market dealings and failed to stem the rise in property prices. This clearly demonstrates that an inefficient land market could, in fact, exacerbate resource

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material for this study as they give descriptive details on land policy and/or its evolution in Zambia (e. g. Mvunga, 1977, 1980, 1982; Banda, 1982; Kajoba, 1990, 1998; Mushota, 1993; Zulu, 1993a & b; Kaunda, 1993, 1995a & b). Others attempt to analyse the consequences of Zambia's land reform/policy and/or prescribe policy changes (e.g. Roth, 1994, 1995; Kambenja, 1997; Chinene *et al.*, 1998; Smith, 2001; Adams, 2003; Jorgensen, 2003). However, none of these previous works focus on the effect of land policy on urban land market in the context and depth specified in this study.

<sup>12</sup> This matter is discussed in detail in chapter 7.

<sup>13</sup> Pasteur, writing on squatter upgrading projects in Zambia, noted, for example, that: "It might be expected that the process of land acquisition would present few problems in a country where freehold rights to land have been abolished, tenure converted to leasehold, and land is regarded as having no value apart from the value of the improvements on it. In fact land acquisition has been a major problem, and has been a significant cause of delay to progress of the project. Furthermore, the new status of land has tended to aggravate rather than alleviate the problem. Bureaucratic and political factors have also been important cause of delay." (Pasteur, 1979, p. 78)

scarcity and aggravate other developmental problems of human settlements. Urban areas as engines of economic activity therefore require functional and buoyant land markets to prosper.

On the investment front, it has been argued that the low direct foreign investment (DFI) flows to Sub-Saharan African countries are to a greater extent rooted in inadequacies of land transferability and land tenure security (Bachmann, 1996; Byamugisha, 1999). The issues of lack of clear private property rights and high transaction costs have been identified, time and again, as the underlying causes (see, for instance, Deininger, 2003; Anderson and Huggins, 2003; North, 1990a). Clearly, all the aforesaid arguments and/or observations suggest that there is a need to examine the factors that hinder efficient operation of land markets. This study is therefore dedicated to examining the land policy factor.

Besides the efficiency consideration, as epigraphically put above (see UNCHS-Habitat, 1991) and clearly articulated by Simpson (1976) below, it is a well-known fact that land is one of the essential factors of production that is central to human survival and development.

Land is the source of all material wealth. From it we get everything that we use or value, whether it be food, clothing, fuel, shelter, metal, or precious stones. We live on the land and from the land, and to the land our bodies or our ashes are committed when we die. The availability of land is the key to human existence, and its distribution and use are of vital importance (Simpson, 1976, p. 1; quoted in Dale, 1997, p.1621).

The foregoing observations underline the social and economic significance of land. The subject of land, how it is owned and used, usually attracts attention of almost every member of the human society, as it is not only the efficiency but also the equity considerations that matter to all. However, since this study is concerned with the urban land market operations, what is of prime interest here is the efficiency consideration only.

Having given a brief overview of the research problem, the following sections will now outline the broad aims of the study, the key research questions, and the research strategy and indicate how the thesis has been arranged.

### **1.3 Aims of the Study**

The broad and overarching aim of the study is: *To investigate and establish the manner and, possibly, the extent to which Zambia's post-colonial (1975 and 1995) land policy reforms affected (constrained or aided) urban land market transactions.*

More specifically, the study attempts to establish whether the two policy reforms were fundamentally similar or not; and, consequently, will review theoretically and evaluate empirically the impact of each policy regime.

Furthermore, the study seeks to review and/or develop an appropriate conceptual framework within which the impact of public policy and other formal rules, particularly land policy, on the land market could be usefully explored and explicated.

### **1.4 Key research questions**

The study seeks both a broad understanding of the fundamental issues raised at (1) and a more incisive insight into the enigmatic research questions at (2) and (3).

- (1) Comparatively, of what consequence were Zambian post-colonial (1975 and 1995) land policy reforms to the urban land market? What key policy-factors (if any) were at play?
- (2) Were these two (1975 and 1995) sets of reforms *materially* different, as the policy reversal in the subsequent era suggests? If so, why did the problem of

urban land delivery persist at such a grand scale in spite of the changes in land reforms?<sup>14</sup>

- (3) Why is it that, contrary to economic logic, property values and prices never significantly tumbled countrywide, but instead continued to rise in the immediate and subsequent years following the 1975 land policy reforms?

### **1.5 Theory and research strategy**

Characteristically, land markets are highly segmented. Given this idiosyncratic nature, most studies of the land market tend to focus on specific segments of the market. In spite of that, however, this study adopts a broad, urban-level based approach because of the following factors: (1) the land policy reforms in question apply equally to all sub-markets across the country; and (2) the study conceptualises the land market not so much in terms of location, land-use, or economic and physical sector orientation as in context of its institutional structure.

From this perspective, the land market is conceived as an institution, comprising a set of formal and informal rules, rights, norms, practices, conventions, cognitive frameworks, relationships, and organisational formations through which landed property is defined, generated, used and exchanged (adapted from Arvanitidis, 2003, p. 4). By the same token, land policy is also conceived as a set of basic principles, guidelines and rationale upon which land legislation, together with the strategies and infrastructure for their implementation, can be developed (see Mbaya, 2000). In this context, therefore, land policy effect on the land market can be conceptualised as one set of institutions (namely, land policy reforms) modifying or radically restructuring (and, hence, impacting on) the other set of institutions (the land market). Viewed from this perspective, it should be evidently clear that the broad, urban-level based (or even countrywide) approach is

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<sup>14</sup> It may be helpful to note that one of the prime objectives of both land policy reforms was actually to ameliorate the land supply situation so that it could be affordable by the majority of the urban dwellers.

feasible, nay logical, for research purposes. In fact, this approach underlines, as will be explained later hereafter, the institutional nature of the study.

On the basis of the foregoing conception, it follows logically also that the theoretical base of the study would have to be institutional in outlook. There exist two basic institutional approaches in economic studies; namely, old or original institutional economics (OIE) and new institutional economics (NIE).<sup>15</sup> Both approaches expound the proposition that institutions matter (Williamson 2000; 1998). In addition to this proposition, the NIE goes one step further to assert that (determinants of) institutions are susceptible to analysis by the tools of economic theory (see Williamson 2000 and 1998; Smyth, 1998; Matthews 1986). This, according to Williamson (2000; 1998), is what distinguishes NIE from other institutional approaches. Given this distinction, and the nature of the proposed study, outlined above, it evident that the NIE approach is the most obvious choice of the two approaches.

The relevance of the NIE approach to this study also lies in the fact that: (1) NIE 'retains the centrality of markets and exchanges' (Simon, 1991, p. 26); and (2) although NIE is founded on the neoclassical economic theory, it extends and modifies the neoclassical paradigm by introducing the fundamental assumptions of positive transaction costs, bounded rationality, opportunistic behaviour and property rights constraints (see Furubotn and Richter, 2000; De Alessi, 1980; Eggertsson, 1990b; North, 1993a). Arguably, these fundamental assumptions make NIE one of the more formidable candidates for adoption in the study of 'real world' markets where the added assumptions feature prominently.

Although the study is institutional in nature, operationally, the study is confined to the exploration and analysis of the *urban* land market problems and draws most of its data from the larger cities of Lusaka (the capital city of Zambia), Ndola and Kitwe (in the Copperbelt Province). Apart from the logistical limitations of time, research

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<sup>15</sup> Rutherford (1994) examines and compares the two major traditions of institutional thinking in economics.

manageability and funding, there are three other cardinal reasons for adopting this strategy. First, as will be shown later in Chapter 3, the post-colonial land policy reforms, particularly the 1975 reforms, were designed mainly to cope with *urban* rather than rural land market problems. Second, due to the customary land tenure system in most of the rural parts of the country, an active *formal* land market does not exist in rural areas. Most of the land transactions take place in urban areas under the statutory (leasehold) land holding system, which accommodates and facilitates formal property exchange. Furthermore, the focus on *urban* land market is justified on the grounds, as outlined above, that Zambia is a rapidly urbanizing country faced with a myriad of urban development constraints, including land supply and exchange.<sup>16</sup>

Methodologically, the study adopts a largely qualitative research approach and employs a multiple data collection and analysis strategy. This research strategy is necessitated by: (1) the difficulties of procuring secondary/archival data in a developing country setting; (2) the nature of the research questions; and (3) the strengths of triangulation in the study of social phenomena (see, for instance, Bryman, 2001). Chapter 4 (research methodology) discusses these and other concomitant issues in detail.

## 1.6 Structure of the Thesis

The *thesis* comprises eight chapters and is arranged as follows. Chapter 2 reviews the relevant literature and develops a conceptual framework on which the study is founded. Chapter 3 reviews and evaluates the substantive land policy frameworks in question. Chapter 4 outlines the research strategy, methods and process. Empirical and other research data and findings follow under chapters 5 to 7. In particular, chapter 5 presents research material and findings on land delivery, whereas chapter 6 discusses similar

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<sup>16</sup> Furthermore, according to Malpezzi (1999b & c), most studies of land reforms have focused on agricultural and/or rural land. He urges researchers to study the effects of land reforms on the urban sector as well. This study attempts to contribute to growth of such a knowledge-base.

research outcome relating to land transfer and exchange. The penultimate chapter presents and discusses the research results on valuation and pricing. The eighth chapter recapitulates the salient aspects of the study and tenders the overall conclusions and recommendations.

## Chapter 2: Conceptual framework

### Property Rights, Transaction Costs and Institutional Change

It is the theory that decides what can be observed

Albert Einstein<sup>17</sup>

#### 2.1 Introduction

It has been pointed out that the *effect* of land policy on the land market could be conceptualised as one set of institution modifying or radically restructuring other sets of institutions (in this case, land policy reforms modifying or radically restructuring property rights systems and the land market generally) (see Chapter 1). Further, it is said that the basis for all market exchange is rooted in property rights systems (Cole and Grossman, 2000, 2002; Tregarthen and Rittenberg, 2000).<sup>18</sup> This is because every market transaction involves the exchange and transfer of property rights. Without property rights there can be no trade and, hence, no meaningful markets (Nutter, 1968; Allen, 1999). Thus, adopting the 'property rights approach,'<sup>19</sup> it is hypothesized that land policy reforms, by their very nature as formal constraints, generate change in the prevailing *systems* of property rights through their *effect* on incentive and transaction

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<sup>17</sup> See article 'Introduction to Program Evaluation' by David Abrahams. Online, available from: <http://trochim.human.cornell.edu/tutorial/abrahams/sbk16m.htm> [accessed: 2002].

<sup>18</sup> Similar statements and arguments can be found in numerous property rights literature; see, for example, Allen (1999), Brock (2003), Wiebe and Meinzen-Dick (1998), Farvacque and McAuslan, (1992), and Anderson and Huggins (2003).

<sup>19</sup> The central thesis of the property rights approach is that since the system of property rights in an economy influences the allocations and utilization of resources in specific and predictable ways, a basis exists for studying the impact of property-rights configurations on economic outcomes (see Furubotn and Richter, 2000, p. 31 & 71-72).

costs structures. This change subsequently alters the conditions and behaviour of the land market.<sup>20</sup> Grounded in the new institutional economics (NIE) approach,<sup>21</sup> this chapter presents a *conceptual framework* for analysing the effect of land policy reforms (or public policy and regulations generally) on the urban land market.

The chapter is organized as follows. Section 2 reviews the concept of transaction costs. Section 3 dwells on property rights. It explores a wide range of issues, including the relationship between property rights and transaction costs. Section 4 discusses aspects of property rights and institutional change and specifically addresses the following questions: (1) what are the consequences of altering the system of property rights, (2) what are the effects of state intervention, and (3) why do inefficient or undesirable property rights systems persist? The last section summarises and synthesizes the major issues raised by the review and relates them to the research issues at hand. For purposes of coherence and intelligibility, each section hereafter has been provided with brief introductory and closing remarks.

## 2.2 Transaction Costs

This section discusses three important aspects of transaction costs. These are definitional issues, determinants and significance of transaction costs, and measurement. The review is largely based on property rights and transaction cost economic literature.

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<sup>20</sup> Of course, causality runs in the opposite direction as well. Market conditions can, and do, have an impact on land policy, either directly or via property rights reconfigurations. This study, however, focuses on land policy effects. For a similar remark (though this refers to the broader issues of policies and institutions), see World Bank (2002b, p. 6).

<sup>21</sup> Details regarding the nature and origins of new institutional economics (NIE) are outlined in chapters 1 and 4.

### 2.2.1 Definitional issues

What are transaction costs? There is no consensus on how transaction costs should be defined. Instead, several definitions of transaction costs exist in the literature (Benham and Benham, 2000; Klaes, 2000; Wang, 2003). For example, transaction costs have generally been defined as the cost of using the price mechanism (Coase, 1988a & c); the costs of exchanging ownership titles (Demsetz, 1968); costs of running the economic system (Arrow, 1969); the costs associated with the transfer, capture, and protection of rights (Barzel, 1989); the costs of measuring valuable attributes of what is being exchanged as well as the costs of monitoring and enforcing agreements (North, 1990a); the *ex ante* costs of drafting, negotiating and safeguarding an agreement and the *ex post* costs of haggling, costs of governance, and bonding costs to secure commitment (Williamson, 1985a); the resources used to establish and maintain property rights (Allen, 1991)<sup>22</sup>; or simply the ‘economic equivalent of friction in physical systems’ (Williamson, 1986a, p. 176).

More specifically, transaction costs have been defined as the costs of bargaining, information, measurement, supervision, enforcement, and political action (Libecap, 1986). Similarly, Furubotn and Richter (2000) define transaction costs as search and information costs, bargaining and decision costs, and policing and enforcement costs.<sup>23</sup> Furubotn and Richter indicate that transaction costs arise in connection with the exchange process, and their magnitude affects the way in which economic activity is organized and carried out. Typical examples of transaction costs identified by Furubotn and Richter (2000) include:

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<sup>22</sup> Or as Gerard (2001, p. 373) put it: “The resources expended to define, enforce, and transfer [property] rights.”

<sup>23</sup> Dahlman (1979) is of the view that this functional taxonomy of different transaction costs is unnecessarily elaborate for the three classes reduce to a single one: “for they all have in common that they represent resource losses due to lack of information ... Therefore, it is really necessary to talk only about one type of transaction cost: resource losses incurred due to imperfect information.” (p. 148).

- The costs of using the market; known as the *market transaction costs*<sup>24</sup>.
  - These arise primarily due to the need for information and the bargaining processes that characterise the use of the market. They consist of (i) costs of preparing contracts (search and information costs), (ii) the costs of concluding contracts (costs of bargaining and decision making), and (iii) the costs of monitoring and enforcing the contractual obligations.
  
- The costs of exercising the right to give orders within a firm, called *managerial transaction costs*.
  - Classified as: (i) The costs of setting up, maintaining or changing an organisational design, and (ii) the costs of running an organisation (comprising information costs and costs associated with the physical transfer of goods and services across a separable interface (Williamson, 1985a)).
  
- Costs associated with the running and adjusting of the institutional framework of the polity, termed as *political transaction costs*.<sup>25</sup>
  - Identified or understood as: (i) the costs of setting up, maintaining and changing a system's formal and informal political organisation, and (ii) the costs of running a polity.

(For more details, see Furubotn and Richter, 2000, p. 42-49).

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<sup>24</sup> Note that, unlike the neoclassical theorists, Coase (1937; 1960) realised that there are costs of using the price system. The costs of carrying out transactions by means of exchange on the open market are what now 'have come to be known as market transaction costs' (Coase, 1992a).

<sup>25</sup> Described by Levi (1988, p.12) as: "the costs of measuring, monitoring, creating, and enforcing compliance." [Quoted in Furubotn and Richter, 2000, p. 47].

Each of these costs consists of two variants, namely: 'fixed' transaction costs and 'variable' transaction costs. The latter are the costs that depend on the number or volume of transactions, and the former relate to specific investments made in setting up institutional arrangements (see Furubotn and Richter, 2000).

North (1990a) categorizes transaction costs as partly market costs (such as legal fees, title insurance and credit rating searches) and partly the costs of time each party must devote to gathering information, to searching, and so on. In addition to this categorization, North (1987) identified a type of transaction costs that do not go through the marketplace, known as non-market transaction costs. This type of transaction costs reflect the high costs of searching, where information is not efficiently distributed, and the substantial costs in undertaking economic activity in compliance with rules and regulations. Examples of this type of transaction costs include costs of queuing, bribing officials, cutting through red tape, time involved in obtaining permits to do business, and so forth. Unlike those costs that go through the market, and thus measurable, the latter costs are hard-to-measure. It is these hard-to-measure costs that complicates the assessment of total transaction costs associated with a particular institution (see North, 1990a).

It would appear the term 'transaction costs', as is popularly known in the literature, is rather ambiguous or a complete misnomer altogether.<sup>26</sup> Cheung (1998) for example has suggested, with the approval of Coase, that transaction costs be named *institutional costs*. After defining transaction costs as 'all the costs which do not exist in a Robinson Crusoe economy,' Cheung notes that: 'An economy of more than one individual would necessarily contain institutions, but the costs that arise as a result may entail no transactions at all' (Cheung, 1998, p. 515).<sup>27</sup> Klaes (2000) and Webster and Lai (2003)

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<sup>26</sup> It is perhaps for this reason that critics have branded this concept as 'too vague, catch-all' term (see, for instance, Miller, 1965; Niehans, 1969; and Shapiro, 1971).

<sup>27</sup> Note, though, that Coase has often used examples that suggest transaction costs arise only in market exchange (Allen, 1999, p. 896). For Coase (1992b), a wholly communist society is the place where transaction costs would be zero (Wang, 2003).

also espouse similar views. Following Arrow (1965) and Green and Sheshinski (1975), Klaes (2000) suggests that transaction costs inherent in a particular mode of economic organisation, be called 'institutional transaction costs' and those that are independent of the particular mode of economic organisation, be referred to as 'technological transaction costs.'<sup>28</sup> Webster and Lai (2003), on the other hand, assert that transaction costs as generally referred to in the literature are *co-operation costs* of exclusion, transaction and organisation. Exclusion, transaction and organisation costs are then defined separately (see Table 2.1, p. 41). All these costs, Webster and Lai (2003, p. 41) argue, are 'costs of owning and using resources.'

The definitional differences of 'transaction costs' emanate from a number of sources. For one thing, the term 'transaction' is itself conceived differently. Williamson (1985a) and Commons (1934)'s varied interpretations of the term 'transaction' are instructive. For Williamson (1985a, p. 1), a transaction occurs 'when a good or service is transferred across a technologically separable interface. One stage terminates and another begins.'<sup>29</sup> Viewed from this perspective, the term applies to circumstances in which resources are actually transferred in the physical sense of 'delivery' (Furubotn and Richter, 2000). Delivery may occur within firms or across markets, and it is therefore possible to speak of internal and external transactions or, in some contexts, of intra-firm and market transactions. Commons, on the other hand, gives a somewhat different interpretation of the term. Transactions, according to Commons, 'are the alienation and acquisition between individuals of the rights of future ownership of physical things' (1934, p. 58). This definition, Furubotn and Richter (2000) note, deals with the transfer of resources,

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<sup>28</sup> Arrow's (1965) identified these two different types of transaction costs, but did not label them. Like Arrow (1965), Green and Sheshinski (1975) make a starkly similar distinction between 'institutional efficiency' and 'technological efficiency.' Logically, Klaes (2000) applies Green and Sheshinski's (1975) terminology to label Arrow's (1965) transaction cost concepts.

<sup>29</sup> An example here would be the famous Adam Smith's (1776) division of labour scenario. A transaction takes place, he said, each time a pin changes hands in a factory.

not in the sense of delivery mentioned above, but in the legal sense (involving the transfer of sanctioned property [or even contract] rights).<sup>30</sup>

Besides the mere interpretation of the term 'transaction,' transactions themselves come in different forms. There are *exchange* transactions, *contract* transactions and transactions with *externalities* (Ullrich, nd). With exchange transactions, the object of exchange (as in the case of selling and buying a good) does exist *ex-ante*, or before the settlement of the contract. Contract transactions, on the other hand, depend on the specifications within a contract agreement and the object of performance is produced *ex-post*, after settlement of contract. Typically, contract transactions are so constituted that either the contract contains a transfer of complete ownership (full bundle of rights), as in exchange transactions, or only certain property rights are transferred over time without forfeiting the entire bundle of rights. Where the object of exchange creates positive or negative externalities, as in transactions with externalities, a complete specification of property rights and ownership is impossible due to prohibiting transaction costs (see Ullrich, nd, p. 3-4). Transactions can also be classified or distinguished according to: 'the degree to which relationship-specific assets are involved, the amount of uncertainty about the future and about other parties' actions, the complexity of the trading arrangement, and the frequency with which the transaction occurs' (Shelanski and Klein, 1995, p. 337; see also Williamson, 1985a, from whom the original material was derived). Clearly, the existence of the different forms of transacting adds further complications and dynamics to the definition of the concept of transaction costs.

The multiple meanings of the concept of transaction costs stem, in part, also from the diversity in theoretical perspectives (Allen, 1999). The property rights literature, for instance, defines transaction costs as costs of establishing and maintaining property rights. According to Allen (1999), this definition cuts across all organisations (markets, firms, households) and any other theoretical constructs. Going by this theoretical

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<sup>30</sup> Interestingly, Karl Marx (1893, p. 144), in his *Das Kapital* made a similar observation about 'costs of circulation.' He noted that the when goods circulate, this does not necessarily mean actual physical movement of the goods in question, but the property rights to which the goods relate.

perspective, whenever and wherever property rights are protected and maintained, transaction costs exist. The neoclassical definition, which defines these transaction costs as 'costs resulting from the transfer of property rights,' on the other hand, ignores the enforcement-type costs *within* firms (an inherent feature of the property rights definition). Allen (1999) argues that the emphasis of the latter definition is on costs that occur between firms and individuals resulting from the process of *market exchange*.

Given the multivalent (and sometimes cryptic) definitions, it is to be expected that some critics and sceptics would regard transaction costs as an *opaque concept*. Allen (1999), for example, notes that the words 'transaction costs' have evolved to the point where some sceptics claim they include any cost that is convenient and elusive enough to avoid critical examination (Niehans, 1987, p. 678). These criticisms arise because, among other 'shortcomings' of this concept, no consensus exists on the appropriate way to measure transaction costs (Dawkins, 2000). Ambiguous, though, as it may be, the diversity in conceptualisation of the term 'transaction costs' presents opportunities for formulation of heterogeneous research programmes, particularly those that relate to its measurement and empirical investigation (see Wang (2003) for a taxonomy of such various research programmes carried thus far).

### **2.2.2 Determinants and significance of transaction costs**

Having dealt with definitional issues, it is perhaps logical to explore and establish how transaction costs arise and what determines their magnitude. Scholtz (2001) notes that there is often a large amount of effort that goes into choosing, organizing, negotiating and entering into even the most mundane contracts. The costs associated with these efforts, he argues, are called transaction costs, and originate from a wide variety of sources. Although Scholtz does not cite specific examples of the various sources of transaction costs, a review of literature finds evidence consistent with this notion.

Some of the sources of transaction costs include: number and diversity of agents (Williamson 1985a; Milgrom and Roberts; Benham and Benham, 2001; Wang, 2003; Webster and Lai, 2003); complexity and value of rights being exchanged (Webster and Lai, 2003); available technology (North 1990a); policy factors (Coase 1960; McCann and Easter, 2002), as some policies generate more transaction costs than others; natural difficulties in trading<sup>31</sup> and legal factors (Demsetz, 1967); and size and structure of the transaction (Stavins 1995).

The magnitude and type of transaction costs also depend on the institutional environment (Coase 1960; North 1990a; Griffin 1991; Vatn and Bromley 1994). North (1990a; 1991) in particular contends that it is institutions (together with the technology applied) that largely determine how costly it is to transact. To reinforce this argument, North amplifies that the higher these costs become, the more parties to an exchange will invoke informal constraints to shape the transaction. In the extreme, due to the costliness of such transactions, it is believed, no transaction will occur at all.

Given the wide variations in definitions, sources and typologies of transaction costs, as the foregoing review has demonstrated, is the identification and separation of these costs into different categories of any consequence?

McCann and Easter (2002) point out that, for a number of reasons relating to valid measurement and policy-design, it makes sense to distinguish between the various types of transaction costs.

A typology can help compare studies since some studies take into account a wide range of transaction costs than others. It may also help ensure that all relevant types of costs have been accounted for and to facilitate collection of data on transaction costs. Different types of costs may be borne by different agencies or at different points in the life cycle of a policy instrument. Meaningful categories can also be used to improve

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<sup>31</sup> Trading can be inhibited, for example, by location and distance to markets as carrying out exchange transactions in distant and/or unfamiliar places entails more transaction costs.

policy design. Some costs may be positively (complements) or negatively (substitutes) correlated with other types of costs. For example, costs involved with encouraging participation of stakeholders at an early stage may decrease monitoring and enforcement costs later (Egdell, 1998). Also different types of allocation mechanisms may have a different mix of costs or a difference in their relative importance which may help in examining the fundamental determinants of transaction costs. (McCann and Easter, 2002, p. 6-7)

An anatomy of these costs is also useful because, as broadly defined in the literature, transaction costs do not only exist, they are huge (Cheung, 1998; Arvanitidis, 2003) and are a critical determinant of economic performance (North, 1991). It is thought that transaction costs may represent about 50 to 60 percent of net national product of modern market economies (Furubotn and Richter, 2000; North, 1990a; Matthews, 1986). In *less* developed economies, transaction costs are thought to make up an *even* higher fraction of the overall GDP (see Hagel and Singer, 1999), and sometimes no exchange takes place due to these high costs (Barzel, 1989; North, 1990a; for similar views on this matter, see also Coase, 1992a; Benham and Benham, 2001; Sholtz, 2001; Williamson, 1985a & b). North specifically emphasises this point.

When we compare the costs of transacting in a Third World country with that in an advanced industrial economy, the costs per exchange in the former are much greater – sometimes no exchange occurs because costs are so high. (North, 1990a, p. 67)

Transaction costs have been found to be a contributing factor to the greater use of non-market forms of exchange and to prices that diverge from the social values of the goods exchanged (Furubotn and Pejovich, 1972). In land market markets, high transaction costs make it more difficult to provide credit or may necessitate costly development of collateral substitutes; both of which constrain development of the private sector (Deininger, 2003).

Although mere existence of positive transaction costs does not imply inefficiency (De Alessi, 1980; Demsetz, 1968), it is widely believed that lower transaction costs are

almost always beneficial (Gu and Hitt, 2001). Most research indicates that a decline in transaction costs leads to improved economic efficiency (Gu and Hitt, 2001).<sup>32</sup> Writing on 'private financing of urban infrastructure,' Lindfield (1997), for example, suggests that:

Lowering transaction costs will reduce total costs and thus increase margins and sales, promoting economic growth and employment in the urban system concerned. (p. 2)

Benham and Benham (1997; 2000; 2001) and Coase (1998b; 1999; 2002) also echo similar views. They, too, note that lower transaction costs facilitate more trade, greater specialization, changes in production costs, and increased output.<sup>33</sup> They argue thus:

In our real world, transaction costs determine property rights, ownership, the extent of trade, specialization, and production. If transaction costs decrease, property rights will be more clearly defined, more goods and services will be traded, the benefits of specialization will increase, and greater economic gains will be realized. (Benham and Benham, 1997, on-line: <http://www.nap.edu/html/transform/ch1.htm>)

Obstacles that impede the formation of efficient markets rob people of opportunities to improve their standards of living. These obstacles include weak enforcement of contracts and laws, insecure property rights, corrupt or inefficient bureaucracies, and societal norms that discourage cooperation. They result in high transaction costs, which reduce exchange, employment, and growth. (Coase, 1998b, web page 1)

A number of studies grounded in the *neoclassical* economic theory equally demonstrate the significance of transaction costs. For instance, after incorporating transaction costs in a capital market equilibrium study, Constantinides (1986) concluded that transaction

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<sup>32</sup> This is congruent with Buitelaar (2003, p. 324) who notes (citing Alexander (2001a), Williamson (1999) and Dixit (1996)), that: "There are many transaction cost economists who regard transaction costs, implicitly or explicitly, as the determinant of efficiency."

<sup>33</sup> These views (on the merits of lower transaction costs) seemingly stem in part from economic theory, which suggests that changes in transaction costs have a first-order impact on the production frontier (see Benham and Benham, 2001).

costs reduce frequency and volume of trade and are a second-order effect on those costs (see Sullivan *et al.*, 1991, p. 114). In a study on effect of transaction costs on real estate investment returns, Sullivan *et al.* (1991) note that studies that do not adjust for transaction costs run the risk of overstating risk-adjusted returns. They conclude that this explains why, aside from appraisal smoothing, such research (for instance, Brueggeman *et al.*, 1984; Burns and Epley, 1982; Zerbst and Cambon, 1984) reports superior risk-adjusted returns for real estate.

In spite of the research findings on the significance of transaction costs, Gu and Hitt (2001), however, argue that not all reduction in transaction costs need be beneficial. Reduced transaction costs, for example, may introduce new, poorly informed participants into markets that they would not otherwise access through a professional intermediary who would screen or temper their information disadvantages. Secondly, the classic economic problems such as the 'lemons problem' (Akerlof, 1970)<sup>34</sup> can be exacerbated if lower transaction costs lead some participants to become more informed than others. Thus, it is concluded:

To the extent that market efficiency is affected by the introduction of less uninformed participants, a reduction in transaction costs can impede market efficiency and create real social costs. (Gu and Hitt, 2001, p. 85)

However valid Gu and Hitt's (2001) insights on the extent to which reduction in some transaction costs might not be beneficial, the important observation from the new institutional economics perspective is that transaction costs are huge and that they pervasively *inhibit* exchange, production and economic growth (Cheung, 1998; Coase, 1998b; Benham and Benham, 1997; North, 1990a, 1991). An examination of the nature and structure of transaction costs is, therefore, worth undertaking. Further, aside from

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<sup>34</sup> This problem stems from the fact that the seller of a used car knows the value of the car better than a potential buyer. This, then, raises the problem of information asymmetry; and hence, adverse selection. Only when both parties are equally informed (be it completely uninformed or fully informed), Gu and Hitt (2001) argue, can trade actually take place.

their expanse and pervasiveness, an analysis of transaction costs is even more warranted when it is realised that their escapability under alternative institutional arrangements is crucial to the working of markets and economic systems.<sup>35</sup>

### 2.2.3 Measurement

Are transaction costs measurable?<sup>36</sup> Given the wide variations in interpretation of the concept and the inseparability of production costs from transaction costs (see Benham and Benham, 2001), it is no surprise that empirical measurement of transaction costs is somewhat problematic (see Dawkins, 2000; Wang, 2003). This fact, notwithstanding, several studies have attempted to measure transaction costs (see Wang, 2003 for a review). The approaches taken by these studies can be divided into two categories (see Klaes (2000) and Allen (1999) for detailed discussions).

First, the ‘objectivist’ approach (which is basically a neoclassical approach<sup>37</sup>) tries to measure transaction costs quantitatively with reference to market prices. Most of the studies that employ this approach are from the financial sector. Typically, the results of most of these studies are analogous to the effects of transportation charges (Allen, 1999). Among such works, include Demsetz (1968), Stoll and Whaley (1983), Constantinides (1986), Wallis and North (1986), Collins and Fabozzi (1991), and Polski (2001).

Second, the ‘subjectivist’ approach (arguably, a property rights, or new institutionalist, approach), questioning the possibility of arriving at reliable quantitative estimates,

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<sup>35</sup> In stressing the importance of transaction costs, Arrow (1965, p. 155) noted that: “It is not only their existence but their escapability under alternative institutional arrangements that is crucial to the normative discussion.”

<sup>36</sup> “*When you cannot measure your knowledge is meager and unsatisfactory.*” Lord Kelvin (Inscription on the Social Science Building of the University of Chicago, see Wang, 2003, p. 1).

<sup>37</sup> Klaes (2000, p. 286) rightly points out that transaction cost components amenable to quantitative analysis are precisely those that could be incorporated into the general equilibrium models of monetary economics.

attempts a qualitative ranking of alternatives. This approach is founded on the seminal work of Coase (1960), and those following this line of inquiry include Cheung (1969), Williamson (1975; 1985a; 1996; 1998; 2000), Besley (1995), Knack and Keefer (1995), Ghertman (1998) and Rodrick (2000). Adopting a comparative institutional approach, most of these works do not measure transaction costs per se. Rather, transaction costs proxies (e.g. uncertainty, asset specificity, opportunism, etc.) are used as heuristic devices to measure the relative efficiency of alternative institutional/property rights arrangements or contractual choices. The primary contribution of this body of work is to demonstrate empirically and systematically the simple point that institutions matter for economic development (Matthews, 1986; Wang, 2003).

Of course, for reasons discussed above, studies in measurement of transaction costs are not incontrovertible. Controversy abound that transaction costs are difficult to measure. Most, if not all, proponents of the comparative institutional approach (see, for example, Furubotn and Richter, 1991; Lai, 1997; and Cheung, 1998) however argue that although the absolute or cardinal levels of transaction costs cannot be determined, their order of magnitude can be approximated. Furthermore, following the same line of reasoning, that transaction costs do not necessarily have to be expressed in money, but can be measured in terms of time, energy and efforts (see Hazeu, 2000; Buitelaar, 2002; 2003). Advocating this type of approach, Cheung contends thus:

Fundamentally, measurement involves an assignment of numbers for purposes of ranking, and precision in measurement can only be judged by the extent of agreement among different observers. To say that cost is measurable, or measurable precisely, does not necessarily mean it is measurable in dollars and cents. If we are able to say, *ceteris paribus*, that a particular type of transaction cost is higher in Situation A than in Situation B, and that different individuals consistently specify the same ranking whenever the two situations are observed, it would follow that transaction costs are measurable, at least at the margin. Testable propositions may be obtained, and that is the important thing. (Cheung, 1998, p. 516)

Thus, by employing this approach, and treating the ‘transaction’ as the unit of analysis, studies in this line of inquiry sidestep the thorny question of quantifying the absolute level of transaction costs (Wang, 2003).

#### **2.2.4 Recapitulation**

As the following sections will demonstrate, the concept of transaction costs is central to the discussion of property rights. For this reason, this chapter firstly attempted to highlight the essential characteristics of transaction costs. This review covered, among other things, definitional issues and measurement. The review established that, just as transaction costs are defined in various ways, the sources and measurement of transaction costs are equally variable. Furthermore, it was noted that transaction costs do not only exist, they are huge and important determinants of economic performance. The review is not only intended to inform and facilitate the *ensuing* substantive discussions on property rights; it is, in itself, a fundamental part of the analytical framework.

### **2.3 Property Rights**

This is the core section of the chapter. Thus, it covers a wide range of issues. Systematically, the section discusses the following: the structure and role of property rights, the link between property rights and transaction costs, and the role of risk and uncertainty. Like the foregoing section, it begins with definitional issues and ends with a recap.

#### **2.3.1 Definitional issues**

The concept of *property rights*, like that of transaction costs discussed above, is also variously (and sometimes inconsistently) defined in economic literature. Legal scholars and the legal profession adopt the relational definition of property rights, as relations between people respecting things (Cole and Grossman, 2000; 2002). A right, in this

sense, is a legally enforceable claim of one person against another. In economic theory however, Cole and Grossman (2000; 2002) argue, such a definitional consensus of this concept is non-existent. Hsiung (1998) concurs with Cole and Grossman (2000; 2002) that the concept of property rights has been interpreted in various ways, and argues that unless the exact meanings of property rights are grasped, defining the other related concept of transaction costs by employing the concept of property rights could be problematic. A review of economic literature on this matter brought the following perspectives to the fore.

Furubotn and Richter (2000), like Alchian (1965a), make reference to legal literature in their approach. They extensively outline the meaning of property rights in the following ways: namely, in the narrow sense of Continental law, in the wide sense of Anglo-American common law, and as a dichotomy between absolute and relative rights.

In the narrow sense of Continental civil law, property rights are related to physical objects or tangibles only, whereas the Anglo-American common law relates property rights to both tangibles and intangibles (including patents, copyrights and contract rights). The United States' modern property-rights model, for example, is said to be based on the 'common law terminology.' A further classification of property rights, according to Furubotn and Richter, comprise the distinction between absolute and relative property rights. Absolute rights (which include both tangibles and intangibles) are directed at all others. Relative rights, on the other hand, give the owner power that he can exercise only against one or more determined persons (Merryman, 1985). In addition to these, Furubotn and Richter extend the concept property rights to include rights:

... not covered by law but rather by conventions 'supported by the force of etiquette, social custom, and ostracism'... or other nonlegal instruments such as self-enforcement... (p. 76)

Going by this definition, customer relations and friendships are good examples of self-enforcement types of property rights. From the arguments Cole and Grossman (2000; 2002) raise, it would appear this is a good example (deviating, as it does, from the strict legal definition of property rights) of the type of definitions that they (Cole and Grossman) find inappropriate.

North (1990a) defines property rights as rights individuals appropriate over their own labour and the goods and services they possess. In the same vein, Barzel (1989) asserts that property rights of individuals over assets consist of:

... the rights, or the power, to consume, obtain income from, and alienate these assets” and points out furthermore that, “legal rights, as rule, enhance economic rights, but the former are neither necessary nor sufficient for the existence of the latter. (p. 2)

Cole and Grossman (2002) contend that although some economists (citing Alchian (1965a)<sup>38</sup> and Demsetz (1967), among others) appear to adhere to the legal definition of property rights, others adopt idiosyncratic definitions of property rights that differ significantly from the dominant trends of the legal theory and judicial practice. For example, Cole and Grossman find Heyne’s (2000, p. 334) conception of property rights inadequate and misleading. Heyne’s (2000) asserts that:

Firms do in fact have rights to discharge obnoxious substances into the air, as proved by the fact that they do it openly and are not fined. They both have actual and legal rights to ‘pollute. (p. 334)

Cole and Grossman (2000) argue that this conception of property rights is inadequate and misleading on a number of grounds. First, the distinction between ‘actual’ and ‘legal’ rights is said to be problematic. It is argued that a person can control resources without possessing a right. To assert a right to control resources is however to claim that

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<sup>38</sup> For Alchian, property rights are ‘the rights of individuals to the use of resources’ (1965, p. 817) not just under the law, but also in reality. He makes clear that these rights are not solely dependent on the existence of the state, but that they depend on custom, reciprocity and voluntary restraints (Allen, 1999).

society, though formal law or informal social norms, will enforce ones control. The distinction therefore reduces the concept of 'right' to an expectation of what one can actually do without penalty. It is pointed out, however, that there are many things one can do without penalty that are not 'rights.' Second, the argument about the firm's rights to discharge obnoxious substances into the air as proved by the fact that they do it openly and are not penalized is found wanting, too. If anything, it is said to be confusing 'the doing of something –mere use – with the right to it.'

As we have seen, however, mere use does not automatically give rise to property rights. (Cole and Grossman, 2002, p. 323)

Cole and Grossman (2002) also find other unconventional definitions of property rights in the economic literature problematic<sup>39</sup> and urge economists to carefully differentiate between property rights, other legal interests, and mere uses.

To the extent that economists are concerned with using the idea of property rights as legal scholars do, they should avoid conflating property rights with mere uses or *claims* of rights. ... When transaction costs are high, the definition of property rights may matter every bit as much as who holds the rights. ... Coase (1960) has shown, if only implicitly, why doing so is just as important for economic theory (Cole and Grossman, 2002, p. 325-326 & 328)

However logically sound Cole and Grossman's (2002) argument may be, it is important to note though that the property rights approach, according to Furubotn and Richter (2000), assumes that there exist:

(a) Property rights in the legal sense; and, (b) property rights in the non-legal sense. Property rights in the legal sense, of course, conform to legal definition. Rights that are not sanctioned by law but by convention, for example, customer relationships alluded to

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<sup>39</sup> For example, the distinction given by Barzel (1989) above and Allen (1999b) between 'legal rights' and 'economic rights' is said to conflate the factual matter of capability with the social-legal matter of 'rights' to do something.

above, are equally of interest under the property rights approach. Such rights would definitely not conform to legal definition.

This view dovetails well with Wiebe and Meinzen-Dick (1998) who assert that property rights arise from law as well as custom and the operation of markets, and further go on to define, making reference to Bromley (1997) and McElfish (1994), property rights as:

[T]he formal and informal institutions and arrangements that govern access to land and other resources, as well as the resulting claims that individuals hold on those resources and on the benefits they generate. (p. 205).

Allen (1999) argues that the attempt to go beyond legal definition and start talking about economic rights is now commonplace in modern property rights literature.<sup>40</sup> The chief proponents of this literature, starting with Alchian (1958; 1965a), are Alchian and Kessel (1962), Alchian and Demsetz (1973), Ellickson (1991) and Landa (1994). Allen (1992) emphasises that:

Although economic property-rights are enhanced by the law, they are ultimately use rights and the greater extent one can exercise these uses and bear the consequences the greater are the property rights, regardless of the law. (p. 898)

In spite of the 'legal' and 'non-legal' perspective<sup>41</sup> and other fine variations in definitions, it is however generally understood that property rights are basically *rights of*

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<sup>40</sup> Note the definitions of legal and economic rights. Legal rights are rights defined by the state and recognised by law. Economic rights, on the other hand, are the ability of individuals to exercise their rights over an asset (Zhu, 2002, p. 42; see also De Soto, 2001, p. 180-183; Webster and Lai, 2003).

<sup>41</sup> An analysis of the modern property rights perspective indicates that in so far as ownership, and the exercise of the rights thereof, are concerned legal frameworks, however important they might be, are not the only defining institutions. There is an attempt under the property rights paradigm to transcend the legal domain and consider the broader, non-legal framework within which property rights are exercised. This is evident from the property rights definition of legal and economic rights (see note and arguments above). The underlying rationale here is that it is the ability of the individual to exercise the rights to use, obtain an income, sell, or transfer an asset that matters and that this may be effectively done non-legally under

*ownership* (for standard definitions, see Bazelon, 1963, Becker, 1977; Reeve, 1986). In the land market, property rights are said to be none other than the *tradable* land rights or interests (see Alchian and Demsetz, 1973; Enever and Isaac, 1996, 2002; Fraser, 1993; Harvey, 2000 and many others). Tradable rights or interests in land – it must be pointed out – are legal interests and, hence, consistent with the legal definition of property rights.

### 2.3.2 The structure of property rights

So far we have established that property rights are rights people have or acquire over the use of resources. Since literature suggests that when rights are not clearly defined, transaction costs rise (North, 1990a; Barzel, 1989, and others) and market failures<sup>42</sup> result (Coase, 1937; Cole and Grossman, 2000 & 2002),<sup>43</sup> it is perhaps necessary that we now examine the nature of property rights. The review hereafter will initially discuss the fundamental attributes of property rights and, then, this will be followed by an appraisal of the common typologies of property rights.

Many economists, legal and property specialists always point out that *what is transacted* and *owned* in the land market are not the bare land or bricks and mortar as such, but *rights* in land.<sup>44</sup> Alchian and Demsetz (1973) clearly argue, for instance, that it is not the

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informal/social contracts. Indeed, although the law strengthens the validity and exercise of such rights, it does not fully guarantee performance if the broader, social contract is feeble. Rapaczynski (1996) and De Soto (2001) articulate this perspective quite clearly. See also Ellickson's (1991) book, *Order Without Law: How Neighbours Settle Disputes*.

<sup>42</sup> Stiglitz (1989) contends that market failure is more prevalent in less developed countries, and the nonmarket institutions that ameliorate its consequences are, at least in many instances, less successful in doing so.

<sup>43</sup> Coase (1937) realized that the root of many market failures was the improper definition of legal rights, and that once property was well defined and easily tradable, an efficient market solution could quickly follow (Sholtz, undated, on-line 2002).

<sup>44</sup> Coase (1992a) commenting on his earlier work (1960), had this to say: "I explained in 'The Problem of Social Cost' that what are traded on the market are not, as is often supposed by economists, physical

resource itself that is owned; it is a bundle, or a portion, of rights to use a resource that is owned. They further state that these rights are always circumscribed, often by the prohibition of certain actions. To own land usually means to have the right to till (or not to till), to mine the soil, to offer those rights for sale, mortgage, etc., but not to throw soils at a passer-by, to use it to change the course of a stream, or to force some one to buy it.

Consistent with Alchian and Demsetz (1973), Furubotn and Richter (2000) note that under private ownership:

The right of ownership is an exclusive right, but ownership is not unrestricted right. ... In the case of a sale, what happens effectively is a transfer of a 'bundle' of property rights from one person to another. (p. 72)

That property rights are not absolute and can be changed by individuals' action, Barzel (1989) argues, is useful in the analysis of resource allocation. Furubotn and Pejovich (1972) note that the value of any good exchanged depends, *ceteris paribus*, on the bundle of property rights that is conveyed in the transaction.

The foregoing arguments are not inconsistent with Roman law, which specifies several categories of property rights. According to this law, ownership consists of the right to use an asset (*usus*), the right to capture benefits from an asset (*usus fructus*), the right to change its form and substance (*abusus*), and the right to transfer all or some of the rights specified above to others at a mutually agreed price (Pejovich, 1990, p.27-28). Grafton *et al.* (2000) note further that these rights can be described by their divisibility, exclusivity, transferability, duration, quality of title, and flexibility.<sup>45</sup>

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entities, but the rights to perform certain actions, and the rights which individual possess are established by the legal system."

<sup>45</sup> "Divisibility describes the extent to which the right can be partitioned, such as the division of surface and mineral rights. Exclusivity encompasses the notion of how an asset or resource can be used as well as the ability to restrict its use to others. It may include the right of access and to enjoy (*ius utile*), the right of withdrawal (*ius fruendi or usufructus*), and the right to prevent interference (*ius excludendi*).

Secondly, it is often stated that the *strength* with which the rights are owned is defined by the extent to which an owner's decision about how a resource will be used actually determines the use. If an owner can freely determine the use and this dominates the decision process that governs actual use, such an owner is said to hold *absolute* rights of ownership. In the land market, the most powerful property right (and, hence, the most valuable) is called *freehold*. A *leasehold* interest, on the other hand, is less powerful as it is carved out of the freehold (Enever and Isaac, 2001).

Thirdly, it is also observed that there can be a *multiplicity* of interests subsisting simultaneously in a particular object of ownership (Alchian and Demsetz, 1973; Fraser, 1993; Enever and Isaac, 2001). This means that in the one and same property, more than one party can claim some ownership interest at any given time. Or, to put it differently, the domain of demarcated uses of a resource can be portioned at any specific time among several people. One party may own the right to till the land, while another (perhaps the state) may own an easement to traverse or otherwise use the land for specific purposes. This attribute has important economic implications, as ownership and actual possession or use (and even the mere interest of *control*) can be separated.

Fourthly, the exercise of a particular right may depend on a decision process in which many individuals share, such as in the use of majority voting. Although the right to vote may be exercised individually, it is the pattern of votes amongst many individuals that govern the use of the resource (Alchian and Demsetz, 1973). In land-market terms, this situation would perhaps obtain under what is known as common-tenancy, or such other similar collective/joint ownership forms.

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Transferability (*ius disponendi*) refers to the ease by which owners may trade, gift, or bequeath the property right. Duration encompasses the notion of how long the property right exists, such as whether it expires at the end of every year or is valid in perpetuity. Quality of title (*ius possidendi*) represents how well the property right is specified and includes the notion of possession and ownership (*de facto* and *de jure*). Flexibility, the last characteristic, refers to the ability of the property right to accommodate changes in the resource and circumstances of the owner(s)." (Grafton *et al.*, 2000, p. 681)

Furthermore, it is held that the *value* of property rights (and the functioning of land markets) depends on formal mechanisms for defining and enforcing the rights, including the court system, police, the legal profession, land surveys, record keeping systems, and titling agencies (Feder and Feeny 1991), as well as on social norms or religious customs (Brandão and Feder, 1995). It is important to note that *defining* and *enforcing* the rights is *costly* (North, 1990a; Alchian and Demsetz, 1973; Demsetz, 1967; Barzel, 1989; and others), and this being the case, rights to assets cannot be perfectly delineated (Barzel, 1989; Libecap, 1986). Libecap (1986) further notes that property rights tend to be made more precise as resource *values* rise. This is because, Libecap (1986) points out, an increase in value attracts additional claimants, thus raising the losses of common pool situations and increasing the returns from contracting, to define rights. This suggests, in tandem with Coase theorem,<sup>46</sup> that as property rights become better defined, the gains from trade increase (see Anderson and Lueck, 1992; Allen, 1999). By and large, the lesson from this literature, as Eggertsson (1990a, p. 451) has implicitly put it, is that the *value* of property rights is dependent on the structure or system of property rights.

All the attributes outlined above about the structure of property rights refer directly to the 'rights' themselves. It would be useful now to turn to the *typology* of property rights regimes in terms of ownership character forms. This is necessary for three reasons. First, a system of property rights not only defines the legitimate exclusive uses of land; it also identifies those entitled to these rights (Brandão and Feder, 1995; Jaffe and Louziotis, 1996; Alchian and Demsetz, 1973). Second, behavioural analysis suggests that different types of ownership character forms exhibit different response postures to market signals (see Adams, *et al.*, 2001). Third, diversity in strategies, interests and actions of those who hold the ownership rights can be critical to the way resources are managed. Adams (1994), for instance, suggests that certain landowners pursue more active land management and development strategies than others. Goodchild and Munton (1985) contend that individual landowners perceive land management and development from different perspectives, taking into account their own set of characteristics or

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<sup>46</sup> According to Allen (1999, p. 898), when property rights are perfectly defined, the Coase theorem states that the gains from trade are maximized.

circumstances. So, an understanding of these ownership character forms would be useful in explaining their behavioural characteristics vis-à-vis market incentives.

For analytical purposes property rights can, according to Brandão and Feder (1995), be categorized into four basic types: open access; communal property; private property; and state property (see also Libecap, 1986, p. 235).

In an *open access* regime, property rights are not specifically assigned to any individual or small group (although they may be perceived as belonging to some large group, so that the ability to exclude individuals from using the land is practically zero). It may be worth noting that the right to exclude has a number of implications. First, those individuals that can solve transaction problems effectively (that is, with less cost) tend to be the ones that can exclude more effectively (Field, 1989). This suggests that the cost of transacting is directly related to the right of exclusion. Second, the inability to exclude reduces the amount of resources that must be used to protect the rights held. This, in turn, reduces the uncertainty associated with the ownership of those rights (Jaffe and Louziotis 1996). Third, in the absence of excludability free-rider problems may arise, as there is no *incentive* for individuals to invest in, restore, or conserve the resource<sup>47</sup>.

In the case of *communal* property, rights are assigned to a specific community. Community members are able to *exclude* outsiders from using the land and to control and regulate its use by members. Although there may still be *incentive* problems, related to the unwillingness of any individual member to undertake the appropriate fertility-enhancing (or resource-conserving) investments, the group as a whole may overcome these problems by viewing those investments as a public good and using communal tax

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<sup>47</sup> It must be said that most of the criticism of African customary land tenure centres on this aspect of excludability. It is often argued (sometimes with empirical evidence) that land on title, hence with right of exclusion, provides better incentive for development, adequate security for debt capital and is more amenable to high-value investment. This rationale is what in fact prompted the Zambian government to formulate a policy that facilitates conversion of customary lands, comprising about 90 per cent of the total landmass, into a landholding system (leasehold tenure) that recognises the right of exclusion (see Lands Act, 1995).

authority to finance investment costs. If the community is so large that exercising control is not practicable, the distinction between communal and open access systems disappears. The problem with common property regimes is that they are perceived by many economists to be *inefficient* on account of rent dissipation (as consumers wastefully compete for and under-invest in the common-pool resource<sup>48</sup>), transaction cost and low productivity (Anderson and Huggins, 2003; Libecap, 1999; Ostrom, 1999; De Alessi, 1980).

To elaborate further: it is claimed, firstly, that communal property rights beget low productivity because no one has an incentive to work hard in order to increase their private returns (North, 1990a, Yang, 1987). Secondly, that it is a form of property rights that promotes rent dissipation (Cheung, 1970) and many other problems referred to by Ostrom (1999). This arises from the fact that as no one owns the products of a resource until they are captured, everyone engages in an unproductive race to capture these products before others do (and, of course, no one bothers to conserve or invest in the resource). As for the transaction cost factor, this is centred on the argument that if communal owners were to try to devise rules to reduce the externalities emanating from their mutual overuse, high transaction costs would ensue<sup>49</sup> (Demsetz, 1967; Coase, 1960). It is further argued (Alchian and Demsetz, 1973) that the difficulty with a communal right is that it is not conducive to the accurate measurement of the cost that will be associated with any person's use of the resource. Persons who own a share in communal rights will tend to exercise these rights in a way that ignore the full

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<sup>48</sup> See, for instance, Cheung, 1970, Deacon and Sonstelie (1991) and Libecap, 1999. Libecap (1999, p. 35) categorically states that: "when there is no clear definition of ownership over valuable assets, then parties will wastefully compete for them and under invest in them. Third-party effects or externalities will result. In the most extreme case, the value of the asset will be fully dissipated through competition for control and lost opportunities for investment and exchange."

<sup>49</sup> This exemplified by the fact that costs of contractual negotiations between private (non-communal) parties tends to be comparatively lower than that which involves several individual interested parties. Seeking consensus among communal owners can be a cumbersome, resource and time consuming activity, and hence, costly.

consequences of their action. This property rights system, therefore, raises transaction costs.

Under *private* property rights, land is assigned to specific individuals or corporate entities. The state or the community may impose certain formal or informal limitations on these rights. For example, the state may forbid certain uses of the land or its sale. The fewer restrictions there are, the stronger are the incentives for individuals to invest in the land<sup>50</sup>. In the absence of a proper enforcement apparatus, private property rights may assume the characteristics of an open access regime. Private property-ownership, it must be pointed out, is characterised by *exclusive rights* to the use of resources, or receipt of income generated thereof; and *free transferability* of the whole or part of the ownership rights (Cheung, 1974; De Alessi, 1980).

*State* ownership, on the other hand, implies that the state (or extensions of the state, such as local authorities and municipalities) possesses the property rights. The authorities may, however, transfer temporarily some of the rights to private users or to communities (for example, through the rental of state land or by providing permission to graze over state land). When the state does not assert its authority, state property may become *de facto* private property if individuals (squatters) establish their rights by physical possession and acquire informal communal recognition of their *de facto* rights.

Of all these types of ownership forms, Alchian and Demsetz (1973) believe, the most important distinction is that between state (public) and private ownership. They argue that the classification of social systems according to the degree of centralization of control is closely related to the degree to which property rights are owned exclusively by the state. Kivell (1993) points out that in the mixed economies that dominate the

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<sup>50</sup> State restrictions on land use rights are like a double-edged sword. The negative side is that, as outlined above, they do erode incentives to invest in land, particularly if applied excessively. The positive side, though, is that they minimise erosion of land values on adjoining plots. Left to their own devices, individuals could put their parcels of land to uses that may adversely affect the use of adjacent lands. Getting the right balance with state restrictions is therefore crucial, though problematic.

Western World, the ownership of land is primarily split between public and private sector interests. In the UK, Massey and Catalano (1978) identified three major forms of private land ownership: these being industrial land ownership, financial ownership and former landed property. This classification of landownership is based fundamentally on the function the ownership structure plays in the process of (capitalist) production.

### 2.3.3 The role of property rights

Economic theory suggests that the function of (private) property rights is to create incentives to use resources efficiently (Posner, 1973; Reeve, 1986; Jaffe and Louziotis, 1996). Stated rather differently, but justifying the foregoing proposition, Demsetz (1967) contends that the primary function of property rights is to guide incentives to achieve a greater internalization of externalities (see also Carter, 1989)<sup>51</sup>. Similarly, Libecap (1986) suggests that property rights affect economic behaviour through incentives. He argues that it is property rights that:

... delineate decision-making authority over economic resources, determine time horizons, specify permitted asset uses, define transferability, and direct the assignment of net benefits. Because they define the costs and rewards of decision making, property rights establish the parameters under which decisions are made regarding resource use.  
(p. 229)

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<sup>51</sup> Note that externalities exist when production or consumption of a good or service has spillover effects that are not reflected in the market price. They are regarded as a type of market failure (DFID, 2000). Environmental degradation (say, through emissions of industrial waste or traffic pollution on roads) is usually cited as a typical example of an (harmful) externality. Demsetz (1967) acknowledges that the term 'externality' is an ambiguous concept. He argues that what converts a harmful or beneficial effect into an externality is that 'the cost of bringing the effect to bear on the decisions of one or more of the interacting persons is too high to make it worthwhile'. And by 'internalizing' he means 'a process, usually a change in property rights, that enables these effects to bear (in greater degree) on all interacting persons.' (p. 348).

De Alessi (1983a), making reference to Alchian's (1965b and 1967a & b) work, notes that different systems of property rights present decision makers with different structures of incentives, resulting in different alignment of resources and different input-output mixes.

The proposition that the function of property rights is to create *incentives* to use resources *efficiently* is firmly rooted in the economic traditions of relating property rights to economic efficiency<sup>52</sup>. It has traditionally been argued that a stronger right to own property leads, through incentives, to a higher level of economic efficiency. Jaffe and Louziotis (1996) argue, however, that what is still unexplained is *why* or *how* property rights create incentive. They (Jaffe and Louziotis) point out that the reason private property rights result in higher levels of societal wealth through increased economic efficiency is due to reduced *risk* (of future returns) associated with *strong* private property rights (the section below, on the *role of risk and uncertainty*, discusses this matter in detail).

Using the 'internalisation of externalities' approach, Demsetz (1967) demonstrates at length how the concentration of costs and benefits on owners of rights can create incentives to utilise resources more efficiently. He argues that due to the virtue of the power to exclude others, internalisation of many of the external costs under private ownership is possible and accomplishable on realization of the rewards associated with non-communal, exclusive ownership. To this effect, Demsetz (1967) elaborates that every cost and benefit associated with social interdependencies is a potential externality. If the cost of a transaction in the rights between parties (internalisation) exceeds the gains from internalisation, an externality results.

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<sup>52</sup> Furubotn and Richter (2000) are of the view that property-rights analysis, as a systematic treatment of the economic incentives of ownership in scarce resources, began only in the 1960s. Further, they point out that, "[Property-rights analysis] was initiated by Coase (1959, 1960), Alchian (1958, 1965), Alchian and Kessel (1962), Demsetz (1964, 1966, 1967), and others, who pointed out that alternative institutional arrangements typically confront individual decision makers with different rights to the use of resources. Furubotn and Pejovich (1972) gave a review of the early theoretical literature and De Alessi (1980) of the early empirical work in this field (p. 116)."

In general, transaction costs can be large relative to gains because of “natural” difficulties in trading or due to legal reasons. Property rights develop to internalise externalities when the gains of internalisation exceed the cost of internalisation. The prohibition of: (1) a property rights adjustment; and (2) establishment of an exchangeable ownership title; precludes the internalisation of external costs and benefits. The prohibition of voluntary negotiations, Demsetz (1967) further contends, makes the cost of transacting infinite in a lawful society. Contributing to this debate on internalisation of externalities, Furubotn and Richter (2000) add that external effects may be either harmful or beneficial, and that in a private-ownership economy, the necessary conditions for the internalisation of external effects include:

- (i) A sufficiently clear specification of property rights; and
- (ii) Freedom for their exchange.

The concept of efficiency in property-rights analysis propounded above is unproblematic in the case of the *neoclassical*, zero transaction cost world. As highlighted above, transaction costs are costs of negotiating, monitoring and enforcing contracts. They arise because information is costly and asymmetrically held by the parties to exchange and also because whatever way actors develop institutions to structure human interactions results in some degree of imperfection of the markets (North, 1990a). Coase (1937; 1960; 1988a & b) adopted the concept of transaction costs as a theoretical tool, using it to explain, first, why firms exist and, then, why market failures occur. In essence, it is the costs of contracting among parties that determine whether production will be internalised into a firm or whether goods and services will be bought and sold through the market using third parties. Coase argued that, at times, firms and direct management superseded the market, while at other times markets prices are used in directing goods and services (Allen, 1999).<sup>53</sup>

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<sup>53</sup> According to Allen (1999, p. 895) the implications of Coase’s findings are that: (1) all methods of allocating resources have costs and benefits and no single mechanism works for free and dominates all others. In modern language, all allocation mechanisms are ‘second best’. (2) ‘rules’, ‘organizational

In the context of market failure, Coase emphasized the importance of well-defined<sup>54</sup> and enforceable property rights for establishing an institutional environment favourable for contracting. If property rights were not enforceable or well defined<sup>55</sup>, markets were unlikely to incorporate all costs and benefits of a transaction into an exchange, thus creating externalities. In a zero transaction cost environment, all costs and benefits, including third party impacts, would be included in the exchange and markets would efficiently allocate resources in a socially beneficial way (Staley, 1998). In fact, according to Coase (1937, 1960), when transaction costs are *zero*, the initial assignment of property rights does not matter because rights can be voluntarily adjusted and exchanged to promote increased production (Libecap, 1986). On this matter, Furubotn and Richter (2000) quote Coase thus:

... whatever the law, the allocation of resources will be identical [Coase, 1960] because 'people can always negotiate without cost to acquire, subdivide, and combine rights whenever this would increase the value of production' [Coase, 1988b, 14]. (p. 9)

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forms' and 'methods of payments' are subject to economic analysis. (3) positive transaction costs were both necessary and sufficient for an explanation of the firm.

<sup>54</sup> With reference to the land market, Dowall (1993) also argues that markets need well-defined property rights so that sellers and buyers can clearly determine what they can and cannot do with land and property. These rights, he adds, need to be unambiguous and easy to transfer from sellers to buyers. The logic behind the Coase theorem, according to Coloma (2001), is that the basic elements required for efficiency (well-defined property rights) are: (1) all assets and economic resources have individual owners, (2) the limitations for the use of those assets and resources are fully specified, and (3) that it is also possible to remove those limitations by trade.

<sup>55</sup> Ill-defined property rights, it is argued by several economists (Coloma, 2001; Anderson and Huggins, 2003; Ostrom, 1999), is responsible for emergence of the phenomenon called 'tragedy of the commons.' Tragedy of the commons is the phenomenon discussed earlier of contesting wastefully to capture valuable resources in the absence of well-defined and enforced property rights (see Anderson and Huggins, 2003; Alchian and Demsetz, 1973; Hardin, 1968; and many others). Jaffe (1996, p.432), for example, attributes transition (or low-income) housing market failure largely to poorly defined property rights.

De Alessi (1983a) and Gerard (2001) further highlight that if transaction costs are zero, private property rights will be fully defined, fully allocated and fully enforced. Under these circumstances (the zero transaction cost regime), it is asserted (see Coase, 1960; De Alessi, 1983a), rights to the use of resources will be allocated to their highest-valued use irrespective of their initial assignment.<sup>56</sup>

#### **2.3.4 The link between transaction costs and property rights**

Why should we invest our time and resources in analysing the subject of transaction costs if the concept of 'zero transaction costs' appears, as highlighted above and as applied in the neoclassical theory, unproblematic? Of what consequence, if one may ask, are transaction costs to the study of property rights?

As is well known, the neoclassical world of zero transaction costs is purely theoretical. In the real world transaction costs exist. As a consequence, Furubotn and Richter (2000) even advise that as a practical matter, it would be preferable to do without the neoclassical efficiency criterion when judging institutions in a world of 'frictions.'

It is now a widely held viewpoint that significance of the study of property rights results from the fact that transaction costs are positive (see Barzel, 1989). In a positive transaction cost world, it is argued (Barzel, 1989; and others), price adjustment is not

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<sup>56</sup> Coloma (2001) notes that when the two conditions, well-defined property rights and zero transaction costs, are combined: "we end up in a situation in which efficiency is assured by the fact that trade is costless, and therefore the assets and resources can go to the economic agent who values them the most." (p. 345). He, thus, concludes: "if property rights are well-defined and there are no transaction costs, then the market equilibrium is efficient." (p. 345). Allen (1999) however takes issue with the dual specification of zero transaction costs and complete property rights. He points out, consistent with Cheung (1992, p. 54) and Jaffe (1996, p. 427), that this is tautological. To say a situation has zero transaction costs is to say property rights are complete. If transaction costs are truly zero, the delineation of rights can be ignored. The implications of zero transaction costs is that all of the attributes of an asset can be defined, enforced and transferred at no cost (Gerard, 2001, p. 373).

expected to be instantaneous, as neoclassical theory would suggest. As long as prices are not fully adjusted to new conditions, the quantities demanded are not, in general, equal to those supplied. By implication, this presupposes that the equilibrium position (quantities demanded being equal to those supplied) cannot be attained instantaneously, or even in the short-run.<sup>57</sup> In effect, this suggests that positive transaction costs adversely affect the way the market functions (for example, the sluggish adjustment in supply due to transaction cost constraints, in response to changes in demand, is drain on operational efficiency of the market<sup>58</sup>). Malpezzi and Williamson clearly articulated this phenomenon thus:

One way to think about explaining how well the market ‘works’ is to consider how well the supply side responds to effective demand. In a well-functioning market, increases in the demand imply increases in the supply ... Prices remain stable. In a poorly functioning market increases in demand do not call forth sufficient supply, at least over some reasonable time frame, and instead prices rise. (Malpezzi, 1999a, p. 27)<sup>59</sup>

A transaction occurs when a good or service is transferred across a technologically separable interface. One stage of activity terminates and another begins. With a well-working interface, as with a well-working machine, these transfers occur smoothly. In mechanical systems we look for friction: Do the gears mesh, are the parts lubricated, is there needless slippage or other loss of energy? The economic counterpart of friction is transaction cost: Do parties to the exchange operate harmoniously, or are there frequent misunderstandings and conflicts that lead to delay, breakdowns, and other malfunctions? (Williamson, 1985a, p. 1-2)

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<sup>57</sup> No wonder Hayek (1945, p. 530), while acknowledging the usefulness of the equilibrium approach to economics, asserted that it is no more than a useful preliminary to the study of real issues (the main problem).

<sup>58</sup> “Operational efficiency is concerned with ensuring that transactions take place smoothly and without undue delay” (Brown and Matysiak, 2000a, p. 433). Brown and Matysiak (2000a) acknowledge that high trading costs will prevent the market from being operationally efficient.

<sup>59</sup> For similar comments, see Malpezzi and Mayo (1997, p.384).

The land and property markets, notoriously known for their high transaction costs, are characterized by inelasticity of supply relative to price and demand changes. Consequently, these markets are usually considered to be inefficient (see, for example, Balchin *et al.*, 1991). The UNESCAP's (online, 2002/3) assertion that 'the key to efficient land markets is the easy and rapid availability of developed land' is indicative of how inefficiently land markets have been behaving.

Besides this well rehearsed and clearly recognised deficiency in economic theory, it is held that when transaction costs are positive, rights to assets cannot be perfectly delineated or defined<sup>60</sup>. Consequently, the attributes of such assets are not fully known to prospective owners and are often not known to the current owner either (see Barzel, 1989).

The transfer of assets entails costs resulting from the parties' attempt to determine what the valued attributes of these assets are and from the attempt by each to capture those attributes that, because of the prohibitive costs, remain poorly delineated. Exchanges that otherwise would be attractive may be forsaken because of such exchange cost. (Barzel, 1989, p. 3)

As a consequence of the nature and extent of these costs, it is thus acknowledged that transaction costs limit the ease of market entry and exit and aggravate liquidity (Adams *et al.*, 2001).<sup>61</sup> Walters (1983), for example, contends that transaction costs in the

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<sup>60</sup> Delineation of property rights (the defining of property rights), it has been pointed out (Coase, 1988 a & b; Hsiung, 1998), is a necessary prelude to market transactions. For similar viewpoint, see next footnote. Key elements in the definition of property rights include nature and duration of rights, identification of boundaries, the subject of rights, and enforcement institutions (Deininger, 2003).

<sup>61</sup> Note that: (1) If transaction costs are prohibitively high then property rights will neither be established nor maintained, and hence property rights will be zero (Allen, 1999). Allen notes further that: "If property rights are complete in some situation, there are two possibilities, either transaction costs are zero, or costs may have been incurred to guarantee the property rights simply because the benefits of doing so exceed the costs – in which case transaction costs are positive." (p. 899). (2) *Free entry and exit* is one of the six important conditions necessary for competitive land market operation (Dowall, 1993). Others include

provision of land and shelter are frequently large and fixed and may be a significant deterrent to land delivery for the urban poor.

Since these [transaction costs] do not vary proportionately with the size of the plot, the true market prices for small plots are considerably higher than those reported for large plots. Such transaction costs may be a significant deterrent to subdivision and the development of small-scale shelter. (Walters, 1983, p. 43)

Little wonder, Arrow (following Coase's 1960 paper) attributed market failure largely to transaction costs. Arrow (1969, p. 48) pointed out that:

Market failure is not absolute. It is better to consider a broader category, that of transaction costs, which in general impede and in particular cases completely block the formation of markets. ... The identification of transaction costs in different contexts and under different systems of resource allocation should be a major item on the research agenda of the theory of public goods and indeed of the theory of resource allocation in general. (Quoted in Furubotn and Richter, 2000, p. 63-64; Wang, 2003, p. 1; and Williamson, 1985a, p. 8)

Consistent with the foregoing arguments and perspectives, De Alessi (1983a) contends as well that the existence of positive transaction costs introduces a new constraint and yields new efficient solutions. Among the several examples that De Alessi cites, he argues that the existence of transaction costs implies that some rights to resources will *not* be fully assigned (for instance, some fisheries will be owned in common), fully enforced (some theft will be allowed)<sup>62</sup>, or priced (for example, parking spaces in some privately owned shopping centres will be assigned on a first-come, first served basis).<sup>63</sup>

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well-defined property rights, voluntary participation, many buyers and sellers, perfect information and similarity of product.

<sup>62</sup> Torstensson (1994) asserts that when property rights are not well enforced, resources may be directed towards unproductive activities; moreover, transaction costs will be high, which may prevent mutual beneficial transactions.

<sup>63</sup> Furubotn and Richter (2000, p. 71) and De Alessi (1980, p.4) highlight these issues in a similar fashion.

This, according to De Alessi (1983a), reduces an individual's incentive to take fully into account all the harms and benefits flowing from his decisions. Furthermore, it is argued that due to transaction costs, even under a fully allocated system of private property rights, there will be deviations (such as shirking) from the efficiency conditions of neoclassical theory. Worse still, such deviations could be more pronounced if private property rights are *attenuated* (say, by government regulation or mutual ownership) or *replaced* by some other institutional arrangement (for example, by government ownership) (see De Alessi, 1983a).

For his part, Libecap (1986) also acknowledges the fact that transaction costs matter.

Where transaction costs are high, as is often the case, the allocation of property rights is more critical, since transfers are less fluid. In those circumstances, the existing property rights arrangement has profound and enduring effects on production and distribution. (Libecap, 1986, p. 228)

This is, perhaps, no better exemplified than in some less fluid, dysfunctional land market structures of Sub-Saharan Africa where price differentials, identified by Mabogunje (1992) and discussed by Kironde (2000), can be as much as one hundred times between *initial* allocation of land by the state to individuals and the *subsequent* private transactions of the same parcel of land. With such windfall gains, the consequences on production and distribution of scarce resources can be drastic and far-reaching.

In addition to the foregoing, it is perhaps worth noting also that positive transaction costs determine the pattern and the degree of ownership (Barzel, 1989; Benham and Benham, 1997). This, invariably, affects wealth distribution (as alluded to by De Alessi, 1983a) and, therefore, equitable resource allocation as well.

### **2.3.5 The role of risk and uncertainty**

What is risk, and how does it relate to the property-rights incentive, transaction costs and economic efficiency factors referred to above?

*Risk* is defined in many ways.<sup>64</sup> Some definitions make a distinction between risk and uncertainty (for example, Enever and Isaac, 2002; Byrne, 1996). Others (for instance, MacGregor, 1991; Reilly's, 1985) do not.

In portfolio theory risk is defined as the probability of actual returns being less than expected returns (Markowitz, 1959). For property investment, Enever and Isaac (2002) define risk as the level of probability that a required return, measured in terms of capital value and income, will be achieved.

Over time, the variance of actual return compared to expected return (the volatility) could be measured and used to help determine probability levels. (p. 173)

Where no probability can be ascribed to the probable outcome, this is then termed as uncertainty. In this case assessment of uncertainty remains qualitative rather than quantitative, although investors may feel fit to deal with such situations by use of mini-max criteria or by using a payback technique (see Enever and Isaac, 2002).

MacGregor's (1991) and Reilly's (1985) definitions vary from that of Enever and Isaac. For MacGregor, risk is synonymous with uncertainty.

As investment decisions require the calculation of future returns, it is necessary to consider not only the best estimate but also the probable variation from this estimate. Risk is, therefore, a measure of what is expected to happen, not actually

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<sup>64</sup> There are many types of risks, some are diversifiable (unsystematic risk) and others are not (market risk). Some relate to opportunity cost (comparative risk) and others relate to time (e.g. holding period and timing risk). In the UK, Baum and Crosby (1988) and Dubben and Sayce (1991) - among others - identify and discuss various types of risk that affect property investment.

happening. Thus, in investment, it is a measure of the expected return not being achieved. (MacGregor, 1991, p. 90)

Reilly (1985) defines risk simply as uncertainty regarding the expected rate of return from an investment. Jaffe and Louziotis (1996) do not define risk. However, going by the nature of their argument on the role of risk in creating incentives, Jaffe and Louziotis seem to follow the latter category of definition.

The preceding sections have demonstrated that there is a link between property rights, incentive, economic efficiency and transaction costs. Jaffe and Louziotis (1996) argue that the basic property rights model needs to be expanded to explain *why* efficiency is related to private property by considering the effects of *risk*. Jaffe and Louziotis (1996) note that the creation of incentives is one step that comes directly before economic efficiency. They then suggest that the other step, in the model, which comes between property rights and the creation of incentives, is *risk reduction*.

In terms of relationships, then, economic efficiency is a function of incentives, which is a function of risk, which, in turn, is a function of the property rights structure. (p. 153)

The consideration of risk, Jaffe and Louziotis (1996) argue, is important for two related reasons. First, as risk is reduced (due to stronger property rights), the certainty of receiving the future benefits associated with a bundle of rights is increased. This creates the incentives for both short- and long-term investment. Second, by creating incentive for long-term investment, there are reasons and incentives for markets to be developed. The creation of markets provides even greater incentives for economic efficiency because it also increases the number of available goods, which makes individuals and society better off (Johnsen, 1986). Finally, Jaffe and Louziotis (1996) conclude that this proposition goes to show that strong (private) property rights reduce the *uncertainty* surrounding the claims on an asset.

Staley (1998) argues that risk and uncertainty are key elements of transaction costs. In relation to land use planning, Staley points out also that uncertainty in plan applications and approval process encourage developers to withhold investments in land until more information becomes available about allowable land uses. In land development context, Friend and Hickling (1987), Hopkins (1981), and Schaeffer and Hopkins (1987) identified four different types of uncertainty. These being uncertainty about (land) values, uncertainty about environment, uncertainty about the search for alternatives, and uncertainty about related decisions (see Lai, 2001).

It could be argued that land reforms, which are a form of state intervention in land transactions and/or pricing, introduce elements of risk and uncertainty in the land market and development process. Intervention in pricing, for example, could induce uncertainties about property values. This, in turn, may create uncertainty in investment decision-making process. In essence, such policy interventions may exacerbate the extent of transaction costs through increased risk and uncertainty.

In an economy where levels of market risk and uncertainty are high as result of distortion effects of policy intervention, the vices of bribery and corruption are not uncommon. In such an uncertain environment, desperate and unscrupulous investors may attempt to short-circuit or circumvent certain policy impediments, through payment of bribes, to speed up transactions. Bribery and corruption, however, hamper economic activity by (a) raising transaction costs<sup>65</sup> (Geurts and Jaffe, 1996; Coase 1998b); and (b) distorting the allocation of resources, and discouraging investment and the creation of new firms (see Acemoglu and Verdier, 1998; Myrdal, 1968; De Soto, 1989). Moreover, as cross-country studies suggest, countries with high corruption or long bureaucratic delays suffer lower growth (Acemoglu and Verdier (1998); Mauro, 1995; Sartre, 1997).

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<sup>65</sup> North (1990a, p.65) calls this type of costs as 'shadow transaction costs', and argues that they alter relative prices.

Given the foregoing review, in conclusion, it can be said therefore that there is a link between risk and uncertainty, on the one hand, and the property rights issues of incentive, economic efficiency and transaction costs, on the other.

### 2.3.6 Recapitulation

As stipulated above, this core section of the review has addressed various aspects of property rights that have a bearing on all other sections of the chapter. The review has raised and discussed some pertinent questions. The central and foremost question, however, has been: 'is the *system* of property rights of any consequence in the allocation of resources and economic growth?' This question has been discussed to a considerable extent. To address this question, the review made reference to property rights and other relevant literature (see Coase, 1937, 1960; Alchian, 1965a; Alchian and Demsetz, 1973; Demsetz, 1967; De Alessi, 1980, 1983a; Libecap, 1986; Barzel, 1989; Furubotn and Richter, 2000). On the basis of the said literature, we now summarise and present the findings as follows:

- (i) In a *zero transaction cost* environment, all costs and benefits would be included in the exchange, and markets would efficiently allocate resources.
- (ii) When transaction costs are *zero*, the initial assignment of property rights does not matter at all because rights can be voluntarily adjusted and exchanged to promote increased production. This is popularly known as the 'Coase theorem', named and formulated by George Stigler (see Coase, 1992a); and
- (iii) Where transaction costs are *high* the allocation of property rights is more critical because of the constrained fluidity of transfer of rights. In such circumstances, the existing property rights structure has profound and enduring effects on production and distribution.

Of all the three findings however, (i) and (ii) are useful for theorising purposes only, since a *zero* transaction cost world does not exist;<sup>66</sup> and (iii) is the most relevant to the real world. Given these findings, and considering Libecap's (1986) strong assertion that:

By defining the parameters for the use of scarce resources and assigning the associated rewards and costs, the prevailing system of property rights establishes incentives and time horizons for investment, production and exchange (p. 227);

it is resoundingly clear that property rights arrangements affect the allocation of resources and, thus, economic growth. Eggertsson (1990a) cites several studies that confirm the aforesaid assertion and fundamental assumptions.<sup>67</sup>

## 2.4 Property Rights and Institutional Change

Property rights do not exist in an institutional vacuum (Zhu, 2002).<sup>68</sup> They are structured and modified by institutions and social norms (institutional framework) devised by

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<sup>66</sup> Demsetz (1966) notes that a world without transaction costs can only be a starting point for analysing the implications of alternative property right systems. Coase (1960) himself made it clear that only in the absence of transaction costs did the neoclassical paradigm yield the implied allocative results. With positive transaction costs, resource allocations are altered by property rights structures (North, 1990a). In fact, Coase later emphasized that: "I tend to regard the Coase theorem as a stepping stone on the way to an analysis of an economy with positive transaction costs." (1992a, p. 717)

<sup>67</sup> Alternative structures of property rights can affect economic outcomes (Jensen and Meckling, 1979); changes in property rights can alter the structure of contracts and economic outcomes (Cheung, 1974); and uncertain property rights can affect behaviour and waste resources (De Soto, 1989) (see Eggertsson, 1990a). Other noteworthy studies are Torstensson (1994), Jaffe and Louziotis (1996), Goldsmith (1995), Byamugisha (1999), Neeman (1998; 1999), and Grafton *et al.* (2000).

<sup>68</sup> In fact, property rights are institutions in themselves (Anderson and Huggins, 2003). They subsist, however, within the overall institutional framework.

society to shape human interaction (North, 1990a; 1993a, 1994a; Furubotn and Richter, 2000).<sup>69</sup> Institutions and social norms *change*<sup>70</sup> over time; and so do property rights.<sup>71</sup>

In the following subsections, the review discusses some aspects of property rights and institutional *change* that have a bearing on the subject at hand. In particular, the review considers the following issues. The effects of: (a) change in property rights generally (whatever the underlying factors for such change may be) and (b) state intervention in property rights; as well as the question of why inefficient property rights persist in spite of losses in social welfare. Subsection 4.4 sums-up the discussion.

#### **2.4.1 Effects of change in the system of property rights**

The property rights literature suggests that the system of property rights does affect resource allocation and use. The crucial question now is ‘what consequences (if any) do arise if, for some reason, the system of property rights is interfered with?’

Among others, Furubotn and Pejovich (1972) and Furubotn and Richter (2000) have shed some light on this matter. Furubotn and Richter (2000) argue, for example, that under conditions of full private ownership:

[T]he value of any property exchanged depends, *ceteris paribus*, on the bundle of property rights that can be conveyed in the transaction. If, as a result of government action or otherwise, the content of property rights in an asset is changed, the value of the asset must be changed too – for the asset’s owner and for any would-be buyers of the asset. And, as might

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<sup>69</sup> Furubotn and Richter (2000) state that, at any time, property-rights configurations in an economy are determined and guaranteed by a governance structure or order. The latter are the rules and the instruments that serve to enforce the rules.

<sup>70</sup> North (1990a, p. 86) discusses the process of institutional change. He attributes most of the change in institutional framework to ‘changes in relative prices.’

<sup>71</sup> Of course, change is not unidirectional. Just as change in institutions and societal norms induce change in property rights; change in property rights can prompt change in the institutional framework.

be expected, changes in the exchange value of goods tend invariably to affect the way people behave. Through this effect on behaviour, then, property rights assignments influence the allocation of resources, the composition of output, the distribution of income, and so on. (p. 72)

Earlier, Furubotn and Pejovich (1972) had indicated that:

[I]t is important to recognise that the *attenuation* of private (or state) property rights in an asset, through the imposition of restrictive measures, affects the owner's expectations about the uses to which he can put the asset, the value of the asset to the owner and to others, and consequently, the terms of trade. (p. 1140. Italics added)

If these insightful commentaries are anything to go by, then, clearly any alterations to the structures of property rights is bound to trigger some changes in resource allocation.

The other insight from literature suggests that the system of property rights does not *merely* affect the allocation and use of resources; the effects thereof have systematic and predictable consequences (Pejovich, 1973; De Alessi, 1980; Furubotn and Richter, 2000; Furubotn and Pejovich, 1972; Libecap, 1986). Given this understanding, Pejovich (1973) and Furubotn and Richter (2000) contend that from a practical point of view, the crucial task of the property rights approach, then, is to show how property rights configurations affect the use and allocation of resources systematically and predictably. Failing that, there would be no possibility of developing analytically significant and empirically refutable propositions about the effects of different property systems on economic activity. Gladly, Pejovich (1973, p. 42) notes, however, that Alchian and Demsetz (1973) have advanced some strong evidence to this effect.

In a seminal paper, *The Property Rights Paradigm*, Alchian and Demsetz (1973) theorise aptly and provide evidence of resource-allocation effects of altering property rights arrangements. Among other things, they identify and articulate the following:

(i) *Attenuation in the bundle of rights*

They argue, in similar terms as Furubotn and Pejovich (1972), that *attenuation* in the bundle of rights that prohibits exchange at market clearing prices will also alter the allocation of resources. This is because interests pursued by individuals are both varied and many. If a price ceiling or price floor prevents owners from catering to their desires for greater wealth, they will yield more to pursuit of other goals. For example, effective rent control encourages owners of apartments to lease them to childless adults or persons possessing personal characteristics that landlords favour. Attenuations in the right to offer for sale or purchase at market clearing prices can be expected to give greater advantages to those who possess more appealing racial or personal attributes.

(ii) *The absence of a right to exclude and the inability to exchange at market clearing prices.*

The allocation of resources associated with the *absence* of a right to exclude and the inability to exchange at market clearing prices is attributable to the increase in the costs of transacting brought about by the *modifications* in the property right bundle. A *price fixing law* raises the cost of allocating resources vis-à-vis the price mechanism and, therefore, forces parties to a transaction to place greater reliance on non-price allocation methods (which methods, according to Stiglitz (1989), are less successful in ameliorating the consequences of market failure in less developed countries). This is obvious; but not equally obvious, Alchian and Demsetz (1973) contend, is the role performed by transaction costs when the right to exclude is absent.

(iii) *The role played by transaction cost when the right to exclude is absent.*

When the right to *exclude* is absent, as in the case of the *communal right system*, a free rider problem ensues. This raises transaction costs.<sup>72</sup> A property rights system, therefore, that *includes* the right to exclude non-payers (such as is possible with toll-roads), eliminates such sources of transaction cost.

Further, like North (1990a), Alchian and Demsetz (1973) also point out that, the most important effect of alterations in *institutional* arrangements may well be the impact of such reorganizations on the cost of transacting. North (1990a, see back cover) had specifically intimated that some economies produce institutions that generate growth, while others develop institutions that breed stagnation. North's assertion is corroborated by some empirical evidence (see, for instance, Goldsmith, 1995; Torstensson, 1994; Scully, 1988; Libecap, 1986; De Alessi, 1980; Furubotn and Pejovich, 1972), which goes to demonstrate that countries that have defined property rights and enforced rule of law, have surpassed other nations that have been unable to undertake such reforms. Of course, the vast majority of such countries in the latter category are found in the Third World, whereas the former category refers to the industrialised countries in the Western World.

#### **2.4.2 State intervention**

Market failure, the failure of markets to produce economically or socially desirable outcomes, is often cited as the principal rationale for state intervention in economic systems and markets (DFID, 2000; Macmillan, 2000; Wolf, 1979). Based on this premise, public policy intervention in market (or other economic) processes is, therefore, generally adopted for the following reasons (UNESCAP, on-line 2002/3; see Dowall

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<sup>72</sup> Demsetz (1967, p. 354-355) discusses transaction costs that arise from communal ownership system and identifies, in particular, the problem of negotiation and policing costs in 'communal' (when parties are numerous in number) transactions.

(1993) and many others<sup>73</sup> for literature relating to the land market and/or land use policy).

- Elimination of market imperfections and failures to increase operating efficiencies;
- Removing externalities so that the social costs of outcomes correspond more closely to private costs;
- Redistribution of society's resources so that disadvantaged groups can share in society's output.

State intervention usually takes varied forms. It may come in form of taxation or subsidies, direct ownership and/or participation in investment and provision of goods and services, or may take the form of administrative/regulatory controls (see, for example, Adams *et al.*, 2003b; Whitehead, 1983; Hallett, 1979).

However well intended state intervention might be, Hallett (1979) reckons, 'good intentions are not enough.' There is need to take into account, among other things, the consequences of such intervention (for similar remarks, see Wolf, 1979, p. 107). More specifically, Hallett (1979) suggests, we need to examine (a) the objectives of the intervention; (b) the administrative consequences; (c) the way in which the market will react to the new conditions; (d) the advantages and disadvantages of possible alternative policies.

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<sup>73</sup> See, for example, Garba (1997), Whitehead (1983), Lee (1981), and Moore (1978). According to Garba (1997, p. 306), the need for public intervention and control of land markets stems from the perception that unregulated land markets have a potential to produce failures, which may lead to socially undesirable consequences. Garba identifies four common failures associated with land markets. These being problems of externalities, land speculation, provision of public goods, exclusionary land markets.

Unlike Pigou (1932), who advocated state intervention in order to tackle the problem of externalities, the fundamental point made by Coase (1960) is that:

... when governments intervene to deal with externalities, “the *total* effect of these arrangements in all spheres of life should be taken into account,” since such corrective measures are inevitably associated with other changes in the system, which may do more harm than the original deficiency. (Hallett, 1979, p. 16)

In fact, the insight from the property rights literature suggests that state intervention may not necessarily be the optimal decision. For Coase (1960), in a world of zero transaction costs public policy intervention on grounds of market failure is both unwarranted and irrelevant from the standpoint of economic efficiency. The rationale being that, if there are no transaction costs, and economic agents (i.e., the affected parties) are allowed to interact and bargain, they would be in a position to resolve market failures through voluntary negotiations and agreements. With regard to the externality problem, it is thus held that *without* transaction costs affected parties could freely enter into contracts and thereby internalise the externality (see, for example, Dahlman, 1979; Webster and Lai, 2003).<sup>74</sup> The following Princeton University slide clearly encapsulates this position.

In the presence of an externality, as long as negotiation costs are negligible and affected parties can negotiate freely with each other (when the number of affected parties is small), either party can be allocated the ‘right’ (either to pollute or not to have pollution) and an efficient allocation will result through market transaction. (Slide 21 of 34, Princeton University, March 11, 2001  
<http://www.princeton.edu/centennial/bailey/sld021.htm>)

In a world of positive transaction costs, Coase pointed out however, *institutions* (including, but not *necessarily* public/state intervention) matter (Coase, 1937; 1960; 1992a; North, 1993a & b; Matthews, 1996; Benham and Benham, 1997; Eggertsson,

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<sup>74</sup> Even in the world of positive transaction costs, the problem of externalities could still be managed by other means. Webster and Lai (2003, ch. 7) discuss a wide range of ways how this could be done.

1997; Dawkins, 2000). Institutions matter because they largely affect incentives and transaction costs; which, in turn, affect exchange and production.<sup>75</sup> Among the institutions that matter are ‘hierarchies.’ These are not only state bureaucracies but private firms as well. Viewed against this background, both state and private bureaucracies have similar nature. They both serve as allocation *mechanisms* that save on transaction costs.<sup>76</sup>

Although the foregoing insights may appear to underplay the usefulness of state intervention, this is not necessarily the case.<sup>77</sup> For, even from the property rights perspective, state intervention may be *appropriate* in some instances. The following examples may illustrate this point. First, when there is a vast number or unknown magnitude of parties to a transaction, negotiation costs, for instance, could be

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<sup>75</sup> Coase and North’s comments on this matter are instructive. Ronald Coase (1992a, p. 718) once remarked: “It makes little sense for economists to discuss the process of exchange without specifying the institutional setting within which the trading takes place, since this affects the incentives to produce and the costs of transacting.” North (1991, p. 97), on the other hand, notes that: “Institutions provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change towards growth, stagnation, or decline.”

<sup>76</sup> On this basis, if we take into account the other insight from Coase (1937; 1992a) which, according to Allen (1999), is that all methods of allocating resources have costs and benefits and no single mechanism works for free and dominates all others (that is, all allocation mechanisms are ‘second best’); it becomes evident why size and organizational form (governance structure) for both state and private bureaucracies matter from a comparative institutional approach. They matter because depending on their sizes and organizational forms (and, hence, their *relative transaction costs*), it is possible that state and private hierarchies may supersede each other under certain conditions. Clearly, the identification of the underlying factors (which, from the property rights perspective, are understood to be transaction costs) that prompt the supersession of one form of hierarchy by the other provides the framework for understanding *institutional change*. [After all, there is a view that institutional change occurs deliberately or spontaneously as a result of the actions of individual agents who economise on transaction cost (Arvanitidis, 2003)].

<sup>77</sup> Even so, Dewey asserts that the disdain and contempt for regulation among economists is nearly universal; ‘if effective, it is thought to be pernicious, and if ineffective, a waste of resources’ (Dewey, 1974, p. 10; quoted in Goldberg, 1976).

prohibitively high that the entire transaction could be aborted (Johnson, 1994-2000). Hence, it is asserted that:

When the parties are unknown, or are great in number, however, private arrangements can be prohibitively costly. When transaction costs are high, social efficiency is likely to be achieved only through government intervention. (Slide 22 of 34, Princeton University, March 11, 2001 <http://www.princeton.edu/centennial/bailey/sld022.htm>)

Second, state intervention is justifiable also in situations where the transaction costs of using the 'market' are greater than using the 'hierarchy'.<sup>78</sup> These may be circumstances where, for example, "transaction costs are persistently so high that markets fail or do not exist, or where tendencies towards concentration, with resulting abuse of power, ... in which government capacity to regulate monopoly is limited" (DFID, 2000, p. 5). Goldberg (1976) and Williamson (1976) outline cases where bargaining issues are so complex that private agreements break down, thus providing possible justification for state intervention through regulation to complete and enforce contracts at the insistence of the bargaining parties (Libecap, 1986, p. 231). Lai (1997), thus, remarks:

Where, however, the costs of market operation are prohibitively high, voluntary settlement of conflicts of interest by the market may not be possible. In this situation, 'externalities', 'public goods' and 'monopolies' may pose real problems, and government intervention may be necessary. (p. 201-202)

Coase (1959), himself, had stated earlier that:

As a practical matter, the market may become too costly to operate. In these circumstances, it may be preferable to impose special regulation. (p. 29)

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<sup>78</sup> Based on Coase's (1959; 1988b) views on planning regulation and theory of the firm. For similar discussions, see also Lai, 1997; Buitelaar, 2003; and Webster and Lai, 2003.

These views are, of course, predicated on the premise that whatever mode of coordination is adopted in allocation and management of scarce resources, there are bound to be costs of using the chosen mode of coordination. For, as Coase (1988a & b; 1992a) repeatedly pointed out, there is a cost of using *even* the market pricing system.

Viewed from this perspective, state intervention measures are usually thought to be useful if undertaken to improve the efficiency of markets by reducing private transaction costs (for example, by socializing regulatory cost) or creating negotiable property rights, and thereby facilitating the private resolution of market failures (see Rutherford, 1994; Dawkins, 2000; Feiock, nd). Alternatively, state intervention measures may be directed at internalising the transaction itself and the associated costs if transaction costs facing the economic agents are prohibitively high (Dawkins, 2000).

In addition to the foregoing property rights perspective in support of state intervention, it is argued elsewhere, particularly in the pro-state interventionist literature, that the market cannot exist without state intervention (Polanyi, 1957; Rankin, 1998). To function properly, the market needs formal rules to guide and facilitate market exchange. Buitelaar (2003) contends this matter as follows:

Without some form of public-hierarchical interference, market exchange would break down – in particular, the civil law is made to facilitate exchange between legal persons by defining and protecting individual property rights. The market is not a ‘spontaneous coordination mechanism’ (Powell, 1991, p. 270) or just something ‘out there’; it is a social construct of which the government rules are an inseparable part. (p. 318)

Adam Przeworski (1997) argues strongly that the state permeates the entire economy. It is a constitutive factor of private relations.

Even the most ardent neoliberals admit that governments should provide law and order, safeguard property rights, enforce contracts, and defend from external threats. The economics of incomplete markets and imperfect information allows room for much greater role for the state. The neoclassical complacency about markets is untenable: markets do not allocate efficiently.<sup>79</sup> Even if governments have only the same information as the private economy, some government interventions would unambiguously increase welfare. (Przeworski, 1997, web-page 3, <http://www.nap.edu/html/transform/ch16.htm>)

Acknowledging the liberal values of many writers from the new institutional economics tradition, Rutherford (1994), in line with other commentators such as Brock (2003) and Strassmann (1994), also criticises the extreme non-interventionist stance towards government's direction of economic activity. He reckons that:

Even market orders are not able to entirely dispense with government, both for the provision of public goods, and for the specification and enforcement of property rights and other rules necessary for the market to function at all. (Rutherford, 1994, p. 156)

Indeed, even the most pro-market, neo-liberal literature agrees that the state has a role to play in market transactions. The emphasis from this perspective, however, is on 'creation and protection of property rights' (see, for example, Matthews, 1986; Przeworski, 1997; Deininger and Binswanger, 1999; Dawkins, 2000; Galal and Razzaz, 2001; Deininger, 2003; World Bank, 2003); and the state is usually *called upon* to create conducive climate in which these rights can be transacted (Farvacque and McAuslan, 1992; Deininger and Binswanger, 1999; Galal and Razzaz, 2001; Deininger, 2003; World Bank, 2003). The emphasis on property rights, I suppose, underlines the non-interventionist attitude of neo-liberal capitalism in economic activities and the realisation (as North (1993a & b; 1994a & b) has consistently pointed out), that it is the *polity* that effectively defines and enforces property rights.

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<sup>79</sup> North (1993a, p. 3) notes as well that: "It is exceptional to find economic markets that approximate the conditions necessary for efficiency." (*Footnote added*).

Be that as it may, as many commentators have pointed out (e.g. Hallett, 1979; Wolf, 1979 and Whitehead, 1983), state intervention is not without consequences. What, then, are the likely consequences of state intervention?

First and foremost, it is understood that all activities of state intervention define or redefine property rights, and by so doing, modify or alter existing property rights arrangements. Antwi liberally espouses this view.

But just because an inefficiency appears to exist in the way the market may be operating in these circumstances does not mean government intervention to remove the externality will yield any better results. Government intervention in the economy leads to an altering of existing property rights. (Antwi, 1998a, p. 20) (For similar viewpoints, see Antwi, 1998b; Coase, 1960; Denman, 1978; Wolf, 1979; and Libecap, 1986)

In effect, *all* state interventions (whether executed through taxation, regulatory controls, or otherwise) result in *attenuation* of the bundle of rights. Attenuation is the erosion of exclusive private property rights of an affected party, which of course may benefit a third party, through state control on: (a) freedom in the use of resources (b) freedom in the derivation of income from the use of resources, and (c) freedom in the transfer (alienation, subdivision, or combination) of the above interests (Cheung, 1974; Lai, 1997). It leads to *rent dissipation* (Lai, 1997);<sup>80</sup> and this may explain why Libecap (2003) and Furubotn and Richter (1991) refer to attenuation of property rights as 'shrinkage of economic options' and 'reduction in asset value.'

Attenuation is one thing; more crucially, however, state intervention may even lead to transfer or capture of some or all of the property rights. Under such circumstances the overall economy suffers, as freely transferable property rights play a fundamental role in

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<sup>80</sup> Rent here refers to income derivable from a resource (see Lai, 1997).

a market economy (Feige, 1997; Allen, 1999; Furubotn and Richter, 2000).<sup>81</sup> Nationalization, for example, represents a complete state monopoly over property rights and transactions. In the land market, nationalization may be designed to eliminate the market and replace it with administrative system of resource allocation. In other instances, it may be limited to mere transfer of the most superior rights (freehold title) in land to the state, relegating market transactions to lesser valuable (leaseholds) interests (Farvacque and McAuslan, 1992). The mere fact that state monopolizes property rights under nationalization can cause a host of other problems, which manifest themselves in form of ownership constraints,<sup>82</sup> price controls, perverse incentives and rent-seeking behaviour. These problems are briefly highlighted below.

First, some excessive or inappropriate intervention measures can, for example, create or exacerbate problems of acquiring property rights in land (referred to by Adams *et al.* (2001; 2002) as *ownership constraints*) in a number ways. The monopoly of ownership, management, and control inherently evident under nationalization, for example, may induce or increase high transaction costs through:

- Bureaucratic delays and cumbersome procedures in acquiring ownership rights from the state for private sector development; and

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<sup>81</sup> With an eye on socialist market models, Nutter (1968, p. 144), for instance, observed that: "Markets without divisible and transferable property rights are a sheer illusion. There can be no competitive behaviour, real or simulated, without dispersed power and responsibility." (Quoted in Furubotn and Richter, 2000, p. 75). Allen (1999, p. 898) also acknowledges the vitality of private property rights: "Given that trade is the transfer of property rights, there can be no trade (and hence no gains from trade) in the absence of property rights." Thus, it is held that because of private ownership capitalism triumphs in the West and fails everywhere else (De Soto, 2001; quoted in Fernandes, 2002).

<sup>82</sup> An ownership constraint, according to Adams *et al.* (2001, p. 460-461), can be said to exist if development is unable to proceed because the required ownership rights cannot rapidly be acquired through normal market process.

- Lobbying and/or bribing officials, as a result of the said delays, to expedite allocations of use/ownership rights.<sup>83</sup>

Moreover, as the state is not usually driven purely by profit motives in allocating resources, as can be deduced through its actions, interests and strategies, it doubtful whether it could respond to changing market conditions efficiently. This therefore induces uncertainty in the supply-side of the market. If the ensuing uncertainty is prolonged, long-term investment could be frustrated or stalled.

It is worth noting also that state intervention measures, if not carefully crafted (e.g. if property rights are ill-defined or amorphous), may generate defects in ownership title. Defects in ownership title, Munro-Faure, (1999) points out, have an important potential impact on the value of a given property because they constitute a risk. He further suggests that:

This may be true for the economy as whole where there is a defect in the legal framework, or in other areas affecting real estate markets, including the relevant administrative structures and the courts. In those economies where substantial land assets are vested in the state/government, this administration and its efficiency are also likely to be of significance. (Munro-Faure 1999, p. 3)

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<sup>83</sup> Many writers have identified and discussed the *rent-seeking* behaviour of economic agents when valuable property rights are placed in the public domain (see, for example, Niskanen, 1971; Krueger, 1974; De Alessi, 1980; Moe, 1984; Kombe, 1994; Benham and Benham, 1997; Feige, 1997; Kironde, 1997; Olima, 1997; Polishchuk, 1997; Przeworski, 1997; Lai, 1997; Tullock, 1998; Pennington, 2000; Antwi and Adams, 2003b; Webster and Lai, 2003). Anderson and Huggins (2003, p. 24), for instance, argues that: 'Because access to resources is valuable, individuals and firms will invest in trying to bias the distribution system in their favour by using political pressure, campaign contributions, perhaps even bribes. Hence, regulatory agencies can be "captured" by special interest groups.' Hallett (1979, p. 18) also notes that: 'Administrative controls suffer from the disadvantages – in practice – of being arbitrary, erratic and conducive to lobbying, not to say palm greasing. They also give a windfall gain to existing owners.'

Second, in so far as *price controls* are concerned, the theory of price controls is replete with assertion that price controls erode incentives through interference with private contracting. Price fixing regimes, it is said, distort price signals; and *more often than not*, delimit prices below the open market clearing levels. (For a detailed discussion of this topic see, for example, Malpezzi and Sa-Aadu, 1996; Brandão and Feder, 1995; Fraser, 1993; Malpezzi, 1986; Cheung, 1974).

Third, as regards *perverse incentives* and *rent-seeking behaviour*, it is now well recognized in numerous and disparate literature, for example, that: (a) politicians and government bureaucrats have the incentive to cater to organised pressure groups and to expand their own activities (Borcharding, 1977; De Alessi, 1980; Przeworski, 1997); (b) public-sector actors face much weaker incentives to economize than do private-sector actors (Moe, 1984); (c) politicians have a greater interest in providing recognizable political benefits than in achieving market efficiency per se; and (d) bureaucrats often face perverse incentives to maximize inefficiencies in the delivery of public services (Niskanen, 1971; Dawkins, 2000; Somevi, 2001).

Individually or collectively, all these factors (ownership constraints, price controls and perverse incentives) can *adversely* affect the operational efficiency of the land market through increases in transaction costs, risk and uncertainty. A considerable body of evidence exist demonstrating the effects of these factors (e.g. Adams *et al.*, 2001; Antwi and Adams, 2003a; 2003b; De Alessi, 1980; Malpezzi and Sa-Aadu, 1996; Malpezzi and Mayo, 1997; Malpezzi, 1998).

Apart from attenuation and expropriation of property rights, state intervention can spawn other consequences. One such consequence is high institutional (or political transaction) cost. Just as there is a cost to using the price system (Coase, 1960; 1988b; 1992a), state

intervention also entails a cost (Coase, 1960).<sup>84</sup> For any given state intervention regime, it is likely there would be costs associated with the establishment of the state bureaucratic system itself, as well as those of rearranging, monitoring and enforcing property rights. Most of these costs can be classified as *political transaction costs* (see Furubotn and Richter (2000, p. 47-49) and North (1990a) for details on classification of transaction costs). The crux of the matter here is that it is not simply that these costs *exist* but that, as a consequence of the factors discussed above, they could be *higher* than using the market system.

In certain circumstances, state intervention itself may result into what is known as 'government' or 'state' failure. Paradoxically, it has been observed that just as there is market failure; state or government (or non-market) solutions do fail also (see, for instance, Stigler, 1975; Wolf, 1979; Whitehead, 1983; Webster, 1998). Reasons for state (or non-market) failure, it is argued (Wolf, 1979), may not be any different from those of market failure.

Market failure provides the rationale for attempted nonmarket (that is government) remedies. Yet the remedies may themselves fail, for reasons similar to those accounting for market failure. In both cases, incentives influencing individual organizations ("firms," in the one case, and entities acting for or constituting "government," in the other) may lead to outcomes that diverge substantially from what is socially preferable. (Wolf, 1979, p. 122)

Wolf (1979) identifies and discusses in detail four types of *non-market failure*. These are (a) internal and private goals, (b) redundant and rising costs, (c) derived externalities, and (d) distributional inequity. Whitehead (1983) also highlights problems that ensue from state intervention. She discusses the following: (a) multiple objectives, (b) undesirable side effects, (c) technical problems of definition and operation, (d) perversion of instruments to meet other ends, and (e) legal and administrative problems.

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<sup>84</sup> On this matter, Coase (1960, p.18) noted that, in some instances, government bureaucratic machinery could, in fact, be extremely costly.

Interestingly, both Whitehead (1983) and Wolf (1979) point out categorically that state intervention can generate unanticipated side effects (externalities). Some of these unanticipated side effects may even exceed those that market failure regulation intended to curtail (DFID, 2000; Wolf, 1979).

In view of the foregoing, it is perhaps helpful that we take heed of Stiglitz's (1989) advice that good policies are needed to tackle market failures.

Good policy requires identifying them [market failures], asking which can be directly attacked by making markets work more effectively (and in particular, reducing government imposed barriers to the effective working of markets), and which cannot. We need to identify which market failures can be ameliorated through nonmarket institutions (with perhaps the government taking an instrumental role in establishing these nonmarket institutions). We need to recognize both the limits and strengths of markets, of government interventions aimed at correcting market failures." (Stiglitz, 1989, p.202)

### **2.4.3 The resilience of status quo**

Some of the foregoing observations and conclusions regarding state intervention and property rights seem to suggest that *any* formal coercive action, in the name of state intervention, is likely to generate change in the prevailing systems of property rights. If this is truly the case, why then, historically, inefficient or unproductive systems of property rights have persisted in some societies despite state intervention measures intended to correct such property rights regimes? Why, for instance, do *good* policies fail?

North (1981; 1987; 1990a; 1991), in his scholarly works on institutions and institutional change, has been grappling with similar questions to the one just posed above. Over the

years, North and several other contributors (see, for example, De Alessi, 1980; as Heiner, 1983; Libecap, 1986, 1999; Becker, 1992; Matthews, 1996; Jaffe and Louziotis, 1996; Feige, 1997; Antwi, 1998a; Greif, 1998; Keogh and D'Arcy 1999; Furubotn and Richter, 2000; Arvanitidis, 2003) have attempted to shed some light on why, generally speaking, inefficient property rights (or seemingly perverse institutions) persist. Among other factors, they attribute the occurrence of this phenomenon to the following.

(i) *Incoherence between formal rules and informal constraints*

It is well recognized that any system of property rights is structured and moulded by formal rules and informal constraints. Formal rules comprise official regulations and sanctions prescribed by political, judicial and economic bodies; which bodies also carry out policing and enforcement of these rules. Informal constraints, on the other hand, are part and product of the social framework that underlies a society. They evolve as solutions to the problem of coordination (North, 1990a; 1993a, 1994a; 1997). Informal constraints include self-enforcing social conventions, self-imposed codes of conduct (such as ideology), and social norms of behaviour (North, 1993b). Whilst formal rules may change in relatively short spaces of time; informal constraints (embodied in customs, traditions and codes of conduct), being part of habitual behaviour, possess tenacious survival ability and resistance to change (North, 1987; 1990a). For this reason, their change is much slower and indeterminate than that of the formal rules. Hence, it is said that 'even revolutionary change is seldom as revolutionary as it appears on the surface,' because while it is relatively easy to change formal rules it is much more difficult to alter informal constraints (North, 1990a; Arvanitidis, 2003).

(ii) *Politics, interest groups and path dependence*

Historically, property rights and institutions generally have evolved as a result of the bargaining power of actors and not on the basis of credible commitment to low-cost transacting (see Libecap, 1986; Matthews, 1996; North, 1987; 1990a; 1993a; Greif,

1998). Rulers, for example, devised property rights in their own interest and transaction costs resulted in typically inefficient property rights prevailing (North, 1981). This, according to North (1990a, p. 7), explains the wide spread existence of property rights throughout history and in the present that do not produce economic growth. In fact, North (1987; 1990b) argues that political markets are prone to inefficiency. Using the same example of *rulers*, North attributes the inherent tendency by political systems to produce inefficient property rights to the following:

First, the revenue that can be raised by rulers may be greater with an inefficient structure of property rights that can, however, be effectively monitored and therefore taxed, than with an efficient structure of property rights that has high monitoring and collection costs. Second, rulers can seldom afford efficient property rights, since they would offend many of their constituents and hence become more insecure. That is, even when rulers wish to promulgate rules on the basis of their efficiency consequences, survival will dictate a different course of action, because efficient rules would offend powerful interest groups in the polity. (North, 1987, p. 422)

In addition to North's observations, Libecap (1986; 1999) also reiterates and acknowledges the importance of interest groups in the polity. He points out that due to the multiple competing claims in the political arena, the institutions and property rights arrangements that emerge through political bargains and compromises do not usually correspond to the hypothetical wealth-maximizing norm. The influence of *powerful* interest groups in the process of institutional change is especially highlighted.

[T]he heart of the contracting problem is devising politically acceptable allocation mechanisms to assign the gains from institutional change, while maintaining its production advantages. By compensating those potentially harmed in the proposed definition of rights and by increasing the shares of influential parties, a political consensus for institutional change can emerge. Those share concessions, however, necessarily alter the nature of the property rights under consideration and the size of the aggregate gains that are possible. If influential parties cannot be sufficiently compensated through share adjustments in the

political process to obtain their support, otherwise beneficial institutional change may not occur, with potential economic advances forgone. Even though society as a whole is made worse off, the distributional implications lead influential parties to oppose institutional change. (Libecap, 2003, p. 146-147; 1999, p. 8)

[Hence] ...Institutional change will only contribute to collective or social efficiency where the interests of those with bargaining power to create new rules coincide with the interests of the wider society. (Keogh and D'Arcy, 1999, p. 2409)

[For similar arguments, see also Coase, 1974, p. 493; De Alessi, 1980, p. 5; North, 1990a, p. 68; Becker, 1992, p. 67]

This clearly illustrates the fact that the creation of efficient institutions is largely dependent on bargaining power of *influential* actors; without their support institutional change for efficient deployment of resources and economic growth may be significantly impeded.

Moreover, institutional change and the subsequent property rights that emerge are not driven wholly by efficiency considerations because, in addition to politics, cultural and other historical factors matter. For example, common forms of landownership may have prevailed in some parts of the world not because they are adjudged to be comparatively productive but for some historical reasons, such as colonialism, society felt (wrongly or rightly) that this is the only way it could restore lost property rights. (In fact, many cases of land nationalisation, or *suchlike schemes*, in independent countries of Africa and elsewhere in the World, were/are motivated by these factors). Under such circumstances, inefficient property rights endure. Various writers have highlighted this 'path dependent' nature of institutional change (path dependent in the sense that today's and tomorrow's choices are shaped by the past) in the literature (see, for example, Langlois, 1986a & b; North, 1990a; Jones, 1995; Arvanitidis, 2003). In terms of technology, the famous example of QWERTY (see David, 1885; 1986; Arthur, 1989; North, 1990a) has been

mooted time and again to demonstrate the fact that the most efficient solution does not always win.

(iii) *Knowledge, information and motivation to change rules*

Within the institutional economics circles there also exist a point of view that since economic behaviour is determined by a bounded rationality framework, inefficient institutions may persist as nobody has the knowledge, perceptual ability, power, or motivation to change them (Heiner, 1983; Keogh and D'Arcy, 1999). It is further argued that in view of the complexity and volatility of modern economies, and the inert and stable character of the institutions, even if cost-minimising (or wealth-maximizing) institutions could have been established in the past, there is little chance that they could still be the optimal solutions of the present (Furubotn and Richter, 2000). North (1990a) sums this up as follows:

The actors frequently must act on incomplete information and process the information that they do receive through mental constructs that can result in persistently inefficient paths. Transaction costs in political and economic markets make for inefficient property rights, the imperfect subjective models of the players as they attempt to understand the complexities of the problems they confront can lead to the persistence of such property rights. (p. 8)

(iv) *Other factors*

In addition to the foregoing, as highlighted earlier state intervention measures may also fail to produce efficient or desirable property rights due to a host of other reasons. For example, failure to appreciate<sup>85</sup> the multi-dimensional nature of the problem being addressed may render a policy intervention measure ineffective. McAuslan (1988) in his

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<sup>85</sup> This may be, as indicated earlier, due to bounded rationality.

paper, *Land Policy: a Framework for Analysis and Action*, points out why legal reforms meant to promote marketability of land, such as those favoured by the World Bank and some governments in the developing world, may fail. He attributes the failure of these schemes to inability on the part of the reformers to appreciate the multi-dimensional nature of land, and in particular the significance of customary law.

Further, policy intervention measures may not succeed due to lack of supporting institutions and/or acceptance among the bureaucrats who are supposed to administer the reforms, or due to such other social, political and economic factors (see Whitehead, 1983; McAuslan, 1994; World Bank, 2001). Typically, the World Bank recounts its recent experience with failed reforms thus:

The broader diversity of failed reforms does not lend itself to easy generalization. Some reforms proceeded too quickly and failed for want of supporting institutions. Others proceeded too slowly and were captured and undermined by special interests. Yet others were imposed by government elites and foreign donors and foundered for lack of strong domestic leadership and a broad-based commitment to reform. (World Bank, 2001, p. 62)

Sometimes policies can generate unintended consequences (North, 1990a; Wolf, 1979; Whitehead, 1983).<sup>86</sup> Of course, if policies produce unintended consequences, it is likely that some of them would be inimical to efficiency. For this reason North concludes that “the market overall is a mixed bag of institutions;” there are those that increase productivity whilst others reduce productivity. “Institutional change, likewise, almost always creates opportunities for both types of activity (North, 1990a, p. 9).”

All in all, as the foregoing insights have demonstrated, it should now be appreciated why well-intended (but poorly designed or managed) state intervention measures may fail. Failure may be occasioned, for example, by lack of coherence and consistency between

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<sup>86</sup> This, too, may be a product of bounded rationality.

the formal intervention measures and the prevailing informal constraints, which of course have an equally important impact on economic agents' behaviour. Or, due to bounded rationality and such other unfathomable circumstances,<sup>87</sup> it may be that failure is just unavoidable.

#### **2.4.4 Recapitulation**

The object of this section was to discuss some aspects of property rights and institutional *change*, particularly those that relate to the effects of (a) change in property rights generally; and (b) state intervention in property rights; as well as the question of why inefficient property rights persist.

The conclusions that can be drawn from the review of literature are that: firstly, any interference with the system of property rights gives rise to problems of resource allocation and use; secondly, that however justified state intervention may be, the consequences are that it will not only alter the system of property rights but also engender other resource allocation problems too (e.g. unanticipated side-effects); and thirdly, that inefficient property rights may persist even in the presence of corrective intervention measures. A number of factors may account for this phenomenon, including the clash between formal rules (which may be designed to curtail inefficiency) and prevailing informal constraints (which are resistance to change and which may be attuned to the inefficiency).

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<sup>87</sup> For instance, opportunistic behaviour among interest groups, particularly those with political clout.

## 2.5 Concluding remarks

The main objective of this study is to establish whether Zambia's land policy reforms adversely affected urban land market transactions. In line with the said objective, this chapter has provided the conceptual framework for analysing the effect of land policy reforms on the urban land market. The conceptual framework, grafted largely in the economics of property rights and transaction costs, follows the new institutional economics approach.

On the basis of the foregoing approach and the property rights and transaction costs literature, some of the salient points established by the review are:

- Transaction costs do not only exist, they are huge and are a critical determinant of economic performance;
- There is a fundamental relationship between property rights and transaction costs; establishment and maintenance of property rights, for instance, entails transaction costs;
- Like transaction costs, property rights matter. Through incentives, the system (and changes in the system) of property rights affect resource-allocation and economic growth; and
- State intervention, whatever form it takes, is a cardinal driving force in property rights arrangements. However, due to other intervening (or vitiating) factors, *unanticipated* changes in property rights may nonetheless occur, contrary to the intended objective(s) of state intervention.

In the introductory section, it was pointed out that the *effect* of land policy on the land market could be conceptualised as one set of institutions (land policy reforms) modifying or radically restructuring the other sets of institutions (property rights and the land market generally). Adopting a modified property rights approach, the implications arising from the foregoing *review* clearly suggest that *land policy*, being an instrument of state intervention, can be a formidable driving force *capable* of generating changes in

system of property rights. As the system of property rights changes, the content of property rights and the associated incentive and transaction cost structures systematically alter; this, in turn, reconfigures land market operations. Thus, on the basis of this conceptual framework, it is possible to examine the effect of land policy (one set of institutions) on the land market (the other set of institutions).

Although land policy effects on the land market could possibly be analysed either directly or indirectly (through other conceptual frameworks), for reasons specified below (see also chapters 1 and 4), this study applies a modified property rights approach. Arguably, this approach broadens the scope of the conventional property rights approach for it considers not only the issues relating to 'institutional arrangement' (property rights and transaction costs) but also the 'institutional environment' (property rights and institutional change). The expanded scope enables robust analysis of policy-based problems, which hitherto could hardly be tackled under the traditional property rights approach.<sup>88</sup> This conceptual approach could, for example, be effectively used in the study of the impact of not only land policy per se, but also other public policies and formal rules generally (e.g. fiscal policies and spatial planning regulations), on the land market.

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<sup>88</sup> According to Williamson (based on Coase, 1959, p. 12), the traditional property rights literature is characterised by the view that: "Once property rights have been defined and their enforcement assured, the government steps aside. Resources are allocated to their highest value as the marvel of the market works its wonders (Williamson, 2000, p. 580; see also Williamson, 1990)." This contrasts quite markedly with the approach adopted here where other institutions (other than property rights), including the State, matter (see particularly the section on 'The resilience of the status quo'). This approach is much more broad-based in scope and mimics the real world quite closely. It is, therefore, likely to be much more versatile and robust for policy analysis. Having said that, it is important to note that although this approach purports to be more versatile it is constrained by NIE's current state of knowledge on the theory of the state and informal institutions.

Having established the conceptual framework in this chapter, chapter 3 will now review and evaluate the respective land policy instruments before delving into the substantive parts of the research process and empirical results.

## Chapter 3: Policy Review and Evaluation

Show me a country's system of land tenure and I will describe its state of civilization.

Aristotle

### 3.1 Introduction

Chapter 2 presented the conceptual framework for the study. In that chapter, a proposition was made that the analysis of the effects of land policy reforms on urban land market could be conceptualised as one set of institutions modifying or radically restructuring the other sets of institutions. In essence, land policy reforms thus modifying or radically restructuring property rights systems and the land market generally. For reasons spelled out in chapters 1 and 2, this conceptual approach is appropriately set out within the new institutional economics perspectives of property rights, transaction costs and institutional change.

Grounded in the foregoing conceptual framework, the objective of this chapter is to review Zambia's land policy framework and establish whether or not this policy framework (a) materially altered the structure of property rights, and, (b) if so, what were the likely effects of such a modified property rights system on land transactions. Based on *official* policy statements, the review sets the context and analytical framework within which the substantive research process is carried out.

The chapter is arranged as follows. Section 3.2 provides the background information. It sets the context in which the 1975 and 1995 land policy reforms were promulgated. Sections 3.3 and 3.4 review the respective land policy reforms in question. Section 3.5 wraps up the chapter.

### 3.2 Synoptic background

Zambia, like many other former British colonies, inherited British-type formal institutions of governance<sup>89</sup> at independence in 1964. In land matters, colonial land policy evolved a system of land tenure that catered for separate interests of the foreign, colonising settlers and the local indigenous population. Consistent with this policy, two forms of land regulatory regimes were administered for these interest groups. African customary law regulated land under occupation by the indigenous people. English law, on the other hand, applied to land reserved for colonial settlers.

Naturally, the types of interests in land for both legal systems were different. The English land law had the usual features of freehold and leasehold estates. Freehold interests included fee simple, fee tail and life estates. Leasehold interests, on the other hand, had varying fixed durations, some of which were of 99 years and 999 years (see Mvunga, 1980; 1982; UNCHS-Habitat, 1991). Unlike the English land law, the interests in land under African customary law were not fully understood, though it was widely accepted that they were largely of 'communal' type.<sup>90</sup>

To administer these dichotomous land regulatory regimes, land itself had to be physically delineated into separate classes. Thus, three categories of land were designated for this purpose. Land under the administration of the English law was classified as Crown land. This comprised about 6% of mineral-rich or fertile land in the country. The rest of the land was designated either as Trust land or Reserves for partial or full use of the local population.

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<sup>89</sup> For instance, Zambia's land law and the town and country planning regulations are modelled on the British/English common law and statutes.

<sup>90</sup> There exist two contending views on this matter (see Mvunga, 1977; Chinene, *et al.* 1998). Some believe that land and land rights are held in common, and not individually; yet others recognise individualism in land relations and tenure. Chinene *et al.* (1998) assert that both views are valid because of the dynamic nature of customary tenure.

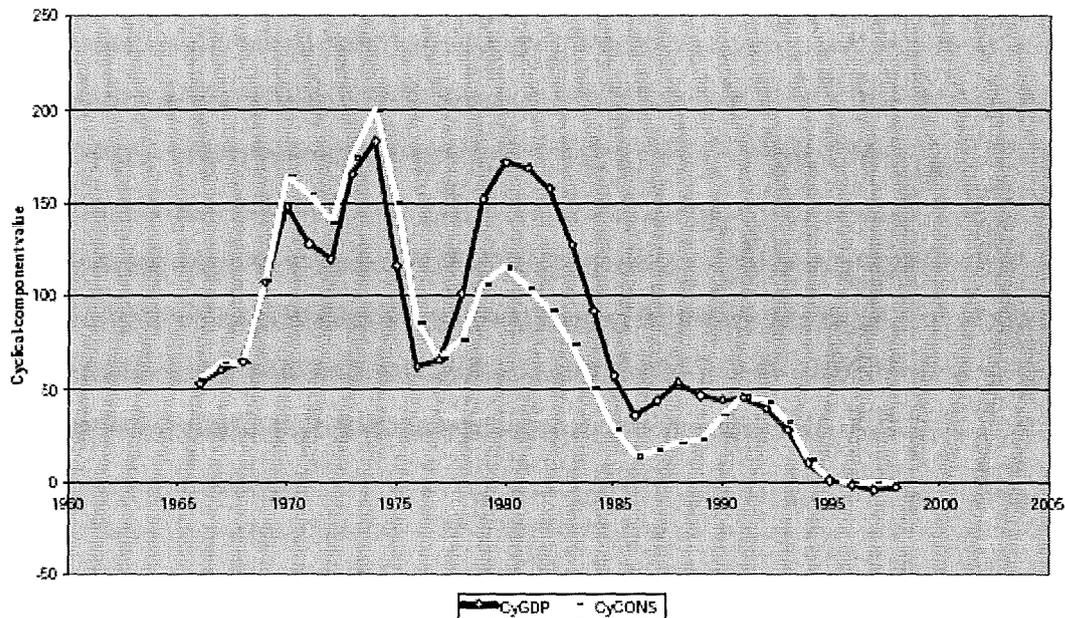
After independence pressure to change colonial land policy mounted, as the racial division on which the policy was formulated was no longer operational.<sup>91</sup> The prevailing socio-economic circumstances at the time, particularly the rapid growth in population and urbanisation, also accentuated the need for land tenure reform. It is worth pointing out here that as the economy rapidly grew in the immediate years following independence (in the late 1960s and early 1970s) more people migrated to urban areas. Table 3.1 provides statistical data on national and urban population growth rate. Figure 3.1 shows the GDP and construction cycles that evolved in the post-colonial era. The GDP cycle (CyGDP) represents the state of the economy and the construction cycle (CyCONS) indicates the level of construction activity over the years up to 1999.

Table 3.1 National and urban population: intercensal growth rates 1969-90 (percentages)

	1963-69	1969-80	1980-90	1990-2000
Zambia	2.5	3.1	2.7	2.4
Total urban	8.9	5.8	2.5	1.4
Lusaka city	13.8	6.5	3.7	3.5
Copperbelt urban	-	-	1.7	-0.09
Ndola	9.5	4.0	2.7	1.3
Kitwe	8.4	2.6	0.8	2.3
Chingola	9.6	2.1	0.8	0.3
Mufulira	5.0	2.1	-0.8	-0.1
Luanshya	4.2	1.3	0.6	-0.2
Chililabombwe	4.7	1.8	-1.35	1.3
Kalulushi	7.2	4.3	-5.0	5.3

Source: (Potts, 2005, p. 589.)

<sup>91</sup> For example, an opposition Member of Parliament (MP), objecting to retention of colonial land policy is quoted to have said: 'The change should come so that the people will have their land as they used to' (Hansard, 11 August 1965; quoted in Mvunga, 1982, p. 76). What appears to have been suggested by the opposition MP, according to Mvunga (1982), is free acquisition of land without cash consideration.



Source: Musole, 2000

Figure 3.1 Cycles: GDP and Construction

With the passage of time, it became apparent that in spite of the growth in the overall economy and construction activity<sup>92</sup>, the existing institutional capacity and the inherited land holding system could not cope with the rapid pace of urban growth. Notably, the procurement of adequate (serviced) land for urban development became more problematic. The scarcity of urban land that ensued naturally induced higher land prices and conjured certain real estate activities. In particular, land speculation and related practices (e.g. gazumping) proliferated. The inability of the formal institutions to cope with the demand for land created opportunities for the development of informal urban settlements and land transactions.

Galvanised by the heating up of the economy and the apparent gradual deterioration in social conditions in urban settlements, at the height of rising land values, government announced its first post-colonial land policy reforms on 30 June 1975. The sections

<sup>92</sup> This was mainly due to government investment in social and physical infrastructure.

below examine, chronologically, the nature of the two post-colonial reforms and assess their implications.

### 3.3 The 1975 Land policy reforms

#### 3.3.1 Policy objectives and attributes

The main objective of the 1975 land policy reforms was to abolish land sales and transfers, except for unexhausted improvements<sup>93</sup> thereon. The policy was prompted by a spate of land speculation and price hikes.<sup>94</sup> In a 'watershed speech' on 30<sup>th</sup> June 1975, President Kaunda decided to do away with land sales altogether. Citing atypical land transaction cases, the President recounted angrily how urban land prices were rising by the day.

The cost of vacant plots in and around Lusaka and other cities and towns is simply shocking, to say the least. What greed! What shameless broad day-light robbery! What exploitation! There are Landlords, Comrades, who bought their one-acre plots for K3, 600 or less in 1970. Last year they were demanding K8, 000 and this year for the same plot they want K10, 000. Then there is the classic case of a plot in the Lusaka City Centre and today I am exposing the facts. By a conveyance dated 3<sup>rd</sup> April, 1975, one George Louis Lipschild of Lusaka sold to

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<sup>93</sup> Unexhausted improvements were defined by the Land (Conversion of Titles) Act 1975, a statute giving effect to the 1975 land policy, as: "anything resulting from expenditure of capital or labour and includes carrying out of any building, engineering, or other operations in, on, or under land, or the making of any material change in the use of any building or land."

<sup>94</sup> As out lined above, in the early years of independence, Zambia enjoyed a relative stronger economy due to higher prices of its main export, copper. In the quest for rapid economic development and restructuring of the economy, the pace of economic growth accelerated considerably. This attracted a lot of people, who hitherto to had been restricted or barred by colonial laws, to the urban areas. In the process, the rate of economic expansion could not however cope with the pace of population growth. The implications of a rapidly developing economy faced with a huge influx of immigrants from deprived areas were far-reaching for the growth and development of urban settlements. In particular, the problems of urban squalor and rising land values became more prevalent and poignant.

a Company known as Solar Investments (Zambia) Ltd, with registered office at Sackville House, Akapelwa Street, Livingstone, the following properties which are opposite the Lusaka City Council Library, namely:

1. Sub-Division 1 of Sub-Division A of plot Number 29, size 0.0405 hectares (0.100 of an acre).
2. The remaining extent of Sub-Division A of Sub-Division Number 29, size 0.0716 hectares (0.177 of an acre).
3. The remaining extent of plot Number 29, size 0.0927 hectare (0.229 of an acre).

Now these three plots each less than a quarter of an acre (using old language) cost Solar Investments (Zambia) Ltd K150, 000. Listed on the same day, 3<sup>rd</sup> April, by another conveyance made between Solar Investments (Zambia) Ltd, and the Development Bank of Zambia, our own Bank, handling public funds, the third plot, that is, the remaining extent of plot number 29, size 0.0927 hectare (0.229 of an acre) that one plot of those three plots which were sold at K150, 000 was sold to Development Bank of Zambia at K100, 000. ... We are getting into the pockets of one man to buy our Land, God given Land in Zambia, I will not accept that system. It is a rotten exploitation of the worst order. I ask you, do you want me to accept that? This plot has never been developed and we, the public of Zambia, poor people are being asked to pay K100, 000 to Solar Investments, yet Solar Investments (Zambia) Ltd bought three plots for K150, 000 one of which has a building standing on it – an antique shop. This is merely profiteering. This is insanity and we must put an immediate stop to it. Solar Investments (Zambia) Ltd, whatever the other names they have, must give back to the Development Bank of Zambia the money already paid to them for this plot. The vacant plot is immediately taken over. The Development Bank can have it from the State. Those involved in negotiating this deal, Zambians or non-Zambians ought to be sacked. I am accordingly asking Comrade Prime Minister to instruct them to show sense, Zambians or non-Zambians, why this nation should not punish them. We are a fair society. Let them show cause why they should not be punished for selling the masses of the people of Zambia down the river of capitalism.

As for the other two plots, I direct that the value of the Building be immediately assessed. The building, together with the plot, is taken over. We will pay just for the value of the building and nothing else. I am being kind, very kind indeed. ... I have also decided that all

vacant plots and all vacant and undeveloped Land in and around Lusaka and all other cities and towns will now be taken over by local authorities.

All vacant plots around cities and towns of whatever size, already sub-divided ready for sale will be taken over immediately and will come under either local authority ownership or Central Government as the case may be. (GRZ, 1975a, p. 44)

To understand the basis and context of the land policy that subsequently evolved out of this speech, three key points about the nature of these land policy reforms (1975) are worth mentioning. First, it is important to note that the sharp and persistent rise in land prices at the time was largely blamed on, or attributed to, the activities of estate agents (GRZ, 1975a). Estate agents were seen as culprits responsible for inflating prices.<sup>95</sup> In consequence, the state thought it would be prudent to transfer the functions of *private* real estate agents (including banks and law firms) to the local and central governments or a quasi-autonomous, non-governmental organisation (in this case, the *quango* in question was the Zambia National Building Society (ZNBS)). Thus, it was for this reason that estate agency functions regarding 'land administration' were devolved to local and central government and those functions relating to 'developed' property (houses and buildings) were assigned to ZNBS.<sup>96</sup>

Second, however important the escalation in land prices was to the conception of the land policy reforms, the reforms were not without philosophical inclination. Outlining the ruling party (UNIP)'s philosophical position on land policy reforms, President Kaunda iterated that:

The political line of UNIP on land is that this is a gift from God and cannot be sold and especially be made the subject of speculation by human exploiters.

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<sup>95</sup> Government authorities considered estate agents as price-makers whose prime interest was procuring huge commissions. So, rising land values naturally guaranteed huge commissions for them, as commissions were pegged in tandem with land prices.

<sup>96</sup> The 'watershed speech' did not, however, clearly specify the type of estate agent functions in question.

The Party and Government have, on several occasions, made this policy stand clear. In *Humanism in Zambia Part 1*, it is stated 'land obviously must remain the property of the State' and in the Party's National Policies for the next decade, 1974 to 1984, it is even more explicitly stated that 'all land will continue to be vested in President of the Republic of Zambia, not Kaunda, on behalf of the State and that all existing freehold titles to any land will be replaced by leasehold titles for terms of 99 years' (GRZ, 1975a, p. 43).

Notwithstanding the aforesaid philosophical orientation, it should be noted, furthermore, that the land policy reforms in question were actually part and parcel of the wider economic reforms the government had embarked upon to foster national development.<sup>97</sup> At the time, nationalisation of the economy was seen as a viable model of economic development and as a means to restructuring the inherited colonial economic institutions. "Nationalisation enabled the state to control 80 per cent of the economy through parastatals involved in mining, energy, transport, tourism, finance, agriculture, trade, manufacturing and construction (Turok, 1989, 78). Thus, the state became the engine of growth" (Osei-Hwedie, 2003, on-line). Seen in this light, it is clear that the land policy reforms, which in essence amounted to land nationalisation, were an integral part of the state-led development strategy.

To realize the objectives of the land policy reforms a land bill was drafted for parliamentary debate following the 'watershed speech.' The Bill stipulated, among other things, that: (1) all land be invested in the President and be held by him for and on behalf of the people of Zambia; (2) Freehold titles be converted to leasehold titles; (3) No land be sold, transferred or alienated at a price or value (see Lands Bill 1975<sup>98</sup>).<sup>99</sup> This was

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<sup>97</sup> The *Watershed Speech*, a lengthy presidential address to the National Council of UNIP, was a part of a series of speeches from the late 1960s President Kaunda made outlining major economic reforms the government was initiating. The Mulungushi and Matero Economic Reforms of 1968 and 1969, respectively, were typical products of these speeches.

<sup>98</sup> The Land (Conversion of Titles) Bill No. 24 of 1975

<sup>99</sup> In Parliament, defending the government's position on this matter, Minister of Lands had this to say: "While under this Bill any sale, transfer, or other alienation of land for value is now abolished, it is fully

later encapsulated in the preamble of the Land (Conversion of Titles) Act 1975<sup>100</sup> (referred to hereafter simply as the *Lands Act 1975*) as:

An Act to provide for the vesting of all land in Zambia in the President, for the conversion of titles to land, for the imposition of restrictions on the extent of agricultural land holdings, for the abolition of sale, transfer and other alienation of land for value, and for matters connected with or incidental to the foregoing (for more details, see copy of the Act, Appendix 4.1).

Perusing through the 'Presidential Watershed Speech' (GRZ, 1975a, p. 43-48) and the Lands Act 1975, the cardinal attributes of the reforms can be summarised as:

- *Ownership of land*

Land, having been vested in the President and held absolutely and in perpetuity for and on behalf of the people of Zambia (Lands Act 1975, S. 4), became predominantly the property of the state. The state, through the President,<sup>101</sup> became the landowner and could then grant statutory leases of 100 years to its people and other interested parties.

- *Land rights*

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appreciated that land includes buildings and other immovable property or improvements thereon. Consequently it means that when these improvements are sold land is also transferred. Government recognises this and it is for this reason that now no subdivision, sale, transfer, mortgage etc., can take place without prior consent of the President. If consent was not required the speculation in land would still continue as people would include an element of the price of land in their valuation of improvements. ... Sir, all these reforms flow from one cardinal concept, that land is the nation's most precious heritage and cannot be a commodity for sale or speculation. It is priceless. This does not mean that because land can no longer be sold it is therefore of no value. On the contrary it is so valuable that we cannot put a price to it" (quoted from Parliamentary Debates, see Law Development Commission, 1981, p. 56).

<sup>100</sup> Chapter 289 of the Laws of Zambia

<sup>101</sup> For administrative purposes, following Statutory Instrument No. 7 of 1964 and Gazette Notice No. 1345 of 1975, the powers of the President in land matters were delegated to the person performing the functions of Commissioner of Lands (see Kaunda, 1995a; Roth, 1995; Banda, 1982).

With superior interests (freeholds and leasehold interests exceeding 100 years as at 1 July 1975) converted into statutory leases (Lands Act 1975, S. 5 & 6), the land tenure system was fundamentally transformed into a *highly* regulated, residuary tenure. This is clearly manifested in the fact that although statutory leaseholds of 100 years could be renewed for a further period of 100 years on effluxion of time (Lands Act 1975, S. 6, 7 & 12), thus retaining the longevity attribute of the aforesaid superior interests, leases were to be subjected to: (a) payment of rent and held on certain prescribed terms and conditions (Lands Act 1975, S. 5 & 6); and (b) state consent on *all* transactions (Lands Act 1975, S. 13).

- *Land transactions*

The reforms imposed severe and incontestable restrictions on *any* land transaction (Lands Act 1975, S. 13). Section 13 of the Lands Act 1975 stipulated that: “no person is allowed to subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber, or part with possession of, his land or any part thereof or interest therein without the prior consent in writing of the President” (S. 13 (1)). And in granting his consent, the President was authorised by the same Act to: (1) “impose such terms and conditions as he may think fit, and such terms and conditions shall be binding on all persons and shall not be questioned in any court or tribunal” (S. 13 (2)); and (2) “fix the maximum amount that may be received, recovered or secured... Provided that in fixing any amount ... no regard shall be had to the value of the land apart from the unexhausted improvement thereon” (S. 13 (3)).

- *Land value and pricing*

The issue of ‘land value’ was central to this policy. The concept that market value of bare or undeveloped land should be *disregard* in all land transactions was entrenched and/or reflected in a number of sections in the Lands Act 1975 (see S. 9, 10, 13, 14, & 15). The policy also gave the President discretionary powers to fixing prices, ignoring land value, as and when he saw fit (see S. 13, 14, & 15).

- *Compatibility with other institutions*

In its quest for banishing 'land value,' the policy does not appear to have harmoniously taken on board most of the other pertinent rules, regulations and practices that impinge on land use and development. For example, certain land-use regulations seem to have been largely ignored. Yet extant statutes, such as Landlord and Tenant (Business Premises) Act, Lands Acquisition Act and Rent Act (which clearly recognised the concepts of land value), were an essential component of the issues the land policy reforms intended to address. The Lands Act 1975, itself, as a legal document, did acknowledge the existence of other laws. It even made explicit references to a few other statutes, but did not explicitly repeal most them.<sup>102</sup> Although this may have been adequate from a legal viewpoint, operationally, however, the policy had the potential to clash with other institutional factors (rules, regulations and practices) at play. The conflict stems from the fact that most of the other institutions embraced, or were founded, on the concept of private property ownership and land value – the very virtues or principles the land policy reforms intended to get rid of.

### *Summing up*

This section has identified the objective and the primary attributes of the policy. It is evident from the review that the prime motive of this policy was to abolish sale and transfer of land at market prices. Market transactions in land were to be restricted to developed property (the unexhausted improvements). Moreover, actual prices of such improvements had to be sanctioned by the state. To achieve these policy objectives, the state had to (a) convert existing freehold interests into leasehold interests, and (b) take control of the actual land ownership and pricing system. In this way, the state became the sole, absolute landowner; allocator; and price determining agent in all land matters.

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<sup>102</sup> The Law Development Commission report (1981) highlights some of the conflicts, which basically revolve around the issue land value and administration, between the Lands Act 1975 and the existing statutes.

The implications of such a policy regime on land transactions are immense and far-reaching. In the next section we examine some of the implications in question.

### 3.3.2 Policy evaluation

As intimated above, the implications of the 1975 land policy reforms were great and far-reaching. This section will now discuss and evaluate the impact of the land policy reforms on property rights and land transactions generally. The evaluation exercise will focus on two aspects of property rights outlined in the conceptual framework: (a) definitional issues and (b) the structure of property rights.

#### (a) Definitional issues

The literature review so far indicates that in any discussion of the system (or structure) of property rights, the 'definition of property rights' is an important matter (see chapter 2). It matters because when rights are not clearly defined, transaction costs rise and market failures result. Now the question is: how did the 1975 reforms define or redefine property rights?

Table 3.2 shows the changes in the structure of property rights across land policy regimes. In respect to 1975 reforms, the table indicates that prior to 1975 property rights were fairly well defined.<sup>103</sup> The freehold and leasehold land tenure system, modelled on received English land law, was amenable to private property ownership. As a result, a vibrant land market with an open market pricing system emerged. Due to land scarcity and other imperfections of the land market, the open market pricing system however fostered the escalation of land prices. As discussed above, this escalation in prices prompted the 1975 land policy reforms.

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<sup>103</sup> Well-defined property rights are unambiguous and easily transferable (see Dowall, 1993).

Table 3.2 Changes in structure of property rights: a theoretical evaluation

Property Rights	Land policy prior to 1975	1975 Land Policy and its Implications	1995 Land Policy its Implications	1975/95 Land Policies: Comments
<i>Definition of property rights:</i> The fundamental question is: How well defined are property rights (see note 1. below)?	Fairly well defined freehold and leasehold interests. Land tenure system modelled on English land law (esp. the Law of Property Act of 1925).	Leasehold system: the policy converted all freeholds into leasehold interests. Land values were not however considered as part and parcel of property values. Also, the fixing of property prices was subject to state consent.  The severance of (bare) land values form (developed) property values renders the definition of property rights ambiguous. State intervention further impedes free exchange of rights.	Leasehold system. No distinction between (bare) land values and developed property values. Open market pricing and exchange largely unfettered by the state.  Fairly well defined property rights system (i.e. leasehold user rights).	<i>Similarities:</i> None apparent <i>Differences:</i> Dichotomous definition of land/property rights <i>Remarks:</i> In relation to 1975 policy, the 1995 policy shows a fairly well defined property rights system (i.e. leasehold user rights).

Notes

- Property rights are said to be well defined if the rights in question are unambiguous and easy to transfer from sellers to buyers (Dowall, 1993). This, according to various commentators (see chapter 2), is fundamental to the workings of land market (see, for example, Feder and Feeny 1991).  
  
To ensure well defined property rights (and, hence, efficiency), the following requirements are essential: (1) all assets and economic resources have individual owners, (2) the limitations for the use of those assets and resources are fully specified, and (3) that it is also possible to remove those limitations by trade
- (Coloma, 2001). Note, however, that because of high transaction costs property rights are *never* fully specified (Barzel, 1989; North, 1990a).  
  
It is evident from this schedule that although both policies reconfigured, in various ways and extents, the constituent parts of the structure of property rights, the 1975 policy had more dramatic impact. The implications of the changed property rights structure on land market transactions are also highlighted in Table 3.4. The text discusses these issues in detail.

Table 3.2 Changes in structure of property rights (*cont'd*)

Property Rights	Land policy prior to 1975	1975 Land Policy its & Implications	1995 Land Policy & its Implications	1975/95 Land Policies: Comments
<p><i>Bundle of property rights:</i></p> <ol style="list-style-type: none"> <li>1. Use/Exclusivity: Access, enjoyment, withdrawal, and interference.</li> <li>2. Transferability</li> <li>3. Duration</li> <li>4. Flexibility</li> </ol>	<ol style="list-style-type: none"> <li>1. Unfettered in freeholds. Leaseholds were partially subject to state consent.</li> <li>2. Unfettered</li> <li>3. Unfettered in freeholds. State leases varied from 14 to 999 years.</li> <li>4. Unfettered in freeholds, but partially restrained leaseholds.</li> </ol>	<ol style="list-style-type: none"> <li>1. Subject to uncertain state consent procedures.</li> <li>2. Subject to state consent.</li> <li>3. Renewable, statutory leases of 100 years.</li> <li>4. Severely constrained by state consent.</li> </ol> <p>State intervention has the effect of reducing or stifling the bundle of rights. The end results are: investment values and incentives to invest diminish and transaction costs increase. This is due to reduced returns and increased risk.</p>	<ol style="list-style-type: none"> <li>1. Subject to specified state consent procedures.</li> <li>2. Subject to specified state consent processes.</li> <li>3. Renewable, statutory leases of 100 years</li> <li>4. Partially constrained by state consent.</li> </ol> <p>The implications stipulated under the 1975 policy apply generally here as well. However, clearly specified and well-crafted state intervention reduces uncertainty. Thus, serves to lower transactions costs, and, possibly, raise incentives.</p>	<p><i>Similarities:</i> Property rights abstraction. However well crafted state intervention might be, it stifles or diminishes private property rights. This is the bottom line of the property rights paradigm.</p> <p><i>Differences:</i> Variation in the extent of abstraction of property rights.</p> <p><i>Remarks:</i> Though both are state intervention based instruments, the latter (1995) policy appears to be less severe in its abstraction of property rights than the former (1975).</p>

Table 3.2 Changes in structure of property rights (*cont'd*)

Property Rights	Land policy prior to 1975	1975 Land Policy and its Implications	1995 Land Policy & its Implications	1975/95 Land Policies: Comments
<p><i>Typology of property rights:</i> Ownership character forms.</p>	<p>Crown/State land: Private ownership (freehold system) permitted.</p>	<p>State land: State ownership predominates. State grants users rights (statutory leases) to private sector agents. The latter may then make further (lesser) leasehold grants to others.</p> <p>This has several implications on efficiency of land markets (see literature review), including land delivery, land exchange and pricing (the cardinal issues in this study).</p>	<p>State land: State ownership predominates. State grants users rights (statutory leases) to private sector agents. The latter may then make further (lesser) leasehold grants to others.</p> <p>The comments made regarding 1975 policy apply here, too.</p>	<p><i>Similarities:</i> State ownership of land. <i>Differences:</i> None. <i>Remarks:</i> Arguably, ownership <i>per se</i> does not guarantee efficiency. Overall, however, private ownership exhibits relatively superior efficiency-enhancing attributes.</p>
<p><i>Other:</i> Compatibility with other institutions (rules, regulations and market practices).</p>	<p>Policy linked to existing institutions (that is, land use regulation &amp; administration).</p>	<p>Policy not properly synchronised with existing institutions.</p> <p>An incongruous policy is more likely to be ineffective. First, it may fail to systematically alter the structure of property rights as expected. Second, it may raise transaction costs.</p>	<p>Attempts to link policy with other supporting institutions.</p> <p>Compatibility with other institutions ensures easy implementation of the policy. This reduces transaction costs.</p>	<p><i>Similarities:</i> None apparent <i>Differences:</i> 1995 policy takes on board some of the existing institutional factors. <i>Remarks:</i> The former (1975) policy is largely oblivious to the nature and effect of other institutions than the latter (1995).</p>

The 1975 land policy reforms made a fundamental point of departure from the previous regime by declaring that in any land transaction 'no regard shall be had to the value of the land apart from the unexhausted improvement thereon' (see Lands Act 1975). In so far as the definition of property rights is concerned, this was a real *watershed*. Although at first sight this may appear to be a mere 'land value' matter (in this case, an attempt to separate land value from improvement value), it has tremendous implications. The philosophical perspective, on which this conception is founded, for instance, has immense ramifications. The philosophical outlook is that land is a free gift of nature (in this case of God) and, for that reason, cannot be *appropriated* by private agents. What can be private property, and, hence, of *value* to the claimants, are the improvements therein. Clearly, this is a *redefinition* of private property rights: a definition that is quite unique and distinct from the one modelled on English land law. The English land law, under which the pre-1975 policy was modelled, does not make such a distinction between land and improvements thereon.

Although philosophically such a definition of property rights may be valid, the technicalities of the severance of land value from improvement value poses considerable problems. Treating land and improvements therein as separate entities is profoundly problematic in terms of valuation and conveyance. Valuing land and improvements separately is practically difficult to execute as improvement values are inextricably linked with, and derive from, the idiosyncratic nature of the land. This, therefore, poses problems in transferring landed property. The difficulty is that, as the improvement is conveyed from one person to another, the price of the improvement would be determined by, among other things, the land factor that attends it. This, therefore, contradicts the very concept (of abolishing or ignoring land value) on which the 1975 reforms were founded. Although the attempt to impose 'price control' by way of state consent (see Lands Act 1975, S. 3 (3)) was intended to cure this cumbersome situation, it merely complicates rather than ameliorates the situation. The complexity of such a valuation regime, if it were to function strictly as conceived here, would inevitably lead to increased valuation error. Consequently, the valuation on which the 'control price' is pegged would become highly questionable. Now, if valuation becomes more uncertain,

then that which has been defined as *private* property in land – in this case, that which is of *value* to the claimant<sup>104</sup> – also becomes equally ambiguous.

Needless to say these uncertainties attract high transaction costs. An uncertain valuation regime, for example, will induce parties to a transaction to spend far greater resources trying to fathom the real value of their assets. Secondly, realising that there are some valued attributes left in the public domain (due to imprecise specification/assessment of property rights), some economic agents may be prompted to engage in rent-seeking<sup>105</sup> activities to capture those valued attributes.<sup>106</sup> This situation may manifest itself in various forms, including bribery or corruption of the public officials entrusted with the duties of ‘value’ assessment for *state consent* purposes or those involved in its actual issuance.

The other fundamental shortcoming of such a definition of property rights stems from the apparent conception that landed property is none other than the physical matter: land and/or improvements thereon. Taken as it stands; this is a highly inadequate definition of (private) property rights.<sup>107</sup> The fault with it is that it is less useful for market transaction purposes. As is well known in legal circles (and commonly ignored by economists), what can be bought and exchanged on the market are not the physical entities as such,

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<sup>104</sup> That is, value of the unexhausted improvements.

<sup>105</sup> The concept of ‘rent-seeking’ is defined and discussed further in chapter 5.

<sup>106</sup> Feige (1997, on-line) notes that: “Incomplete liberalization – the maintenance of arbitrary gaps between buy and sell prices – produces incentives for rent-seeking and acquisitive behaviors. Incomplete privatisation – the maintenance of valuable assets in the public domain with amorphous property rights – produces incentives for predation.” The issues of incomplete liberalization and incomplete privatisation, which Feige refers to, are issues that are at the heart of this subject matter. Unlike the pre-1975 policy, the Zambian land policy reforms in question appear to embrace partial liberation and privatisation.

<sup>107</sup> Coase (1960) observed a similar flaw about the concept of a ‘factor of production’: “This is usually thought as a physical entity which the businessman acquires and uses (an acre of land, a ton of fertiliser) instead of as a right to perform certain (physical) actions. We speak of a person owning land and using it as a factor of production but what the land-owner in fact possesses is the right to carry out a circumscribed list of actions” (Coase, 1960, p. 43-44).

but rather the intangible rights to perform certain actions.<sup>108</sup> The rights in question, it must be emphasised, are many and take many combinational forms. Hence, the notion of a 'bundle of rights.' Each right in the 'bundle' has its own purpose and value; and the bundle itself is adjustable in a variety of forms. For example, a freehold property can be leased, mortgaged, crisscrossed by rights of way, subleased and even re-mortgaged simultaneously. Invariably, each of these purposeful interests/rights attracts a separate value from the other. Moreover, and perhaps more importantly, the values thereof are assessable empirically. Clearly, this conception of property rights is more amenable to numerous (including, land) market transactions than that assumed under the (1975) reforms.

Well-defined property rights are said to unambiguous and easy to transfer from sellers to buyers (Dowall, 1993). Thus, if the foregoing analysis holds water, it could be argued here that by splitting property values into two *inseparable* categories (land and improvements therein), the 1975 reforms did not help matters at all. If anything, it obfuscated the definition of (private) property rights. As highlighted above, ill-defined property rights impact negatively on land transactions.

(b) The structure of property rights.

According to the property rights literature, the structure of property rights can be conceived in terms of (i) property rights, i.e., the rights or interests themselves that comprise the structure; and (ii) the typology of property rights (the common forms of ownership).<sup>109</sup> The evaluation exercise will, accordingly, proceed in the said manner.

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<sup>108</sup> Coase asserts that: "Trade, ... its amount and character, consequently depends on what rights and duties individuals are deemed to possess" (Coase, 1988c, p. 656). This suggests that without property rights there can be no trade, as much of the trade that takes place involves the exchange of property rights (see Allan, 1999; Nutter, 1968).

<sup>109</sup> According to Jaffe and Louziotis (1996), there are two important questions regarding the structure of property rights in a society: (1) what property rights exist, and (2) who owns those rights (see Achian and Demsetz, 1973, p. 18; Jaffe and Louziotis, 1996, p.141). Similarly, Ratcliff (1949, p. 1) avers that: "The

(i) *Property rights*

Under *definitional issues*, it was pointed out that, what are traded on the market are not physical entities, but rather “bundles of rights, rights to perform certain actions” (Coase, 1988c, p. 656; Medema, 1996, p. 574). In so far as the 1975 reforms are concerned, the pertinent question to ask is: in what way did the reforms reshape or modify the pre-1975 ‘bundles of rights’ that were modelled on the English legal system?

As the foregoing review indicates, the 1975 reforms were designed by the state so that it could take control of the actual land ownership and pricing system. By their very nature, the reforms were intended to *attenuate* the ‘bundle of rights.’<sup>110</sup> This was effected by (a) conversion of freehold interests (and longer leasehold interests) into statutory leasehold interests of 100 years (Lands Act 1975, S. 5 & 6), and (b) imposition of state controls on: (i) land/property transfers and (ii) pricing (Lands Act 1975, S. 13).

In some respects, the attenuation of rights appears to be thorough and decisive. The abolition of freehold interests, the greatest bundle of rights under the English land tenure system, was a clear indication of the abridgement of private property rights. In effect,

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commodities traded in the real estate market take the form of rights in land. These rights are found in a wide variety of combinations constituting various forms of ownership or tenure.” Anderson and Huggins (2003, online) also note that property rights consist of multiple characteristics often referred to by lawyers as a bundle of rights, each of which represents a different aspect of property ownership. These ownership characteristics include: right to use; right to profit from an asset; right to exclude others from using the asset; and right to transfer the asset to others. These rights can be packaged in complete form (e.g. freehold in absolute ownership of land), or less complete form (e.g. leasehold). On the basis of this insight, it is important therefore that both aspects of property rights be taken into consideration.

<sup>110</sup> As outlined in the literature review, *attenuation* is the erosion of exclusive private property rights through state control on freedom in the (a) use of resources, (b) derivation of income from the use of resources, and (c) the transfer (alienation, subdivision, or combination) of the above interests (Cheung, 1974; Lai, 1997). It leads to *rent dissipation* (Lai, 1997).

this meant, for example, that exclusive rights to the use of land and its transferability were completely curtailed. To transfer one's interest in land state consent had to be sought; and subject to certain conditions (e.g. maximum allowable price), consent could be denied. Furthermore, such consent denial could not be contested in any court of law.

In other respects, the attenuation of rights seems to be less dramatic but equally damaging to private property rights. The imposition of state controls on land/property transfers and pricing, though seemingly less dramatic, is equally efficacious in stifling the bundle of rights. Controls on price reduce one's right to the receipt of full income or wealth created through private ownership. Hindrance of free transfer of property rights leads to a similar adverse outcome: diminishing yields and value erosion. It is worth pointing out that, unlike the decisive effect of conversion of interests from freeholds to leaseholds, the adverse impact of state controls is that they induce greater uncertainty regarding the nature of property rights. The uncertainty emanates from the uncertain valuation, discussed above, and the lengthy and bureaucratic delays in decision-making due to various factors, including heavy workloads. The uncertainty regarding property rights, in turn, generates further uncertainties in the trading system (e.g. the terms of trade/contracts) (see Furubotn and Pejovich, 1972).

From the discussion above, we can thus deduce that there is generally a special relationship between property rights and the policy regimes that beget them. Table 3.2, among other things, highlights the interaction between the bundle of rights and the respective policy regimes. It shows, for instance, whether property rights were subject to specific (or even uncertain) policy measures and the implications thereof. Theory indicates that policy measures that attenuate property rights increase risk, diminish incentives, and raise transaction costs (Anderson and Huggins, 2003; Libecap, 2003; Lai, 1997; Furubotn and Richter, 1991; Alchian and Demsetz, 1973). Of course, not all policy measures have similar effect. Some measures are more detrimental than others.

*(ii) The typology of property rights*

Property rights can be categorized into four basic typologies: open access; communal property; private property; and state property (see chapter 2). The review of the 1975 policy indicates that all superior interests (freeholds and longer leasehold estates) were converted into leasehold interests (see Lands Act 1975, S. 5 & 6) and the State, through the President, assumed absolute ownership of land (see Lands Act 1975, S. 4). Thus, the effect of this policy was to transform private property, as a dominant form of property rights, into state ownership.

Theoretically, state ownership of land is not by itself undesirable from efficient point of view (see Mukhija, 2003; Galal and Razzaz, 2001; Hong, 1998; Njoh, 1998).<sup>111</sup> The consequences of state ownership are very much dependent on the form and extent of state intervention. In the case of the 1975 reforms, the above review indicates severe attenuation, and an unclear definition, of property rights.

Although state ownership of land does not by itself necessarily lead to inefficient outcomes, as an extended form of collective rights, it is usually associated with some efficient problems inherent in communal property (see Libecap, 1986; and literature review). Furthermore, some commentators believe that: “placing more property under the direct control of the state will lead to greater instability of the polity because coalition will form to compete for property in the public domain” (Benham and Benham, 1997, Online). So, given the foregoing backdrop, in what manner or to what extent did state ownership (by itself) affect the efficient operation of the land market following the 1975 land policy reforms? Well, this is an empirical question in need of an empirical answer. In the subsequent chapters we address this, and other, issues raised in this

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<sup>111</sup> There is a growing body of knowledge that argue quite clearly that ownership per se has no direct bearing on efficiency (Mukhija, 2003; Galal and Razzaz, 2001; Hong, 1998) or the supply of land (Njoh, 1998). This, of course, contradicts the traditional (or earlier) property rights literature, part of which has been reviewed in chapter 2, which regard private property as the most efficient form of ownership (see Barzel, 1989; Libecap, 1989; North and Thomas, 1973; Demsetz, 1967; Coase, 1937; 1960).

chapter as we discuss theory and evidence in relation to (a) land delivery and (b) land transfer and exchange (c) land valuation and pricing.

### *Summing up*

By and large, the policy evaluation exercise indicates that the 1975 reforms did *materially* alter the structure of property rights. In particular, private property rights were *severely* attenuated. The attenuation of rights is clearly manifested by the (a) abridgement of superior interests, and (b) state controls of land transactions. Moreover, state ownership became the dominant form of land ownership. Such a change in property rights is normally associated with low incentives and high risk/transaction costs.

## **3.4 The 1995 Land policy reforms**

### **3.4.1 Policy objectives and attributes**

Towards the mid-1990s as Zambia's economy began to deteriorate drastically, a new political movement emerged and challenged the extant one-party system that had been in operation since 1972. This movement, which rapidly mutated into a political party, was known as the Movement for Multi-party Democracy (MMD). MMD was overwhelmingly voted into government and replaced the United Independence Party (UNIP) in 1991. In its manifesto and at its political rallies, the MMD pledged to restructure and revitalise the withering economy. Naturally, this entailed undoing what the previous government had put in place. Thus on ascension to power, the UNIP economic path of 'nationalisation' was discontinued and, in its place, a new regime of 'market-driven' economy was born. MMD instantaneously embarked on mass privatisation and liberation of the economy.

As one might expect, the political economy of land policy reforms was not spared by the new political dispensation. Unlike UNIP, which considered land as 'unsaleable gift' from God, the MMD government believed in commodification of land and land rights. For this reason, MMD sought to create a market 'enabling environment' through a systematic overhaul of the existing institutions. Consequently, a new philosophical outlook, 'new culture' (as it was popularly referred to by MMD party cadres), emerged and was emphatically inscribed in their party manifesto. Paragraph '(m) LAND' of the MMD manifesto heroically stipulated thus:

The MMD shall institutionalise a modern, coherent, simplified and relevant land law code intended to ensure the fundamental right to private property and ownership of land as well as to be an integral part of a more efficient land delivery system. To this end an 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 1928-1947, the Land Survey Act and the Town and Country Planning Act, 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 co-ordinated in such a way that confidence shall be restored in land investors; the land planning system and related legislation shall evolve such strategy as not only to merge reserve and trust lands, but also to meet the varied development needs in the country.

The MMD in government will attach economic value to under-developed land, encourage private real estate agency business, promote the regular issuance of title deeds to productive land owners in both rural and urban areas, and clear the backlog of cadastral surveys and mapping (quoted in Mushota, 1993, p. 3; Roth 1995, p. 33).

To transform this party manifesto into a formal government policy, a number of consultative meetings and symposiums (at which government sought public support) were held. Of all the meetings that were held to discuss land policy reforms, the most important gathering was the national conference on 'Land Policy and Legal Reform' of 1993. The resolutions of this conference had a significant bearing on the land policy. In line with government thinking, the conference unanimously resolved that the existing

land policies needed restructuring. A ten-point resolution was, ultimately, transacted. The resolution addressed a number of pertinent land policy reform issues, including land value.

On *land value*, the conference held that market forces should generally determine the price in state land.<sup>112</sup> The caveat however being that, in certain circumstances, vulnerable groups should be protected through concessionary pricing. As for the customary land (land mainly outside the urban sector), the conference took the view that pricing arrangements be left to evolve in accordance with local conditions and circumstances.

Subsequent to the foregoing consultative meetings, the government drafted a Lands Bill<sup>113</sup> for parliamentary debate in 1994. The outcome of the parliamentary debates was, of course, the enactment of the *Lands Act of 1995*.<sup>114</sup> Being a land *reform* (not a revolution), the Lands Act 1995 did not totally negate everything that was promulgated in the Lands Act 1975. For instance, it is evident even from a cursory glance of the Lands Act 1995 preamble (see below) that although the 1975 and 1995 policy reforms differ in some fundamental ways, they also share certain basic attributes. Certainly, it is useful to study the similarities and differences between the two policy regimes (for a study of this nature, see Kaunda, 1995a).<sup>115</sup> Given the broad nature of the matters addressed by these policies, this chapter will not however delve into such details but highlight critical issues relevant to this study. Consistent with the review of the previous (1975) policy, the chief attributes of this policy/Act are now highlighted as follows.

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<sup>112</sup> State land is what was formerly known as crown land in the colonial era.

<sup>113</sup> Lands Bill, 1994

<sup>114</sup> Chapter 184 of the Laws of Zambia

<sup>115</sup> Kaunda<sup>115</sup> (1995a) undertook a similar exercise. He compared the Lands Act 1975 and the Lands Bill 1994, outlining, among other things, "What is old in the new Bill? ... What is fundamentally new in the Bill? ... What principles of the 1975 Act does the Bill completely abandon?" (p. 8-90). Kaunda's analysis is quite relevant to this study as the Lands Bill, 1994 (he compared with the Lands Act, 1975) is the seminal document on which the Lands Act, 1995 is founded.

- *Ownership of land*

As the preface of the Lands Act 1995 asserts, the broad *objectives of this Act* are:<sup>116</sup>

... to provide for the continuation of leaseholds and leasehold tenure; to provide for the continued vesting of land in the President and alienation of land by the President; to provide for the statutory recognition and continuation of customary tenure; to provide for the conversion of customary tenure into leasehold tenure; to establish a Land Development Fund and a Lands Tribunal; to repeal the Land (Conversion of Titles) Act; to repeal the Zambia (State Lands and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 to 1964, and the Western Province (Land and Miscellaneous Provisions) Act, 1970; and to provide for matters connected with or incidental to the foregoing. (See Lands Act, No. 29 of 1995)

In relation to this study, it worth noting that whilst repealing a number of the previous statutes (particularly the Lands Act 1975), the 1995 policy does not negate the concept of *leasehold tenure* and *state ownership* of land. Sections 3, 4 and 5 of the Act vest absolute ownership of land in the President and bestow upon him/her the power to alienate land. This is a clear signal of state ownership character form. The continuation of leasehold tenure is reflected in sections 3, 8 and 10 of the Act. Unlike the Lands Act 1975, the statutory lease period/term for leases under this Act is however abridged to 99 years.

- *Land rights*

The continuation of leasehold tenure under this policy (Lands Act 1995, S. 3, 8 & 10) has, in principle, a similar effect – attenuation of the tenorial status – to that imposed by Lands Act 1975. However, in contrast to the Lands Act 1975, this Act curtails the severity of certain encumbrances imposed by the previous Act. For example, the

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<sup>116</sup> For further details, see the Lands Act 1995 at Appendix 4.2

'unlimited' state consent powers on *all* transactions (see Lands Act 1975, S. 13) are now censored in that: (1) the period in which consent should be processed is specified (Lands Act 1995, S. 5 (2 & 3)), and (2) aggrieved parties to a transaction have the right to appeal to a lands tribunal, if consent is denied (Lands Act 1995, S. 5 (4)).

- *Land transactions*

Apart from the usual encumbrances that attend leasehold tenure (such as payment of ground rent and observance of certain terms and conditions of the lease), this Act attempts to promote free exchange and transfer of property. The curtailment of the 'unlimited' state consent powers on *all* transactions (see Lands Act 1975, S. 13) just referred to above, though not totally adequate, is a right step in the process of removing impediments to free trade. The provision 'that (1) the period in which consent should be processed be specified (Lands Act 1995, S. 5 (2 & 3)), and (2) aggrieved parties to a transaction be given the right to appeal to a lands tribunal, if consent is denied (Lands Act 1995, S. 5 (4))' reassures the market that transactions can be concluded in specific periods of time. Parties to a transaction can also be confident that if consent is not granted, such a decision can be formally challenged. This limits the uncertainty (regarding time and whether or not consent will be granted) spawned by the previous policy.

- *Land value and pricing*

This Act discards the notion advanced in the previous policy (see Lands Act 1975, S. 9, 10, 13, 14, & 15) that the value of land, except for unexhausted improvements, be ignored in all transactions. In addition to this, some commentators (e.g. Kajoba, 1998, online) claim that the requirement under section 4 (1) that the "President shall not alienate any land ... without receiving any consideration, in money for such alienation and ground rent for such land except where the alienation is for a public purpose ..." is an indication

that land value is now formally recognised. In line with the (English) adage that ‘the test of the pudding is in the eating,’ market operations so far have demonstrated that this, indeed, is the case. Market evidence on the ground indicates that there have not been any legal or administrative impediments on land pricing since this policy came into operation.

With respect to compensation for non-renewal of statutory leases for a further term not exceeding 99 years, section 10 (2) of the Act stipulates that “If the President does not renew a lease the lessee shall be entitled to compensation for the improvements made on the land in accordance with the procedure laid down in the Lands (Acquisition) Act [Cap. 296].” Although this provision suggests that the previous regime of *ignoring* land value is not discarded altogether, the Lands (Acquisition) Act however awards compensation based on the market value of both land and improvements (see sections 2 and 12 of the Act).<sup>117</sup>

- *Compatibility with other institutions*

Comparatively, the Lands Act 1995 attempts to harmonise with other statutes, rules and practices that govern land use. A number of examples can be cited in support of this assertion. First, unlike the previous Act (1975), the Lands Act 1995 makes references to a number of related statutes in its treatment of land administrative issues (see, for example, Section 2, 3, 6, 10 and 32). Second, the issues it raises, vis-à-vis other statutes, are crucial to the functioning of the land market. For example, the repeal of the *Lands Act 1975* itself, which ignored land value or conflicted with other institutions that embrace the concept of land value and private property, is a significant step in harmonising land policy with related rules and practices. The attempt to harmonise land policy with existing institutions is, of course, firmly enshrined in the MMD manifesto (paragraph ‘(m) LAND’) referred to above.

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<sup>117</sup> Lands (Acquisition) Act [Cap. 296] has since been renumbered as Cap 189

### *Summing up*

Having discussed the primary objective and attributes of the 1995 reforms it would be appropriate that we wrap up the section with a few remarks. We note from the review, by and large, that the 1995 land policy reforms: (1) were designed to reverse the undesirable policy aspects that characterised the previous regime; notably, the abolition of land sales and the excessive state interference in land transactions; and (2) attempt to consolidate and harmonise existing land use regulations and promote private property rights. In spite of all this, however, these reforms retain certain attributes of the previous regime; namely, leasehold tenure and state ownership of land.

### **3.4.2 Policy evaluation**

Consistent with the section on policy evaluation of the 1975 land policy reforms, the evaluation exercise hereunder will also focus on (a) definitional issues and (b) the structure of property rights.

#### (a) Definitional issues

In the matter of *definition* of property rights, Table 3.2<sup>118</sup> indicates that the 1995 reforms attempted to define property rights fairly well. No direct wordings or provisions in the Lands Act 1995 actually define property rights. However, this is evident from (a) the repeal of the Lands Act 1975, particularly the provisions that generated the narrow and ambiguous definition of property rights (see Land Act 1975, S. 9, 10, 13, 14, & 15) and the lifting of the severe state intervention measures in land transactions (compare Lands Act 1975, S. 13 and Lands Act 1995, S.5); and (b) the MMD manifesto which embraces private ownership of land. Although state ownership and leasehold tenure were continued (see Lands Act 1995, preamble), in so far as land value/pricing are concerned, the 1995 policy reforms make no distinction between land and

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<sup>118</sup> Table 3.2 shows the changes in the structure of property rights across the three land policy regimes.

improvements. Furthermore, the requirement for state consent on land transfer is clearly specified by indicating the duration in which it can be procured and the appeal process, if consent is not granted (see Lands Act 1995, S.5). Put together, all these amendments seek to promote private property rights and easy transferability of interests in land.

(b) The structure of property rights.

(i) *Property rights*

On the question of property rights, similar remarks can be made as for the 1975 reforms. First, by continuing with leasehold tenure (see Lands Act 1995, preamble), the 1995 reforms extended the *attenuation* of private property rights that were formerly available prior to 1975 in form of freehold/long leasehold tenure. Secondly, the continuation with state consent requirement (see Lands Act 1995, S. 5), however simplified it might now appear, is partially a vitiating factor.

In spite of the said remarks, it is evident that the 1995 policy reforms do not affect *property rights* to the same extent as the 1975 reforms. One of the major differences between the two reforms is that the 1995 reforms drastically expunged the arbitrary state consent mechanism that characterised the 1975 reforms. A comparison of the two land Acts would suffice here. Lands Act 1995 (section 5) stipulates that:

- (1) A person shall not sell, transfer or assign any land without the consent of the President and shall accordingly apply for that consent before doing so.
- (2) Where a person applies for consent under subsection (1) and the consent is not granted within forty-five days of filing the application, the consent shall be deemed to have been granted.
- (3) Where the President refuses to grant consent within thirty days, he shall give reasons for the refusal.

(4) A person aggrieved with the decision of the President to refuse consent may within thirty days of such refusal appeal to the Lands Tribunal for redress.

Whereas the Lands Act 1975 (section 13) provided that:

(1) ... no person is allowed to subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber, or part with possession of, his land or any part thereof or interest therein without the prior consent in writing of the President.

(2) The President may in granting his consent under subsection (1) impose such terms and conditions as he may think fit, and such terms and conditions shall be binding on all persons and shall not be questioned in any court or tribunal.

(3) ... the President may, in granting his consent under subsection (2), fix the maximum amount that may be received, recovered or secured... Provided that in fixing any amount ... no regard shall be had to the value of the land apart from the unexhausted improvement thereon.

Clearly, the 1975 policy reforms curtail far more liberty to deal in land transactions than the 1995 reforms. These reforms not only impede transferability, but also limit the income receivable from ownership of land. Furthermore, they impose arbitrary conditions that cannot be challenged in courts of law. As intimated above, attenuation of rights reduces incentives to invest in land; and due to the uncertainty created by arbitrary policy measures, risk and transaction costs rise in tandem.

*(ii) Typology of property rights*

In terms of typologies of property rights, again similar comments can be advanced in that the 1995 reforms were not any different from the 1975. Both reforms upheld state ownership of land. As highlighted above, state ownership *by itself* may not be a significant impediment to an efficient land market operation. The implications of state ownership depend, among other things, the *form* and *extent* of state intervention

undertaken. The 1995 reforms present comparatively less state intervention in land transactions than the previous policy regime. However, given that this is a theoretical analysis, the issue of policy impact differentials on property rights and land transactions can only be confirmed by empirical investigation of specific public policy aspects on specific land market operations. Hong's (1998, p. 1585) empirical study of Hong Kong's land-value-capture under public leasehold system, for example, finds no overwhelming evidence of gross 'inefficiency' in resource allocation. A number of studies elsewhere (see, for example, Farvacque and McAuslan, 1992; Garba, 1997; Kironde, 1991; Kombe, 1994; Olima, 1997), particularly in Africa, suggest however that state intervention has generally had a negative impact on the workings of the land market. It is to these issues that chapters 5 to 7 turn to.

### *Summing up*

This section set out to evaluate impact of the 1995 policy on the configurations of property rights. In this respect, the policy evaluation exercise finds evidence of partial *alteration* of the structure of property rights. This is manifested by the persistence of certain aspects of the previous property rights regime (e.g., continuation with state ownership and some state intervention mechanisms). On the other hand, *change* is clearly discernible in relation to (a) the definition of property rights, and (b) severity of state intervention mechanisms. The 1995 reforms, being more liberal, support the establishment of private property rights and, hence, limit state intervention. Such a property rights regime should, arguably, generate more incentives and/or lower risk and transaction costs.

### **3.5 Summary and synthesis**

The primary objective of this chapter has been to (a) review the *two* post-colonial land policy reforms (i.e., the 1975 and 1995 land policy reforms) and (b) assess whether they materially affected the structure of property rights and land transactions generally. For

purposes of coherence and intelligibility, the two policy reforms have been reviewed separately. This summary will now crystallise and synthesize key issues raised by the review. In particular, the summary will identify the fundamental attributes of the two policy frameworks and succinctly comment on (a) how the two regimes differ or resemble one another; and (b) what differential impact, if any, they exert on the structure of property rights and land transactions generally. Finally, the summary ends with a brief remark on how the issues raised in the chapter relate to the forthcoming chapters.

In line with the aforesaid résumé, the first question is, do the two policy reforms really differ in any fundamental way? The answer appears to be in the affirmative. First, on land value, the 1975 reforms espouse the notion that land is a free gift of nature and, for that reason, private property in land is to be limited to improvements only. This concept of property rights is completely dispensed with under the 1995 reforms. Second, on state intervention in land transactions, the 1995 reforms adopt a minimalist approach and advocate an open market pricing regime. The 1975 reforms, on the other hand, evince thorough state intervention, especially on land transfer and pricing. Lastly, on compatibility with other institutions, the 1995 reforms exhibit far greater congruence with other land use regulations and related market rules and practices than the 1975 reforms. Given its radical approach to pricing and the unique conceptualization of property rights, the 1975 policy inevitably clashes with other institutions that embraced private property rights and open market practices.

Be that as it may, the two policy reforms are not altogether different. The 1995 reforms carry over from the previous policy regime the concept of state ownership and leasehold tenure. Table 3.3 presents the major policy attributes in question and shows the pre-1975 position.

Table 3.3 Major policy changes

Key policy issues	Policy prior to 1975	1975 Land Policy	1995 Land Policy
<i>Land rights; land ownership; and land alienation</i>	Freeholds & leaseholds; private land ownership; market-driven, private land alienation as well as central & local government-administered land alienations	Leaseholds; state land ownership; state-administered land alienations	Leaseholds; state land ownership; state-administered land alienations
<i>Land value</i>	Recognised land value	Ignored land value, except for unexhausted improvements thereon	Recognised land value
<i>Attenuation of property rights (extent of state intervention)</i>	No state intervention in freehold estates; very limited intervention in leasehold estates	State intervention in all land transactions	Limited and clearly defined state intervention
<i>Pricing system</i>	Open market	Price controls	Open market
<i>Compatibility with other institutions</i>	Strongly congruent	Less congruent	Partially congruent

Given the foregoing variable nature of the relationship between the two policy frameworks, what are the implications of such a relationship? In relation to property rights, the review (summarised at Table 3.2) indicates that while the 1975 reforms materially reconfigured the structures of property rights, the 1995 reforms had only a partially impact. Against this background, the review finds that the subsequent impacts of these policy regimes on land transactions are systematically similar to the way they impact on the structure of property rights. This is because (a) the structure of property rights determines the level of risk and transaction costs (see chapter 2), and (b) the volume, form and character of trade depends on what property rights economic agents possess (see Allen, 1999; Coase, 1988c; Nutter, 1968). Thus, a radically modified structure of property rights exhibits, for instance, a different transaction costs pattern from a property rights structure that is mildly altered or completely unchanged. Table 3.4 sheds some light on the policy implications in question.

Table 3.4 Policy Implications

Land Policy	Policy attributes	Implications on Property Rights	Implications on Transaction Costs		Effects on Land Transactions
			State sector	Private sector	
1975 Policy	<ol style="list-style-type: none"> <li>Converts of freeholds into leaseholds</li> <li>Ignores land value</li> <li>Intervenes in all land dealings (e.g. sell, transfer, assign, sublet, mortgage, charge, etc).</li> <li>Adopts state ownership character form</li> <li>Largely disregards other/supporting institutions.</li> </ol>	<ul style="list-style-type: none"> <li>Policy attributes (1, 2, &amp; 3), in particular, reduce incentives, increase risk and diminishes return</li> <li>Most of the attributes attenuate the bundle of property rights (use/exclusivity, transferability duration and flexibility) in different ways and extent (see text for detail explanation).</li> <li>The failure to take into account other/supporting institutions may, for example, lessen its effectiveness. Thereby leading to policy failure.</li> </ul>	<p>Imposes increased institutional costs; especially, monitoring &amp; enforcement costs.</p>	<p>Imposes compliance costs, and increases market and non-market transaction costs.</p>	<p>Mostly negative due to the adverse impact on property rights and transaction costs.</p> <p>This, therefore, stifles:</p> <ul style="list-style-type: none"> <li>Trade</li> <li>Land supply</li> </ul> <p>And potentially leads to:</p> <ul style="list-style-type: none"> <li>Further higher land/property prices</li> </ul>
1995 Policy	<ol style="list-style-type: none"> <li>Continues with leasehold tenure</li> <li>Does not disregard land value</li> <li>Curtails form and extent of interventions in land dealings</li> <li>Continues with state ownership character form</li> <li>Attempts to links policy with supporting institutions.</li> </ol>	<ul style="list-style-type: none"> <li>This is a mixed bag; some attributes bear the same effects as the 1975 policy (e.g. attributes 1 and 4). Others (e.g. 2, 3 &amp; 5) enhance property rights.</li> </ul>	<p>Imposes comparatively less institutional costs as some monitoring and enforcement costs are avoided (e.g. by engaging attributes 2, 3 &amp; 5).</p>	<p>Imposes relatively lower compliance and market transaction costs (due to enhanced property rights). But because of attributes 1 and 4, still laden with non-market transaction costs.</p>	<p>Some positive; and others negative. Positive ones emanate from enhanced property rights and marginal reductions in transaction costs. The in ability of the policy to completely transform the structure of property rights means that its adverse impact on transaction costs remains largely unchanged.</p> <p>This, in turn, suggests that the problems of trade, land supply, and raising land/property prices posed by the 1975 policy remain largely unresolved.</p>

This chapter was intended to provide the context and analytical framework for the study. Chapters 5 to 7 will continue with the issues raised at Table 3.4 in this chapter. In the ensuing examination of policy implications, theory and evidence is brought to bear on *specific* land transactions. The transactions or market operations in question are (a) land delivery and (b) land transfer and exchange, and (c) land valuation and pricing. However, before delving into the empirical aspects of the research, the next chapter presents the research methodology.

## **Chapter 4: Research methodology**

### **4.1 Introduction**

This chapter presents the philosophical and methodological issues underpinning the study. It extends and explains the research strategy and methodological issues outlined in chapter 1. Section 2 discusses the philosophical basis of the research. Section 3, research strategy and methods, delves into organisational aspects of the research. It briefly outlines the procedural and practical aspects of the research process. The last section summarises and evaluates the research methodology.

### **4.2 Philosophical framework**

Since the conceptual/theoretical framework of the study has already been mapped out (in chapters 1 and 2), this section highlights the philosophical issues relevant to the study.

#### **4.2.1 Overview of the philosophical issues**

In any academic discipline, scientific inquiry is conducted within a specific philosophical framework. Several reasons account for this modus operandi. First, philosophy, though variously defined (see Johnston, 1986), involves the use of logic and methods of reasoning and argument in pursuit of truth and knowledge of reality (see Katouzian, 1980). It is therefore a useful and powerful mechanism that facilitates any form of formal or scientific investigation. Second, and perhaps more

specific, as Easterby-Smith *et al.* (1997) have pointed out, an understanding of philosophical issues is vital because:

- Firstly, it can help the researcher to refine and specify the research methods to be used in a study, that is, to clarify the overall research strategy to be used. This would include the type of evidence gathered and its origin, the way in which such evidence is interpreted, and how it helps to answer the research questions posed.
- Secondly, knowledge of research philosophy will enable and assist the researcher to evaluate different methodologies and methods and avoid inappropriate use and unnecessary work by identifying the limitations of particular approaches at an early stage.
- Thirdly, it may help the researcher to be creative and innovative in either selection or adaptation of methods that were previously outside his or her experience.

(see Crossan, 2003, p. 47-48)

Philosophy has two essential departments, epistemology and ontology, that provide the framework for defining the nature of knowledge. Epistemology deals with the theory of knowledge. It explores various facets about the nature of knowledge (for example, type, source, object, and limits of knowledge) and the conditions for acquiring it. Moreover, epistemology provides answers to questions on, for instance, what constitutes valid knowledge and how it can be obtained (Johnston, 1986, 1997; Moser, 1999; Peet, 1998). Similarly, ontology is concerned with theory of being/existence. It seeks answers to questions regarding 'reality' or the 'nature of being' – unravelling, for example, what actually exists as opposed to what appears to (but does not) exist (Grayling, 1996; Davis, 1998).

Insofar as scientific inquiry is concerned, it is important to note that it is ontology and epistemology (hence, philosophy) that define *methodology*, which basically represents a set of rules, procedures and techniques for indicating how arguments and research are carried out within specific disciplines (Arvanitidis, 2003; Johnston, 1986; Hollis, 1996). It is this understanding that seemingly led Arvanitidis (2003, p. 85) to remark that:

It is generally acknowledged that philosophies structure social research. The importance of philosophical issues arises from the fact every research procedure is inextricably related to particular perception of the world and cognitive approaches to it. On that basis, the effectiveness and intellectual quality of research methods must depend on philosophical justification.

There are several philosophical schools of thought that are recognised and employed by researchers in social sciences and humanities. These could be summarised into four main philosophical paradigms, namely empiricism, positivism, humanism, and structuralism (see Arvanitidis, 2003; Hooko, 1999). Naturally, each philosophical paradigm has its own ontological and epistemological assumptions as well as its philosophical strengths and limitations.<sup>119</sup> As intimated above, it is helpful to delve into these philosophical aspects of the said paradigms as they aid understanding of research methods' philosophical foundations. However, since literature from numerous authoritative sources on these topics is readily available and accessible even on the Internet (see, for instance, <http://www.socialresearchmethods.net/kb/>),<sup>120</sup> these philosophical issues are summarised in Table 4.1.

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<sup>119</sup> Notwithstanding the foregoing remarks, it is noteworthy to restate the fact that although these paradigms appear to be different and distinct from one another, in reality, there are no hard and fast boundaries between them as a certain amount of diffusion prevails (see Arvanitidis, 2003; Hooko, 1999).

<sup>120</sup> Material on which this section was based is derived from multiple sources, including Katouzian (1980), Johnston (1986), Holt-Jensen (1988), Peet (1998), Moser (1999), and (Hollis, 1996).

Table 4.1 Philosophical traditions: a summary of main features, strengths and weaknesses

<b>Approach</b>	<b>Epistemology</b>	<b>Ontology</b>	<b>Methodology</b>	<b>Strengths</b>	<b>Weakens</b>
Empiricism	Knowledge is gained through experience	Reality exists in that which is experienced	Presentation of the experienced facts after they have been collected, ordered and presented objectively as empirical facts	Descriptive power affords the ability to account for observed phenomena; handles both empirical and normative questions	Description lacks explanatory and analytical power; unscientific approach; ignores power relations in society
Positivism	Knowledge is acquired through agreed verifiable evidence of empirical facts	Reality is present in appearances, but is independent of the observer	Verification of factual statements, using the scientific method and other quantitative and statistical techniques based on hypothesis testing	Facilitates the testing of hypotheses which provides the basis for the development of laws and theories; empirical data and replicable research methods advance explanation	Creates false sense of objectivity; exclusion of human objectives and decisions; quantitative techniques filter out social, aesthetic or moral issues; mechanistic framework content with surface appearances only; ignores power relations and conflict in society
Humanism	Knowledge is obtained subjectively in a world of shared means created by individuals	Reality exists in relation to people, so that whatever exists is what people perceive to exist	Generally subjective using case studies, participant observation, use of various types of questionnaires and interviewing techniques (Collectively referred to as qualitative methods)	Focus on human actor; aims at understanding events and thoughts underlying human action, seeks to uncover nature of universal knowledge governing human behaviour	Communication difficulties; approach perceived as subjective and unscientific, with little relevance to creation of objective conditions in the real world; atomistic focus on human actor distorts reality
Structuralism	Knowledge is gained by the development of theories used to explain the driving forces in society	Reality consists of the underlying structures which give rise to empirical facts	Construction of theories to explain and account for what is observed but cannot be tested due to lack of direct evidence	Studies processes realistically by recourse to theory-building; adopts macro-level perspective to enhance understanding of how mechanisms within structures form outputs at the empirical level	Ignores or pays very little attention to human agency; emphasises too much on the material conditions in the economic system; ignores methodological problems of analysing social and political forces

Source: Hooko, 1999, p. 3

Useful as the foregoing philosophical insights might be to the understanding of research methodology, perhaps a much more helpful approach would be to focus on two major paradigms that are especially important for contemporary social research: viz. positivism and post-positivism (see, for example, Crossan, 2003; Trochim, 2006, online).

As summarised in Table 4.1, *positivism* is a philosophical tradition that is based on the ontological position that objective reality is present in appearances and that it exists independent of observers and is, therefore, not a creation of human mind. Consequently, positivist approaches assume that things could be studied as hard facts and the relationship between them can be established as scientific laws capable of verification by empirical analysis (Crossan, 2003; Hooko, 1999; Smith, 1998). Positivism shares similar philosophical traditions with empiricism (see Table 4.1), though unlike the latter seeks not only to describe and present experienced facts but also to explain why they exist.

The epistemological stance of positivism is that knowledge is gained from experience, and that this experience should be firmly established as verifiable evidence on which all those working in a specific field would agree. It argues that only that which can be directly observed and measured can be accepted as evidence. Its methodology is, therefore, a hypothetico-deductive progression towards explanation by the verification of factual statements. With respect to knowledge development, logical positivist approaches rely on the use of mathematics and formal logic as necessary tools for scientific discovery, for it claims that the only meaningful evidence is that which can be measured. On this basis, positivism emphasises the use of mathematics and related statistical methods.

The positivist elements highlighted above have important implications for natural sciences and social research. In natural sciences, the implications are that theories about nature can be developed and hypotheses about certain relationships postulated

and, possibly, tested for validity. With regard to social research, Crossan identified the following implications:

- *Methodological*: all research should be quantitative, and that only research which is quantitative can be the basis for valid generalisations and laws
- *Value-freedom*: the choice of what to study, and how to study it, should be determined by objective criteria rather than by human beliefs and interests
- *Causality*: the aim should be to identify causal explanations and fundamental laws that explain human behaviour
- *Operationalisation*: concepts need to be operationalised in a way that enables facts to be measured quantitatively
- *Independence*: the role of the researcher is independent of the subject under examination
- *Reductionism*: problems are better understood if they are reduced to the simplest possible elements.

(see Crossan, 2003, p. 51)

Clearly, the positivist philosophy has immense implications for science and research. However, as can be discerned from the presentation above, the major criticism of the positivist approach is that it lacks the means to study human beings and their behaviours in an in-depth and meaningful way (Parahoo, 1997; Crossan, 2003). For example, human attitudes, feelings and perceptions cannot be adequately investigated; in fact, such inquires are beyond the scope of positivism. It is such shortcomings that lead to the emergence of an alternative paradigm, the post-positivism.

*Post-positivism*, is an umbrella-worldview<sup>121</sup> with an epistemological position that human knowledge is not based on 'unchallengeable, rock-solid foundation; it is conjectural' (Wikipedia, online). And, for that reason, knowledge can be acquired by means of both deduction and induction. Ontologically, it is held that reality does not

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<sup>121</sup> The following are some of the postpositivist philosophies, namely phenomenology, Marxism, critical theory, poststructuralism, and postmodernism (see Wikipedia, online).

exist in a vacuum, it is influenced by context and that many constructions of reality are possible. In short, reality is multiple, subjective, contextual and mentally constructed (Crossan, 2003). Methodologically, post-positivist approaches apply 'critical multiplism' (Guba and Lincoln, 1998; Cook, 1985), for it is acknowledged that observations and measurements are inherently imperfect and, hence, the need to measure and analyse phenomena in 'critical' and 'multiple' ways.

Like positivism, post-positivism has its weaknesses and strengths too. Notably, post-positivist approaches are usually criticised for their lack of reproducibility and generalisability. These weaknesses stem from the fact that post-positivist methods of inquiry are essentially interactive and participatory. Furthermore, some critics see post-positivism as a modified form of positivism (Oka and Shaw, 2000).<sup>122</sup> This criticism stems from post-positivism's assertion that although human beings cannot perfectly understand reality, with rigorous data collection and analysis, researchers can approach the truth. Weaknesses aside, post-positivism has some merits. Its strength lies in the use of flexible, multi-faceted (qualitative as well as quantitative) methods to the study of phenomena. Arguably, this approach broadens the scope of knowledge, particularly in areas (referred to above) hitherto unexplored by positivist approaches.

In summary, this brief review of the philosophical paradigms has identified two broad, but rather, dichotomous approaches to investigating phenomena: positivism and post-positivism. The former adopts a clear-cut quantitative approach to investigation of phenomena, whilst the latter seeks to describe and examine phenomena in depth from, but not exclusively, a qualitative perspective. Additionally, it has been established that post-positivism, unlike positivism, embraces a wide variety of philosophical perspectives such that 'it hardly earns the

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<sup>122</sup> Trochim (2006, online) does not, however, support this view. For Trochim, post-positivism is a complete paradigm shift from positivist school of thought. "By post-positivism, I don't mean a slight adjustment to or revision of the positivist position – post-positivism is a wholesale rejection of the central tenets of positivism" (Trochim, 2006, online).

name of a paradigm' (Oka and Shaw, 2000, online). Hence, it is possible to operate within the post-positivist framework whilst leaning to other related philosophical stances, such as constructivism or phenomenology (see Trochim, 2006, online).

#### **4.2.2 Philosophical basis of the research**

The above brief review of the philosophical issues in general provides a basis on which the philosophical orientation of this research can be established. As outlined in chapter 1, this study is concerned basically with 'land policy' and the 'urban land market' from an institutional perspective. Arguably, by virtue of its institutional outlook, a number of issues under discussion are likely to be of unobservable (or intangible) nature, yet manifestly significant in social life.<sup>123</sup> The study of such issues requires some degree of imagination and perception, which may not be so easily comprehended and reduced (or operationalised) into 'hard facts.' Philosophically, then, the positivist approach, which assumes that 'things could be studied as hard facts and the relationship between them can be established as scientific laws capable of verification by empirical analysis' (vide supra), is quite inappropriate in this case. Take, for example, the issue of causality regarding land policy, on one hand, and the urban land market, on the other (see chapter 1), as conceptualised in this study. These phenomena cannot be conclusively studied and verified because, by their very complex and mutually interactive nature, causality runs in both ways. It is fundamentally because of this limitation that studies of this nature methodologically adopt 'triangulation' research strategies of some kind. Indeed, as outlined in chapter 1, this study is not different in this respect. Philosophically, therefore, this study is naturally founded on the post-positivist model.

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<sup>123</sup> Policies and legal constraints (laws), for instance, are intangible aspects of social life (even legal experts occasionally disagree on the interpretation of certain aspects of law) although they formally exist on paper. Yet, like the air we breathe in, their effects on human beings are indisputably evident and significant.

There are several philosophical aspects of post-positivism that underpin this study. First, the concept of critical multiplism is vitally important: it underscores the 'triangulation' research strategy initially conceived in chapter 1.<sup>124</sup> However, the methodology of critical multiplism (a pluralistic methodological approach that incorporates both qualitative and quantitative methods) is much broader than triangulation per se (see Letourneau and Allen, 1999); and, therefore, more helpful in that respect. According to Letourneau and Allen (1999), critical multiplism 'goes further in that it encourages the exhaustive study of phenomena from as many different perspective as possible, given the recognition that theory is a huge fishnet of complex, mutually interacting relationships among constructs and variables (p. 625).' Critical multiplism has been described as an approach with several strategies or options, including 'multi-method research, multiple operationalism, the use of multiple theoretical and value frameworks to interpret research questions and findings' (see Letourneau and Allen, 1999, p. 624; and also Houts *et al.*, 1986; Cook, 1985). As intimated in chapters 1 and 2, due to the multidimensional nature of the research questions and the conceptual framework, it is unlikely that a monolithic research strategy would be helpful in addressing the research issues at hand. A multiplist research strategy, as particularly demonstrated by critical multiplism, would therefore be most appropriate.<sup>125</sup>

Second, the study shares the ontological and epistemological perspective of the post-positivist paradigm. Take, for instance, the philosophical conceptualisation of reality

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<sup>124</sup> In fact, Clark (1998, p. 1247) points out that triangulation itself indicates a tacit acceptance of post-positivistic philosophy.

<sup>125</sup> Critical multiplism is understood as follows. 'Critical implies that, as in positivism, the need for rigour, precision, logical reasoning and attention to evidence is required, but unlike positivism, this is not confined to what can be physically observed (Crossan, 2003, p. 53).' Multiplism refers to fact that research can be mounted from different perspectives. More specifically, multiple perspectives can be applied to 'define research goals, to choose research questions, methods and analyses, and to interpret the results' (see Letourneau and Allen, 1999; Cook, 1985).

and truth. Positivism claims of the existence of objective reality, one that is independent of the knower that can be accurately perceived through the human senses and even be verified (Clark, 1998). Similarly, truth is assumed to correspond with the knowable facts of reality. In this regard, truth is said to be dependent, not on mere belief, but on the correspondence of belief to facts present in external reality. As outline above, this study however takes the critical realist, post-positivist perspective, which assumes that unobservables have existence and are capable of explaining the functioning of observable phenomena (Bronowski, 1956; Schumacher and Gortner, 1992). Consequently, *theoretical explanations* do possess greater predictive value (Clark, 1998).

Further, the study toes the philosophical line which acknowledges the position that truth is ultimately *unknowable*, due (in part) to human sensory and intellectual limitations;<sup>126</sup> and, in consequence, settles for modest knowledge claims based on 'warranted assertibility' (which simply means evidence that is valid and sound proof for the existence of phenomena (see Crossan, 2003; Philips, 1990).<sup>127</sup> Truths contained in methodologies focusing on experiences and meanings of individuals, as captured by interviews and questionnaires, are deemed acceptable although such phenomena are not directly observable.

Other notable features of post-positivism and critical multiplism relevant to this study include: acknowledgement that observation and experience are theory-laden

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<sup>126</sup> The NIE assumptions of bounded rationality and opportunistic behaviour referred to above also come into play here. In this respect, NIE has strong leanings towards post-positivism than positivism as alluded to by some taxonomists (see Arvanitidis, 2003, p. 66- 67). This classification is however understandable because, for one thing, Arvanitidis (2003) like Eggertsson (1990b), attempts to draw hard and fast lines between NIE and its earlier/parallel version, known as Neoinstitutional economics (the latter is much more closer to neoclassical economics, a positivist oriented approach). Secondly, the issue of opportunistic behaviour is conspicuously absent in the discussion of the philosophical and methodological traits of NIE.

<sup>127</sup> Post-positivist knowledge claims are said to be worthy (or warranted) 'when they are have survived the critical tradition of evaluation and challenge' (see Letourneau and Allen, 1999; Cook, 1985; Popper, 1968).

(Forbes *et al.*, 1999), hence, social research cannot be value-free, as assumed by positivism; recognition that the results of scientific strategies can be corroborated but not verified; and the context of discovery is not differentiated from justification in scientific work (Forbes *et al.*, 1999; Phillips, 1992). These and other philosophical aspects discussed above underpin the methodological approach adopted in the study; and, therefore, the research outcomes and conclusions so derived (see chapters 3, and 5 to 8) can be correctly associated with the post-positivist philosophical framework. It is important also to note that within the broader post-positivist framework, this study leans towards a constructionist paradigm (see Bryman, 2001, chapter 1) and, more significantly, embraces the (post-positivist) philosophy's critical multiplist approach.

### **4.3 Research strategy and methods**

Having outlined the philosophical framework in the foregoing section, this section firstly highlights the major aspects of the research strategy and approach before outlining and evaluating the research methods.

#### **4.3.1 Research strategy**

The research strategy adopted in this study is essentially motivated by the nature of the empirical research issues highlighted in chapter 1 and research philosophy articulated above. As pointed out in the said chapter (chapter 1), the research strategy is founded on the premise that the effects of land policy on the land market can be conceptualised as one set of institutions (namely, land policy reforms) modifying or radically restructuring the other set of institutions (*viz.*, the land market). On the basis of this premise and the nature of the aforesaid research issues, chapter 1 justified the adoption of the NIE approach. Chapter 2 curved out a conceptual framework, entitled 'property rights, transaction costs and institutional change,' that not only considers institutional arrangement (property rights and transaction costs)

aspects but also encapsulates issues regarding institutional environment (property rights and institutional change) context of the research problem.<sup>128</sup>

Clearly, this strategy combines, to use Smyth's (1998) terminology, micro- (institutional arrangement) and macro- (institutional environment) analytic approaches. The usefulness of such an approach lies in the fact that the property rights (micro-analytic) approach by itself may not fully explain certain phenomena (for the very reason that it is micro analytic) and, therefore, requires a complementary, broader (macro-analytic) perspective.<sup>129</sup> Chapters 5, 7 and 8 in this study exemplify the very need to transcend mere policy considerations at micro-analytic level and take into account other policy-related factors (e.g., support institutions and informal constraints), which reflect the macro- and multidimensional nature of the research problem.

Methodologically, it is important to note that the central hypothesis, which posits that the land policy reforms in question may have modified or radically restructured that land market, presupposes causality. However, due to the underlying philosophy of the study (just outlined above) and the nature of the phenomena and research questions being examined, the research design does not involve the use of hypothesis testing to *prove* or *reject* 'cause/effect' relationships (as in experimental research designs). Rather, the overall research strategy follows what is known as the *illustrative method*. According to Neuman (2000), the illustrative method uses evidence to illustrate or anchor a theory.

With this method, a researcher applies theory to a concrete historical situation or social setting, or organises data on the basis of prior theory. Pre-existing theory provides the empty boxes. The researcher sees whether evidence can be gathered to fill them. The evidence in the boxes confirms or rejects the theory, which he or she treats as a useful

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<sup>128</sup> This was discussed in chapter 2. For a detailed explanation of the terms 'institutional arrangement' and 'institutional environment,' see Davis and North, 1971 and Smyth, 1998.

<sup>129</sup> Rapaczynski (1996), Smyth (1998) and Williamson (2000) highlight, explicitly or implicitly, some of the limitations of the property rights approach.

device for interpreting the social world. The theory can be in the form of a general model, an analogy, or a sequence of steps. (Neuman, 2000, p. 427)

Thus, on the basis of this methodological approach, it is possible to mount a 'critical multiplist'-oriented research project that ultimately confirms or rejects the central hypothesis without recourse to a positivist, quantitative research strategy.

Second, it is important to note also that, methodologically, this type of study is fundamentally historical and comparative. It is historical in the sense that the policy reforms in question happened some time back in the past, though the second wave of reforms have not yet elapsed.<sup>130</sup> And, it is comparative because it involves comparing and contrasting two policy regimes of different eras. Consequently, a research methodology known as historical-comparative approach is also applicable.

Historical-comparative (or, according to Greif (1998), historical and comparative institutional analysis (HCIA)) approach is a powerful research method in social sciences as it is applicable to a wide range of research problems (see Neuman, 2007). For example, it is applicable to research involving comparison of social systems or institutional structures; assessing what is common or unique across societies; or analysing socio-economic change generally (see Neuman, 2007; Arvanitidis, 2003; Greif, 1998). HCIA is a research approach that recognises the complexity of institutions and institutional structures. It was developed specifically to address problems of institutional nature, particularly questions regarding the origins, nature, and implications of institutions and institutional change (Greif, 1998). HCIA uses field study or case study method as means to collect and organise data/information.

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<sup>130</sup> "*History* means the events of the past ..., a record of the past ..., and a discipline that studies the past" (Neuman, 2007, p. 312; emphasis in original).

Table 4.2 Research methods, data, and applications

Research method/Mode of data collection	Data	Data sources	Methods of analysis	Overall applications	Examples of specific area(s) of applications
Archival/Documentary	Qualitative (text) & Quantitative (digital)	Government policy documents; mass media (newspapers); and research reports, conference papers and other publications;	Various: includes, content analysis; flowchart and time sequence; time allocation analysis; e vent-structure analysis; network analysis;	Contributed to: chapters 1, 3, 5-7; and, therefore, all the three research questions.	<i>Chapter 1</i> : research issues (section 2) <i>Chapter 3</i> : policy review and analysis (theoretical analysis of policy statements and legal documents). <i>Chapter 5</i> : Background data in section 2 (e.g., in Tables 5.1 to 5.3); analytical data in section 3, used correspondingly with other data in discussion of research findings (see Figure 5.1, Tables 5.5-5.10; & Appendix 5.1 & 5.5). <i>Chapter 6</i> : Basic qualitative data in section 2; quantitative (digital) data in Tables 6.3 & Appendices 6.1, 6.2 & 6.4). <i>Chapter 7</i> : Background material in section 7.2; Core or supplementary data in section 7.3 and Tables 7.1 & 7.5.
Questionnaire survey (interview schedule)	Quantitative (digital)	'Expert witnesses': Valuation surveyors	Statistical: descriptive statistics and cross-tabulations	Contributed to: chapters 5-7; particularly to research questions (2) & (3).	<i>Chapter 5</i> : Used correspondingly with other analytical data in section 3 in the discussion of research findings (see Tables 5.11; & Appendix 5.3 & 5.4). <i>Chapter 6</i> : Used correspondingly with other analytical data in section 3 in the discussion of research findings (see Tables 6.4; & 6.6 Appendix 5.3 & 5.4). <i>Chapter 7</i> : An essential component of section 7.3 (see, for example, Tables 7.2 (A-D); 7.3; & 7.4 (A-G)).

Table 4.2 Research methods, data, and applications (*cont'd*)

Research method/Mode of data collection	Data	Data sources	Methods of analysis	Overall applications	Examples of specific area(s) of applications
Semi-structured interviews (interview guide/schedule; partially audio recorded)	Qualitative (text) & Quantitative (digital)	Ministry of Lands; Government Valuation Department; Kitwe City Council (Local Authority); Zambia Land Alliance (Civil society); & SIZ.	Various: includes, content analysis; flowchart and time sequence; time allocation analysis; event-structure analysis	Contributed to: chapters 5-7; particularly to research questions (2) & (3).	<i>Chapter 5</i> : Used correspondingly with other analytical data in section 3 in the discussion of research findings (see Tables 5.8-10; 12 & 13; & Appendix 5.2). <i>Chapter 6</i> : Used as supplementary data in section 3 in the discussion of research findings (see discussion of transaction costs, e.g. state administrative costs and Table 6.5). <i>Chapter 7</i> : Provided additional data to section 7.3 & 7.3 (see, for example, Appendix 7.1)).
Focus groups (Video/audio recorded)	Video/audio recorded	Valuation surveyors and Estate agents: Lusaka and the Copperbelt	-	Used mainly as a brainstorming instrument prior to survey & interviews exercises	Used as background as well as supportive data/information (see, for example, chapter 6, section 2).

### 4.3.2 Research methods

In line with the principles and research issues mentioned earlier (see above), the study adopted multi-method research approach. Table 4.2 shows the research methods, data and application issues in question. As can be seen from the table, there are four distinct research methods and modes of data gathering used in the study, namely: archival/documentary; questionnaire survey; semi-structured interviews; and focus groups. A brief description of the research process involving each of the research methods applied in the study follows hereunder. The comments on critical multiplism and triangulation in section 4.3.3 summarises the discussion.

- *Archival/Documentary method*

A substantial part of the research was derived from documentary data. The two key documents used in the study are: (1) the Lands (Conversion of Titles) Act, No. 20 of 1975 (see Appendix 4.1); and (2) the Lands Act, No. 29 of 1995 (see Appendix 4.2). These are legal documents and, as such, reflect government policy at the time. Other vital documents appear in Table 5.4 (see chapter 5) or are explicitly stated elsewhere in the text.

As indicated in Table 4.2, the policy statements and other documentary data have been of use virtually to all chapters of the thesis. The methods of data analysis have therefore varied considerably, reflecting the various research issues discussed in the thesis. Chapter 3 and section 2 of chapter 6, for example, relied on content analysis of the said policy documents. This involved basically identifying the major policy factors or, as in the appendices 5.5 and 6.4, other themes of interest (e.g., corruption) for illustration purposes. Other textual and digital data were gleaned from the records and analysed conjunctively with other data collected by other means (see other research methods highlighted below). Examples here include the production of

a flowchart (see Figure 5.1) and various tables (shown in Table 4.2). To generate such specific research outputs, a series of relevant analytical techniques (including those indicated in Table 4.2) and/or modifications were applied.

Given the severe limitations archival research face in developing countries generally and on land policy in Zambia in particular, written records by themselves could not suffice for the type of research questions posed by the study. Consequently, supplementary and/or complementary data were required to meet the different research parameters (e.g., triangulation and authenticity) and the overall research objective. Survey research methods and data collection techniques were therefore considered as appropriate options. These are explained below.

- *Questionnaire survey*

Besides archival records, a questionnaire survey (research method) was used to capture additional data. The questionnaire addressed two main research issues, valuation and land delivery (see interview questions in Appendix 5.3), and contributed to all the key research findings (see Table 4.2 and chapters 5 to 7). The questionnaire used for this purpose, a self-completion schedule of 7 main sections, was entitled 'Expert witness questionnaire survey.' The questionnaire was depicted in this manner just to emphasise the fact that the research subjects – valuation surveyors/estate agents, whose main occupation is facilitating the exchange and transfer of land or rights in land – are professional people. Their professional experiences and opinions are therefore indicative of what really goes on in the land/property market.

Using the Valuation Surveyors Registration Board's (VSRB)<sup>131</sup> list of registered valuation surveyors in the country as the *sampling frame*, the questionnaire was

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<sup>131</sup> This is a statutory body whose main function is registration of newly qualified valuers, following completion of (or exemption from) the Boards' test of professional competence. The Board usually keeps

distributed to *all* registered valuation surveyors (hereinafter referred to as ‘valuer(s)’ or ‘surveyor(s)’) in country. It is important to note that except for one surveyor, who was a resident in Chipata, the rest of the valuers in professional practice lived in Lusaka or Copperbelt towns at the time of the survey. According to the VSRB list, there were 40 registered valuers for the period July 2003 to June 2004.<sup>132</sup> Since the number of registered valuers was not too large, it was decided that the questionnaire be administered to the entire target *population*, including the surveyor in the far-flung area. Arrangements were made to have the questionnaire distributed by post to the surveyor in remote town and by courier on the Copperbelt and Lusaka. Of the 40 questionnaires distributed, 26 were completed and returned (representing a response rate of 65 percent<sup>133</sup>). Given that the entire population was captured in the survey, the questions of sample designs (e.g., sample size and sampling procedures) and sampling errors do not, therefore, arise in this particular circumstance.

Details regarding the nature of data and methods of analysis are clearly indicated in chapters 5 to 7, where specific cases are dealt with. Table 4.2 shows the summary details about the method of data analysis used and the specific areas of application.

- *Semi-structured interviews*

In addition to the questionnaire survey just referred to above, a set of semi-structured interviews were arranged and administered to government departments (the central Government, in Lusaka; and the Kitwe City Council, on the Copperbelt<sup>134</sup>) dealing

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an update list of practicing valuers, which is published in the press (government gazette and newspapers) as and when amended.

<sup>132</sup> Note this number can vary greatly within a couple of years as newly qualified valuers join the profession and others, for various reasons, leave or are forced out of the profession.

<sup>133</sup> The response proportion can be computed as follows (see Frankfort-Nachmias and Nachmias, 1992, p. 190):  $R = 1 - (n-r/n)$ ; where, R = response rate; n = sample size; r = responses received.

<sup>134</sup> Kitwe is the largest city on the Copperbelt.

in land matters. These interviews were necessary and helpful to the study since the departments in question were/are the key units involved in public land administration and allocations. To gain insights into the public land allocation system and state consent machinery, one had therefore to engage the bureaucrats concerned.

The interview questions addressed a variety of issues relating, once again, to land delivery and valuation. The specific questions asked and the departments involved are shown in Appendices 5.2 and 7.1. As can be discerned from the variety of questions and respondents, the interviews tapped quite a rich source of data that required equally diverse methods of data analysis. Again, as in the preceding sections, Table 4.2 shows the summary details about the methods of data analysis used and the specific areas of application.

- *Focus groups*

To kick-start the survey research process, two focus group sessions were held in Lusaka and the Kitwe (Copperbelt). Appendix 6.3 shows the key issues of the discussions and the panel of valuation surveyors/estate agents involved. The focus group gatherings were intended primarily as brain storming sessions. The questions and issues raised at focus group sessions were later extended to a personal (unstructured) interview with a Zambia Land Alliance (ZLA) official.<sup>135</sup> Some of the data/information procured from these interview sessions was used to improve the design and/or conduct of the other (aforementioned) research methods.<sup>136</sup> Both the

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<sup>135</sup> Zambia Land Alliance is 'a network of civil society organisations advocating for land rights for the poor' (see <http://www.landcoalition.org/events/n05zla.htm>, accessed March 2007).

<sup>136</sup> For example, initially when the questionnaire survey (mentioned above) was designed, there were doubts regarding its length and design outlook. In particular, the use of parallel columns for jotting down the responses was thought of as, perhaps, 'quite confusing'. To mitigate for this supposedly negative effect, it was decided that the 'questionnaire survey' be transmuted into a structured interview. However, after a review of the said document by the focus group panellists, it was unanimously agreed that it was sufficiently clear to be administered as self-completion questionnaire.

ZLA interview and the focus group sessions were video- and/or tape-recorded with explicit consent of the research subjects. However, except for a few quotations, the video/tape-recordings remain largely un-transcribed.

#### **4.3.3 Critical multiplism and triangulation**

One of the important characteristic features of this study is the use of the concept of triangulation in view of the severe limitations that monolith data collection strategies entail in such a multidimensional-oriented research project. As stated above, the concept of triangulation has systematically been reinforced by the research philosophy that advocates the generic but expansive concept of critical multiplism. The review of the research methods used in the study clearly demonstrates that the concepts of triangulation and critical multiplism were operationalised through: (a) multiple methods of data collection and analysis strategy; and (b) multiple perspectives of the research issues, which incorporate property rights, transaction costs and institutional change (see chapters 5 to 7).

The other notable feature is that although the data sources and characteristics vary (varying from primary (survey research data) to secondary (archival data) and obtrusive to non-obtrusive, respectively), the results of the data analysis and the interpretation thereof show amazingly interrelated and intertwined phenomena. The research output of each method appears to support and reinforce the other remarkably well. Secondly, it is also observed that the overall research outcome is consistent with the findings and conclusions of the prior 'policy review and evaluation' exercise in chapter 3. This, therefore, suggests that despite the use of the 'illustrative method' research strategy (to establish the 'cause-effect' relationship between land policy and the urban land market), the research design in question did in fact produce a research outcome with high internal validity. Indeed, this is one of

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the intended consequences and benefits of a critical multiplistic and/or triangulation research approach.

#### **4.4 Summary and evaluation**

This chapter set out to present the research philosophy and methodology. It has reviewed and highlighted the study's philosophical framework and the research strategy and methodological orientation. Briefly restated, the study is grounded in the post-positivist philosophical approach and embraces the concepts of critical multiplism and triangulation. Given that background, the study employed multiple research methods, namely archival/documentary; questionnaire survey; semi-structured interviews; and focus groups, the latter being used simply as a reference or check method.

Reading through the chapters (1 to 4), it is apparent that the research design is methodologically consistent and systematic all the way from the conception of the research problem to the actual data collection and analysis stage reported above. Notably, the conceptual framework dovetails considerably well with the philosophical framework and methodological approach. The use of multi-method, critical multiplist research strategy accordingly, therefore, bore fruitful results (see subsection 4.3.3), which are indicative of the high internal validity of the research design.

Since the study adopted a 'broad, urban-based' approach (see 'theory and research strategy' issues in chapter 1) and the data and research strategy captures the 'countrywide nature' of the policy-impact reasonably well, it can be claimed that it scores highly even on the external validity scale, too. In fact, this is not far-fetched a claim given the centralised nature of the public land administration and delivery system, on the one hand, and the commonality of urban development problems countrywide, on the other. The similarities are simply striking. Hence, although only one local authority (Kitwe City Council) was, for instance, the source of data on

local authority land operations, the evidence procured is widely applicable to most local authorities in the country. If anything, as one ZLA official put it (personal interview, November 2003), smaller towns in far-flung areas, away from Lusaka and the Copperbelt, have even greater problems in so far as these land issues are concerned.

In spite of the high internal and external validity claims, the research methodology adopted in this study is not without any problems.

First, each one of the research methods applied in the study has its own strengths and weakens. A combination of methods suggests an amalgamation of not only the strengths but also the weaknesses. So, the multi-method research strategy does not *entirely* escape the standard criticisms applicable to other methods. For example, the methodology of critical multiplism, itself, has been criticised for *bias* (Houts *et al.*, 1986), the very basic element that it is assumed to *curtail* through the 'promotion of heterogeneity and diversity in all research endeavours' (Letourneau and Allen, 1999, p. 626).

Second, the more methods one applies in a particular study, the greater the likelihood of accumulation of errors – however well a research programme is designed and conducted.

Third, there multi-method research strategy entails greater use of resources in terms of time, effort and money.

In fact, it is the latter two points that leads me to highlight the practical problems and difficulties encountered in this particular research project.

First, as outlined in chapter 1, documentary data was not easy to access despite its 'public good' status, as in the case of government policy documents. Experience gained from the study suggests that gatekeepers at sources of data may, on

occasions, refuse access; citing all sorts of reasons, some of which are, of course, genuine. Reasons vary and range from inadequate copies to missing or misfiled documents.<sup>137</sup> A researcher has, therefore, to be extra resourceful in the identification of alternative sources of data and methods of persuasion of gatekeepers.

Second, there was a tendency by some government officials to attempt to portray a good picture of their departments, even when there was clear evidence to the contrary. Without background material and preparation to enable one probe further certain responses to interview questions, interview data in such circumstances may carry remarkable degree of respondent biases. In this case, the focus group sessions and the prior knowledge that I had on public land administration in Zambia were extremely helpful.

Third, as the theory suggests, the time, cost and effort in carrying out this (multi-method) project were considerable. Lusaka and Kitwe (the research settings in Zambia) are hundreds of miles apart and Zambia is, of course, thousand miles away from Scotland; so, arranging interviews and focus group sessions was not a cheap undertaking financially and otherwise. Once the data was compiled, the varied processes of data analysis and interpretation of results were equally demanding. Thus, in the end, one could not divest oneself the feeling that this was, perhaps, an intricate and oversized project to undertake in the space of regulation time.

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<sup>137</sup> For example, I failed to obtain annual departmental reports for the Lands Department at the Ministry of Lands. These were easily accessible in the distant past (mid 1960s to 1970s). *Strangely*, statistical data on land allocations in recent years (1980s to date) is even more difficult to obtain.

## Chapter 5: Land Delivery

True independence comes through land ownership ... but alas ...  
We haven't been empowered with anything, not even our own land.  
Concerned citizen (anonymous writer), *The Post*, Zambia<sup>138</sup>

Freedom without landownership is like a tree without roots  
Levy Mwanawasa, *President* of the Republic of Zambia

### 5.1 Introduction

This chapter builds on chapter 3, which reviewed and evaluated the Zambian policy framework. As intimated in the concluding remarks of that chapter (chapter 3), this chapter now focuses the analysis of the land reforms on one aspect of land transactions: namely, *land delivery*. Within the context of the property rights/transaction cost conceptual framework, this chapter seeks in particular to examine how the policy changes identified in chapter 3 affected land delivery.

The chapter comprises four core sections. Section 2 provides a synoptic background. Firstly, it defines the term 'land delivery' and then briefly outlines the basic systems of land delivery. Secondly, it narrates the evolution of the Zambian land delivery problem. Thirdly, it highlights the transactional nature of the land delivery process and the associated costs. Lastly, it advances the central thesis of the chapter and expands and clarifies its objective. Section 3 discusses the land delivery system. It is here that the substantive issues, based on the policy framework and empirical/other data, are analysed

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<sup>138</sup> The Post, 21 June 2005 (see Letters to the Editor: <http://www.post.co.zm/letters.html> [accessed 21/6/05])

and elaborated. Section 4 summaries and synthesises the issues raised in section 3. Concluding remarks and recommendations are in section 5.

## **5.2 Land delivery: definition and context**

The term *land delivery* is defined in this study as the initial grant or assignment of rights over land, usually green-fields, either by government edict or via voluntary exchange for use, development or other purposes. This process normally involves identification, planning, demarcation and allocation of land. Planning and demarcation activities usually incorporate the provision of basic physical infrastructure such as roads, electricity, water and drainage.

The delivery of developable urban land at the *strategic level* occurs through one or a combination of the following modes of delivery: plan-led delivery, market-led delivery or circumstantial delivery (see Larbi, 1995). Within these frameworks, access to land is procured through private-private transactions, public-private transactions and customary allocations and such other arrangements. 'Plan-led delivery' refers to circumstances where developable land is made available through the planning process. Where the market is allowed to allocate land to its highest and best use, with the planning system offering guidance rather than direction, the delivery process is then referred to as 'market-led delivery.' 'Circumstantial delivery,' on the other hand, arises in incidents where the land market is ill-regulated and the spatial planning system is ineffectual and, in consequence, the land needs of a sizeable section of the urban community are not met. Going by this definition, most of the land procured for urban settlements in developing countries, where informal settlements are the norm rather the exception, can be rightly classified under the circumstantial delivery mode (for detailed discussion of these land delivery systems, see Larbi, 1995).

Land delivery is *sine qua non* to urban development, especially in developing countries experiencing rapid urban growth. Because of its prominence in urban development, the

issue of land delivery has always been at the forefront of most urban land reforms. It is not surprising therefore that at the height of the spiralling *urban-land* prices, in the mid-1970s, the Zambian government launched its first ever land reforms since independence. These reforms, as the review in chapter 3 indicates, were later superseded by another set of reforms in 1995, with a similar agenda of restructuring the land-delivery system.

As discussed in chapter 3, the prime objective of the 1975 land reforms was to curtail the escalation of land prices. Even so, at the heart of these land reforms were the issues of affordability and land delivery (see Mulwanda and Mutale, 1994). Perusing through the ‘watershed speech’ that ushered in the 1975 reforms (see GRZ, 1975a), it is abundantly clear that the intention of the government at the time was to economize (reduce) on land *acquisition* costs so that the majority of the people could afford it. Consequently, it was felt, wrongly or rightly, that land prices (except for improvements thereon) be frozen and the task of land delivery be internalised through state-ownership and land administration. Implicitly, the 1975 land reforms appear to have been driven, to a large measure, by the need to avoid the *costs* (which costs Kenneth Kaunda, the Zambian President at the time, considered as exorbitant and exploitative<sup>139</sup>) of carrying out land delivery transactions through the market. In fact, according to the MMD government (see *Zambia Daily Mail*, 21 November 2002), the 1975 land reforms were designed “to empower people through enabling the acquisition of undeveloped land *at no cost*” (GRZ/MoL, 2002, p. 3; emphasis added).

Twenty years on, the state-administered land-delivery system under the 1975 policy regime also failed to deliver. New reforms were therefore instituted in 1995 to make good that which the previous reforms failed to achieve. Notwithstanding these changes, to date, the problems of land-delivery seem not to have eased. The vexatious, perennial problem of mass urban-landlessness (as exemplified by the presence of vast expanses of informal settlements), for instance, continues to escalate unabated even to this day. In view of these developments, one may well be prompted to ask: why does the problem of land delivery, and mass urban-landlessness in particular, persist in spite of the changes

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<sup>139</sup> See the watershed speech that gave birth to these reforms (GRZ, 1975a, p. 43-47).

in land policy regimes? (The term 'land policy regime' is defined, in this context, as the policy framework and the associated system of property rights). Is land delivery, under these land policy regimes, operationally efficient?<sup>140</sup>

Land delivery, as applied in this context, is a *land supply* activity. Indeed, it is also a land transactional process. As Williamson (1985a, p. 1) has pointed out: "a transaction occurs when a good or service is transferred across a technically separable interface. One stage terminates and another begins." This is a typical characterization of the land delivery process. A typical land delivery scheme involves a number of transactional stages and economic agents, and, naturally, entails a series of interfaces. Like all transactional processes, land delivery therefore is not *costless* to operate. Indeed, there are operational costs to contend with. These costs, as with all transactions, are known as *transaction costs*.<sup>141</sup>

It is important to note, as pointed out in the literature (e.g. Brown and Matysiak, 2000a; Coase, 1992a; 1998a), that where transaction costs are high, efficient economic outcomes and productivity are invariably *impeded*. It is not surprising, therefore, that when transaction costs are prohibitively high; market failures arise (see chapter 2). High transaction costs, as Arrow (1969) has rightly asserted, do not only impede efficient economic outcomes, they can actually completely block the formation of markets.

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<sup>140</sup> Efficiency is a word of many meanings. However, in economics, three major types of efficiency have been identified. These are informational efficiency, allocational efficiency and operational efficiency. Operational efficiency is concerned with 'process' efficiency; that is, whether or not the processes or transactions take place smoothly and without undue delay (see Brown and Matysiak, 2000a, p. 433). Since land delivery entails execution of a series of processes and the study is interested in the workings of the delivery process, it is only appropriate that this chapter adopts the concept of operational efficiency.

<sup>141</sup> Transaction costs should be distinguished from production costs. A distinction between the two concepts is not however always easy to make (see Benham and Benham, 1997; 2000; 2001). Difficulty as it may be, Matthews (1986) has attempted the following distinction. According to Matthews (1986) transaction costs are *ex ante* costs of arranging a contract and *ex post* costs of monitoring and enforcing contractual arrangements, whereas production costs are costs of executing contracts. Matthews (1986) argues that the former relate to relations between economic agents and the latter pertain to relations between economic agents and inordinate objects.

Thus, on the basis of the aforesaid insight, would it not be logical and helpful to intuitively surmise that the persistence of urban-landlessness could, perhaps, be explained by the incidence of transaction costs in the land-delivery processes? Is it not possible, for instance, that the institutional *structures* (land policy regimes) that give rise to the delivery processes might be fraught with high transaction costs? Against this background, would it not be worthwhile then examining the land delivery systems in question?

The objective of this chapter, therefore, is to examine the land-delivery systems across the land policy regimes outlined in chapter 3 and (a) ascertain whether the land policy changes in question generated any significant bottlenecks in land delivery; and, if so, (b) assess the incidence of transaction costs. The section hereunder now analyses the delivery systems and their cost implications.

### **5.3 Land delivery systems, processes and transaction cost implications**

The cardinal issues on land delivery really revolve around the operational efficiency with which land is made available at strategic level<sup>142</sup> considering the huge and ever growing urban demand for its use. Central to the issue of operational efficiency (see definition of this concept in the previous chapters) is the incidence of transaction costs. In line with the objectives of this chapter, this section: (a) reviews and evaluates the land delivery systems and the associated processes under each policy regime; and (b) identifies the transactional bottlenecks imposed by such delivery systems and assesses their cost implications.

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<sup>142</sup> This is usually the *initial* release or assignment of land rights into the market after land has been subdivided into developable plots (see definition of 'land delivery' above).

### 5.3.1 Land delivery systems

- *Pre-1975 era*

Except for African townships, urban land alienations in the colonial era were either on freehold or leasehold tenure. Subject to fulfilling certain minimum requirements,<sup>143</sup> leasehold tenure could be converted to freehold. Following the *Crown Grant Ordinance, 1960* (later renamed as the State Grant Act, Cap 104) a head-lease system of land tenure, alongside freehold tenure, was developed. Under this system, land could be leased to local authorities and, they, in turn, could sub-let it to tenants (for the same period, less three days of reversion to the original grantor) of their own choice after sub-dividing and servicing it.

The head-lease system, according to Mushota (1993), had many advantages.

As between the local authority and sub-tenants there was privity of contract. The local authority could enforce covenants in the sublease against the developers. It followed that planning and development could be controlled by the local authority. Developers were allowed to pay development charges to local authorities in instalments to suit individual circumstances. (Mushota, 1993, p. 7)

The other merits of this system were that (a) provision of services was more direct, (b) whatever difficulties that arose in relation to the lease, most matters could be resolved by direct contact between the local authority and its tenants, and (c) although land was leased by the state to local authorities at nominal rates it could be sub-let at a substantial profit by way of plot premium (Mushota, 1993; Surveyors' Institute of Zambia, 1981). In spite of the aforesaid positive aspects of this lease system, for some unexplained reason, it was abolished and replaced by a direct lease system with effect from 10<sup>th</sup> November 1972.

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<sup>143</sup> These include completion of the requisite minimum developments, compliance with all conditions in the lease and payment of the appropriate charges (see *Crown Grant Ordinance, 1960*).

Unlike the head-lease system, the direct-lease system involved direct 'state-tenant' relations and was therefore a more centralised arrangement. Under the latter system, any developer (whether an individual, local authority or any other institution) had to apply directly to the Commissioner of Lands who, on behalf of the President, allocated land. In regard to local authority applications, the land allocation procedures were as shown in Table 5.1 (see Mushota, 1993).

Beyond these provisions, there were special procedures for reserving land for sites and services schemes, as well as for government and local authority own/statutory use.

Table 5.1 Land allocation procedures: the direct-lease system prior to 1975

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- a) The local authority had to obtain permission from the state through the Commissioner of Lands to develop an area within its boundaries in accordance with its zoning schemes.
  - b) Once authority had been obtained, the local authority, in conjunction with the commissioner for Town and Country Planning prepared the necessary layout in respect of the land that was unalienated at that stage.
  - c) The local authority would then service the land and a plot premium (or development charge) fixed in accordance with a formula circulated by government.
  - d) After the land had been serviced, the local authority would notify the Commissioner of Lands of the existence of these serviced plots; the plot numbers; street names; plot sizes, etc.
  - e) The Commissioner of Lands then arranged public notices in the Government Gazette and in the national press, inviting potential developers to apply for the plots.
  - f) After the closing date for the receipt of the applications the Commissioner of Lands would then forward all duplicate copies of the applications to the local authority concerned, which was asked to make recommendations on the most suitable applicants, giving reasons for its selection of the recommended applicants in writing.
  - g) On receipt of the recommendations, the Commissioner of Lands sat with a panel of senior civil servants drawn from the Ministry of Lands and Agriculture and Local Government and Housing for final allocation of the plots. Thereafter, the Commissioner of Lands made formal written offers of direct leases to the successful applicants, with copies of the offers to the local authority concerned.
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- h) The applicant, having accepted the offer and having paid the development charges and other expenses, was finally given a lease to the plot and a certificate of title was issued in his favour in respect of his individual plot. The applicant could then commence construction on the plot.
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(Source: Mushota, 1993, p. 8-9)

Having reviewed the nature of the pre-1975 land alienation/delivery system, it would be useful to summarise and determine the salient features of the system. First, it is evident from the aforesaid review that the land delivery system in question is the product of the freehold and leasehold land tenure system and the associated property rights structure (see chapter 3). Second, due to the varied nature of land tenure system (also highlighted in chapter 3), the modes of land delivery were also different. It is clear, for instance, that the following delivery modes were in operation: (i) centralised, 'plan-led' (in leasehold circumstances where developable land was made available through the 'direct-lease' planning process); (ii) centralised, 'market-led' (in freehold land alienations by the state); and (iii) decentralised, 'market-led' and/or 'plan-led' delivery (in some leasehold instances where land would be let/sublet at substantial profit margins through the 'head-lease system').

▪ *Under the 1975 land reforms*

Due to the changes in land tenure and property rights structures following the 1975 land reforms, the land delivery system was equally modified. Under the leasehold tenure/state-ownership property rights structure, the pre-1975 multimodal land delivery system (highlighted above) gave way to a monolithic delivery system. This monolithic delivery system was, nevertheless, based on the 'direct-lease system' of the preceding era (see Table 5.1).

In 1985, the Ministry of Lands released an administrative circular, *Land Circular No. 1 of 1985*, clarifying and formalising the land delivery procedures under the 1975 policy framework.<sup>144</sup> The land circular in question stipulated land allocation procedures both for rural and urban land. The procedures under the section that applies to urban land allocation are not, however, significantly different from those outlined in the 'direct-lease system' (see Table 5.1) of the pre-1975 era. Items (a) preparation of layout plans and (b) allocation of stands of the *Land Circular No. 1 of 1985* (see Table 5.2 and Appendix 5.1) closely match those of the pre-1975 'direct-lease system'. Notably, land allocations remained centrally administered through the Commissioner of Lands and the duties of planning and provision of services (and this was clearly emphasized by the circular) before land is allocated were thrust on the local authorities as in the preceding era. The only significant difference between these 'direct-lease' delivery systems was that unlike the pre-1975 era where land rights were saleable, that 1975 policy disregarded land value in all transactions. Land allocations were, therefore, based on actual cost incurred in providing the services (roads, water, drainage, sewerage, etc) by the local authorities (see Law Development Commission, 1981) and this eroded their profit margins considerably.

Given that the 1975 reforms were founded on leasehold tenure and state-ownership of land, on the basis of the foregoing analysis, the salient features of land delivery system under the 1975 policy framework could, thus, be characterised as *centralised, 'plan-led'* delivery system.

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<sup>144</sup> This circular, entitled 'Procedure on land alienation', was issued in accordance with section 21 of the Lands Act 1975. Section 21 authorises the minister of lands to make regulations to ensure the provisions of the Act are implemented accordingly.

Table 5.2 Land allocation procedures under the 1975 policy framework

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A. PREPARATION OF LAYOUT PLANS

- (a) The planning of stands for various uses is the responsibility of the appropriate planning authority of the 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.
- (b) 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.
- (c) 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

- a) 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.
- b) 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 number as Annexure A.
- c) On the receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make 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.
- d) 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.
- e) 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.
- f) 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 of 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.

- g) 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.
  - h) 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.
  - i) 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.
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Source: Land Circular No. 1 of 1985, Ministry of Lands

▪ *Under the 1995 land reforms*

Notwithstanding the fact that the 1995 reforms sought to restore private property rights and ensure efficient land delivery (see quotation on 'MMD manifesto' in chapter 3), there has not been any concomitant material change in the legal and administrative structures to alter the land delivery system.

First, contrary to the declared intentions of the 1995 land reforms, the Lands Act 1995 (the statute that gave legal effect to the policy reforms) systematically extends and entrenches the previous (1975) regime by exclusive grant of the powers of alienation and administration of land in the hands of the state (see Part II of the Lands Act 1995).

Second, the actual administrative machinery has remained substantially intact. Section 31 of the Lands Act 1995, for instance, authorises the minister of lands, as in the previous regime, to make regulations by statutory instrument 'for the better carrying out of the provisions of the Act.' For land alienation purposes, no such new regulations been formulated however. Instead, at the strategic level, the same centralised, plan-led and public sector driven delivery system configured under the 1975 regime still reigns to

date.<sup>145</sup> Consequently, most of what has been said under the 1975 regime applies to the delivery system under the 1995 reforms, too.

### *Summing-up*

The foregoing review and evaluation has highlighted the similarities and differences between the land delivery systems since the pre-1975 era. It is apparent, firstly, that: (a) whilst the pre-1975 era had multiple land delivery modes (due to the diversity of the land tenure and property rights system), under the 1975 and 1995 policy frameworks these have been reduced to a monolithic mode only; and (b) the delivery modes under the 1975 and 1995 policy frameworks are fundamentally the same. Both policy frameworks share the one and only 'centralised, plan-led' delivery mode. Secondly, it is also evident that the delivery mode (direct-lease system) obtaining under 1975 and 1995 policy frameworks is an extended version of one of the pre-1975 delivery modes (dating from 10 November 1972).

In sum, it is crystal clear that despite the changes in land reforms in 1975 and 1995, the mode of land delivery has remained substantially the same over the years. Table 5.3 shows the land delivery systems and property rights structures in question.

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<sup>145</sup> Kaunda (1995a) noted that the 'Land Circular No. 1 of 1985' was substantially adopted by the MMD government when they issued a notice in the *Times of Zambia*, 20 May 1992, entitled 'Notice on Administrative Procedures on Land Allocation'. A formal discussion between Adams (2003) and the Registrar of Lands Tribunal in 2003 intimates that the 1985 regulation had in fact been the basis upon which the Lands Act 1995 was drafted. Attempts to draft new regulations have since been unsuccessful as 'it was felt that the 1985 regulations served the purpose' (Adams, 2003, p. 36).

Table 5.3 Land delivery systems and the property rights structures.

<i>Period</i>	Pre-1975	1975-1995	1995-to date
<i>Typology of property rights</i>	Freehold and leasehold; Largely, private ownership (See chapter 3)	Leasehold; State ownership (See chapter 3)	Leasehold; State ownership (See chapter 3)
<i>System of land delivery</i>	Various: Decentralised, market-led and/or plan-led; centralised, plan-led; centralised, market-led; open market pricing regime.	Centralised, plan-led; public sector-driven; price control regime (no value on bare land).	Centralised, plan-led; public sector-driven; open market pricing (applied to subsequent transactions only).

Source: own construction

### 5.3.2 Land delivery processes and their transaction cost implications

Having highlighted the salient features of the land delivery systems in the above section, this section now analyses the land delivery processes. Applying a variety of data and research techniques, it tracks the delivery processes in each delivery system; identifies the major land delivery bottlenecks inherent in the delivery processes; and, then, assesses their transaction cost implications.

The evaluation exercise starts with the 1975 and ends with the 1995 policy frameworks. However, since the delivery systems (and the data so compiled) are basically similar under both regimes, unless stated otherwise, the discussion of the land delivery process under the 1975 reforms will from time to time make reference to the later (1995) land policy regime/period. As will be clarified later, this is necessitated by the fact that the delivery system and the associated processes and/or issues under discussion subsist and transcend to the latter regime. To avoid unnecessary repetition, the *description of events and processes is therefore framed as 'ongoing'* and the discussion under the 1995 policy framework simply amplifies some of the points raised under the 1975 policy framework.

▪ *Land delivery process under the 1975 land policy reforms*

As outlined above, the procedures for land allocation under the 1975 reforms were stipulated under the *Land Circular No. 1 of 1985*. On the basis of: (a) the foregoing procedures; (b) other documentary data (see Table 5.4; for instance, Mulwanda and Mutale, 1994); and (c) the interviews I carried in Lusaka and the Copperbelt (see Appendix 5.2), a graphical representation of the land alienation process can be sketched out.<sup>146</sup> This is depicted as a flowchart (Figure 5.1). The flowchart captures the basic stages from preparations of layout plans to the final stage of issuance of certificate of title to allocated land. Tables 5.5 and 5.6 identify the major players or delivery agents involved; the main land delivery activities; and/or the specific tasks performed.<sup>147</sup>

On the basis of the said multifaceted data, following the transaction costs approach, some major land delivery bottlenecks can be identified. These revolve around two cardinal issues: resource use and incentives. With resource use, the analysis finds problems with (i) the number of players and stages or activities involved, (ii) transaction time, (iii) funding and staffing. On the other hand, the problem of perverse incentives and rent-seeking behaviour are manifested in the land allocation malpractices and bureaucratic corruption.<sup>148</sup> These problems constrain, in a variety of ways (see discussion below), efficient functioning of the delivery process by inflating or exacerbating transaction costs. Chronologically, this section now presents and discusses the research findings.

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<sup>146</sup> The data referred to at (a), (b) and (c) is comparatively similar to the applied under the 1995 policy framework. Therefore, the discussion that follows makes reference also to the 1995 policy framework.

<sup>147</sup> Interview questions used to capture some of the data are at Appendix 5.2.

<sup>148</sup> Corruption is here defined, following Jain (2001, p. 73), as 'acts in which the power of public office is used for personal gain in a manner that contravenes the rules of the game.' Thus, bureaucratic corruption refers to 'corrupt acts of the appointed bureaucrats in their dealings with either their superiors (the political elite) or with the public' (see Jain, 2001, p. 75).

Table 5.4 Primary and secondary data attributes

Data sources	Type of data	Remarks
Adams (2003). 'Land tenure policy and practice in Zambia.'	Secondary: qualitative, non-reactive, documentary data	Unpublished research report
Law Development Commission. (1981). 'Report on the Land (Conversion of Titles) Act No. 20 of 1975.'	Secondary: qualitative, non-reactive, documentary data	Published government report
Ministry of Lands (1985). Land Circular No.1 of 1985 'Procedure on Land Alienation.'	Secondary: qualitative, non-reactive, documentary data	Unpublished government circular
Mulwanda and Mutale (1994) 'Never mind the people, the shanties must go: The politics of urban land in Zambia.'	Methodology: Activity flow of planning, registration and allocation procedures	Journal article
Mushota (MMD Chairman of Lands and Natural Resources Committee & Minister of Information and Broadcasting Services) (1993). 'The Movement for Multiparty Democracy (MMD) and its manifesto provisions on Land Law and Policy Reforms for the Zambian third term Republican Government.'	Secondary: qualitative, non-reactive, documentary data	Unpublished conference paper
Mvunga (1980; 1982). 'The Colonial Foundations of Zambia's Land Tenure System' & 'Land Law and Policy in Zambia.'	Secondary: qualitative, non-reactive, documentary data	Published research booklets
Roth (with assistance of Smith) (1995). ). 'Land Tenure, Land Markets and Institutional Transformation in Zambia.'	1. Secondary: qualitative, non-reactive, documentary data 2. Methodology: Description of state leasehold process	Published research paper
Siame (2001). 'Address by the Chairman of the Lands Tribunal of Zambia.'	Secondary: qualitative, non-reactive, documentary data	Unpublished symposium paper
Wekwete (1994). 'Human settlements analysis and needs assessment in Zambia.'	Secondary: qualitative, non-reactive, documentary data	Unpublished report, UNCHS (Habitat)
Zulu (Commissioner of Lands) (1993a). 'Land Policy and Administration including Systems of Land Allocation in Zambia.'	Secondary: qualitative, non-reactive, documentary data	Unpublished conference paper
Semi-structured interviews in Lusaka	Primary data: qualitative, reactive, survey data	With government officials, and Zambia land alliance (an NGO)
Questionnaire survey in Lusaka and the Copperbelt	Primary data: quantitative/ qualitative, reactive, survey data	Administered to professional valuation surveyors
Focus groups discussions in Lusaka and the Copperbelt	Primary data: qualitative, reactive, panel data	With professional valuation surveyors

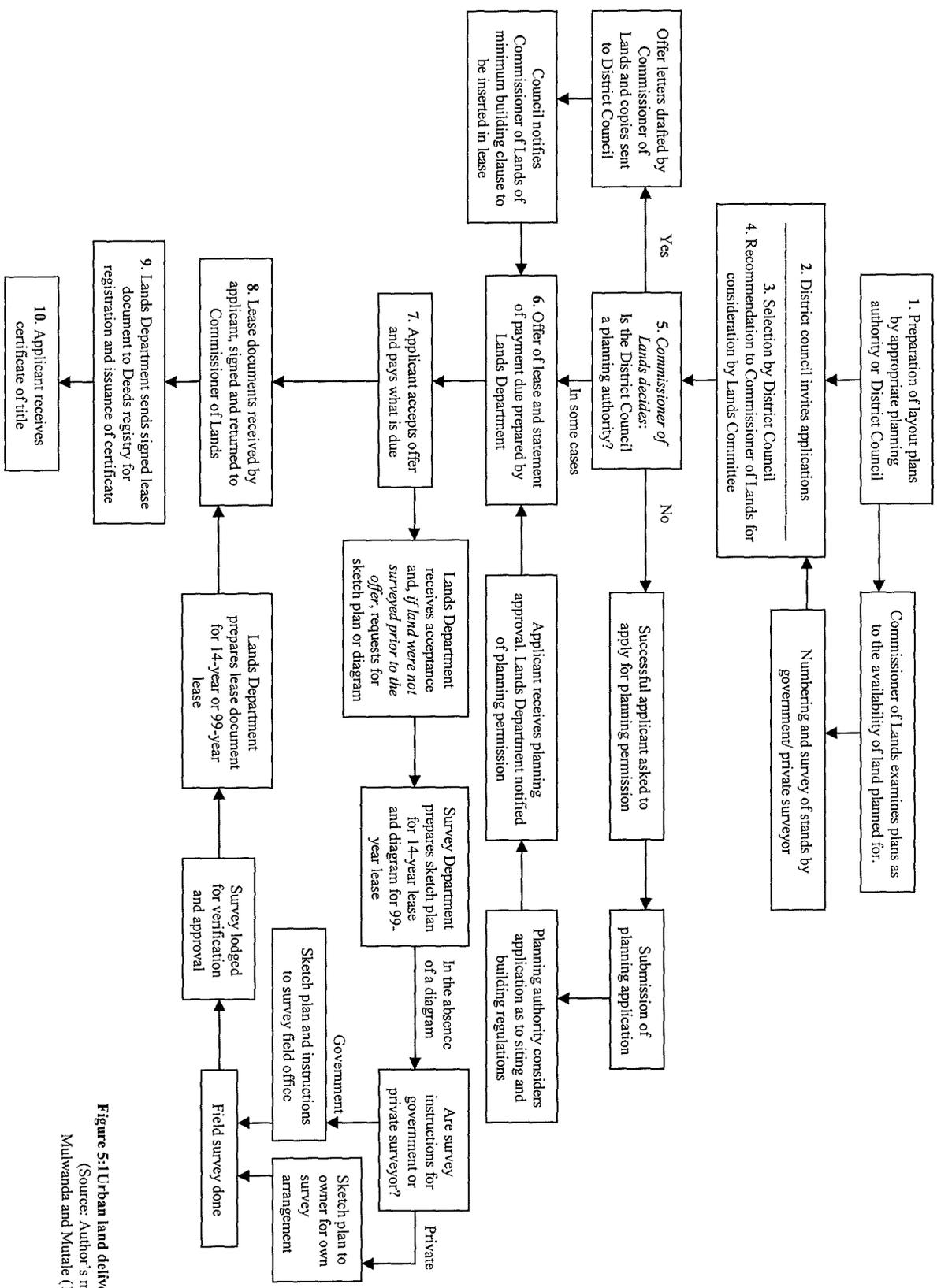


Figure 5:1 Urban land delivery flowchart (Source: Author's modification of Mulwanda and Mutale (1994) version)

Table 5.5 Public sector urban land delivery agencies

Ministry	Department/ Unit/Sections
Ministry of Lands	1. Lands department <ul style="list-style-type: none"> <li>• Lands administration</li> <li>• Legal section</li> <li>• Estates and valuation</li> </ul> 2. Survey department <ul style="list-style-type: none"> <li>• Cadastral services</li> <li>• Mapping services</li> <li>• Survey services</li> </ul> 3. Lands and deeds registry
Ministry of Local Government and Housing	1. Local authorities <ul style="list-style-type: none"> <li>• Town planning section</li> <li>• Legal section</li> <li>• Valuation section</li> </ul> 2. Department of physical planning and housing 3. Valuation department

(Source: Organisational charts)

Table 5.6 Public sector town planning agencies and areas of responsibilities

District Councils	Municipal Councils	City Councils	Ministry of Local Government and Housing	Ministry of Lands	
				Lands Dept	Survey Dept
			Policy development and guidelines		
			Approval of development plans		
	Planning authorities			Final approval and issuance of certificate of title	Surveying
Preparation of development plans					
Development control					
Layout preparation					
Selection and recommendation of applicants for plot allocations					

(Source: Author's modification of Mwimba's (2002) version)

Table 5.7 Critical factors in the land delivery process: 1985-To date

Factors at play	Effect on land delivery process
1. Planning: How regularly do the planning authorities review/update their (master/structural/development) plans?	<p>This is a most critical factor as outdated plans are unlikely to facilitate efficient land delivery.</p> <p>Note: Identification of land and planning process involves a number of agents, professionals and even the community, consumes a lot of time and monetary resources.</p>
2. Local authority (LA): Is the LA a planning authority or not?	<p>The process is shorter if the local authority is a planning authority.</p> <p>A local authority that is not a planning authority has to have its plans produced by the Town and Country Planning Department (now known as the Department of Physical Planning and Housing), a separate entity under the Ministry of Local Government and Housing. Naturally, this involves additional (consultation &amp; coordination) time.</p> <p>Note: Although the large municipalities or city councils (such as the Lusaka, Kitwe &amp; Ndola) have their own planning departments, most urban centres depend on Town and Country Planning Department under the Ministry of Local Government and Housing.</p>
3. Principal-agent relationship and consultations: Did the local authority, as the agent for the commissioner of lands (CoL), consult the CoL in relation to the layout plans for which they have selected and recommended applicants or not?	<p>Failure to consult and secure 'go ahead' decision from the commissioner of lands could result into delays and/or principal-agent conflict. In some cases, the transaction may even be aborted.</p>
4. Physical infrastructure: Is the land serviced or not?	<p>The process is shorter if land is serviced.</p>
5. Survey: Is the land surveyed or not?	<p>Un-surveyed land would require either a sketch or survey diagram before lease documents are prepared (see lease term below).</p>

Table 5.7 Critical factors in the land delivery process: 1985-To date (*cont'd*)

Factors at play	Effect on land delivery process
6. Lease term: Is the lease term for 99-years or 14-years?	99-year lease require rigorous survey procedures, yielding a survey diagram; 14-year lease, on the other hand, does not require rigorous survey procedures since a sketch map is acceptable.
7. Frequency of committee sittings: How frequent do the respective agents (e.g. local authority/council meetings on land allocation) meet and make decisions?	The more frequent the sittings, the greater the chances of delivery.
8. Staffing: Is the section or unit in question well manned with qualified manpower or not?	Poorly manned units experience considerable work overloads, and, hence, unable discharge their duties efficiently.
9. Choice of surveyor: Government or private sector surveyor?	The former is more expensive, the latter involves long delays (Roth, 1995)
10. Follow-up/prodding: Do you, as an individual, follow-up your application after submission or not?	Although, in theory this may not be necessary, where there are delays (as it usually happens) many applicants do in fact follow-up their applications. Naturally, there are follow-up costs (time, effort & monetary expenses) to be incurred.

(Source: Based on interview & documental data)

Table 5. 8 Delays in land delivery process

Question	Response from Departments/Units				
	Land and Deeds	Survey	Lands Department	Kitwe City Council, Legal Section-land allocations	Kitwe City Council, Town Planning Section
How often do you receive complaints regarding processing ... (see options)	(Title deeds) Occasionally	(Survey diagrams/cadastral plans) Many times	(Land allocation) Many times	(Land allocation) Many times	(Identifying land/designing layout plans) Many times
<ul style="list-style-type: none"> <li>▪ Many times</li> <li>▪ Occasionally</li> <li>▪ Rarely</li> <li>▪ Never</li> <li>▪ Cannot tell/remember</li> </ul>					
If you do receive complaints, who are the main complainants (Rank them)?	All (difficulty to rank), including Law Association of Zambia (LAZ)	<ul style="list-style-type: none"> <li>▪ Political party officials</li> <li>▪ Private organisations</li> <li>▪ Senior government officials</li> <li>▪ The general public</li> <li>▪ Land/plot applicants</li> <li>▪ Other departments/units in the land delivery process</li> </ul>	All (difficulty to rank).	Land/plot applicants	Land/plot applicants
<ul style="list-style-type: none"> <li>▪ Land/plot applicants</li> <li>▪ The general public</li> <li>▪ Senior government officials</li> <li>▪ Private organisations</li> <li>▪ Non-governmental organisations</li> <li>▪ Political party officials</li> <li>▪ Other departments/units in the land delivery process</li> <li>▪ Other (specify)</li> </ul>					

(Source: Based on data from interviews (see Appendix 5.2))

Table 5. 8 Delays in land delivery process (cont'd)

Question	Response from Departments/Units					
	Land and Deeds	Survey	Lands Department	Kitwe City Council, Legal Section-land allocations	Kitwe City Council, Town Planning Section	
Do you think these 'delay' complaints are legitimate? <ul style="list-style-type: none"> <li>▪ Some</li> <li>▪ Most</li> <li>▪ Just a smaller number</li> <li>▪ All</li> <li>▪ None</li> </ul>	Some of them are legitimate	Some of them are legitimate	Some of them are legitimate	Most of them are legitimate	Most of them are legitimate	
If the delay complaints are somewhat legitimate, what do you think is the major cause, or causes, of these delays?	Part of the long process	Many causes, including inadequate funding, limited number of staff, and Survey regulations.	Institutional: many departments/units involved in the process, each with own priorities and administrative constraints.	Numerous, including inadequate staffing and funding.	Funding, staffing, and availability of land in Kitwe	
Which period (see options below) would you say that these complaints were more prominent? <ul style="list-style-type: none"> <li>▪ 1975-1990</li> <li>▪ 1995-2003</li> <li>▪ It is difficult to tell</li> </ul>	1995-2003	1995-2003	1995-2003	1995-2003	1995-2003	

(i) *The number of players and stages or activities involved*

First and foremost, the analysis finds evidence suggesting that the land alienation or delivery process is loaded with several players from different portfolios and organizational levels of government. Table 5.5 shows the two major ministries involved in the delivery process and the respective departments. However, on scrutiny of the said departments and other relevant units in the ministries reveals that there are several officials engaged in the process and most of them are remotely connected, given the diversity of specialities and their places of operation.

Furthermore, it is noted that not only does the process engage many players but also comprises several transactional activities and stages. Indeed, Figure 5.1 (see also Table 5.9) confirms the fact that there are numerous transactional activities and stages, from inception to the end of the process.

These findings have immense implications on operational efficiency of the delivery system, some of which are related to:

- Coordination

It is observed that coordinating the various activities and players, dispersed far and wide in multiple departments in various cities and towns under different ministries, becomes virtual intractable. First, each ministry has its own priorities and objectives, which may not necessarily coincide with the other ministry. Indeed, the Ministry of Lands has quite separate priorities from that of local government and housing, although both ministries are mandated to tackle the land delivery problem (see Land Circular No. 1 of 1985).

Second, in executing their respective tasks, there is bound to be conflict or misunderstandings regarding who should do what, where and when. In fact, this is quite evident in the way the process has been managed. Take the allocation stage, for instance. It is stipulated that local authorities are the *agents* of the Commissioner of Lands: their

task is to select applicants and make recommendations to the commissioner (see Land Circular No. 1 of 1985). Very often, however, there are squabbles between the local authorities and the Ministry of Lands regarding breach of protocol. From time to time, there are press reports highlighting the tension between the two players.

In recent years (from the mid-1990s), for example, there have been several accusations of corruption in allocation of land by local authorities originating from the Ministry of Lands (who, incidentally, are also accused of the same vice) (see some of the remarks by the President and Vice-President of Zambia at Appendix 5.5). In some of these cases, the Minister of Lands has had to stop certain local authorities allocating land for allegedly non-observance of laid down procedures. Recent cases reported in the press media, for instance, include revocation of the agency-status of the Lusaka City Council and Siavonga District Council (see the *Zambia Daily, Mail*, 23 August 2005 and 24 September 2005, respectively). It should be noted that the costs of such interventions are colossal to both the local authorities and land seekers, as the activities and processes of identifying and demarcating land; advertising; and selecting applicants are a costly undertaking.

Yet, it is believed that in spite of their shortcomings, local authorities sometimes do try to carry out their tasks promptly and rationally but are occasionally impeded by delayed decisions from the Ministry of Lands (see flowchart, at Figure 5.1, and Table 5.7 (item 3), on how local authorities interact with Commissioner of Lands and how that interaction affects the land delivery process (Table 5.7)). Indeed, there have been a number of land allocations that some local authorities have processed which then got stuck in limbo, awaiting final decisions from the Ministry of Lands. Some of these decisions have been known to take several months or even years. For example, the peri-urban smallholdings, just off the Kafue River, allocated by the Kitwe City Council in the mid-1990's still await the final decision of the Ministry of Lands, even to date.

Besides this, it appears local authorities have problems at times even coordinating with their own ministry (Local Government and Housing). Mwimba (2002) recounts, for instance, that despite the paucity of development/structure plans for most urban centres

in the country, where an attempt was made to formulate one (as the case was in Mazabuka Planning Authority) the ministry had not approved the plan for almost four years.

Theory indicates that coordination problems are usually associated with interdependence and often arise due to *cognitive complexity*. Buitelaar (2002) and Farvacque and McAuslan (1991) succinctly highlight these problems thus:

Sometimes the organizational structure becomes very complex, through which it becomes hard and sometimes even impossible to know all the values and goals of all the other participants, which is often the case within multi-level and multi-agency governance. Many levels and many agencies are especially associated with spatial plans or projects. Those give rise to transaction cost. (Buitelaar, 2002, p. 31)

Lack of inter-agency coordination significantly reduces the efficiency of the land supply and administration system as a whole. Sometimes the efficacy of land-market operations has been constrained by the multiplicity of sectoral institutions, each with different goals, priorities and stipulations (Farvacque and McAuslan, 1991) (see United Nations Commission on Human settlements, 1995, p. 13)

Given this insight, it is not surprising therefore that Lester (1989) argues that 'unified, rather than fragmented, organizational structures reduce coordination costs and ease the transmission of information' (see Feiock, undated, online).

- Delays:

More likely than not, the problem of multiplicity of activities and players usually gives rise to delays in execution of the entire delivery process. Such delays are more likely to take place in the public sector than the private sector due to incentive structures inherent in the former (see, for instance, Lane, 1985; Pennington, 2000; Williamson, 1999; 1973). In the private sector, the incentive for seeking profits prompts more effective monitoring of management performance (Alchain, 1965, 1977; Furubotn and Pejovich,

1972). On the other hand, agents in public bureaucracies have (1) different utility maximizing behaviour – e.g. security of careers, better jobs and salaries, entrenchment of power – and (2) are difficult to monitor due to the intricate ‘principal-agent’ relationships (Letza *et al.*, 2004).<sup>149</sup> Thus, with the multiplicity of activities and players in the land delivery process, it follows naturally that monitoring of the agent performance and activities would be comparatively difficult in the public sector. Delays are therefore eminent or more likely to occur under public sector than private sector land delivery system.

The results of the semi-structured interviews conducted by this study (see Table 5.8<sup>150</sup>) confirm the occurrence of this phenomenon and highlight its essential characteristics across the delivery process. As the table clearly indicates, complaints about execution of the various activities of the process are widespread among the public, particularly the land seekers. These complaints are, it is acknowledged to a greater extent by the various departments, legitimate and arise from a number of sources (see Table 5.8), some of which are discussed in details below.

As expected, a number of players in the process blamed the process itself for the delays. Some players were of the opinion that the process was, by nature, lengthy. Others felt it was encumbered with a number of institutional and logistical constraints. Not surprisingly, in all the departments interviewed, no blame was attributed to staff incompetence. The interview further established that the delays were comparatively more prominent in recent years (the period, 1995-2003) (see Table 5.8). The underlying causes of such prominent delays in recent times were attributed to the growth in demand for land and the work backlogs.

This clear and indisputable evidence on delays in the execution of individual tasks dovetails quite strongly with the coordination issues discussed above and, when

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<sup>149</sup> The complication, according to Letza *et al* (2004), arises from the *multiple layers of agencies* between the principals (the public) and the ultimate agents (the managers/bureaucrats).

<sup>150</sup> Interview questions used for data collection are at Appendix 5.2. Table 5.8 summarises the findings.

combined, these two factors undoubtedly impose considerably encumbrances in the operational efficiency of the delivery process.

Second, aside from the issue of multiplicity of players and activities discussed above, the study identified 'time' as one of the significant resource problem in the delivery process.

(ii) *Time*

Notwithstanding the transactional delays highlighted above, an attempt was made to assess what, in the opinion of the players, were the typical times in which to execute the respective tasks (for similar time estimates, see Roth, 1995). Table 5.9 lists the activities and/or stages in question, the respective durations in which the tasks could be completed and some remarks on the nature of the activity/office or stage.<sup>151</sup> An assessment is then carried out, breaking down the data in terms of days, weeks, months and years in order to identify which task(s) consume more time than others. The results show that, with exception of just a few cases, most tasks took months and weeks to execute (see Table 5.9). On the whole, the process was lengthy as it had the potential of extending beyond several months, or even years.

Furthermore, it is established that planning and survey-related activities consume more time than the rest of the tasks (see Tables 5.9 and 5.10). Evidence, both from interviews and publications, indicates further that major planning activities are rarely carried out, although some survey and registration work do go on routinely (see Table 5.10).<sup>152</sup>

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<sup>151</sup> Appendix 5.2 shows the interview questions used for the data collection. Table 5.9 summarises the findings.

<sup>152</sup> Mwimba (2002) and Wekwete (1994) report that most, if not all, urban centres have outdated development/structure plans. This is a clear signal that there has been very little planning activity in the transactional process of land delivery.

Table 5.9 Land delivery process: transactional activities, stages and duration

Activity/Office/Stage	Typical duration <sup>153</sup>	Average/mean time periods				Remarks
		Days	Weeks	Months	Years	
1. Land identification & survey ( <i>Survey work may or may not precede the 'lease offer' stage</i> )	Several months, sometimes years			√	√	Advertised, pre-demarcated land is not always available. Hence, the lengthy land identification and survey process an individual land seeker may have to go through.
2. Plans, Works, & Development Committee of Local Authority ( <i>Receives and considers applications</i> )	Weeks to months.		√	√		Preliminary review and consideration of application; in readiness for full council meeting.
3. Full council meetings ( <i>Selects applicants</i> )	Three (3) to four (4) months			√		Meetings determined by Council standing orders and costs of bringing councillors together.
4. Ministry of Local Govt & Housing: Provincial office, or the HQ in Lusaka ( <i>Receives, inspects &amp; forwards applications to Lands Dept</i> )	A couple of days, and perhaps weeks	√	√			
5. Lands Department, Lusaka  • Registry • Relevant regional office • Registry • Land Department Folio Section (Map Room) ( <i>Mapping, etc.</i> )	A week, or two		√			The Registry is the nerve centre for Lands Dept: all files pass through this point en-route to any office in the department.
6. If the parcel is available, file dispatched to Survey Department ( <i>Mapping &amp; numbering</i> )	Approximately (1) month, or so			√		Checked against master map in the Property Registration Section (Plan Room), numbered and send back to Folios

<sup>153</sup> The figures in this column were procured from two main data sources - (a) documents (particularly, Roth, 1995) and (b) interviews with government and local authority officials.

Table 5.9 Land delivery process: transactional activities, stages and duration (*cont'd*)

Activity/Office/Stage	Typical duration <sup>154</sup>	Average/mean time periods				Remarks
		Days	Weeks	Months	Years	
7. Lands Department Folio Section (Map Room) <i>(Mapping &amp; numbering)</i>						At this stage applications are sent for the actual allocation
8. Land Allocation Committee (LAC) <i>(Land allocation)</i>	About one (1) week		√			LAC, meets weekly, advises the commissioner of lands, who makes the final decision.
9. If the allocation is approved, Lands regional office or HQ dispatches the offer by post to the Applicant <i>(Offer stage)</i>	Two (2) weeks, and often much longer.		√			
10. Planning permission: Is it needed? - YES	Varies considerably: could be as much as five (5) months.			√		An offer is made in principle pending actual grant of planning permission.
11. Planning permission: Is it needed? - NO	About two (2) months after the letter of offer.			√		Service/lease charges may have to be paid.
12. At 'offer' stage: is the land surveyed? <i>Sketch plan or Survey diagram may be required.</i>	May take two (2) months.			√		Sketch plan is easier and faster to produce (though limited to 14-year leases only) than survey diagram that requires rigorous survey procedures
13. Acceptance of the 'offer' and issuance of title (From Applicant to CoL and Lands & Deeds Registry)	About ten (10) to fourteen (14) days.	√	√			
		2	6	7	1	

(Source: Based on interview &amp; documental data)

<sup>154</sup> The figures in this column were procured from two main data sources - (a) documents (particularly, Roth, 1995) and (b) interviews with government and local authority officials.

Table 5.10 Public sector land delivery: resource constraints and incentives -1975-1995

Activity	Planning	Survey	Allocation	Registration	Application
<i>Agent</i>	Local authorities	Survey Dept	Local authorities	Commissioner of Lands & other staff	Individuals & organisations
<i>Tasks</i>	Identifies land and produce layout plans and/or install physical infrastructure	Carry out cadastral surveys & check private sector surveys	Advetise, select & recommend applicants	Registers land rights & issue titles	Respond to advertisements or make personal enquiries to local authorities or Ministry of Lands
<i>Resource constraints:</i>					
<i>Time-Duration</i>	Varies: several months, even years	Varies: several months, even years	Varies: several months (usually 3-4 months)	Varies: usually a couple of weeks	Varies: a couple of weeks, even months
<i>Time-Frequency</i>	Rarely	Routinely	Occasionally	Occasionally	Routinely
<i>Staffing</i>	Inadequate	Inadequate	Inadequate	Inadequate	N/A
<i>Funding</i>	Inadequate	Inadequate	Inadequate	Inadequate	N/A
<i>Incentives: Bureaucratic corruption</i>	Not evident	Not evident	Most likely	Likely	Likely

(Source: Based on interview & documental data)

Table 5.11 Land delivery malpractices: expert witness statistical results

Variable	Response	High frequency response(s) (Consensus of 26 respondents)		Remarks
		1975-1995	1995-2003	
Double/multiple plot allocations	Always/almost always			
	Sometimes	√	√	Identical results
	Usually			
	Rarely			
	Never/almost never			
	Cannot remember/tell			
Govt officials ignoring land allocation procedures	Always/almost always			
	Sometimes	√	√	Identical results
	Usually			
	Rarely			
	Never/almost never			
	Cannot remember/tell			
Party officials influencing land allocations	Always/almost always	√	√	Quite identical results
	Sometimes		√	
	Usually		√	
	Rarely			
	Never/almost never			
	Cannot remember/tell			
Illegal land subdivisions	Always/almost always			
	Sometimes	√	√	Almost identical results
	Usually		√	
	Rarely			
	Never/almost never			
	Cannot remember/tell			
Land allocations in non-designated areas	Always/almost always			
	Sometimes	√	√	Identical results
	Usually	√	√	
	Rarely			
	Never/almost never			
	Cannot remember/tell			
Land allocation waiting periods	Always/almost always	√	√	Quite identical results
	Sometimes			
	Usually		√	
	Rarely			
	Never/almost never			
	Cannot remember/tell			

(Source: From survey results (see SPSS output, Appendix 5.4))

Table 5.12 Public sector land delivery: resource constraints and incentives - 1995-To date

Activity	Planning	Survey	Allocation		Registration	Application
<b>Agent</b>	Local authorities	Survey Dept	Local authorities	Commissioner of Lands & other staff	Lands and Deeds Registry	Individuals & organisations
<b>Tasks</b>	Identifies land and produce layout plans and/or install physical infrastructure	Carry out cadastral surveys & check private sector surveys	Advertise, select & recommend applicants	Considers recommendations and makes offers	Register land rights & issue titles	Respond to advertisements or make personal enquiries to local authorities or Ministry of Lands
<b>Resource constraints:</b>						
<i>Time-Duration</i>	Varies: several months, even years	Varies: several months, even years	Varies: several months (usually 3-4 months)	Varies: usually a couple of weeks	Varies: usually a couple of weeks; sometimes days	Varies: a couple of weeks, even months
<i>Time-Frequency</i>	Rarely	Routinely	Occasionally	Occasionally	Routinely	N/A
<i>Staffing</i>	Inadequate	Inadequate	Inadequate	Inadequate	Inadequate	N/A
<i>Funding</i>	Highly inadequate	Highly inadequate	Highly inadequate	Highly inadequate	Highly inadequate	N/A
<b>Incentives: Bureaucratic corruption</b>	Not evident	Not evident	Most likely	Most likely	Most likely	Most likely

(Source: Based on interview & documental data)

Table 5.13 Public sector land delivery: resource constraints and incentives - Pre-1975 era

Activity	Planning	Survey	Allocation		Registration	Application
<b>Agent</b>	Local authorities	Survey Dept	Local authorities	Commissioner of Lands & other staff	Lands and Deeds Registry	Individuals & organisations
<b>Tasks</b>	Identifies land and produce layout plans and/or install physical infrastructure	Carry out cadastral surveys & check private sector surveys	Advertise, select & recommend applicants	Considers recommendations and makes offers	Register land rights & issue titles	Respond to advertisements or make personal enquiries to local authorities or Ministry of Lands
<b>Resource constraints:</b> <i>Time-Duration</i> <sup>155</sup>	Not assessed	Not assessed	Not assessed	Not assessed	Not assessed	Not applicable
<i>Time-Frequency</i>	Rarely	Routinely	Occasionally	Occasionally	Routinely	Not applicable
<i>Staffing</i>	Inadequate	Inadequate	Inadequate	Inadequate	Inadequate	Inapplicable
<i>Funding</i>	Limited	Limited	Limited	Limited	Limited	Not applicable
<b>Incentives:</b> <i>Bureaucratic corruption</i>	Not evident	Not evident	Likely	Rarely	Rarely	Rarely

(Source: Based on interview & documental data)

<sup>155</sup> Not assessed because of (a) different modes of delivery and (b) difficulties of accessing/compiling data.

It is also acknowledged that some land allocations do actually take place, albeit, occasionally (see Table 5.10).

Time is money.' We have often heard this statement. If this were not true, the implications of a lengthy delivery process would not matter. It is because time is a critical factor that its role in the delivery process cannot be simply ignored. A lengthy delivery process, as it is evident in this case, is a clear symptom of an inefficient system. Table 5.7 (above) presents critical factors in the land delivery process. To improve and expedite the delivery process, in its current form, the said factors must be carefully addressed.

(iii) *Funding and staffing*

For the delivery system to function properly, it must not only be adequately funded but also be qualitatively and quantitatively supported by appropriate personnel. To emphasize the point in regard to the latter factor, it suffices to remark once again, as Popper (1957) did several decades ago, that: "institutions are like fortresses: they must not only be well designed but also properly manned (p. 66)." As for funding, this is a very vital resource central to the operation of land delivery. In fact, it is the lifeblood of all economic activities. Serious deficiencies in both factors can therefore cripple the entire operations.

Evidence gathered both from the interviews and documents however indicate overwhelmingly that the delivery process in question is inadequately funded and staffed (see Table 5.10; Appendix 5.2).<sup>156</sup>

Due to inadequate funding, the decentralisation of the lands department was, for instance, deferred for many years until very recently. Way back in 1985, the *Land*

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<sup>156</sup> Appendix 5.2 shows the interview questions used to capture some of the data. Table 5.10 summarises the findings.

*Circular No. 1 of 1985* pointed out that, although plans to decentralise the various aspects of land administration and alienation to the provincial centres had been made, they could not be implemented until funds were available. By 1993, the Lands Department reported that:

Until now all the services rendered by the Department have been from the Department's headquarters in Lusaka. To meet demand, the Department has opened offices in the eight provinces as contact points except for Ndola where the office has been constructed with a view to opening a fully decentralised office to cater for land administration and registration. (Zulu, 1993a, p. 7-8)

Lamenting on the funding and staffing inadequacies of the Lands Department, the Commissioner of Lands in 1993 further noted that:

... the workload in the Department [of lands] has increased considerably over the years. But until this year, the establishment of the Department remained almost static. ... It is my conviction that without donor assistance in the form of personnel, training and the strengthening of the administration through the computerisation of the records, the system would not have been adequately sustained. ... If I had to administer land as it existed in the pre-1975 era, the strengthened administration would cater adequately and give expected services to all the users of the services provided by the Department. (Zulu, 1993a, p. 7)

The other important player, the Ministry of Local Government and Housing (under which local authorities operate) face similar constraints. At local authority level, these constraints are even more prominent. A litany of their woes can be found in several works and publications (see, for example, Mulwanda and Mutale, 1994; Mukwena 2002; Wekwete, 1994; Mwimba, 2002), pointing out, among other things, why they are unable to cope with land delivery and spatial development control. Thus, as a result of these constraints, most urban centres have had outdated development plans – the very basis on which land delivery hinges.

As far as staffing shortages are concerned, the most affected operations are planning, at local authority level, and surveying, at the Ministry of Lands. It was not possible however to ascertain the relative effect of under-funding on the various activities through the research strategy adopted in this study.

Indeed, the implications of an under-funded and under-staffed land delivery process are enormous and far-reaching. The problems of delays, work backlogs, and coordination identified and discussed above could be explained, in part, by inadequacy of these critical factors.

(iv) *Perverse incentives and rent-seeking behaviour*

Perverse incentive is a term used to describe an incentive that has the opposite effect to what is originally intended (Wikipedia, online). Thus, by definition, perverse incentives produce unintended consequences. India's attempt to eradicate rats by paying a bounty for each rat pelt handed in is often cited as a typical example. Due to the perverseness of the incentive involved, this scheme resulted in proliferation of rats through 'rat farming.'

Rent-seeking, on the other hand, is a phenomenon that takes place when 'an entity seeks to extract uncompensated value from others by manipulation of the economic environment – often including regulations or other government decisions' (Wikipedia, online). Tullock, to whom this phenomenon is attributed following his 1967 paper, defines rent-seeking as 'outlay of resources by individuals and organizations in the pursuit of rents created by government' (Tullock, 1998).<sup>157</sup>

Arguably, both concepts have relevancy to the topic at hand. In a regime where land is nationalized and allocated administratively ignoring market value of the land (whether in

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<sup>157</sup> 'Rent' here simply means 'income or benefit' so derived from such outlay of private resources. It does not carry the usual meaning of 'payment for a lease' in the normal landlord-tenant relations (see, for instance, Lai, 1997, p. 187-189; Webster and Lai, 2003, p.5-6).

line with the land policy, as under the 1975 policy framework; or not, as under the 1995 policy framework), the problems of perverse incentives and rent-seeking invariably arise as economic agents (individuals and organizations) competitively seize the opportunity to acquire the under-valued land being allocated by the state.<sup>158</sup> Allocating land cheaply, as so often happens in most state land allocations schemes, induces massive demand. The increased 'demand' for land at low 'non-market prices' prompts unintended malpractices and vices among the officials entrusted with the responsibility of land allocation.<sup>159</sup> These vices include corruption and bribery, favouritism, or nepotism. Ultimately, such vices increase the *cost* of land delivery and acquisition and generate many other land management and planning problems. Bribery and corruption, for example, "often encourage the bureaucracy simply to create additional artificial administrative hurdles in order to receive side payments for their removal (Feige, 1997, online)."

Theoretically, the problems of perverse incentives and rent-seeking behaviour could even be more acute if 'land value' is officially/legally recognized, as under the 1995 policy regime. Fully aware that they could either legally dispose of their cheaply acquired land assets at market prices immediately after acquisition or engage in land speculative activities by holding on to cheaply acquired parcels of land for indefinite periods of time, economic agents may be motivated to bribe land allocation administrators. In this way the problem of perverse incentives and rent-seeking behaviour may not only be exacerbated but also perpetuated, resulting into a vicious circle.

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<sup>158</sup> The property rights literature points out that if valuable attributes of a scarce resource are left in the public domain, economic agents will (wastefully) compete to capture them (see, for example, Barzel, 1989; Benham and Benham, 1997; Feige, 1997; Webster and Lai, 2003). Feige (1997) in particular asserts that if valuable assets with ambiguous property rights are kept in the public domain predatory behaviour is likely to ensue.

<sup>159</sup> "When public officials are granted authority to licence, prohibit, tax, ... and distribute valuable property rights and natural resource endowments – monopoly powers are created in the public domain" (Feige, 1997, online). The monopoly powers so acquired induce corruption and bribery.

The issue of perverse incentives and rent-seeking in land allocation have been identified and thoroughly discussed by many commentators in Sub-Saharan Africa, including Garba (1997), Kironde (1997) Kombe (1995) and (Olima, 1997). Because of the significance of this matter, an attempt was made to incorporate some aspects of it in the study. To this effect an inquiry was made: (a) to seek views from expert witnesses (in this case, the registered valuation surveyors<sup>160</sup> in Lusaka and the Copperbelt) and (b) gather noteworthy comments and observations from some eminent persons (such as senior politicians, court judges, and the press media) regarding their perception of deviant or corrupt practises in the land delivery system.

From literature review and earlier discussions with some professional staff involved in land allocation, aside from direct corrupt practices, the following were identified as specific practices directly or indirectly related to perverse incentive and rent-seeking behaviour that could have occurred under the two policy frameworks: (a) double or multiple plot allocations, (b) government officials ignoring land allocation procedures, (c) illegal land subdivisions, and (d) land allocations in non-designated areas.

An expert witness questionnaire was thus distributed to all registered valuation surveyors in the said regions (most of the valuation surveyors (all except one) in the country reside in the said territories). The response rate was 65%. The questionnaire and statistical analysis output are shown at appendices 5.3 and 5.4. Table 5.11 shows the results of the questionnaire survey. The consensus of the expert witness group is that the malpractices of (a) double or multiple plot allocations, (b) government officials ignoring land allocation procedures, (c) illegal land subdivisions, and (d) land allocations in non-designated areas, do sometimes occur. Furthermore, it is acknowledged that the problems of (a) party officials influencing land allocations and (b) lengthy waiting periods for land allocation are always, or almost always, recurring. In short, in the opinion of the expert witnesses, the land delivery process is characterised by the said widespread malpractices.

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<sup>160</sup> These are professionally qualified surveyors (the equivalent of chartered surveyors in the UK) and estate agents with knowledge and/or experience in land transactions matters, including allocation.

The long delays in land allocations are also acknowledged very strongly.

Views from eminent persons, on the other hand, were extracted from published documents. The respective excerpts are tabulated at Appendix 5.5. From the comments and observations made by the eminent persons (see Appendix 5.5), it is apparent that:

- The issue of corrupt practices is not a recent phenomenon. It dates back to the pre-1975 era. Kaunda's (the first Zambian president) testimony is indicative of the problem's long history – having had been in existence prior to the land reforms in question.
- Both the Ministry of Lands and the Local Authorities are equally affected by the corrupt practices. Although it is not clear who are the major culprits at the Ministry of Lands, at local authority level, councillors and political party cadres stand out.
- Unsurprisingly, politics appear to have a role in the problem.<sup>161</sup> There is some evidence that the delivery system is sometimes used to gain political advantage over other political organisations or for personal benefit of the politicians themselves (see remarks by The Post, Mr Sikota, and the Jesuit Centre for Theological Reflections in Appendix 5.5).

Now having analysed the views of the two survey groups (expert witness and eminent persons), what does the overall picture portray about the existence of perverse incentives (corrupt practices and other land allocation malpractices) in the delivery process? It is clear that both groups acknowledge quite strongly that the problem does actually exist. The issue of delays in land allocations is equally recognised (see, for instance, Mr Kavindele's remarks and expert witnesses' response to the question on 'land allocation waiting periods' in Appendix 5.5).

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<sup>161</sup> Jain (2001) notes that corruption is not only an economic problem; it is also a political one.

The issue of perverse incentives/rent-seeking behaviour in public sector was highlighted under chapter 2. The views obtained from the two survey groups clearly epitomize the very nature of perverse incentives referred to in that chapter (see literature review). As pointed out in the literature, perverse incentives can and do *adversely* affect the operational efficiency of the land market through increases in transaction costs, risk and uncertainty.

- *Land delivery under the 1995 land policy reforms*

As the modus operandi under the 1995 land delivery regime is fundamentally the same as in the previous one, the data collected is characteristically similar to that of 1975 policy regime. An attempt is now made to compare the two policy regimes on the same issues raised under the 1975 policy. Four important issues, and their implications, stand out from the discussion of the 1975 policy regime above, namely: (i) the number of players and stages or activities involved, (ii) transaction time, (iii) funding and staffing, and (iv) perverse incentive and rent-seeking behaviour. I now briefly elaborate on some of these.

#### *The number of players and stages or activities*

The number of transactional stages and activities, as well as players, is fundamentally the same under both policy regimes. Variations do, of course, occur occasionally due to changes in staffing. In view of the foregoing, what has been discussed under the 1975 policy regime regarding the implications of this issue largely applies to 1995 policy regime too.

#### *Funding and staffing*

Most of what has been said about funding and staffing constraints under the 1975 policy regime remains valid. However, it is noted that the level of funding has deteriorated

even further over the years due to financial and economic difficulties faced by the country. The central government has been unable to marshal and allocate sufficient financial resources to all public sectors. As in the previous decades (see Wekwete, 1994), central government grants continued to be erratic and not commensurate with the to local authority needs. The Land Development Fund (an innovation conceived under the 1995 policy, see section 16 of the Lands Act 1995) has not equally been effective, as no allocations have been made in sufficient quantities. In fact, disbursement of these funds was discontinued shortly after it was established and remains so even to date (see minister of lands' statement in the *Times of Zambia*, 25 August, 2005).

With regard to staffing, the delivery process has benefited from a small number of university graduates who have joined the local authorities and lands department in the departments of planning and valuation. The number of new recruits is, however, not sufficiently large to stem the staffing problem altogether.

#### *Perverse incentives and rent-seeking behaviour*

Although the level of malpractices in land allocation are almost identical for both regimes (see Table 5.11), my discussions with various players in the delivery process and the Zambia Land Alliance (a non-governmental organisation) suggest that corrupt practices have increased even further in recent years under the 1995 policy regime. This is partly because although the subject of 'land value' is now officially recognised, land allocations are still *administratively* carried out as under the 1975 policy regime which ignored land values. Since land prices are comparatively higher in the open market than when allocated administratively by the public sector, there are real incentives to capture the potentially high returns subsequent to public allocations.<sup>162</sup> Hence, it makes economic sense, on the part of an individual land seeker, to bribe the officials involved in order to secure the land applied for and/or speed up the allocation process. It is not

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<sup>162</sup> For both periods 1975-1995 and 1995-2003, 73% of the respondents to the expert witness questionnaire survey maintained that the sum of money paid for any piece of land acquired through state administered land delivery process is less than that it would fetch if bought in the open market.

surprising therefore that land allocation and registration activities, as shown at Table 5.12 (under the 1995 policy), are more vulnerable to corrupt practices than ever before (see Tables 5.10 and 5.13).

#### **5.4 Summary and synthesis**

This chapter extends chapter 3, which reviewed the 1975 and 1995 policy reforms. As intimated above (see the introductory section), this chapter sought to examine the land-delivery systems across the land policy regimes in question and (a) ascertain whether these land policy regimes generated any significant bottlenecks; and, if so, (b) assess the incidence of transaction costs. The research process has been guided by research questions that query the operational efficiency of the land delivery process. For reasons explained earlier, the study applied multiple data and analytical methods. Accordingly, the study yielded multifaceted findings as summarised hereunder.

First and foremost, the study finds that the land delivery systems under both 1975 and 1995 policy regimes are not fundamentally different. Although the intentions of the 1995 policy reforms were, among other things, to improve the land delivery system, the subsequently legislative changes and administrative practices did not conform to the said policy statement. If anything, the 1995 legislative and administrative machinery entrenched the 1975 policy framework of state land-alienation and administration. Consequently, the consequences of the 1975 policy reforms, as far as land delivery is concerned, extend well beyond the 1975-1995 era to the present (1995) policy regime.

The study identified four main issues regarding the operational efficiency of the land delivery system, namely (i) the number of players and stages or activities involved, (ii) transaction time, (iii) funding and staffing, and (iv) perverse incentive and rent-seeking behaviour. Adopting a multi-method approach to qualitative data analysis, the study tracked the land delivery process for both policy regimes and found evidence of:

- Large numbers of players and activities.
- Lengthy transaction time periods.
- Under-funding and under-staffing resource constraints.
- High incidence of perverse incentives (land allocation malpractices and other corrupt practices).

Furthermore, the study notes that under the 1995 policy reforms the problems of under-funding/under-staffing and perverse incentives were exacerbated due to the specified underlying reasons (see section 3).

The findings, though multifaceted, are mutually related and/or supportive through and through. Note, for instance, that:

- (1) The large numbers of players and activities (see Tables 5.5, 5.6 and 5.9), by implication, suggest lengthy transactional time. Empirical evidence on transactional time confirms that this is indeed the case (see Table 5.9, 5.10 and 5.12).
- (2) An under-funded and under-staffed transactional process (as per the evidence presented above) cannot proceed at an efficient tempo. This, therefore, retards or delays the transactional process.
- (3) A lengthy (because of a series of stages and activities) and retarded (due to funding and staffing constraints) transactional process impedes productivity and, because of these bottlenecks, generates perverse incentives (as the empirical evidence has exhibited).

In short, the findings logically and systematically link up. Hence, realising the benefits of a qualitative, multiple-method research strategy commonly referred to as 'triangulation' (see Bryman, 1992a & b; Creswell, 1994, Philip, 1998).

In transaction-costs terms, the overall implication of '(a) multiple players and activities, (b) lengthy transactional time, (c) failure to provide sufficient funding and staffing, and (d) the high incidence of perverse incentives and rent-seeking behaviour (see chapter 2 on the determinants and significance of transaction costs)' is that *the transactional (land delivery) processes in question are positively and heavily burdened with transaction costs*. The implications of these findings are, therefore, *consistent* with the perception (see the questions raised in the introductory section) that the land delivery systems in question may be operationally inefficient.

### **5.5 Concluding remarks and recommendations**

Understandably, one of the *prime* objectives of the two (1975 and 1995) land reforms was to improve land delivery so that the majority of the people could afford it (see chapter 3 and section 2 above). Having reviewed and evaluated the policy reforms in question (in chapter 3) and the associated land delivery systems and processes (in this chapter), it is only appropriate that we now shed some light on the question posed in chapter 1: why does urban landlessness persist in spite of the changes in land reforms?

As intimated in chapter 3 and section 2 above, the 1975 land reforms were motivated by the need to make land affordable or accessible to a wide range of people through economical means of land delivery other than the market. Since the pre-1975 era was characterized by high land prices, the government of the day felt that the cost of acquiring land could be considerably reduced or done away with altogether if land ownership and delivery were brought under state stewardship. Put simply, the change from market-based to state administered delivery system was prompted by the need to avoid the *high* transaction costs associated with market-based land delivery system. Implicitly, the land market was considered to have failed to marshal and supply adequate land to most urban needs at affordable prices. In view of this perceived market failure, government took over the functions of land allocations.

By the mid-1990s, it was all too clear that the supply of urban land under state stewardship was not any better as well. If anything, the situation had in fact deteriorated drastically. In fact, the land supply situation had begun to worsen soon after the 1975 land reforms (see Law Development Commission, 1981; Pasteur, 1979) and it was a matter of time before it could come to a head. Sadly, to date, even after the 1995 land reforms, the problem of mass urban land scarcity persists. Now, the paradox this study set out to resolve (see chapter 1) is: 'If the two sets of reforms were (a) really intended to improve land delivery and (b) *materially* different, as the policy reversal process in the subsequent era suggests; why then does urban landlessness persist at such a grand scale?'

In the light of what has been gathered, reviewed and analysed thus far (in this and the preceding chapters), it is now evident that:

- Although the two reforms are materially different in some respects (see chapter 3), they are basically similar in so far as land ownership and delivery systems are concerned (see chapter 3 and section 3 above).
- The delivery systems and processes are not only similar under both land policy regimes, more importantly; they are characterized by high transaction costs.
- Under both policy regimes land has been administratively allocated well below its market value notwithstanding the high transaction cost structure of the land delivery system.

Clearly, the allocation of land at below market values when the delivery systems are heavily laden with high transaction costs did not aid but crippled the *strategic* land supply process. This, therefore, largely explains why land could not be supplied at large scale or delivered in sufficient quantities to stem the perpetual growth in urban landlessness.

In view of the foregoing, what lessons or conclusions can we draw from these reforms?

- Market failure vis-à-vis policy or government failure

First, the problem of land delivery can no longer be attributed exclusively to market failure<sup>163</sup> anymore; it is equally a characteristic feature of the state administered delivery system. As literature review in chapter 2 indicates, and this study has demonstrated, government or the state can also fail. Indeed, 'government failure' in providing sufficient land for urban use and development is an issue that also deserves attention and scrutiny in much the same way that 'market failure' has featured in conventional economic literature.

Second, this study confirms also the point made by Coase (1960; 1988a & b; 1992a) that just as there is a cost of using the market/price system, state intervention also entails a cost; and that in some instances, state bureaucracy could be extremely costly (see chapter 2).

The review of the delivery process in this study has demonstrated that real resources (pecuniary and non-pecuniary), some in insufficient quantities, have been expended in the process of land delivery. In other words, land could not be allocated at *zero cost* (as was conceived under the 1975 reforms), as the processes of *urban* land delivery entail considerable costs irrespective of the delivery mode.<sup>164</sup> Indeed, if the land delivery were costless, the mode of land delivery would not matter (see 'Coase Theorem' in chapter 2).

Furthermore, the fact that mass urban landlessness and state land delivery bottlenecks have not only persisted but also escalated under the 1995 land policy framework could be an indication that the consequences of government failure may be comparatively

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<sup>163</sup> As manifested by the spiralling land values, land speculative activities and mass urban landlessness of the pre-1975 era.

<sup>164</sup> The costs, for example, of identifying land, planning, surveying, and conveyancing are inescapable irrespective of the mode of delivery. Indeed, these may be designated, as literature review in chapter 2 has indicated, as technological transaction costs in direct contrast to institutional transaction costs, which are associated with specific modes of delivery/governance.

*more* poignant. Thus, on this basis, state intervention has served no real beneficial purpose other than aggravating the situation.

- Land policy, institutions and economic performance

Land reforms (or land policy reforms)<sup>165</sup> have been conceptualised in this study as a set of institutions (see chapter 2). On the basis of this conceptualisation, land reforms basically comprise (a) government policies, which spell out the goals and desired outcomes and (b) the support institutions (e.g. legal and administrative framework) that effectively facilitate the translation of the policies into actual implementation. This conceptualisation of land reforms is quite evident from the way the study has been carried out. It is worthy of note in particular that in the analysis of the effects of land reforms reference has been made, from time to time, to government policy, legal statutes and/or administrative framework vis-à-vis land.

In this respect, the study has uncovered (consistent with the theory on institutional change; see, for instance, North, 1990a) the fact that although *policies* themselves may change, other institutional factors (those that ought to support and entrench the policies in question) may persist; and is so doing, distort the 'letter and spirit' of subsequent policies; and even lead to policy fail. More specifically, it has been observed that although the 1975 and 1995 land policies were two distinct sets of policies, having been founded on dichotomous philosophical and economic perspectives, the underlying legal and administrative frameworks overlapped.

The 1975 land policy despite espousing a dichotomous philosophical perspective that 'land is a free gift from God' and therefore be freely transferable, continued and naively

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<sup>165</sup> This study adopts both (a) Mbaya's definition of *land policy* as: "a set of basic principles, guidelines and rationale upon which land legislation, together with the strategies and infrastructure for their implementation, can be developed" (Mbaya, 2000, online) and (b) the World Bank's (2002b, p. 6) definition of *policies* as "goals and desired outcomes."

upheld a 'centralised, plan-led' land delivery system whose legal and administrative frameworks were characteristic feature of the preceding policy which upheld private property. It is important to note that the 'centralised, plan-led' land delivery system, due to its bloated multi-layer administrative structure and multiple activities, entails considerable costs. In the pre-1975 regime, which was founded on private property rights, these costs could be offset by income from land sales (see SIZ, 1981, p. 71-79). Since land was not saleable under the 1975 regime and the delivery agents (public bureaucrats) were directly depended on the central government funding, most land delivery operations could not be sustained even with a strict cost-recovery arrangement. It is not surprising, aside from the defective nature of the policy itself,<sup>166</sup> therefore that the adoption of the pre-1975 'centralised, plan-led' administrative framework led to the dismal performance of the 1975 land policy.

In the same vein, the 1995 land policy while heroically advocating for an efficient land delivery system based on private property and ownership of land (see 'MMD manifesto' in chapter 3), amazingly *stuck* to not only the 1975 legal framework of state land ownership and allocation but also the 'centralised, plan-led' administrative structure. As indicated above, the 1975 policy regime was unsustainable. It follows, therefore, that the 1995 policy regime would fail in the similar fashion.

Clearly this review has demonstrated that while policies may change overnight, most institutions do not. Undoubtedly, institutions change incrementally and possess immense survival ability (Langlois, 1986a & b; North, 1990a; Jones, 1995; Van der Krabben, 1995; Syrquin, 1995). It is also evident from the review that government policies are bound to fail if they do not correlate with support institutions. In short, land policy, important though as it may be, is not the only significant motivating factor. Institutions matter as well.

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<sup>166</sup> Arguably, it is not conceivable that *urban* land would sustainably be allocated *freely* (i.e., at no cost or value), or even on cost-recovery basis, as implied by this policy. Land delivery (even for rural land) is a transactional process and entails transaction costs.

### 5.5.1 Recommendations

Before tendering some suggestions on how the current land delivery system could be reformed, it is important that we highlight the following insights.

- Land delivery is a transactional process; and like all transactional processes in the real world, it is not *costless* to operate whatever mode/system of land delivery is adopted.
- Land delivery systems are a product of the land tenure and the associated property rights;<sup>167</sup> and the latter (institutions) are reconfigurable by land policy reforms. Hence, there is a relationship between land reforms and land delivery (the former has a bearing on the latter).
- Any contrived changes to land policy must correspondingly be accompanied by reform of support institutions, particularly the legal and administrative structures. In other words, to be effective, land reforms should be carefully crafted so that public policy and related institutions are in tandem.
- From the perspective of property rights/transaction cost economics, a land delivery system/process that is *least costly* to operate is the most preferred option. However, as there are several ways of restructuring land tenure/property rights systems (and this is essentially a political question), there are equally many ways of reforming the land delivery systems. Conceptually, market-based delivery systems are most preferred modes of delivery because of the efficiency with which market-oriented systems operate. Markets, however, can only function well relatively to the institutions within which they operate (see, for instance, Frey, 1990; Wiebe and Meinzen-Dick, 1998).

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<sup>167</sup> Land delivery involves creation and allocation of property rights in land. It follows therefore that the nature and structure of land rights (which are determined by the land tenure/property rights system) has a bearing on land delivery.

On the basis of the above observations and insights, the following recommendations are proffered for an effective reform of the extant land delivery system.

First, the 1995 (MMD government) land policy, which purports to promote private property and land ownership and improve land delivery, should be retained. However, since this policy is not underpinned by appropriately structured legal and administrative framework (as section 3 above), legal and administrative changes are needed to harmonise with the said policy.

As far as the legal framework is concerned, there is need to modify Part II (particularly sections 3, 4 & 6) of the Lands Act 1995. It may be politically justifiable to vest ultimate ownership status of land in the State (or the President) – after all even in the highly developed capitalist countries like the UK ultimate ownership of land resides with the Crown (see Balchin *et al.*, 1988, p. 278) – the issue of land alienation however ought to be redressed. As this study has demonstrated, state land alienation/delivery has lamentably failed in its existing form.

As regards the administrative framework, the whole network of the delivery system and the associated processes would have to be reviewed. It is unduly lengthy. However, administrative changes can only be effected within the legal framework. Hence, the need for legal reform first of all.

Operationally, the following options may be considered at national (countrywide) or local authority level:

1. Liberalise land alienation

Since most of the state-owned enterprises have been privatized, it may be helpful to consider liberalising (fully or partially) land alienation transactions. The state's role could then be limited to monitoring the process and/or alienating land for public use and the urban poor. This recommendation is based on the premise that the private sector is

suitably constituted to introduce 'market discipline' and its associated improvements in efficiency. The private sector would not, of course, engage in land delivery if the transactions of land alienation were found to be unprofitable. Thus, this proposal presupposes that land would be allocated at market prices. Suffice it to say, professional land delivery tasks/processes relating, for instance, to planning; land surveying; conveyancing; and land administration and valuation could easily be liberalised. In fact, some level of private professional activity (e.g., surveying) has already been permitted (see Land Circular No. 1 of 1985) and private planning consultants have been hired before for major planning projects in some local authorities (e.g., Kitwe City Council).

One of the reasons the pre-1975 land delivery system could not cope up with the rapid growth in demand and urban expansion is not really because the market-based delivery system failed as such. It was partially due to the failure of the supporting institutions, particularly the government's lack of foresight and inability to innovate. The rising land prices, for example, would have been stabilised or significantly reduced by appropriate fiscal and land supply measures. Instead of outright land nationalisation, carefully devised land-value taxes and land banking techniques could have applied.

## 2. Retain state alienation of land

If the country insists on a state-administered land delivery system, to cut down on transaction costs and sustain the land delivery operations, it would be necessary to carry out the following:

First, land should be allocated at market prices (say, by auction sale). The existing arrangement of allocating land at administratively determined 'prices' is not helpful at all. It encourages corruption and related vices.<sup>168</sup> And, more importantly, it is not a prudent and economic way of allocation a scarce resource.

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<sup>168</sup> When a scarce resource is kept in the public domain and administratively allocated, rent-seeking and perverse incentives ensue.

Second, the 'centralised, plan-led' delivery system – in its current form and structure and for reasons adduced above – should be abolished.<sup>169</sup> It is advisable to revert back to the head-lease system (see section 3 above) where land was directly allocated by individual local authorities. This proposal however is predicated on the understanding that local authorities would be financially and administratively capable of managing their own affairs as they had done before. The head-lease system was tested and appears to have worked well at the time (see Mushota, 1993 and section 3 above), so it could be a good and convenient start point in the reform process. In this regard, section 6 of the Lands Act 1995 and related statutes (which promote the direct-lease system) should be amended accordingly to facilitate this proposed change.

### 3. Network

Beyond these recommendations, it is further proposed that, since under certain circumstances both the market and the state/public sector delivery systems do fail, both the state/public sector and the private sector should complement each other in the land delivery process. Each sector should perform a function or a series of functions that offer comparative advantage in transaction costs terms. In this respect, it can be argued that the role of the state/public sector should be limited to tasks or functions, such as strategic planning, which are less attractive to the private sector. As outlined above, most of the professional land delivery functions could be performed by the private sector in tandem with land market demand pressures. Alternatively, both the state/public sector and the private sector may jointly work together in certain tasks or functions that are amenable to collective governance structures and, thereby, reduce transactional costs or facilitate prompt land delivery services. Here, partnerships, and similar network schemes, are possible in areas such as conveyancing, land use planning, and surveying.

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<sup>169</sup> This does not invalidate or contradict the argument that 'centralisation in administration creates greater certainty in decision-making and thus reduces transaction costs.' What is at issue here is that a bloated, multi-layered administrative structure with multiple tasks - as evidently is the case with the land delivery system in question – is a recipe for disaster. It is a costly governance structure compared, say, to a 'decentralised, plan-led' administrative arrangement.

This recommendation is based on theory that espouses constructive engagement or interrelationships between planning (or public policy) and markets<sup>170</sup> (see, for example, Alexander 1992; 2001a, b, & c; Coase, 1960; Lane, 1985; Lai, 1997; Levacic, 1991; Medema, 1996; Powell, 1990; 1991; Thompson *et al.*, 1991; Webster and Lai, 2003; Williamson, 1973; 1975; 1986a & b; 1990; 1991a; 1999).

### **5.5.2 Recapitulation**

This section set out to draw some conclusions and make recommendations. In the concluding remarks, the following points were noted: (a) market failure is not the only notable phenomenon in land delivery; government failure is also an issue, and (b) to be effective, land policy has to be accompanied by an appropriate and supportive institutional framework. Further, the section raised a number of other useful insights and observations. On basis of these insights and observations, it was recommended that the delivery system be reformed. Possible modes of reforms suggested included networking, partial or outright liberalisation of the land alienation and/or reversion to the pre-1972 head-lease system.

The next chapter will now examine the impact of the land reforms on land transfer and exchange.

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<sup>170</sup> Both systems are regarded as alternative, imperfect allocative mechanisms.

## Chapter 6: Land Transfer and Exchange

The welfare of a human society depends on the flow of goods and services, and this in turn depends on the productivity of the economic system. ... the productivity of an economic system depends on specialization ... but specialization is only possible if there is exchange.

Ronald H. Coase, *American Economic Review*<sup>171</sup>

### 6.1 Introduction

Markets, as coordinating devices,<sup>172</sup> are defined and characterised by the ease with which tradable commodities are 'transferred and/or exchanged'. Free and well-functioning markets, for instances, are associated with ease or uninhibited transfer and exchange (see, for instance, Dowall, 1993; Farvacque and McAuslan, 1992). Dysfunctional markets are deficient of this cardinal trademark. Indeed, without effective *transfer* of rights, even if the rights to resources are exclusive, free market exchanges cannot take place smoothly or even exist at all. Thus, any study of the transfer and exchange process or mechanism, in whatever form, is fundamental to the understanding of the existence and operation of any given market. The prime objective of this chapter is therefore to examine how the 1975 and 1995 land reforms affected the transfer and exchange of land and land rights between economic agents.

Like chapter 5 (on land delivery), this chapter extends and amplifies chapter 3 (on policy review and evaluation). As an extension of chapter 3, the approach adopted in this

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<sup>171</sup> See Coase, 1998a, p. 73.

<sup>172</sup> Markets, like hierarchies and networks, are considered as coordinating devices of social life (see, for instance, Thompson *et al.*, 1991; Webster and Lai, 2003), or, in Williamson's (1975; 1985a) parlance, alternative forms of governance. This conceptual approach derives from Coase's seminal works of 1937 and 1960.

chapter entails evaluating the effects of land reforms: first, by conceptual analysis (as in chapter 3); and/or, wherever possible, by adducing empirical and other material evidence gathered through the research process (as in chapter 5). As highlighted in chapter 4 (research strategy, methods and process), this study follows largely an illustrative, comparative research approach where evidence is brought to bear on the conceptual analysis. The central thesis (as in chapter 5)<sup>173</sup> is, once again, centred on property rights, transaction costs and institutional change conceptual framework presented in chapter 2.

The chapter has three major sections. Section 2 addresses the substantive issue of land transfer and exchange. It comprises two main subsections: the first subsection is on property rights and the other focuses on transaction costs. Concluding remarks and recommendations are in section 3.

## 6.2 Land transfer and exchange

All markets involve the transfer or exchange of commodities or services and/or rights thereto. In most, if not all, market transactions, the two most important factors that have a bearing on the manner in which the transactions are executed are: *property rights*, the rights to the commodities or services being exchanged; and *transaction costs*, i.e., the costs of exchange (for a review of the two concepts, see chapter 2). Property rights are absolutely essential: they are not only the objects of the exchange process (Levacic, 1991); they are also the rules that define the nature of market exchange itself (Libecap, 2003). Property rights, thus, form the basis upon which market transactions are consummated. Transaction costs, on the other hand, are synonymous with friction in a mechanical or physical sense (Williamson, 1985a). They tend to stifle the smooth operation of market transactions and, under certain circumstances, may overwhelmingly hinder the formation of markets.

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<sup>173</sup> Consistent with the previous chapter, it is postulated that the land reforms in question may have generated adverse institutional impediments in the operation of the land market.

Given the significance of property rights and transaction costs in market exchange, this section will now examine the effects of the land reforms on the said factors vis-à-vis the land transfer and exchange process.

### 6.2.1 Property rights

Feige (1997, online) correctly points out that: 'every market presupposes the existence of property rights to be traded.' Similarly, in chapter 2 it was clearly articulated that what is transacted and owned in the land market are not the bare land or bricks and mortar as such, but *rights* in land. Further, mainstream economic theory suggests that for the land markets to function properly: (a) there must be private property rights and (b) the rights in question must be (i) freely transferable<sup>174</sup> and (ii) *widely* distributed.<sup>175</sup>

On the basis of the foresaid insights, in what way or manner did the land reforms affect the transfer and exchange of property rights in land?

A critical evaluation of the literature review on property rights (as given in chapter 2) suggests that an alteration of the structure of property rights, whatever the motivating factors might be, may affect the transfer and exchange of rights in land in a variety of ways, particularly with respect to the following factors:

- Type and quantum of transferable rights
- Divisibility and fungibility of rights
- Freedom of exchange
- Terms and gains from trade

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<sup>174</sup> This is a fundamental aspect in capturing gains from trade, increasing productivity and ameliorating human welfare (Coase, 1998a, p. 73)

<sup>175</sup> It is, in fact, asserted by many economists (see, for instance, Randall, 1978) that the existence of competitive, laissez-faire, free enterprise system hinges on the availability and wide distribution of private property rights.

The grand review of the 1975 land reforms in chapter 3 indicates that the system of property rights was substantially modified through attenuation of property rights. Conversely, the 1995 land reforms were found to have partial impact. The objectives and attributes of these respective reforms were aptly articulated and summed up also in chapter 3. Accordingly, this section simply revisits and highlights some of the issues in order to facilitate the discussion at hand, starting with the 1975 land policy regime.

▪ *Under the 1975 land reforms*

Perhaps the most significant constraint imposed by the 1975 land reforms on land transfer and exchange emanates from the way property and property rights were conceived and, implicitly, defined. Property, under these reforms, was conceived largely in terms of its *physicality* (a ‘thing’, as in classical theory<sup>176</sup>) and not as bundle of *rights* (or a ‘benefit or income stream’, as most twentieth-century theorists conceive it<sup>177</sup>), some (if not all) of which could be sold. This conception is vividly mirrored in the Minister of Lands’ submission to the Parliament prior to the enactment of the Lands Act 1975 (see chapter 3 and quotation hereunder). Articulating government policy, the Minister of Lands asserted thus:

... Sir, all these reforms flow from one cardinal concept, that land is the nation’s most precious heritage and cannot be a commodity for sale or speculation. It is priceless. This does not mean that because land can no longer be sold it is therefore of no value. On the contrary it is so valuable that we cannot put a price to it.” (1975 Parliamentary Debates, see Law Development Commission, 1981, p. 56)

On the basis of this conception, most of the valuable and fungible (private) property rights that could be traded on the land market were systematically eroded in disparate

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<sup>176</sup> See Mukhija, 2005, p. 973.

<sup>177</sup> *Ibid.*, p. 973.

ways. It is appropriate that we examine the nature and implications of this policy in detail.

It is worth emphasising that the extent and dynamism of any market depends, among other things, on the quantity as well as the quality of goods or services being traded. Naturally, the greater the variety of saleable commodities available on the market, the larger and more active the market becomes. Therefore, a reduction in the quantity and/or the quality of goods or services being transacted, for whatever reasons, would correspondingly reduce market activity. This is precisely what the 1975 land reforms did to the Zambian land market by curtailing the *type* and *quantum* of transferable rights.

The termination of freehold tenure (including all its variants of fee simple, fee tail and life estates) as well as leaseholds in excess of 100 years (see Lands Act 1975, section 5) reduced considerably the type and quantity of valuable interests in the land market. Freeholds, as pointed out in chapter 2, are the most valuable rights in land. Leasehold interests of longer duration, say 100 years and above, rank second. Leaseholds however are generally regarded as wasting assets because of their determinate periods, which dwindle with passage of time. Most active land markets around the world are therefore modelled on freehold land tenure system. This is because freehold land tenure encapsulates most of the private property rights referred to in chapter 2 (e.g. exclusive rights to use, dispose, sale, transform a valuable resource).

The superiority of freehold tenure in Zambia is historically manifested in the fact that most of the substantive urban developments and formal settlements prior to the 1975 land reforms were situated on either freehold land or leasehold sites with longer durations, well in excess of 100 years (see Mushota, 1993; Zulu, 1993a & b). In fact, according to the Commissioner of Lands (see Zulu, 1993a, p. 3), most large urban areas (such as Lusaka, Ndola and Livingstone) were situated on freehold land. The land market, so to speak, basically revolved around freehold and leasehold land tenure areas. In contrast, most informal or traditional (African) settlements and other land improvements of temporary nature were located in the peripheral sites or completely

outside these areas. This explains, for example, as Mushota (1993, p. 7) rightly points out (based on Palmer, 1973a & b), majority of indigenous Africans having been excluded from the freehold land holding system were unable to buy and sell land in urban areas in colonial times. In this respect, the termination of freehold interests after independence by these reforms was, therefore, a perpetuation of the very colonial injustice that denied African urban-dwellers the right to buy and sell land. It was a considerable impediment on what could have been, potentially, vibrant land market.<sup>178</sup>

As intimated in chapter 3, the Lands Act 1975 boldly imposed burdensome restrictions that disabled numerous dealings in land as well as freedom of exchange. Table 6.1 identifies the specific detrimental sections of the Lands Act 1975 and briefly outlines their impacts and implications. The issues highlighted in the table are then discussed and explained accordingly under the respective subheadings below.

- *Type and quantum of transferable rights*

As alluded to above (see also chapter 3), the termination of freehold interests and abridgement of leaseholds with longer duration was, in effect, a systemic attenuation of property rights. The sections of the Lands Act 1975 responsible for this effect are sections 5, 6, 12 and 13. Theoretically, the implication of attenuated property rights is that the quantity and type of rights available on the market, particularly the most valuable ones, were reduced significantly. This, in turn, meant that the volume of transactions would, consequently, be correspondingly reduced.

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<sup>178</sup> As more market participants who hitherto had been denied access were in the process of entering it, the land market could have thrived.

Table 6.1 Consequences of the 1975 land reforms on land transfers and exchanges

Land transfer and exchange research issues	Adverse policy aspects (Lands Act 1975)	Impact and implications	Empirical evidence of the said impact?
Type and quantum of transferable rights	Sections 5, 6 & 12: these convert freeholds into leaseholds and limit leaseholds in excess of 100 years to statutory leases of 100 years. Further, section 13 imposes restrictions on land subdivision and alienation.	<ul style="list-style-type: none"> <li>▪ Reduce the quantity and type of rights available on the market, particularly the most valuable ones.</li> <li>▪ Reduces the volume of transactions as a result of reduced quantity and quality/type of rights.</li> <li>▪ The statutory leasehold system (so created) retards efficient operation of the land market.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Slump in land supply (<i>discussed in the text</i>). In this respect, the rapid growth of urban informal settlements is perhaps the strongest evidence of the outcome of an inefficient formal land supply system.</li> <li>▪ Reduced private sector investment in land/property development. This is evident (e.g. limited mortgage facilities and a decline in construction sector activities (<i>discussed in the text</i>)), but cannot however solely be attributed to land reforms as the private sector was systematically crowded-out by state-owned enterprises.</li> <li>▪ Operational inefficiencies in land transfers and exchanges arising from state involvement in land transactions (<i>see section on transaction costs</i>).</li> </ul>
Divisibility and fungibility of rights	Section 13: restriction on subdivision and alienation of land	<ul style="list-style-type: none"> <li>▪ Subsections 1 &amp; 2: limit the frequency and extent of dealings through time delays, uncertainty, rent-seeking and perverse incentive activities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Time series data on the actual frequency and extent of dealings is difficult to obtain. However, there is evidence on time delays; uncertainty; rent-seeking and perverse incentive activities (<i>see section on transaction costs</i>).</li> </ul>

Table 6.1 Consequences of the 1975 land reforms on land transfers and exchanges (*cont'd*)

Land transfer and exchange research issues	Adverse policy aspects (Lands Act 1975)	Impact and implications	Empirical evidence of the said impact?
Freedom of exchange	Section 13 (and section 13 A of 1985 Amendment Act): imposes restrictions on various types of transactions and market participants.	<ul style="list-style-type: none"> <li>▪ Subsections 1, 2 &amp; 3: limit (e.g. through time delays, uncertainty, rent-seeking/perverse incentive activities) the ability of economic agents (market participants) to make or arrive at mutually beneficial contractual decisions and agreements. Note: severe limitation of freedom of exchange may prompt non-compliant behaviour.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proliferation of non-compliant behaviour, as exemplified by: blatant breach or non-observance of regulations; growth in informal land transactions; or growth in rent seeking activities (<i>discussed in the text; see also section on transaction costs</i>).</li> </ul>
Terms and gains from trade	Section 13: the restrictions on subdivision and alienation of land also adversely affect the terms and gains from trade.	<ul style="list-style-type: none"> <li>▪ As a result of the limited freedom of exchange (see above), economic agents may not only be unable to devise favourable terms of trade but also unable to maximize returns on investments. Thus, reducing further the incentive to engage in land transactions. Alternative, this may increase the occurrence of non-compliant behaviour as economic agents attempt to maximize, through circumvention of regulations, the gains from trade.</li> <li>▪ Section 13 (3): induces externalities, as economic agents are unable to internalize all the costs and benefits of transactions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proliferation of non-compliant behaviour (as above).</li> <li>▪ Since, economic agents are unable to internalize all the costs and benefits of transactions, society as a whole bears some of the third-party effects. This is largely reflected in the huge public sector transaction costs (i.e., costs associated with verification, monitoring and enforcement activity to ensure regulatory compliance by economic agents) (<i>see section on transaction costs</i>).</li> </ul>

The other conceivable consequence of an attenuated property rights system is the efficiency implication. An abridged property rights system that is modelled on state stewardship, as the statutory leasehold tenure so created by this policy, retards efficient operation of the land market. The impediments to efficiency emanate from a variety of factors that hinge on the market's interface with the state bureaucracy. As noted in chapter 5, rent seeking, red tape, and in some cases corruption, are pervasive in bureaucratic regimes (see also Blackburn *et al.*, 2003, p. 1 & 18). Government direct involvement can and do therefore hinder smooth operations of market transactions.

It may be argued that the foregoing are only theoretical assessments or expositions of the most likely consequences. What empirical evidence, if any, is there to support these assertions?

First, it is patently clear from the published comments by the Surveyors Institute of Zambia, the Conveyancing Committee of the Laws Association of Zambia and the Government Valuation Department (see Law development Commission, 1981) that following the promulgation of this policy a sudden and consistent slump in land supply was felt in the market, as: (a) no freehold land was on the market anymore; (b) those with freehold land (or leaseholds in excess of 100 years) had their interests converted into statutory leaseholds of 100 years and could not sell undeveloped land, as it was illegal to do so (see section 13 of the Lands Act and the Supreme Court judgement No. 43 of 1977; SIZ, 1981); (c) the state bureaucracy, which was mandated to carry out land delivery, was unable to supply sufficient quantities timely and correspondingly to the market demand (see chapter 5). The existence and rapid growth of the squatter/informal settlements (which, incidentally, still adorn and characterise Zambian urban landscape), was perhaps the strongest and incontrovertible evidence of the *failure* of the formal land supply system.

Second, following the 1975 reforms there was some evidence of a slump in private sector investment in the land/property sector. In relation to finance, for instance, it is evident that the limited private sector mortgage/financial facilities that existed prior to

the nationalisation of land were considerably squeezed out until very recently (in the mid-1990s) when the reversal of the said public policy was effected.<sup>179</sup> The dominance of the state-sector in construction industry and the persistent decline in construction activities (see Christie, 1971; SIZ, 1981; Mwanza, *et al.*, 1992; Musole, 2000) also explain, in part, the absence of buoyant private-sector participation.

With respect to operational inefficiency, the empirical evidence on inefficiency in land transfers and exchanges arising from state involvement in land transactions can be gleaned, firstly, from the manner in which the state managed the land delivery system (see chapter 5); and secondly, from the nature and level of transaction costs the regulations imposed on the market (see section on *transaction costs* below). It is, therefore, clear on perusal of both items that there were, indeed, policy-generated transactional bottlenecks.

- *Divisibility and fungibility of rights*

Divisibility describes the extent to which the right can be partitioned, such as the division of surface and mineral rights (Grafton, *et al.*, 2000, p. 681). Fungibility, on the other hand, refers not only to the divisibility but also the ability to combine or mobilize assets to suit any transaction (De Soto, 2000, p. 58). Divisibility and fungibility of resources aid their transferability and exchange. Fungible and divisible commodities are easier to manage and manipulate (that is, divide, merge or mobilise) to suit a variety of transactions. This explains, for example, why the liquidity of financial investments is comparatively higher than most other forms of assets.

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<sup>179</sup> For example, prior to 1972 there were about four building societies. This number was however reduced to one when the said building societies were nationalised. Following privatisation and liberalisation of the economy in the mid-1990s, the number of building societies has been rising. About three more private building societies, and several commercial banks, have since been registered and are now operating in the country.

As pointed out above, one of the major constraints the 1975 reforms posed was the conceptualisation of 'property' and 'property rights in land'. Property was viewed as physical entities (and, therefore, 'property rights in land,' were correspondingly construed as claims to mere physical objects – pieces of land) rather than as bundle of divisible and fungible rights. This conception, coupled with the provisions of section 13 of the Lands Act 1975 (set out below), limited greatly the scope and depth of manoeuvrability with which entrepreneurs could engage in profitable dealings and exchanges.

Section 13 of the Lands Act 1975 stipulated that: “no person is allowed to subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber, or part with possession of, his land or any part thereof or interest therein without the prior consent in writing of the President” (S. 13 (1)). And in granting his consent, the President was authorised by the same Act to: (1) “impose such terms and conditions as he may think fit, and such terms and conditions shall be binding on all persons and shall not be questioned in any court or tribunal” (S. 13 (2)); and (2) “fix the maximum amount that may be received, recovered or secured... Provided that in fixing any amount ... no regard shall be had to the value of the land apart from the unexhausted improvement thereon” (S. 13 (3)). (See Appendix 4.1)

It is important to note that, besides its physical limitations,<sup>180</sup> land was [is] subject to minimum plot-size/usage (town planning and other land use) regulations. Unless a parcel of land is subject to multiple ownership and use, which is more feasible from the property rights perspective, the faulty conception of property (based on the physical form of the object) therefore curtailed significantly the potential multiple transactions and exchanges that would otherwise have occurred.

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<sup>180</sup> Land has limited natural spatial extent beyond which its subdivision becomes uneconomic or virtually unusable.

The foregoing (definitional) constraint was a great deal more exacerbated by other provisions of the Lands Act (see Section 13), which limited the frequency and extent of dealings. This observation is predicated on the fact that the quest for state consent was largely fraught with a lot of obstacles and uncertainty. For example, the inescapable time *delays* in securing consent; the uncertainty that arose due to the unbridled *discretion* in the processing and issuance of the consent (see section 13 (2) and (3) above); and the pervasive *rent seeking* activities that ensued with the administration of such a regime, all conspired to magnify the cost of divisibility and fungibility of property rights. The section on *transaction costs* below discusses this issue further and provides some empirical evidence.

- *Freedom of exchange; and terms and gains from trade*

The other implications of section 13 of the Lands Act 1975 relate to freedom of exchange and the ability of economic agents to engage into profitable undertakings. The regulations in question not only impose cumbersome restrictions on various types of transactions (see section 13 (1) and (2)) but also limit the potential returns from trade (see section 13 (3)). Section 13 directly, or indirectly (through generation of numerous costly impediments, e.g. time delays, uncertainty, rent-seeking/perverse incentive activities), limits the resourcefulness and the ability of economic agents to *voluntarily* engage or arrive at mutually beneficial contractual decisions and arrangements. Price controls (as stipulated in section 13 (3)), for instance, limit the ability of the parties to internalise all the costs and benefits arising from voluntary contractual ventures.<sup>181</sup> The

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<sup>181</sup> As indicated in chapter 2, this is because the price ceilings set by the state usually tends to be less than real market prices that private parties would otherwise agree upon in *arms-length* transactions. The response obtained from the 'expert witness' questionnaire survey (see Table 7.6 in chapter 7)) and the submission by the Conveyancing Committee of the Law Association of Zambia (see Law Development Commission, 1981) support this argument. The Conveyancing Committee of the Law Association of Zambia noted, consistent with the popular response from the 'expert witness' questionnaire survey (see

implication of price controls is that some of the costs of administering the price control regime would have to be passed onto the society at large (the taxpayers). Similarly, some of the benefits of trade would have to be forfeited by the entrepreneurs through imposed valuation limits set by the price control regime. The interference in voluntary trade-relations alters, largely negatively due to the externalisation of some of the benefits and costs, the terms of trade between economic agents. If the interference (or regulation) is so severe and/or runs for a protracted period of time, as was the case, it may prompt certain perverse economic behaviours, such as informal trading; rent seeking; corruption; and blatant breach of, or outright non-compliance with, the regulations in question. The deviant behaviours usually come into existence because of the inability of economic agents to act *freely* and fully capture or *maximise*, as they could otherwise accomplish under voluntary arrangements, the *gains* from trade.

As a matter of fact, some anecdotal and published evidence exists that corroborates or substantiates the foregoing observations and propositions. The evidence on externalisation of costs to the public sector, by virtue of the need for enforcement and monitoring of state regulations, is clearly demonstrated under the transaction cost section below.<sup>182</sup> Non-compliant behaviour,<sup>183</sup> on the other hand, is discernible from the reported cases of, or submissions attesting to, the emergence and existence of perverse economic behaviours, in direct contravention of the statutory regulations (see Law Development Commission, 1981. Chapter 7, hereafter, elucidates this matter further).

In the Law Development Commission (1981) report (Appendices A, B, and C), the Surveyors Institute of Zambia (SIZ), the Conveyancing Committee of the Law

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Table 7.6), that: “the maximum price is frequently less than what has been freely negotiated between the parties (Law Development Commission, 1981,p. 102).”

<sup>182</sup> The transaction cost section also shows that there are actual fees paid to obtain state consent. These costs are, of course, a drain on the gains from trade.

<sup>183</sup> Feige (1997) gives examples of non-compliant behaviours. These are evasion, avoidance, circumvention, abuse, and/or corruption of institutional rules.

Association of Zambia (LAZ), and the Government Valuation Department individually reported of an emerging land market 'culture' characterised by rampant non-compliant behaviour. It was observed by the Surveyors Institute of Zambia, for instance, that due to the severe shortage of land following the enactment of the Lands Act 1975, some landowners (i.e., statutory leaseholders) were not only clandestinely selling land but we doing so well beyond regulated prices (see SIZ, 1981, p. 72). The Valuation Department noted that the Act was being circumvented through what its called 'under counter' payments (these were additional/side payments over and above those disclosed for official verification when seeking state consent) and allowing development to be undertaken by the purchaser prior to the transfer of land being effected (see Law Development Commission, 1981, p. 95). On its part, the Conveyancing Committee of the Law Association of Zambia also observed, consistent with the Government Valuation Department, that: "... the law is often flouted by parties who cannot wait [due to delayed state consent] or will not sell at the price so fixed [by state], and a transaction is consequently registered at figures which are apparently approved, but do not in fact represent the real consideration agreed upon and paid" (see Law Development Commission, 1981, p. 83).

The Surveyors Institute of Zambia (SIZ), the Conveyancing Committee of the Law Association of Zambia (LAZ), and the Government Valuation Department were/are important players and opinion leaders on land matters in Zambia. Their comments, which clearly substantiate the above propositions, are therefore credible. Moreover, there are a number of court cases that demonstrate the occurrence of extra-legal market activities. The most notable and recited cases include: *Mutwale v. Professional Services Ltd* (Selected Judgements of Zambia No. 13 of 1984), *Hina Furnishings v. Mwaiseni Properties Ltd* (Z.R. 40, 1983), and *Charbonier v. Nsoni* (Supreme Court of Zambia Appeal No.... 1979).<sup>184</sup>

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<sup>184</sup> "In *Hina Furnishings v. Mwaiseni Properties Ltd* (Z.R. 40, 1983), the plaintiffs sought an injunction to restrain the defendants from hindrance, molestation and interruption of their peaceful and quite enjoyment of their occupancy of the demised premises during the currency of the tenancy or until further notice. The

- *Under the 1995 land reforms*

In chapter 3, it was pointed out that the 1995 land reforms were intended to reverse the undesirable effects of the 1975 reforms. Most significantly, the 1995 reforms sought to

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premises in questions were demised under a contract to lease which was neither executed nor carried the requisite Presidential consent.

The action arose out of the defendants' effective entry and possession of the premises upon the plaintiffs' falling into several rent arrears. Kakad J. was of the view that until the written consent of the President was obtained as required by the law, notwithstanding the validity of the agreement for lease between the parties, the defendants as the landlords had no power to grant occupation of the premises to the plaintiffs. Consequently, the learned judge opined, the plaintiffs had no right to legally occupy the premises. Significantly it was held, *inter alia*, that the courts would not grant the remedy of specific performance in further of a tenant whose tenancy agreement was subject to a condition precedent which had not been performed or who was in breach of a term of the agreement, that is, arrears of rent, for he who comes to equity must do so with clean hand." (Mushota, 1993, p. 16)

"In *Mutwale v. Professional Services Ltd* (Selected Judgements of Zambia No. 13 of 1984), the appellant had taken possession of a flat which the respondent held as tenants from a superior landlord from December 1978 until she vacated it in January 1981. No rent was paid. No question of a lack of consent for subletting was argued before the trial judge who held that as the Act did not state that any dealings in land made without the President's consent would be void and unenforceable, he was unable to agree that the agreement was void *ab initio*.

In an appeal against the judgement awarding the respondent arrears of rent for the flat it was argued for the appellant, *inter alia*, that the Act was intended to prohibit the exploitation of tenants by requiring that all tenancy agreements must have Presidential consent and that a contract without consent amounted to a contract to commit an illegal act and was therefore unenforceable. Gardener, J. S. delivering the judgement of the Supreme Court found that as the purported subletting was without prior consent of the President as required by the Act, the whole contract, including the provision for payment of rent, was unenforceable (see *Charbonier v. Nsoni*, Supreme Court of Zambia Appeal No. ... 1979)." (Mushota, 1993, p. 17)

promote the development of an efficient land market (see MMD manifesto in chapter 3). However, as the policy evaluations in the previous chapters (3 and 5) have demonstrated, the 1995 reforms retained some of the fundamental features of the former reforms, particularly state ownership and leasehold tenure. With reference to Table 6.2, as in the above section, this section now assesses the effects of 1995 reforms on land transfer and exchange.

- *Type and quantum of transferable rights*

As Table 6.2 indicates, since section 3 of the Lands Act 1995 provided for the continuation with leasehold tenure, the effects of such policy in so far as the quantum and type of transferable rights are concerned, are basically similar to those of the 1975 reforms. Notably, the problems of land supply and operational inefficiencies in land transfer and exchange identified with the 1975 policy regimes persist unabated. Indeed, as chapter 5 has demonstrated, land supply continued to be severely constrained. As the World Bank (2002a) survey report indicates,<sup>185</sup> the concomitant growth of unplanned/squatter settlements remained a critical problem. The section on transaction costs (see below) confirms the existence of some bottlenecks, arising from the additional costs induced by the leasehold system, in the transfer and exchange system. In short, the outcome of the 1995 reforms, in this respect, is not significantly different from that of the 1975 policy regime

- *Divisibility and fungibility of rights*

Section 5 of the Lands Act 1995 provided for continuation with the 1975 state consent arrangement (see section 13 of the Lands Act 1975). However, unlike the 1975 state consent structure, the 1995 procedures and regulations are much more circumscribed.

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<sup>185</sup> See chapter 1.

Table 6.2: Consequences of the 1995 land reforms on land transfer and exchange

Land transfer and exchange research issues	Adverse policy aspects (Lands Act 1995)	Impact and implications	Empirical evidence of the said impact?
Type and quantum of transferable rights	Section 3: provides for continuation with the 1975 leasehold tenure and limits the duration of leases to period of 99 years. <sup>186</sup>	<p><i>As under 1975 land reforms:</i></p> <ul style="list-style-type: none"> <li>▪ Reduce the quantity and type of rights available on the market, particularly the most valuable ones.</li> <li>▪ Reduces the volume of transactions as a result of reduced quantity and quality/type of rights.</li> <li>▪ The statutory leasehold system (so created) retards efficient operation of the land market</li> </ul>	<p><i>Partly as under 1975 land reforms.</i></p> <ul style="list-style-type: none"> <li>▪ Slump in land supply (<i>discussed in the text</i>), as manifested in the continual growth of urban informal settlements.</li> <li>▪ Operational inefficiencies in land transfers and exchanges arising from state involvement in land transactions (<i>see section on transaction costs</i>).</li> </ul>
Divisibility and fungibility of rights	Section 5: provides for continuation with the 1975 state consent arrangement albeit in a highly abbreviated form.	<ul style="list-style-type: none"> <li>▪ Highly abbreviated state consent arrangement: it limits the range of transactions and the time in which it is procured. In this respect, many land dealings are not significantly affected.</li> </ul>	<ul style="list-style-type: none"> <li>▪ None thus far. For most transactions, state consent is usually granted within thirty days at market prices and terms agreed between the parties to the transaction. Divisibility and fungibility of rights are, therefore, not significantly affected.</li> </ul>
Freedom of exchange	Section 5 and 31: state consent procedures and regulations.	<ul style="list-style-type: none"> <li>▪ Compared to the 1975 land reforms, these afford relatively higher degree of freedom of exchange. However, until state consent is actually granted, certain level of uncertainty lingers on. Besides, the consent procedures impose fees and time delays.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Most transactions are granted state consent on terms agreed by the parties to the transaction. For fees and time delays, <i>see section on transaction costs</i>.</li> </ul>
Terms and gains from trade	Section 5 and 31: state consent procedures and regulations.	<ul style="list-style-type: none"> <li>▪ Notwithstanding the relatively higher degree of freedom of exchange, there are fees to be paid and a maximum waiting period of forty-five days to be endured. If, for some reason, state consent is not granted the time delays (and any legal costs) incurred in pursuing the matter further (seeking redress) may attract additional costs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fees and waiting time (<i>see section on transaction costs</i>).</li> </ul>

<sup>186</sup> Leases may be renewed for a further period of 99 years and under exceptional circumstances, longer leases may be granted (see sections 3 and 10).

Firstly, the range of transactions requiring state consent is limited to 'sell, transfer or assignment of land (section 5 (1)). Secondly, the time in which consent is granted or denied is clearly specified (section 5 (2 & 3)); and thirdly, in the event of an unfavourable consent decision, the parties have the right of appeal to higher courts of law (section 5 (4) and section 29). These limitations, though not as fully empowering as they could have been,<sup>187</sup> afford more leeway in property dealings.

Practically, this matter was investigated in order to establish whether, indeed, the restricted scope of the 1995 consent structure is what it claims to be. Questionnaire survey<sup>188</sup> results (see 'transaction costs' section on state consent time) and focus group discussions (both in Lusaka and Kitwe) confirmed the *timely* delivery of most state consent applications. It was established that state consent is usually granted in accordance with the Lands Act 1995 (within thirty days) at market prices and terms agreed between the parties to the transaction. Therefore, divisibility and fungibility of rights appear not to be significantly affected as compared to the 1975 state consent regime.

Furthermore, since the faulty 1975 conception of property ownership by reference to the 'physical entity' of land was discarded under the 1995 reforms, this naturally enhanced the manoeuvrability with which economic agents would engage in land transactions.

- *Freedom of exchange; and terms and gains from trade*

Comparatively, the 1995 reforms provide generally more freedom of exchange due to the circumscribed nature of state intervention regulations just outlined above. Price controls, for instance, were totally dispensed with; thus, enabling parties to internalise most costs and benefits of an exchange.

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<sup>187</sup> Intervention in private transactions in whatever form, from whatever quarters, still constitutes an impediment. If consent is denied, for instance, court decisions on appeal may take considerable time; thus, increasing transaction costs.

<sup>188</sup> This is the expert witness questionnaire survey (Appendix 5.3) referred to above.

Potentially, however, the statutory provisions are capable of being modified and manipulated, thereby creating obstacles in the transfer and exchange processes. The likely source of such a problem is section 31 of the Lands Act 1995. This section empowers the Minister of Lands to prescribe by statutory instrument procedures for, among other things, applying for state consent and fees for transacting in land. Since bureaucrats are notoriously known for their red tape and concocting strategies that further their own interests at the expense of social welfare (see, for example, Adams, *et al.* 2003a; Anderson and Huggins, 2003; Webster and Lai, 2003), if granted the opportunity to set rules to control private transactions, they are likely to contort and delay the process to suit their own interests. Indeed, as the section on *transaction costs* below indicates, the exchange process is saddled not only with the charges that are tied to the procurement of state consent, but also other related fees (see Appendix 6.1).

▪ *Summary*

The main purpose of this subsection was to assess how the land policy reforms, through alteration of property rights, affected the transfer and exchange of property rights in land. A critical evaluation of the literature review in chapters 2 suggested that a restructuring of the system of property rights, whether policy-driven or not, could have multiple effects on the transfer and exchange of rights in land, especially with regard to: (a) type and quantum of transferable rights; (b) divisibility and fungibility of rights; (c) freedom of exchange; and (d) terms and gains from trade. Based on the grand review in chapter 3, each set of land policy reforms was evaluated in relation to the said principal factors.

In regard to the *type and quantum of transferable rights*, the evaluation exercise finds evidence suggesting that abolition of freehold tenure and the introduction of state restrictions on land transactions, as per section 13 of the Lands Act 1975, generated major bottlenecks in the supply and transfer of land rights. On that score, the 1995

policy reforms, having continued with leasehold tenure, were also found to be basically similar to the previous (1975) policy reforms. It was noted for instance that, because of the failure of the formal land supply and exchange system under both policy regimes, the concomitant problem of unplanned/informal settlements continued to grow unabated.

Secondly, the 1975 reforms were found to have major shortcomings as far as *divisibility and fungibility of rights* were concerned. Two issues account for this: (a) the faulty conception of property ownership by reference to the 'physical entity' of land; and (b) section 13 of the Lands Act 1975, which limit the frequency and extent of dealings in land. The divisibility and fungibility of rights were not, however, found to be an issue under the 1995 regime. Reasons are patently clear. First, the 1995 regime discarded the faulty conception of landownership, which focused on the physicality of land; and, second, the circumscribed nature of state intervention in land transactions enhanced manoeuvrability in land transactions.

Thirdly, while the circumscribed nature of the 1995 reforms makes them comparatively more congenial to trade, the 1975 policy regime was found to have detrimental impact. The major reasons accounting for the shortcomings of the 1975 reforms also hinge on the debilitating effects of section 13 of the Lands Act.

In summary, the effects of the 1975 and 1995 land policy reforms on the transfer and exchange of land rights have been evaluated with regard to the extent they attenuated property rights or obstructed free dealings in land rights. On the whole, the 1975 reforms are found to be more abrasive to free trade than the 1995 reforms. The next subsection now discusses transaction costs. It is important to note that the transaction costs subsection is complementary to this section. It extends and sheds some light on specific issues raised in this section.

### 6.2.2 Transaction costs

The transfer and exchange of land rights is not, of course, without costs. In the process of transfer and exchange of rights, professional fees may have to be paid, for instance, to lawyers, surveyors, valuers and estate agents for conveyance, land surveys and assessment of market values; transfer levies or taxes may have to be settled with government; and, indeed, time and effort may have to be expended, too, waiting or following up specific issues. These costs are popularly known as *transaction costs*.

Chapter 2 (on the conceptual framework) defined and discussed other relevant issues regarding the concept of transaction costs. Accordingly, this section will now examine how the reforms under discussion affected transaction costs with respect to the transfer and exchange of land rights. Specifically, the section will consider the questions of whether or not: (a) the reforms generated additional transaction costs, over and above existing costs; and (b) influenced in anyway the nature and level of other specified transaction costs. Although, the chapter focuses on issues relating to the transfer and flow of land rights between private transacting parties, the transaction costs borne by the State will also be taken into account so that the externality aspects referred to in the preceding section can be explained.

Given the multivalent, and sometimes cryptic, nature of transaction costs; this study identified the specific types of transaction costs that have a bearing on the transfer and exchange of property rights in land. These are:

- *Compliance costs*: policy-induced, direct public/official charges, paid by parties to a transaction, for processing documents that relate to a land transaction.
- *Costs of regulatory delay*: policy-induced, indirect costs borne by parties to a transaction that arise from bureaucratic delays by public officials when processing the submitted land-transaction documents. The major proxy in this case is 'waiting time' parties to a transaction have to bear in order to fulfil the regulatory requirements.

- *Property transfer tax*: direct public/official levies on sales price of landed property being exchanged.
- *Professional fees*: the fees paid to land/valuation surveyors, estate agents, lawyers, and other professionals contracted to facilitate property exchange.
- *Speed-money*:<sup>189</sup> this is a *non-market*, corruption-related cost that an individual may pay covertly to a public official to avoid bureaucratic delays and/or uncertainties that may arise if public officials are involved at some stage in the exchange process.
- *Travel and follow-up costs*: costs faced by an individual when following up a delayed transaction or when requiring speedy execution of the transaction by public officials involved in the exchange process.

As in subsection 2.1 (on property rights) above, the issue of *transaction costs* is presented chronologically, starting with the 1975 land reforms as follows.

- ***Under the 1975 land policy reforms***

In a market environment that existed prior to the 1975 reforms, of the six types of transaction costs identified above, professional fees and property taxes were the obvious transaction costs that were regularly encountered. The introduction of the 1975 reforms did not in any way directly affect these costs. Professional fees, whether legal, valuation or agency charges, have always been set independently by the various professions concerned. As for taxes, the Ministry of Finance determined the nature and structure of taxes, including property transfer tax, on yearly basis in accordance with the fiscal and monetary policy.

The introduction of the 1975 policy reforms however brought about the following additional direct and indirect costs. The direct costs are mainly the fees or charges

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<sup>189</sup> Speed money is a concept associated with corruption. See literature on corruption (Blackburn *et al.*, 2003; Jain, 2001 and many others) and literature on non-compliant behaviours (Feige, 1997).

directly paid to the state, as explained above, for processing the consent applications (in line with Section 13 of the Lands Act). These costs are easy to identify and enumerate as they are officially publicised. Indirect costs, on the other hand, are difficult to assess but can be identified and, in some cases, measured in relative terms. These include *time* spend waiting for consent decisions (i.e., cost of regulatory delay), *travel and follow-up* costs, and *speed-money* expenses as defined above. *Travel and follow-up* costs and *speed-money* expenses are highly specific to particular circumstances of each and every transacting party. Furthermore, *speed-money* expenses, due to the clandestine nature of the transactions, are not directly observable. Given the foregoing constraints, the study presents the data and analysis of the compliance and regulatory delay costs and discusses generally the incidence of speed-money in light of the available evidence.

(a) Compliance costs

Up and until 26th January 1985, no fees were paid for applying for state consent in compliance with section 13 of Lands Act 1975. The costs of processing consent applications were therefore borne by the State. From 1985 to 1994, these costs were (wholly or partially) passed on to the applicants.<sup>190</sup>

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<sup>190</sup> For want of sufficient data, this study was unable to ascertain whether the costs were recovered in full or not.

Table 6.3 Consent application fees 1975<sup>191</sup>

Year	Assign/sell transfer	Sublease	Mortgage/ charge	Subdivide
01/01/85	Application: K100 Renewal: K100	Application: K100 Renewal: K100	Application: K50 Renewal: K25	Application: K50 Renewal: K25
01/01/88	i) K100 for CMV below K100, 000. ii) K300 for CMV between K100, 000 and K300, 000. iii) K500 for CMV above K300, 000.	i) K100 for annual rent K10, 000 and below. ii) K300 for annual rent between K10, 000 and K30, 000. iii) K500 for annual rent above K30, 000.	K100	K100
01/01/91	i) K300 for CMV below K100, 000 and below. ii) K600 for CMV between K100, 000 and K300, 000. iii) K1, 000 for CMV above K300, 000.	i) K300 for annual rent K10, 000 and below. ii) K600 for annual rent between K10, 000 and K30, 000. iii) K1, 000 for annual rent K30, 000 and above.	K250	K1, 000
01/07/91	i) K600 for CMV below K10, 000 and below. ii) K1, 200 for CMV between K10, 000 and K30, 000. iii) K2, 000 for CMV above K30, 000.	K2, 000	K500	K5, 000
01/01/94	K25, 000	K25, 000	K5, 000	K50, 000

Source: Land (Conversion of Titles) (Amendment) Act, No. 5 of 1985; Ministry of Lands; Roth, 1995

<sup>191</sup> Data on inflation and exchange rates of the Kwacha are in Appendix 6.5.

Table 6.3 shows the respective fees in question. Note that the structure of the fees was slightly modified and the fees had been reviewed upwardly from time to time. The adjustments were prompted by the rise in actual costs of administering the consent procedures in view of the high rate of inflation experienced during the periods in question.

(b) Costs of regulatory delays

As with most state regulatory bodies, the study anticipated time delays in the administration of the state consent regulatory regime. It suffices to say that time delays may be particularly acute if the administrative machinery is under-funded, understaffed and/or overloaded with tasks requiring urgent and timely decisions as most land transactions do.

Using the expert witness survey questionnaire referred to in chapter 5 (see Appendix 5.3), valuation surveyors were asked to indicate, based on their experience, how long the procurement of state consent for sales transactions usually took. Of the 26 valuation surveyors that were targeted by the survey, 22 responded to this question. Table 6.4 presents the results of the survey.

Table 6.4 Questionnaire survey responses 1975

Responses	Scores	
	(n = 22)	%
Less than four weeks	7	32
One to three months	8	36
Four to six months	6	27
Seven to 12 months	1	5
More than 12 months	-	-
<i>Cannot tell</i>	-	-

Number of respondents to the question (n) = 22

From the table, it is evident that state consent time delays did occur. The most popular response (as represented by the modal score of 36%) indicates that the typical delay was one to three months. However, the other responses are equally important, particularly those that are close to the modal score. Besides the unanimity over the occurrence of delay, the response pattern demonstrates the range and, perhaps, the varied nature of the experiences of the respondents over this matter.

Data from official documents (see Law Development Commission report of 1981) also supports the above observations. Submissions by the Surveyors Institute of Zambia (SIZ), the Conveyancing Committee of the Law Association of Zambia (LAZ), and the Government Valuation Department to the Law Development Commission all highlight the occurrence of this problem and its underlying causes (see Law Development Commission, 1981, p. 71-98). According to some of these submissions (e.g. by the Conveyancing Committee of the Law Association of Zambia, p. 86-87), the delays in question usually take several months (ranging from one to six months) and, for some cases, one to three years. The Conveyancing Committee blamed the difficulties faced under the Lands Act 1975 (including the delays in issuance of state consent) on '(a) the too comprehensive range of transactions affected by Section 13 (1); and (b) the lack of administrative machinery for applying Section 13 (3)' (see Law Development Commission, 1981, p. 81). The Government Valuation Department, on the other hand, argued that: "The Act [Lands Act 175] creates considerable work for all involved... Delays occur through administrative inefficiency, incorrect filing on forms and because of the sheer volume of work (ibid., p. 96)." For its part, the Government Valuation Department produced some statistical data to show the department's inadequate (valuation) staffing position, volume of work and the outstanding cases in the period July 1975 to July 1978 (see Appendix 6.2).

In its findings, Law Development Commission report (1981) acknowledged the existence of the problem and the underlying causes, which basically reflected the high transaction costs of establishing and administering the state consent regime.

Consequently, the report recommended, among other things, additional engagement of resources, in terms of manpower and logistical support (see Law Development Commission, 1981, p. 5-6).

(c) Speed-money

The issue of speed-money centres on the occurrence of bribes and corruption in the administration of the state consent machinery. As intimated above, because of the opaque nature of corruption, the costs arising from bribery activities are difficult to assess. In particular, quantitative data on the extent of the 'speed money' phenomenon was virtually absent. However, analysis of policy documents and other official statements suggests that speed-money could have exchanged hands between certain public officials administering the consent machinery and some transacting parties.

Firstly, according to the Law Development Commission report (1981, p. 1), one of the terms of reference the Government wanted the Law Development Commission to investigate was 'the alleged misuse of certain sections of the Act for the personal benefit of officials in the Ministry of Lands and Agriculture.' This suggests, as the Commission rightly observed (see Law Development Commission, 1981, p. 3),<sup>192</sup> the occurrence of 'corruption'.<sup>193</sup> The corruption in question must have occurred at a sufficiently high level so as to warrant public inquiry. If corruption levels were insignificant, as presumably was in 1975 when President Kaunda acknowledged its existence in local authorities (see GRZ, 1975a), the Government would not have pursued this matter.

Secondly, because of the complications arising from the Act, especially the separation of land value from improvement value and the faulty conceptualisation of property

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<sup>192</sup> Law Development Commission (1981) declined to investigate this matter, pointing out that the issue required a special investigation agency that would take evidence on oath. [To conclude this matter, further study would have to be carried out with the Anti-Corruption Commission to establish whether or not government did follow up this matter as advised by the Law Development Commission.]

<sup>193</sup> Most literature on corruption defines this concept in a similar fashion to the terms of reference in question (see, for instance, Blackburn *et al.*, 2003; Jain, 2001).

ownership (see above and chapter 3 on policy review and evaluation), the valuation regime appears to have ran into major difficulties; hence, the purported problem of 'manipulation of prices of land'.<sup>194</sup> Valuing land and attached improvements separately, as pointed out in chapter 3, is practically difficult to undertake and therefore results mostly in uncertain assessments of value. This, as noted in chapter 3, creates opportunities for corruption. Not surprisingly, various members of the Working Party who deliberated on the problems arising from the Lands Act 1975 categorically acknowledged the presence of this phenomenon (see Law Development Commission, 1981, p. 69).

Thirdly, besides the problem of uncertain valuations, the mere fact that the issuance of state consent consumes substantial time of transacting parties (as shown above) is reason enough to suggest that unscrupulous transacting parties would not be hesitant to 'buy their way out' of the (perceived) lengthy consent encumbrance in order to expedite an urgent worthwhile transaction.

The last, but not the least, point to note is that section 13 of the Lands Act 1975 gave unreservedly considerable *discretionary* power to the state to decide on a wide range of aspects regarding a wide range of transactions (see sub-sections 2 and 3). For example, the state was given the liberty to fixed maximum prices, rents receivable, premiums, or any other consideration whether for sale, mortgage, or, indeed, any other conceivable purpose. We just noted above (*see footnote 181*) that the valuations on which 'consent prices' were based were highly vulnerable to error. So, to impose a condition, such as subsection 2, which reads in part that: "The President may in granting his consent under subsection (1) "impose such terms and conditions as he may think fit..." is to create a recipe for uncertainty and transaction risk of unfathomable proportions. Discretion breeds fertile grounds on which corruption thrives (see Jain, 2001). An uncertain decision-making, as this consent machinery appears to have fostered, also generates opportunity for corruption. Even without corruption, the uncertainty itself (spawned by

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<sup>194</sup> This was the second term of reference the Government wanted the Commission to investigate (see Law Development Commission report, 1981, p. 1 & 43).

discretion) is sufficient enough to discourage official transfer and exchange, or encourage underhand methods of transacting.

(d) State administrative costs

The costs referred to in (a) to (c) above, are costs borne by private transacting parties. The state/government, as the policymaker and enforcer, must have incurred some costs as well, as policy-making and/or implementation are not costless.

Besides the cost of policy-making itself, which involves a wide range of activities (political, legal and so on), there were costs of administering the consent regime. Typical of most transaction costs assessments (see chapter 2, on conceptual framework); these costs are difficult to measure in absolute terms. This study simply highlights the incidence and relative significance of the administrative costs.

When the 1975 policy reforms were promulgated, the rationale was that land would be delivered, or transferred, cheaply by the government (see, for example, GRZ/MoL, 2002, p. 3). However, as the section on compliance costs above has shown, the state realised ten years later that administering state consent machinery is costly and the state alone could not foot the entire bill. Although the survey could not establish whether the fees charged for state consent covered all the costs in question, it is doubtful that they did. This doubt is founded on the fact that no fees, for example, were levied on valuation of landed property for state consent purposes (see interview results in Appendix 7.1 (section B: Fees)). So, it is likely that the costs of administering state consent were borne both by the transacting parties and the Government.

Secondly, and perhaps more importantly, it worth point out that the Government did not have the adequate capacity to administer the state consent regulations. The problem of under-funding, understaffing and heavy workloads referred to in chapter 5 equally applied here. For example, until very recently (in the late 1990s), the Ministry of Lands did not have its own team of valuation surveyors to carry out valuations for state consent purposes. It, therefore, had to rely on valuation surveyors from other Ministries (i.e.,

Works and Supply and, later, Local Government and Housing), which were also understaffed (see Appendix 6.2 referred to above). Consequently, for some consent applications (e.g., consent for mortgages and charges) professional valuations had to be dispensed with (see submission by the Commissioner of Lands in the Law Development Commission report, 1981, p. 100). Now, the bone of contention here is that, if the resources needed to support the administration of state consent machinery were not costly, Government would *not* have had the administrative problem referred to above. The fact that the problem existed and did in fact linger on for a very long time suggests that the costs of administering the consent provisions were *significantly* high.

- ***Under the 1995 land policy reforms***

- (a) Compliance costs

As noted above, the 1995 reforms retained the state consent arrangement, albeit in a modified and circumscribed form. Administering state consent, as the outgoing (1975) regime realised once in operation, is not without costs. These costs were (fully or partially)<sup>195</sup> passed on to the transacting parties in form of fees, levies or charges. Table 6.5 shows the various fees involved. In addition to consent fees, Appendix 6.1 lists a chain of other pertinent fees for transacting in land.

Table 6.5 Consent application fees 1995

Year	Assign/sell transfer	Sublease	Mortgage/ charge	Subdivide
01/01/95 to 11/ 2003	K60, 000	K60, 000	K51, 000	K60, 000

Note: From January 1994 (see Table 6.3) to date, fees are no longer variable by the size of the transaction. Source: Ministry of Lands (personal communication, 2003).

<sup>195</sup> Again, due to data constraints this study is unable to say whether the costs are recoverable in full or not.

## (b) Costs of regulatory delays

Besides consent application fees, again, as noted under the 1975 regime, the study anticipated that the consent statutory requirement, however well framed, was more likely than not to spawn some delays in the transaction process due to red tape. As expected the survey results, based on the expert questionnaire survey referred to above (see appendix 5.3), give a somewhat different picture to that which obtained under the 1975 regime.

Table 6.6 Questionnaire survey responses 1995

Responses	Scores	
	(n = 24)	%
Less than four weeks	17	71
One to three months	1	4
Four to six months	2	8
Seven to 12 months	4	17
More than 12 months	-	-
<i>Cannot tell</i>	-	-

Number of respondents to the question (n) = 24

Of the 24 respondents that answered this particular question, the majority were of the view that procurement of state consent, this time around, is a lot quicker. State consent, in the view of the 71% of the respondents, is usually granted in less than four weeks (see Table 6.6). The focus group discussions I had with two panels of property consultants (see Appendix 6.3) on the Copperbelt and Lusaka prior to the survey strongly supported this view. However, a smaller number of respondents, as be seen from the table, still held the notion that very little had changed since the 1975 regime. All the same, the

overall picture, as anticipated, is that state consent takes time to process however efficiently the current system may have been revamped.

The improved delivery of state consent was fostered by (a) the circumscribed nature of the consent structure, which limits the range of transactions, and the time in which it is granted (see Section 4 of the Lands Act 1995); and (b) enabling environment of open market pricing, which allowed arms-length transactions.

(c) Speed-money

The problem of corruption at the Ministry of Lands, where state consent is processed, has not gone away yet. In fact media reports<sup>196</sup> and personal communication with staff in land-based organisations, such as the Zambia Land Alliance, suggest that corruption has been on the rise since the 'open market pricing' (1995) regime came into force. These observations were confirmed by a recent study by Transparency International Zambia, which found the Commissioner of Lands office as one of the most corrupt public organisations in the country (Transparency International Zambia/Lemba, 2005).<sup>197</sup> The President of Zambia himself<sup>198</sup> has on a number of occasions charged that the ministry was corrupt (see *The Post*, August, 01, 2006; May 27, 2006; Zamnet, May 24, 2006). This culminated into dismissal of the Lands minister and some senior officers, including the Commissioner of Lands (*The Post*, March 2, 2007) following *The Post's* (February 26, 2007) revelations of the corruption scandal involving senior officers at the ministry. Appendix 6.4 highlights some of the noteworthy comments from eminent persons about public perception of corruption at the Lands Ministry (this is the *general* perception, on *land delivery* see Appendix 5.5 in chapter 5).

<sup>196</sup> These include *The Post*, *Times of Zambia*, *Zambia Daily Mail*, and online news excerpts by Zamnet.

<sup>197</sup> Online, available at: [http://www.tizambia.org.zm/download/uploads/OPINION\\_POLL\\_ON\\_LUSAKA\\_RESIDENTS\\_PERCEPTIONS\\_OF\\_CORRUPTION.pdf](http://www.tizambia.org.zm/download/uploads/OPINION_POLL_ON_LUSAKA_RESIDENTS_PERCEPTIONS_OF_CORRUPTION.pdf) [accessed November, 2006].

<sup>198</sup> This refers to President Levy Mwanawasa, who has held the presidential post since 2001.

However, in spite of the grim picture these reports project, given the *circumscribed* nature of the 1995 state consent structure and the enabling environment of free/open market pricing, the extent of corruption (and therefore speed-money) has in fact been *scaled* down, if not, in most cases, removed altogether. The vexing issue of valuation (for state consent purposes), for example, is no longer a state-determined matter. Therefore, the attendant problems of valuation uncertainty and corruption do not arise, as was the case in the previous regime. Of course, the situation under the current public land administration regime could have been considerably worse if the state consent structure of 1975 (see *supra*) was retained in its entirety.

#### (d) State administrative costs

The administrative structure at the Ministry of Lands under the 1995 policy framework is not very different from the previous (1975) regime; hence, there is not much to be said that is significantly different from what was discussed above. However, in terms of strict administration of state consent provisions, the modification of the consent structure (discussed above<sup>199</sup>) under the 1995 policy meant that the administrative machinery would now carry comparatively less workload as the number of tasks, such as valuation and the actual fixing of maximum prices, were no longer existent. This perhaps explains, in part, why there is some improvement in the delivery of state consent (see section on costs of regulatory delays) despite the perennial problems of funding and understaffing.

#### ▪ *Summary*

As pointed out above, this subsection is complementary to the subsection on property rights. (Note that there is a relationship between the two concepts, property rights and

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<sup>199</sup> This was discussed in section 6.2.1 (b), regarding the issues of 'divisibility and fungibility of rights.'

transaction costs. This was discussed in chapter 2). Although it is quite informative by itself, the transaction costs subsection buttresses the observations and conclusions arrived at in the former section. However, it is appropriate that the major points arising from the subsection are highlighted before proceeding to the next section.

First, the section identified six main types of transaction costs. Two of these, professional fees and property transfer tax, were found to be not directly driven by the land policy reforms.

Second, both the 1975 and 1995 policy reforms were found to have increased, to varying extent, transaction costs. It is important to note that these costs (a) were borne both by the transacting parties and the Government (the policymaker and enforcer); (b) are additional costs over and above those of a free market regime; and (c) are not insignificant.<sup>200</sup>

Third, due to the varying degrees of property rights attenuation, it is evident that one set of these reforms generated comparatively more adverse effects than the other. In particular, the 1975 reforms, being more abrasive, appear to have a higher incidence of transaction costs than the 1995 reforms. Notably, costs of regulatory delays and the incidence of speed money were much heavier in the former than the latter regime. It is also clear that the 1975 regime needed, but was not able to mobilise, adequate administrative resources to monitor and enforce the regulations than the more permissive (1995) regime. The failure, for example, to strictly enforce the provisions of sections 13 of the Lands Act 1975 which required state consent for each and every land transaction (see Law Development Report, 1981, p. 102-103)<sup>201</sup> shows, among other things, the lack of sufficient administrative resources to implement such a policy.

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<sup>200</sup> A three to six months wait for state consent in a high inflationary environment, for instance, is economically damaging to the transacting parties and the agility of the land market as a whole.

<sup>201</sup> The Law Development Commission (1981) report carries official statements which demonstrate the failure of the administrative regime to strictly adhere to the policy and legal provisions on state consent (as

### 6.3 Concluding remarks and recommendations

This chapter set out to examine how the 1975 and 1995 land reforms affected the transfer and exchange of land and land rights between economic agents. In line with the research strategy (set out in chapter 1), an evaluation of the property rights literature (as outlined in chapter 2) was carried out to establish how an alteration of the structure of property rights may affect the transfer and exchange of property rights. The analysis indicates that changes in the system of property rights may impact on the transfer and exchange of property rights in land in a number of ways, particularly with respect to the following factors:

- Type and quantum of transferable rights
- Divisibility and fungibility of rights
- Freedom of exchange
- Terms and gains from trade

Based on the grand review in chapter 3, this chapter proceeded to analyse the effects of the land reforms in question with regard to the aforesaid factors.

Consistent with the general evaluation in chapter 3, the findings in this chapter indicate that the 1975 land reforms had relatively more detrimental effects on the land transfer and exchange than the latter (1995) reforms. Tables 6.1 and 6.2 summarised and guided the discussion. It is evident from these tables and the text that the adverse effects of the reforms centre on the attenuation of private property rights, with the latter (1995) reforms being less corrosive than the former. The point to note about property rights attenuation, as outlined in chapter 2 and demonstrated in this chapter, is that it affects

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per section 13 of the Lands Act 1975). This matter is discussed from a different perspective in chapter 7 (see section on 'Buyer-seller behavioural and other related issues').

incentives and transaction costs. Incentives and transaction costs, in turn, affect exchange.

In conclusion, what lessons can be learnt from the comparative study of the said policy reforms?

Firstly, state intervention in land transfers and exchange should be carefully planned because policy intervention measures are not costless.<sup>202</sup> Each policy regime has its own pattern and/or level of transaction costs; just as each policy structure has its own set of incentives. Secondly, excessive detrimental market intervention yields higher transaction costs.<sup>203</sup> In other words, the greater the extent of deleterious intervention, the heavier the incidence of transaction costs. Thirdly, policies stifling free market exchange can lead to non-compliant behaviours and other externalities.<sup>204</sup> Non-compliant behaviour, for instance, manifests itself in the form of informal/extra-legal land transactions. Fourthly, poor conceptualisation or definition of property rights in land generates variable effects that hinder market exchange. Poorly defined or conceptualised property rights in land, as the 1975 policy evaluation has for instance demonstrated, affects fungibility of property rights.<sup>205</sup>

This is not however to say that the State should not in any way intervene in land transfers and exchange. On the contrary, to improve the exchange and transfer of property rights in land, this study recommends state involvement that (a) reduces

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<sup>202</sup> See subsection on transaction costs.

<sup>203</sup> The 1975 policy regime, for example, spawned relatively more costs than its (1995) counterpart because of its excessive interference with free market operations.

<sup>204</sup> See subsection on property rights. Note: non-compliant behaviour, itself, can (in my opinion) be conceptualised as an externality. It is a reaction to a repressed free market exchange and has both positive and negative effects. The positive part of it is that, like corruption, it can be considered as a 'necessary price to pay for correcting market failures' (on corruption, see Acemoglu and Verdier, 2000; Blackburn *et al.*, 2003; and on non-compliant behaviour, see Feige 1997; De Soto, 1989). However, the negative aspect is that, if carried out on a large scale, it may contribute to erosion of 'rule of law' (see Feige, 1997).

<sup>205</sup> See subsection on property rights.

transaction costs; and (b) improves market incentives. This can be achieved in a number of ways. For example, by formulating or modifying policies that encourages market exchange. Free market exchange removes the incidence of non-compliant behaviour and other externalities, some of which have been outlined above in this chapter. Policies that encourage market exchange include policies that clearly define property rights and minimise private property rights attenuation.

In context of the two policy reforms referred to above, the 1995 policy regime attempted to promote free market exchanges by getting rid of the 1975 poorly framed concept of property rights that focused on physicality of land alone. However, the 1995 reforms did not entirely rid itself of the 'state consent' regime. The primary effects of 'state consent' are that it creates uncertainty and limits free transferability of land rights. State consent, therefore, reduces the agility of the land market. The issue of state consent need to be revisited and modified so that it does not pose serious constraints as it were prior to the 1975 policy regime.<sup>206</sup> In fact, from a market efficiency point of view, unless there are compelling reasons to maintain it, it should be abolished.

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<sup>206</sup> Understandably, the requirement for state consent is not entirely a new creation of the 1975 policy. It did exist prior to the 1975 reforms (source: personal communication with S. P. Mulenga, a long-serving former chairman of the Surveyors' Institute of Zambia, and focus group discussion in Lusaka, 2003). However, at the time it was not considered as a major constrain in land transactions partly because of there relatively laissez faire market situation obtaining at the time, and partly due to its simplicity and (hence) prompt delivery.

## Chapter 7: Land Valuation and Pricing

We seek to reduce transaction costs, but we also behave to increase them.

Steven N. S. Cheung, *Economic Inquiry*<sup>207</sup>

### 7.1 Introduction

'Markets are institutions that allow individuals to *coordinate* without central planning (Webster and Lai, 2003, p. 1; emphasis added).' Coordination is achieved through the Adam Smith's 'invisible hand' of the price mechanism. Pricing, as a system and mechanism for allocating scarce resources, is therefore central to the operation of any market system.

As in most complex market transactions, the process of establishing the actual price in land market transactions is usually preceded by valuation.<sup>208</sup> Valuations are often sought, for instance, during the acquisition process in order to support or confirm purchase prices (Baum *et al.*, 2001). Valuations also play a pivotal role in a wide range of other land market transactions, such as privatisation of state assets; mortgage finance; and property rating, taxation and insurance. As vehicles for discovering what the relevant prices are, valuations are not costless.<sup>209</sup> Usually professional fees have to be incurred to commission and obtain valuations. Because of their variable role and economic significance in market transactions, it is useful that we examine the effect that land policy may have on valuation and pricing.

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<sup>207</sup> See Cheung (1998, p. 518).

<sup>208</sup> A distinction must be made between valuation and price. Valuation is an act or the process of estimating the value of a commodity or interest in a property for specific purpose or purposes. Price, on the other hand, is the actual consideration given by one party to the other in an exchange of a commodity or interest in a property.

<sup>209</sup> For a discussion of the costs of carrying out transactions through the market, see Coase (1988a & b).

As in the previous two chapters, the purpose of this chapter is precisely that of seeking an understanding of the impact of the two land-policy reforms (1975 and 1995), referred to above, on the actual workings of the land market. However, unlike the preceding chapters, this chapter focuses on institutional change. More specifically, the chapter attempts to gauge, not the direct impact of land policy on the land market's pricing system as such, but rather the market agents' reaction to policies. The policy review and evaluation exercise in chapter 3 suggests that there were some changes in property rights regimes as a consequence of the changes in land policy reforms. These changes (in policy and the resultant property rights regimes), it is hypothesized,<sup>210</sup> may have induced some market behavioural changes in the bargaining and price fixing processes as well. This chapter therefore examines the strategic responses, if any, of market agents (i.e., professional valuation surveyors and buyers and sellers) to these changes. Alongside buyer-seller behavioural and related issues, the chapter delves more importantly into valuation issues and their implications. Valuation issues, in this respect, relate to valuation methods, data gathering and availability, and valuation accuracy. Buyer-seller behavioural issues, on the other hand, focus specifically on policy compliance with the exchange and pricing setting or control regimes. Table 7.1 shows the key research issues.

It is apparent from the table that the 1975 land policy intervention measures, as pointed out in the previous chapters, adversely affected private property rights generally and the pricing regime in particular. On the other hand, the 1995 land policy, following a minimal interventionist approach that included open market pricing, attempted to create a market-enabling environment.

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<sup>210</sup> Based on the tenets of *institutional change* (see North 1990a; 1993; 1987; Feige, 1997; Arvanitidis, 2003; Kingston and Caballero, 2006). While the *locus classicus* describing institutions and institutional change is the work of North (1990a, b & c; 1993a & b; 1994 a, b, c & d; 1995; 1997), other related works explore and/or demonstrate the fundamental role of property rights in economic behaviour (see, for instance, Alchian and Demsetz, 1973; De Alessi, 1980; Demsetz, 1967, 1972; Furubotn and Pejovich, 1972). Chapter 2 (see the subsection on 'property rights and institutional change') reviewed some of these aspects.

Table 7.1 Land policy, pricing and market behavioural changes

Land policy framework	Property rights and pricing regime	Market behaviour and experiences	
		Professional valuation practices	Interaction of buyers and sellers
1975 <ul style="list-style-type: none"> <li>• State-administered leasehold system (100 years+)</li> <li>• Ignores value on bare land</li> <li>• State consent: comprehensive</li> </ul>	<ul style="list-style-type: none"> <li>• Amorphous property rights</li> <li>• State price controls</li> </ul>	<ul style="list-style-type: none"> <li>• Valuation methods</li> <li>• Data/information</li> <li>• Valuation accuracy</li> <li>• Land value</li> </ul>	<ul style="list-style-type: none"> <li>• Policy compliance: exchange &amp; fixing of prices</li> </ul>
1995 <ul style="list-style-type: none"> <li>• State-administered leasehold system (99 years+)</li> <li>• Recognises value on bare land</li> <li>• State consent: liberal</li> </ul>	<ul style="list-style-type: none"> <li>• Comparatively well-defined property rights</li> <li>• Open market pricing, save for govt land allocations</li> </ul>	<ul style="list-style-type: none"> <li>• Valuation methods</li> <li>• Data/information</li> <li>• Valuation accuracy</li> <li>• Land value</li> </ul>	<ul style="list-style-type: none"> <li>• Policy compliance: exchange &amp; fixing of prices</li> </ul>

Given these observations, it is apparent that radical market reactions to policy changes were more likely to have occurred under the 1975 regime than under the pro-market, 1995 policy framework. It is to these more appealing, radical behavioural changes that the analysis of the market reaction will focus on in this chapter.

The focus on the 1975 land policy regime is justified also on the grounds that this chapter addresses one of the research questions raised in chapter 1 and highlights the issue of valuation uncertainty referred to in chapter 3. The pertinent question posed in chapter 1 was: 'Why is it that, contrary to economic logic, property prices never significantly tumbled countrywide, but instead continued to rise in the immediate and subsequent years following the 1975 land policy reforms?'

Indeed, it is paradoxical that historically there has not been any evidence (published, anecdotal or otherwise) to suggest the land/property market did crash subsequent to the 1975 land policy reforms. On the contrary, property prices continued to rise thereafter

(see section 7.2, Table 7.5). It is amazing also that the scramble for free land, which Professor Mvunga (see Mvunga, 1982, p. 76) logically predicted following the said 1975 reforms, never materialized. Besides the transaction cost explanation regarding land delivery constraints advanced in chapter 5, which aggravated land scarcity, there ought to be another reason, or set of reasons, that explain specifically why majority of the people in urban areas could not afford to acquire formal landed property when the State annulled land prices for bare/undeveloped land and imposed price controls on developed property in order to stop price escalations. The review of the valuation and pricing system following the 1975 land policy reforms may well shed some light on these matters.

This chapter is arranged as follows. Section 2 presents the valuation issues and section 3 discusses the buyer-seller behaviour and other related matters. Concluding remarks are at section 4.

## **7.2 Valuation issues**

In the matter of land and property valuation, the Government policy and statutory regulation categorically stipulated that: ‘... in fixing any amount [price, premium, consideration, or rent]... no regard shall be had to the value of the land apart from the unexhausted improvements thereon’ (Lands Act 1975, Section 13 (3)). Chapter 3 pointed out the major difficult such a policy poses in property valuation and conveyancing. This section now explores this matter in detail, drawing on theory and research evidence, by delving into actual property valuation process to unravel the valuation traits and practices.

### **7.2. 1 Valuation process**

The valuation process and practices can perhaps be better understood by structuring the discussion around the following set of questions. First, how do valuation surveyors (referred to hereafter simply as ‘valuers’ or ‘appraisers’) go about valuing land transactions? What precisely do they value? Is it land, brick and mortar, or anything else of substance that is assessed? What specific techniques and practices do they use? Are conventional valuations good proxies for market prices? If so, how well have Zambian valuers performed their valuation tasks generally? Finally, and more importantly, how compatible were the Zambian valuation practices with the 1975 statutory valuation guideline outlined above and was this of any consequence on property values?<sup>211</sup>

Valuation is defined as: ‘The art, or science, of estimating the *value* for a specific *purpose* of a particular *interest* in property at a particular moment in *time*, taking into account all the *features* of the property and also considering all the underlying economic *factors* of the market, including the range of alternative investments’ (Millington, 2000, p. 8; emphasis added). Going by this broad definition, it is apparent that the valuation process is cognisant of the concept of *property rights*, as value estimates (in each and every valuation) are ascribed to *specific interests*. In fact, according to the definition (and even other definitions in the valuation literature; see, for instance, Enever and Isaac, 2002; Scarrett, 1991; Isaac, 1998), what are valued in property are *interests* – taking into account the purpose of valuation, time, all features of the property and other relevant factors (e.g. legislation or statutory requirements).<sup>212</sup> It is not land or improvements on the land *per se* that are valued, although these physical components are crucially important and do significantly contribute to the ultimate value estimates. The rights in land or developed property, however, determine the extent to which land or the improvements thereon can be owned and used; and, hence, the value of the property (see chapter 2). Without the demand for the (use-) rights, the improvements on the land

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<sup>211</sup> The statutory valuation guideline in question formed the basis on which state consent to land transactions were granted.

<sup>212</sup> Although Millington’s (2000) definition of valuation does not include the aspect ‘other relevant factors,’ most valuation literature does make reference to this matter (see, for instance, Baum *et al.*, 2006, p. 74-75; Scarrett, 1991, p. 203).

(or land by itself) would have no, or very little, exchange value.<sup>213</sup> Thus, the identification of specific *interests*, or *rights*, in landed property and the understanding of their investment potential are absolutely crucial in land valuation matters.

Valuation, as a professional activity, is usually carried out methodologically. There five major techniques that are used in property valuations worldwide, particularly in the UK, US, and Australia. These are comparative method, investment method (or income approach), cost (or summation, or contractor's) method, profits (or accounts) method and residual (or hypothetical development) method. To aid this discussion, these methods are briefly outlined below. For thorough review or detailed description of these methods, however, see Baum *et al.* (2006); Enever (2002); Millington (2000); Scarrett (1991) and many others.

The comparative method basically involves comparison of rental, in the case of rental assessment, or capital values, where capital value is the object of the valuation, of properties that have been recently let or sold with the subject property (see Isaac, 1998). The investment method is used 'for valuing properties that are normally held as income-producing investments. The value of such an investment is the product of the net income and the inverse of the market yield (Enever, 2002, p. 65).' The investment method of valuation has been referred to by Baum *et al.* (2006) as the market's *indirect* comparison method. This is because the data on net income and yield applied in such valuations are essentially derived from comparable market transactions.

Where comparable market data is frequently not available (as in the case of theatres, golf courses, caravan sites and suchlike properties), valuations are usually made with reference to the profits earned by the enterprise in occupation of such properties. The valuation method applied in these circumstances is referred to as the profits or accounts method. Where properties do not normally come onto the market, and where such properties are not used for profit-making ventures, the appropriate method used in these

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<sup>213</sup> The economic demand for land is derived-demand – arising, as it were, from land use. Thus, land by or of itself has no exchange value.

situations is called the contractor's or cost method. The major limitation with the cost method is that it equates cost to value. It is, thus, used as a method of the last resort. The residual method is used in valuing properties with development or redevelopment potential, where an element of latent value could be released by expenditure of money on property and/or change in use. This method requires considerable valuation skills and judgement and, if not carefully handled, can produce outlandish valuation outcomes.

Methodologically, property valuations (or appraisals)<sup>214</sup> are said to be 'backward-looking' (see literature on 'appraisal smoothing' by, say, Matysiak and Wang, 1994; Diaz and Wolverton, 1996; Brown and Matysiak, 2000b; Clayton *et al.*, 2001; Baum *et al.*, 2002). It is widely acknowledged (within the said body of knowledge) that the retrospective nature of valuations derives from reliance by valuers (or appraisers) on historic cost and transaction information. This methodological weakness is universal notwithstanding the argument that, as Lai and Wang (1998, p. 520) point out, 'in the real world appraisers rely heavily on the most recent transaction and income data to derive their appraisal estimates.' For, as Clayton *et al.* (2001) have rightly asserted, 'Any technique based on past market data must, by its very nature, moderate the influence of current market conditions, and hence induce a lag in the appraisals behind contemporaneous market values (Clayton *et al.*, 2001, p. 342).' The point here is that however current appraisal data may be, such data is invariably based on past market transactions and, hence, is 'past market data'. Thus, as Millington (2000, p. 242) has remarked, 'it will remain true that the real skill in valuation will continue to lie in how available evidence is used, all of it being evidence of past market events rather than evidence of what the future will be.'

Historic data, and the valuations that naturally emerge from such data, are inherently problematic. It has been observed, for instance, that the backward-looking nature of the appraisal methodology will tend to produce a moving average, and therefore smoothed, measurement (see Baum *et al.*, 2002; Geltner and Miller, 2001; Clayton *et al.*, 2001).

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<sup>214</sup> The two terms are used interchangeably to mean the estimation of value as per the definition of valuation specified above.

This is, in part, due to the 'lag' effect between the 'individual appraised values themselves and the contemporaneous (unobservable, true) market values (Clayton *et al.*, 2001). Describing the lagging phenomenon in their study, Fisher and Miles (1999) observed thus: "when properties are increasing in value, appraised value lags prices from below, and when properties are decreasing in value, appraised values lag prices from above. It is as though appraisals are drawing from sales comps spanning the preceding year or more, to infer the current appraisal of the property (web page 4)." It is important to note, as Quan and Quigley (1991) have demonstrated, smoothed or lagged appraisals are a rational outcome of a thinly traded market. Thinly traded markets are characterised by low volatility and statistically significant serial correlation and cross-serial correlation (McAllister *et al.*, 2003).

Besides the smoothing effect, it is further noted that historic appraisals have influential effect on current appraisals through 'anchoring' bias (Diaz and Wolverton, 1998; Clayton *et al.*, 2001). According to this view and the empirical evidence thereof (see Diaz and Wolverton, 1998), there is a tendency among appraisers to "attaching 'too much' weight to their previous appraisals and 'not enough' weight to new market information since the time of the previous appraisal (Clayton *et al.*, 2001, p. 342)."<sup>215</sup> Similarly, the appraisal smoothing literature also indicates that property valuers exhibit strong inertia to change their previous appraisals unless and until there is overwhelming evidence to the contrary. In particular, there is strong tendency to stick to hard transaction-based evidence and reluctance to include non-transaction based information into appraisals. As Graff and Webb (1997, p. 21) have, for instance, carefully noted: "the appraiser will need overwhelming and incontrovertible evidence that temporary/abnormal economic factors were involved in determining the sale price in order to produce an appraisal valuation that differs in a major way from that price." This clearly underscores the conservatism and anchoring bias of the appraisal practice in price formation.

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<sup>215</sup> However, Gallimore's (1994) survey findings in Britain indicate that besides anchoring, valuers have 'a tendency, in certain circumstances, to overweight information received most recently (Gallimore, 1996, p. 262).' A phenomenon he refers to as 'recency'.

Aside from the appraisal smoothing literature, the valuation/appraisal accuracy literature also provides insights into the discrepancies that do arise between valuations and actual prices (or appraised values and the true, unobservable market values). According to this literature, appraisal distortions can also arise from a series of other factors. Notably among these factors is the possibility of 'contamination' of the price itself by the valuation (see Lizieri and Venmore-Rowland, 1993 and Baum and Crosby, 1988) due to the perceived strong inter-linkage between the valuation process and transaction pricing mechanism. In this respect, Baum *et al.* (2002) have thus remarked: "appraisal may sometimes be a self-fulfilling prophecy as market participants and intermediaries are influenced by historic appraisals in price determination (p. 7)." Similarly, Cole *et al.* (1986) also draw our attention to the fact that other elements can introduce some distortions in the 'valuation versus price' relationships. It is evident that factors such as: "thin market and buyer motivation; logistics and seller motivation; capital improvements between date of valuation and sales date; and lengthy time period needed to close a large commercial transaction", if they form part of the transaction, may bring about certain discrepancies. Other factors that could lead to differentials between valuations and sales prices are information set (Crosby, 1996; Enever and Isaac, 1996; Brown, 1992); 'weight of money' theory (Scarrett, 1991); and basis of valuation (Crosby, 1996).

In the light of the foregoing review on the nature of valuations, the impending question is: Are valuations good proxies for prices? A significant number of quantitative studies on valuations accuracy<sup>216</sup> support the view that valuations are a good proxy for prices (see Parker, 1998). In the UK, following the criticism of the accuracy of valuations by Hager and Lord (1985), empirical studies by Brown (1985), Cullen (1994), and IPD/Drivers Jonas (1988) found high levels of valuation accuracy relative to predicated transaction prices. In addition, empirical studies in Australia by Parker (1998) and Newell and Kishore (1998) also indicate high degree of valuation accuracy. (Valuation

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<sup>216</sup> Valuation accuracy is defined as 'how close the valuation is to the exchange price in the market place' (Crosby *et al.*, 2003, p. 3; see also Parker, 1998; Waldy, 1997). It should not be confused with valuation variance, which captures 'the difference between valuations arising from different valuers working with similar property interests and similar data (Parker, 1998, p. 4).'

accuracy in both contexts refers to the high level of correlation found between prices and valuations). Some studies, however, do not subscribe to this affirmative view. Results from studies by Matysiak and Wang (1995) in the UK and Cole *et al.* (1986) and Fisher and Miles, (1999) in the US, for instance, reveal some marked discrepancies between valuations and prices.

In view of the mixed experiences from the developed world, similar studies were carried out in Zambia using privatisation transactions (see Musole, 1998; 1999) to establish the developing world position on this matter. Despite wide disparities in a number of specific cases, on the whole, both studies found high degree of correlation between valuations and prices. Thus, adding to the tally of those studies in developed countries confirming the accuracy of valuations. However, in spite of the empirical studies supporting the accuracy of valuations around the world, there is a consensus that “individual valuations are prone to a degree of uncertainty (Baum, online, undated<sup>217</sup>).”<sup>218</sup> At aggregate/macro-level, valuation-smoothing studies indicate, as pointed out above, that valuations lag the market and produce indices that fail to capture the turns and twists in actual market price movements.

Having reviewed the salient characteristics of valuation, the remainder of this section will now consider the substantive issues regarding the central question of the 1975 land policy impact on valuation practices. In line with the review and the research approach outlined above, this section will specifically establish what valuation methods and practices the Zambian valuers applied and then consider the implications of such valuation practises in the face of the statutory regulations imposed by the 1975 land policy.

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[http://www.cmvm.pt/NR/rdonlyres/99EEDC28-9E88-46C1-BD8E-A9362EF74AC3/2091/andrew\\_baum.pdf](http://www.cmvm.pt/NR/rdonlyres/99EEDC28-9E88-46C1-BD8E-A9362EF74AC3/2091/andrew_baum.pdf)

<sup>218</sup> Undoubtedly, the uncertainty in valuations is evident even from the analyses of the studies that confirm high degree of valuation accuracy.

### 7.2.2 **Zambian valuation practices**

In order to facilitate the assessment of the impact of the 1975 land policy on Zambian valuation practices, a questionnaire survey, referred to in chapters 5 and 6 as *expert witness questionnaire survey*, was administered to all valuation surveyors in the Copperbelt region and Lusaka (see Appendix 5.3). The survey posed, among other things, the basic questions regarding (a) methods of valuations used for commercial and residential properties under each of the three policy regimes (that is, prior to 1975, 1975-1995, and 1995-2003); (b) whether or not location attributes of urban land were taken into account when valuing developed properties in the period 1975 to 1995; and (c) availability of valuation data and its consequences on valuation. In this respect, the specific questions raised by the questionnaire survey are shown at Appendix 5.3 as questions 1-4, and 6.2. Further, a separate semi-structured interview with senior government officials was carried out to elicit additional data in relation to 'state consent valuations'. Appendix 7.1 shows the questions asked and the responses elicited (the pertinent questions are shown under Part 1: 1975-1994 (section A) and Part 2: 1995-2003).

As in chapters 5 and 6, the purpose of the questionnaire survey was to establish the respondents' *prevailing or dominant view* on the questions raised. This is represented in the tables by the *modal scores*. The results of the questionnaire survey are tabulated below.<sup>219</sup>

Tables 7.2 (A-D), Valuation Methods, show the frequency distribution of the answers regarding valuers' choices of the respective valuation methods for each property sector and the period in question. As indicated in the questionnaire survey (see Appendix 5.3, question 1), valuers were asked to indicate their choices of the given valuation methods, starting with the most important or preferred choice. Thus, the results were such that some valuers

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<sup>219</sup> Although the number of respondents was the same for the entire questionnaire, not all respondents answered all the questions; reflecting perhaps variations in the level of valuers' experience and age and the fact that this was a self-completion questionnaire. So, each question had rather a different response rate.

indicated two (2) or three (3) of their most preferred choices, others gave the full range of choices from one (1) to five (5). In each table, the last column shows the modal score(s) for each of the methods. Table 7.2 (A), for instance, indicates that the investment and DCM methods scored highly (bimodal) as first and second choice methods; followed by the Cost method, as the third choice; and the residual and other methods are at the lower end, as fourth and fifth methods.

#### Tables 7.2 (A-D) Valuation methods

Table 7.2 (A) Valuation of commercial property: 1995-2003

Choices	Frequency distribution					Modal Score(s)
	Direct Comparison Method (DCM)	Investment Method	Cost Method	Residual Method	Other Methods	
1st	12	14	0	0	0	Invest/DCM
2nd	9	9	4	0	0	DCM/Invest
3rd	1	1	5	0	0	Cost
4th	0	0	0	1	0	Residual
5th	0	0	0	0	2	Other

Table 7.2 (B) Valuation of residential property: 1995-2003

Choices	Frequency distribution					Modal Score(s)
	Direct Comparison Method (DCM)	Investment Method	Cost Method	Residual Method	Other Methods	
1st	25	0	1	0	0	DCM
2nd	1	18	4	0	0	Investment
3rd	0	2	5	1	0	Cost
4th	0	0	0	1	1	Residual
5th	0	0	0	0	0	Other

Table 7.2 (C) Valuation of commercial property: 1975-1995

Choices	Frequency distribution of the scores					Modal Score(s)
	Direct Comparison Method (DCM)	Investment Method	Cost Method	Residual Method	Other Methods	
1st	13	11	1	0	0	DCM/Invest
2nd	7	12	2	0	0	Investment
3rd	1	0	5	0	0	Cost
4th	0	0	0	1	0	Residual
5th	0	0	0	0	1	Other

Table 7.2 (D) Valuation of resident property: 1975-1995

Choices	Frequency distribution					Modal Score(s)
	Direct Comparison Method (DCM)	Investment Method	Cost Method	Residual Method	Other Methods	
1st	22	0	1	0	0	DCM
2nd	2	16	3	0	0	Investment
3rd	0	2	4	1	0	Cost
4th	0	0	0	1	0	Residual
5th	0	0	0	0	1	Other

Table 7.3 shows the survey results to question 1 in section 3 'Location, location, location' (see Appendix 5.3). As will be explained later, this was asked in order to establish whether or not land values aspects of property were taken into account in valuations in the period: 1975-1995.

The issue of valuation data is highlighted in Tables 7.4 (A-G). In particular, the tables focus on core data-inputs (sales prices and rental values), the difficulties encountered in gathering the data across the various types of property and the consequences thereof.

Table 7.3 Location attributes

Were location attributes taken into account when valuing developed properties?	Scores
1. Location attributes partially ignored	2
2. Location attributes totally ignored	2
3. Location attributes fully taken into account	20 ( <i>Modal score</i> )

These tables provide useful background and supplementary information on the nature of the property market in question under each policy regime and how that could have possibly affected valuation methods, practices and accuracy (the very issues referred to above and which are explored further below). The tables are also the product of the *expert witness* questionnaire survey discussed in chapter 5 (see Appendix 5.3, section 4).

Tables 7.4 (A-G) Data/information gathering

Table 7.4 (A)

Data on developed commercial property: Which type of data did you find most difficult to compile?	Scores 1995-2003	Scores 1975-1995
Sales prices	17 ( <i>Modal score</i> )	11 ( <i>Modal score</i> )
Rental values	1	3
Both sales prices and rental values	4	8
Other	4	3

Table 7.4 (B)

What were the common difficulties that you encountered in collecting commercial property data?	Scores 1995-2003	Scores 1975-1995
Insufficient land transactions	15 ( <i>Modal score</i> )	16 ( <i>Modal score</i> )
Total absence of transactions	1	5
Other reasons	1	6

Table 7.4 (C)

Data on developed residential property: Which type of data did you find most difficult to compile?	Scores 1995-2003	Scores 1975-1995
Sales prices	6	7
Rental values	7 <i>(Modal score)</i>	6
Both sales prices and rental values	3	9 <i>(Modal score)</i>
Other	1	2

Table 7.4 (D)

What were the common difficulties that you encountered in collecting residential property data?	Scores 1995-2003	Scores 1975-1995
Insufficient land transactions	11 <i>(Modal score)</i>	12 <i>(Modal score)</i>
Total absence of transactions	1	4
Other reasons	5	5

Table 7.4 (E)

Data on serviced, but largely undeveloped <i>urban land</i> with planning permission: Which type of data did you find most difficult to compile?	Scores 1995-2003	Scores 1975-1995
Sales prices	8 <i>(Modal score)</i>	11 <i>(Modal score)</i>
Rental values	7	5
Both sales prices and rental values	4	7
Other	1	1

Table 7.4 (F)

What were the common difficulties that you encountered in collecting data on serviced, but largely undeveloped urban land with planning permission?	Scores 1995-2003	Scores 1975-1995
Insufficient land transactions	15 <i>(Modal score)</i>	15 <i>(Modal score)</i>
Total absence of transactions	2	5
Other reasons	3	5

Table 7.4 (G)

Did the difficulties with data gathering, indicated above, have any significant consequences on valuations?	Scores 1995-2003	Scores 1975-1995
Most valuations tended to exceed actual prices	1	0
Most valuations tended to be lower than actual prices	0	4
There were no significant differences between valuations and prices	5	2
There were significant differences between valuations and prices: some valuations were higher and others were lower than prices	19 <i>(Modal score)</i>	18 <i>(Modal score)</i>
I do not know	0	0

The results of the questionnaire survey and interviews can be summarised as follows.

*(a) Methods of valuation*

The dominant valuation methods for the period 1975-1995, for both commercial and residential property, were comparative method (first choice), investment method (second choice) and the cost method (third choice). In the period 1995-2003, although the same methods were equally applied, the investment method was the first choice method and was more dominantly used for commercial property valuations. The residual and other methods were inconsequential for both periods 1975-1995 and 1995-2003.

Of the three mentioned methods of valuation, the cost method was consistently used as a third choice method. The low modal scores of the cost method (the modal scores of the

cost method do not exceed 5, whereas the DCM and investment methods have modal scores well above 8 (ranging from 9 to 25) (see Tables 7.2 A-D)), however, suggest that the cost method was occasionally used, perhaps as a check valuation tool.

*(b) Location attributes of land*

It was a majority view that, in period 1975-1995, location attributes of the urban-land were fully taken into account when valuing developed property. In valuation, location attributes of land are defined largely in terms of shape and extent of the site, neighbourhood or geographical position, and accessibility to services and/or infrastructure, etc. These multiple, "on-site and off-site attributes give land its value" (Webster and Lai, 2003, p. 45).

*(c) Data/information gathering*

The respondents acknowledged that in their tasks of data/information gathering, valuers had some difficulties compiling the following sets of data largely due to insufficient land transactions (Table 7.4 (A-F)). In the period 1975-1995 the major data constraints were the availability of market evidence regarding: (i) sale prices on commercial properties, and (ii) both sale prices and rental values for residential property sector. Similarly, in the period 1995-2003, valuers faced major difficulties obtaining sale prices and rental value data on commercial and residential properties respectively.

It was further acknowledged by the respondents that the difficulties they encountered with data availability had detrimental effects on the accuracy of their valuations: some valuations were significantly higher or lower than transaction prices (Table 7.4 (G)). This is expected and logical of thin land markets because valuations, after all, are a function of information (i.e., the database) (see Crosby, 1996; Enever & Isaac, 1996; Brown, 1992).<sup>220</sup> If market data is scant and far between, valuations will invariably

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<sup>220</sup> 'Valuations are a function of information. The better the information set the better the valuation.' (Brown 1992, p. 200)

oscillate unreliably around the 'true' market values. These 'errors' notwithstanding, so long such variations are random (not constant and systematic); valuations play a useful role in guiding the market. As discussed below (see subsection 7.2.3 and 7.3.1), valuations attempt to reflect the 'market back to the market' despite data and methodological limitations, for they are based on market evidence.

*(d) State consent valuations*

As pointed out in the previous chapters, the 1975 land policy reforms introduced the requirement for 'state consent' in all land transactions. In administering the consent, the President (through the Commissioner of Lands) was authorised, among other things, to set maximum prices, rents or premiums (see Lands Act 1975, Section 13). To facilitate the assessment of property values, the Commissioner of Lands engaged government valuers from the Ministry of Local Government.<sup>221</sup> Interviews with senior government valuers over the administration of the state consent valuations generated the detailed responses indicated in Appendix 7.1. From the appendix, it is apparent that:

- (i) In exercising their professional judgements, government valuers (like their counterparts in the private sector) did *not* ignore the 'location attributes' (land value) aspect in their valuations in the period 1975-1995 (see Appendix 7.1, responses to questions 1 and 2).
- (ii) Apart from the provisions of Section 13 of the Lands Act 1975, there were no additional government regulations or guidelines on how government valuers were to carry out their tasks (see Appendix 7.1, response to question 4).
- (iii) Except in the initial stages, when valuation figures could be modified on a massive scale by a specially appointed committee (see Law Development Commission, 1981), professional valuations were usually accepted by the

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<sup>221</sup> During this period (1975-1995), the Ministry of Lands did not have qualified manpower to carry out valuations.

Commissioner of Lands' office as given without further consideration (see Appendix 7.1, response to questions 3).

Furthermore, it evident from appendix that:

- (i) Government valuation services (from the Ministry of Local Government) were provided to the Commissioner of Lands' office *without* a specific charge (in terms of valuation fees) (see Appendix 7.1, response to the question in sections B). (The survey and interviews could not however establish whether the state consent fees, paid by applicants prior to valuation and other administrative processes, incorporated the cost of valuation services or not).
- (ii) Due to operational constraints (e.g., financial and manpower limitations), there were occasional delays in the delivery of valuation services (see Appendix 7.1, responses to questions in sections C)

### **7.2.3 Implications**

It will be recalled that the prime objective of the 1975 land policy reforms was to curtail price escalations in property transactions, particularly by banning the sale and transfer of bare/undeveloped land. As outlined above, this objective could not be achieved however. If anything, contrary to the policy, property prices kept on increasing (the house price escalation in Table 7.5 is a typical example); and, hence, more and more people got marginalised and/or consigned to the informal land market sector. The question is why did this policy objective fail? Why did the 'all embracing, all powerful' statutory provisions (see Lands Act 1975, Section 13) that nullified 'land value' and controlled property transactions fail?

Table 7.5 House prices: 1974-1990

Year	Price (in Kwacha)
1974	9, 570
1976	19, 380
1977	13, 370
1979	17, 170
1980	19, 945
1983	34, 730
1986	86, 000
1987	120, 000
1988	145, 320
1989	450, 000
1990	650, 000

Source: National Housing Authority (NHA)<sup>222</sup>

The results of the questionnaire survey and interviews (outlined above) do not, by themselves, tell much, if any, about the aforementioned land policy failure. Merging theory and evidence marshalled above, this subsection now examines their implications.

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<sup>222</sup> See National Housing Authority (1990). According to NHA (1990), the table shows house prices for a typical three-bedroom house with a plinth area of about 98 sq. metres. Statistically, NHA does not indicate whether these are mean, modal, or median prices. However, it would not be far-fetched to say these were modal or, if you wish, typical prices. For comparison purposes, data on inflation and exchange rates of the Kwacha are in Appendix 6.5. Note that NHA is a corporate body that was established by an Act of the Parliament of 1971. Its origin, however, dates back to the colonial era. NHA was mandated to, among other things, carry out surveys and maintain data on housing.

*(a) Valuation practices*

Zambia's land tenure system is founded on the British colonial (freehold and leasehold) landholding system. Zambian valuers also follow the British system of valuation which, incidentally, is not very different from that practiced in the other Western countries. Most of the Zambian valuers possess (or possessed) the same or similar qualifications to those of their counterparts in the UK, namely RICS/ISVA or IRRV membership.<sup>223</sup> Research on valuation accuracy (see Musole, 1998; 1999) suggests Zambian valuers can value just as well as other valuers in the world. So, in addition to whatever may be typical of Zambian valuation practices, what has been said about the valuation process above is generally applicable to Zambian valuers and valuation practice. With these points in mind we will now examine the role of valuation in the 1975 land policy failure.

First, the valuation methods applied by Zambian valuers (the most popular methods were/are comparative method and investment method, see Table 7.2 A-D) do not lend themselves easily to the task of separating land value from improvement value. Although there was a cut-off date (that is, with effect from 1<sup>st</sup> July 1975) by which freeholds estates ceased to exist and land value could not be incorporated in property transactions, the valuation methods applied by the valuers (both in the private and public sector) ensured that property values could be maintained, and if demand grew stronger later on, prices could in fact rise. Let us consider the following scenarios using the two commonly applied methods (see Table 7.2 C & D).

- (i) Valuation of freehold property that has been converted into statutory leasehold property (see Lands Act 1975, Section 5) using comparative method*

The comparative method of valuation is founded on the assumption that subject property will be compared with similar transacted properties; and the transactions on which the

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<sup>223</sup> In fact, a number of British valuers have worked in Zambia and/or assisted in training of Zambian valuers.

comparable evidence will be derived should have taken place in recent past. Consequently, as Millington (2000, p. 89) has pointed out, 'The less the comparable property complies with these requirements, the less valid will be the comparison'

Results of the questionnaire survey indicate that the comparative method was the *first choice* valuation method applied in the 1975-1995 period, yet during that period valuers had difficulties gathering data on property sales (for commercial property) and both sales and rental evidence (for residential property) due to insufficient land transactions (see Table 7.4 A-G). Therefore, applying the comparative method of valuation, as they did, in such (thin market) circumstances must have reduced its effectiveness (and possibly increased the chances of error). Secondly, as freehold interests were not directly comparable to 'statutory leaseholds' (defined by Lands Act 1975, Section 5, as the leasehold tenure for 100 years), this too must have posed some difficulties with valuation adjustments for freehold and leasehold interests are quite different. Freeholds are considered to be superior to leasehold interests, irrespective of the duration of the leaseholds. Lastly and more importantly, since the 'land value' component was to be deducted from the property values, it must have rendered the whole comparison method even more complicated; and, therefore, unreliable. It would appear that the conventional comparison method was not well suited to such radically modified circumstances.

In the light of the foregoing, valuers were likely to either: (a) decide not to use this method; or (b) apply it with *major* modifications in relation to: the type of interest being valued (either treat statutory leasehold as freeholds<sup>224</sup> or use data from similar leasehold properties which had already been in the market); include (partly or fully) or exclude land value component; and, in view of insufficient recent data, consider other market evidence in the distant past.

Since questionnaire survey evidence shows that this method was widely used, it would not be incorrect to suggest that the valuers that applied this method had to reckon with

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<sup>224</sup> Long leaseholds are usually treated as freeholds in valuation (see Baum, *et al.*, 2006 and Enever and Issac, 2002).

all those important adjustments mentioned in option (b). The outcome of such a valuation approach is that valuations are likely to be backward-looking (anchored or ratcheted to past data), lagged and smoothed (as thin market situations prompt valuers to look for reliable data far back in the distant past), and, therefore, less accurate.

*(ii) Valuation of previous leasehold property that has been converted into statutory leasehold property (see Lands Act 1975, Section 5) using comparative method*

What has been discussed in (i) above applies here to a greater extent. Unlike freeholds, however, valuation of leasehold property converted to statutory leasehold must have been slightly less problematic as the two systems, except for the land value aspect, were almost similar. This, perhaps, explains why it was commonly used.<sup>225</sup>

Even so, the results of such a valuation approach, as intimated above, are not likely to produce highly accurate estimates. The major source of error here arises from the adjustment of the constituent parts of the overall property value in order to account for the land value component. As valuations for 'site/land value taxation' have demonstrated around the world, this is easier said than done.<sup>226</sup>

*(iii) Valuation of freehold property that has been converted into statutory leasehold property (see Lands Act 1975, Section 5) using investment method*

The investment method has been defined by Baum *et al.* (2006, p. 69) as 'the method of estimating the present worth of the rights to future benefits to be derived from ownership of a specific interest in a specific property under given market conditions.' It is founded on the principle that that annual values and capital values are related to each other

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<sup>225</sup> The other reason is that urban leasehold properties were much greater in number than freehold properties (Zulu, 1993a & b).

<sup>226</sup> See [http://en.wikipedia.org/wiki/Land\\_value\\_tax](http://en.wikipedia.org/wiki/Land_value_tax).

(Millington, 2000). Hence, once one of these components is known the other can be assessed. In its simplest form, the investment method is represented as follows:

$$\text{Net income (NI) x Years' Purchase (YP)}^{227} = \text{Capital Value (CV)} \quad (1)$$

In valuation, freehold properties are considered to be properties capable of producing a perpetual income. Where, therefore, a freehold property is let at a rack rent with no known reversionary interest or recovery of capital to be provided for, the aforesaid formula (1) neatly applies.

It is noteworthy that this method was consistently used as a second choice method in the period 1975-1995. The use of this method could only have been prevalent if valuers treated the freehold properties that had been converted into statutory leasehold tenure basically as 'freehold property' that it were prior to the conversion. (This would, of course, be subject to specific value or yield adjustments to take into account the fact that the properties were no longer 'freehold' per se). Indeed, valuation theory and practice supports this approach in case of long leases (e.g., leases in excess of 40 years, according to Baum *et al.* (2006, p. 122); or 100 years, according to Enever and Isaac (2002, p. 117)). Invariably, as with the direct comparison method discussed above, the data on rental income, capital values or yields used in the formula (1), is essentially historic data from the subject property itself and/or similar transactions.<sup>228</sup> Therefore, the problems associated with the use of historic data (highlighted above) do arise here, too. This is particularly so, considering that this method was applied in a relatively *thin* market (see Table 7.2 A-G). In these circumstances, the accuracy of valuations was more likely to be impaired.

The other point to note is that the valuation process, using this approach, ascribes the property income or capital value to the interest being valued (see definition of the

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<sup>227</sup> Net income (NI) /Capital Value (CV) = Yield; and Yield = 1/YP. The years purchase, is therefore, an expression given to the inverse of the yield (see Enever and Isaac, 2002, p. 65; Isaac, 1998).

<sup>228</sup> That is why it is referred to by Baum *et al.* (2006) as the market's indirect method of valuation.

investment method above) and not to specific constituent parts of the property (e.g., buildings or land only). Of course, it is possible in the valuation process to apportion values to specific physical parts of the property before (and, perhaps, even after) the capitalisation process. But, as pointed out above, this is a difficult exercise to undertake empirically; and in most cases, for want of *comparable* market evidence (*comparison being the cornerstone of valuation*),<sup>229</sup> it can only be done with a high degree of error. Valuers, as the review process has highlighted above, tend to be conservative with capturing and processing of appraisal data. It is highly unlikely therefore that they could have gone to the extent of making massive, unprecedented adjustments to hard transaction-based data.

(iv) *Valuation of leasehold property that has been converted into statutory leasehold property (see Lands Act 1975, Section 5) using investment method*

If valuing the 'converted' freehold property was a very challenging undertaking in the period 1975-1995, this could have been less so with leasehold property (as data on leasehold property was already in existence from the previous era). Of course, even here valuers had to contend with the unprecedented difficulty of discounting the land-value component, if they did at all (see discussion below), in their assessments. With short leases, *ceteris paribus*, valuations could therefore proceed in the normal way. Comparable evidence (income, capital values/prices, yields, etc) from past leases was readily available, leasehold properties having been the bulk of the property on the market compared to freehold properties,<sup>230</sup> albeit in a thin market environment.

Having said that, as with the preceding section, the question here is whether such a valuation approach can effectively discount the land value component, in the absence of market evidence. Again, knowing valuation/appraisal traits and behaviour, as we now do, it seems this was highly unlikely.

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<sup>229</sup> See Enever and Isaac (2002, p. 67).

<sup>230</sup> See Zulu, 1993a & b.

*(b) Land value*

Besides the limitations of the valuation methods discussed above, the question of whether or not *land value* itself was ignored in assessments of property values is even more interesting. It suffices to remember here that the exchange value of the land derives from the demand for its use. In urban areas, the exchange value is closely associated with the 'location attributes of the land' (see definition above); the more appealing these attributes are [were] to the buyers, the higher the demand and vice versa. Therefore, any property valuation that takes into account the aspect of location attributes of land essentially incorporates some or all of components of the exchange value ascribable to the land itself. (This point is very well understood by valuers. It is the hallmark of the valuation profession). It is in the light of the foregoing that the aforementioned questionnaire survey and interviews solicited for the valuers' views and experiences on this matter.

Of the 24 responses received on this question, except for the two respondents who cited illegality of such an action (referring to the Lands Act 1975), the majority of the valuers candidly acknowledged having fully or partially incorporated this aspect of land value in their valuations (see Table 7.3). Even more surprising, however, was the disclosure by a senior government valuer that they, too, did *not* ignore this aspect of property value in their valuations (see Appendix 7.1 (section A: Valuation Practice, questions 1 and 2)) although such action was in direct conflict with the statutory regulation. When asked to clarify why they contravened the statutory guidelines, he remarked (verbally): 'We valuers are capitalists by training.'

It should be noted though that, whilst most of the government and private sector valuers were willing to factor-in the land value component into property valuations, market evidence (particularly sale prices) was sparse (see Table 7.4 E & F). This must have contributed to the problems of valuation accuracy; as, indeed, was acknowledged by the valuers themselves (see Table 7.4 G). This, perhaps, explains why the cost method was used by a couple of valuers as a *third choice* valuation technique.

## 7.3 Buyer-seller behavioural and other related issues

### 7.3.1 The behaviour of buyers and sellers

Undoubtedly, as the foregoing section has explicated, valuation practices contributed significantly to the failure of the 1975 land policy reforms to stem the escalation of land and property values. Be that as it may, putting wholesale blame on valuation alone would, however, be far-fetched. If valuation practices were solely responsible for nurturing or exacerbating property values, the market would have corrected itself over the years and valuations would have been rendered virtually useless (valuation failure) at some point or the other. This never happened. Hence, it is suggested that valuations played a constructive role by 'reflecting the market back to the market.'

Besides the valuation factor, it is important that we examine the buyer-seller behavioural traits. After all, it is the buyers and sellers that 'call the shots'; the valuer simply observes and analyses the actions of the 'agents who pay the piper'. Studying behavioural traits that happened in the past can be a daunting task. The data in this study was obtained largely from secondary source: documents or papers that reported or analysed the Zambian land and property market. Personal communications with estate agents and valuers also supplemented documented reports. A review of these sources of data/information suggests that the behaviour of these economic agents (buyers and sellers) may have underpinned property values.

Several commentators and market observers and analysts (see Commissioner of Lands; 1981; Conveyancing committee, 1981; Dow, 1981; SIZ, 1981; Zulu, 1993a & b; Mushota, 1993; Roth, 1995)<sup>231</sup>, for example, carry stories that intimate that during the 1975-1995 era, when it was illegal to sell or buy bare/undeveloped land, a number of market participants did not comply with the statutory regulations. In fact, there were a

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<sup>231</sup> Note that the references: Commissioner of Lands (1981); Conveyancing Committee (1981); Dow (1981); and SIZ (1981) are *annexed memoranda* in the Law Development Commission (1981) report. These references may, therefore, have been conveniently left out in the bibliography.

number of court cases that show that the provisions of the Lands Act 1975 regarding land/property exchange and sales were being violated (see, for instance, Mutwale v. Professional Services Ltd (Selected Judgements of Zambia No. 13 of 1984; and Hina Furnishings v. Mwaiseni Properties Ltd (Z.R. 40, 1983)).

One area of non-compliance was payment of market prices. Although government valuers purported to have professionally carried out their duties even at the risk of breaking the statutory regulation on land value (see the discussion on land value above), many commentators opine that their valuations were usually lower than prices agreed between transacting parties (see, for instances, results of the expert witness questionnaire survey at Table 7.6). Understandably, this perception prompted market participant to engage in underground market transactions by:

Table 7.6 Comparison of state consent valuations with prices

... From your experience, ... would you say whether state consent valuations were <i>usually</i> :	Scores
Same as the prices agreed between parties	4
Lower than the prices agreed between parties	11 ( <i>Modal score</i> )
Higher than the prices agreed between parties	6
Cannot tell/remember	1

(i) Side payments

Buyer and sellers would agree on what they felt were the right prices in the first place and then under-declare the purchase price so that state consent could be easily and promptly granted<sup>232</sup> and/or, as Strasma *et al.* (1995, p 118) put it, to avoid paying an “excessive” high transfer tax. In this way, property prices were fixed and sustained at ‘real’ market prices, ignoring the official valuations.

<sup>232</sup> The issue of delay in granting state consent was discussed in chapter 6. As regards state consent valuations, the senior government valuer interviewed acknowledged the existence this constraint and the underlying causes (see Appendix 7.1, Part 1: 1975-1994, section C).

(ii) Buyer plot development

In addition to side payments, the other market innovation that arose out of the contravention of this land policy was the practice or arrangement where the prospective buyer of bare/undeveloped land would negotiate with the seller and clandestinely agree to undertake some construction or improvement of some sort which would officially justify the transfer of land. Again, for state consent purposes, the actual agreed price of the land would not be disclosed. Government valuers would simply value the initial improvements and the property would ultimately change hands.

The 1995 land policy reforms reversed all that. As appendix 7.1 (Part 2: 1995-2003) indicates, the 1975-1995 price-control regime was expunged. From 1995, no valuations for state consent were carried out anymore. Prices were accepted as agreed between transacting parties.

With a price controls regime totally removed, one would expect that the market would suddenly awaken and flourish in the 1995-2003 period. The expert witness questionnaire survey, however, suggests that this was not necessarily the case. Table 7.4 (A-G) carries a more or less similar picture of the two eras. And, correspondingly, the methods of valuation more or less remained the same (see Table 7.1 A & B) since 1975. This is rather surprising. Now, the question is: why did the later regime mirror the former?

The similarities between the aforesaid parameters imply one thing: that the land/property market in Zambia strongly resisted the overbearing price control regime of the 1975-1995 era to an extent that the reversal of policy, in 1995, simply acknowledged and endorsed what was already in practice. If this were not the case, clearly discernible disparities would have merged between the two (1975-1995 and 1995-2003) regimes.

### 7.3.2 The role of bureaucrats

Drafting and promulgating policy is one thing; implementing it is another. For several reasons, some of which were identified in literature review (see chapter 2), implementation of public policy may yield unsatisfactory results. The one more reason the 1975 land policy reforms failed is because of the inability of the civil servants entrusted with task of implementing the policy to strictly adhere to the letter and spirit of the policy.<sup>233</sup> This is evident from the submission by the Commissioner of Lands to the Law Development Commission (see Law Development Commission, 1981, p. 99-106).

In his rather inconsistent statements, the Commissioner of Lands while in one breath rightly pointed out the law about the powers of the state in *all land transactions* (Lands Act 1975, Section 13); in the other, he contradicted himself and unwittingly showed that in practice *not* all land transactions were subjected to state consent. The following quotations will suffice.

... But if the intention of the legislature has to be put into effect such volume of work is unavoidable. In this regard I refer you to the judgements of the Supreme Court SCZ Judgment (No. 43) of 1977 ... I quote as follows: 'that the President shall have control over all transactions concerning lands' ... (Law Development Commission, 1981, p. 99-100)

... No attempt has been made or will be made by this Department to control the short term letting of property. This is not the intention of the Act, as I understand it. If the

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<sup>233</sup> The laxity in implementation was considered by the Surveyors Institute of Zambia (SIZ) to be a beneficial thing. The SIZ submission to the Law Development Commission regarding the Lands Act 1975 remarked thus: "... it should be noted that it is due to the fact that Section 13 has not been strictly applied that development has continued at any sort of pace at all. ... Were it strictly enforced it would in a very short time be almost impossible to buy a plot of land to build on in cities and towns" (see Law Development Commission, 1981, p. 72-73). This is in line with the view that: "violation of 'bad' rules, 'those that prohibit voluntary exchanges - in the absence of negative third party effects,' may actually have positive economic consequences (see Feige, 1997, online)." For similar viewpoints, see also Leff (1964), Huntington (1968) and De Soto (1989).

intention of the legislature is to control the letting on short term basis, then obviously such law would not only be cumbersome, but also unenforceable. ... (Law Development Commission, 1981, p. 102)

... Under section 4 of Cap. 287 only letting for a longer term than one year is required to be registered. And in my opinion the instruments, leases, agreements etc. which do not require to be registered under the said section do not require consent and no such consent has been applied for since the Act came into force. (Law Development Commission, 1981, p. 103)

The above quotations also suggest that landlords and tenants dealing in short-term lettings never bothered to apply for state consent and the government were clearly aware of this.

Aside from the Commissioner of Lands' office, there were allegations that valuers were manipulating prices of land (see Law Development Commission, 1981, p. 1). This is in fact one of the problems that prompted the investigations that led to the commissioning of the Law Development Commission Report of 1981. In their deliberations, the Working Party (constituted by the Law Development Commission) noted that valuation of land was one of the problem areas that presented opportunity for corruption (see Law Development Commission, 1981, p. 42-46). It was observed, for instance, that valuers could manipulate prices by, say, lumping together movable and immovable properties; advising sellers to undertake some superficial land improvements prior to valuation date; or simply inflating the value of the property arbitrarily. These observations seem to lend support to the findings made above that (a) government valuers may, indeed, have ignored the provisions of the Land Act 1975 (Section 13) by incorporating the 'land value' (location attributes) component in their assessments; and (b) the regulation requiring that land value be discounted from property values presented a real formidable problem that impacted negatively on valuation accuracy.

### 7.3.3 Other factors

The rise in property values subsequent to the Lands Act 1975 could also be attributed to factors other than those referred to above. In this respect, the role of government and macroeconomic factors in land/property supply were vitally important.

As discussed in chapter 3, the conversion of freeholds into leaseholds and the state ownership of land virtually created monopoly power by the state in land delivery. However, since the government could not efficiently supply sufficient quantities due to the factors enumerated in chapter 5, acute land shortages arose and drove land/property prices even higher. It is important to note that the land shortages in question were exacerbated further by state limitations on land transfers between private individuals by virtue of section 13 of the Lands Act 1975, which prohibited land sales and exchange.

In addition to the foregoing, macroeconomic factors played a vital role in boosting property prices. This was nowhere more evident than in the supply of building materials and construction processes. First, the country's construction industry input-structure was import-intensive, with about 50 percent of construction materials being a direct foreign exchange expenditure (Musole, 2000; Christie, 1971). Second, until recently (from the late 1990s), most of the construction firms and professional expertise were largely non-Zambian (Musole, 2000). The costs of these imported construction-related items were colossal and could not be controlled in very much the same way as the state-owned, land factor. This, therefore, raised prices to unprecedented levels when (local and external) inflation rates started to escalate from the mid-1970 onwards.

It should be noted and emphasised that when property valuations are undertaken, valuers do take into account all the *relevant* factors (economic, social, physical, and otherwise), including the aforesaid aspects of land availability and construction costs. The issue of valuation has already been discussed above. However, the issue of whether or not valuers did factor-in construction costs and related elements in developed property values was not discussed but need not attract so much scepticism, as property prices are

really determined by the market. Market behaviour, as highlighted (in sub-section 7.3.1) above and as reported by the National Housing Authority (1990),<sup>234</sup> suggests that construction costs and the land factor were, in fact, core elements of land/property transactions.

#### 7.4 Concluding remarks and recommendations

This chapter has addressed the issue of land valuation and pricing. The prime objective of the chapter was to resolve the property market paradox identified in chapter 1: i.e., the persistent refusal of property prices/values to succumb to land policy and statutory regulation designed to curtail their growth. Focusing on agent behavioural traits and responses to policy constraints, the chapter established that

- Conventional valuation behaviour was not consistent with the formal constraints. Valuation practices both in the private and public sectors systematically, but inadvertently, undermined public policy intended to control price escalations. The use of backward-looking valuation methods, for instance, produced a ratchet effect that progressively generated valuation outcomes that reflected the true market behaviour rather than the policy intentions.
- Similarly, the buyer-seller behavioural attitudes were not in tandem with the formal regulations. To be more explicit, buyers and sellers circumvented policy and legal constraints on a grand scale to an extent that some of the statutory regulations were virtually unenforceable to the letter. For example, although the statutory regulations provided for state consent on *all* land transactions, short-term lettings were virtually unaffected by these regulations from the outset.<sup>235</sup>

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<sup>234</sup> Referring to the spiralling property prices between 1974 and 1990, for example, NHA noted that: "Some of the major factors which have led to the astronomical increases in the price of houses are as follows: (a) High cost of servicing land and related infrastructure ... (b) Increase in the prices of Building Materials (National Housing Authority, 1990, p. 3)."

<sup>235</sup> This is consistent with the remarks made by Rapaczynski. "When most people obey the law, the government can enforce it effectively and (relatively) cheaply against the few individuals who break it.

The findings of this study clearly give credence to the institutional change precept, which stipulates that when there is incoherence between formal rules and informal constraints, even well intentioned policies may fail (see literature review in chapter 2). In this case, it has been established that the *conventional* valuation and market behavioural patterns, with tenacious survival ability, conflicted with *formal rules* and resisted change. The outcome was policy failure.

The lesson from this debacle is plainly clear: '*Das Gesetz muss aus dem Gedanken des Volkes gesprochen sein*'. This is a German saying which, according to De Soto, roughly means: 'The law must come from the mouth of the people' (see De Soto, 2000, p. 183). The failure to take root and harmonise with the established social-economic conventions and practices is one of the major defects writers such as Rapaczynski (1996), De Soto (2000) and Roland (2004) have identified as the underlying cause of public policy and legal failure in most of the emerging and developing economies of the world. Indeed, the picture emerging from this study is an epitome of this malaise. The 1975 land policy reforms, although well intentioned, were not well rooted into social matrix. As initially pointed out in chapter 3, and now demonstrated in this chapter, the reforms in question conflicted with other already established institutions that embraced the concepts of private property ownership and land value. To attempt to break down instantaneously such deep-rooted informal constraints, as this policy sought to accomplish, was rather naïve. It was simply courting failure.

It is against that background this study recommends that changes to public regulations generally and, land policy in particular, should be founded first and foremost on sound understanding of the extant institutions. Good policy reforms should, therefore, be

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But when obedience breaks down on large enough scale, no authority is strong enough to police everyone. In such a setting, with enforcement becoming less and less effective, individuals have incentive to follow their own interests, regardless of any paper constraints" (Rapaczynski, 1996, p. 88). A number of authors have commented on the relationship between formal rules and informal constraints, particularly agent behaviour (see, for instance, De Soto, 2000; Ellickson, 1991; Fiege, 1997; Roland, 2004).

preceded by careful study of the existing social institutions in order to identify possible areas of conflict or compatibility so they could fit in harmoniously, rather than disrupt the established domain. Policy/legal disruption of the existing social order, as we have seen above, may induce mass non-compliance.<sup>236</sup>

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<sup>236</sup> Non-compliance is a two-edged sword, though. “Low levels of non-compliance with bad rules might provide a useful buffer against the negative effects of bad rules, but widespread non-compliance can undermine the social fabric, thereby jeopardizing the fundamental principle of the rule of law,” (Feige, 1997, online).

## Chapter 8: Conclusions and recommendations

'There is a time for everything' *Ecclesiastes* 3

.... and, so, it is time to conclude

### 8.1 Introduction

As outlined in chapter 1 (see sections 1.3 and 1.4), the central objective of the study was to investigate and establish the manner and, possibly, the extent to which Zambia's post-colonial (1975 and 1995) land policy reforms affected (constrained or aided) urban land market transactions. Supplementary to the core aim of the study was the intention to review and/or develop an appropriate conceptual framework within which the impact of land policy (or even other public policies and formal regulations) on the land market could be usefully explored and explicated.

In line with the research aim of developing a conceptual framework that could have wider applications to the analysis of public policy and other institutional constraints (see chapters 1, section 1.3), an underlying proposition was advanced in chapter 1 (section 1.5) and the conceptual framework was developed in chapter 2. It was postulated, in particular, that the effects of land policy on the land market could be conceptualised as one set of institutions modifying or radically restructuring the other set of institutions. Chapter 2 sketched out the appropriate conceptual framework, viz. property rights, transaction costs and institutional change, following the new institutional economics approach. On the basis of the foregoing, chapter 3 reviewed and evaluated the Zambian post-colonial land policy reforms. This, then, set the ground for empirical investigation and further examination of the research problem/issues in chapters 5 to 7.

Similarly, the primary objective of the study was achieved via the analyses and study output generated by the theoretical evaluation of the land policy reforms in chapter 3 and empirical examination of the land policy effects on specific land market transactions in chapters 5 to 7. The next section will attempt to highlight and synthesize the prime research outcomes and the major observations and/or conclusions reached. Some salient policy recommendations follow in the last section.

## 8.2 Conclusions

First, on research outcomes, the policy review and evaluation exercise (in chapter 3) indicated that although the two land policy reforms in question were fundamentally different in some respects, they were nevertheless similar in other aspects. Notably, the 1975 reforms were characterized by the state-landownership/leasehold system that disregarded land value and open market pricing. The 1995 reforms, in contrast, whilst espousing the very state-landownership/leasehold tenure, embraced the pre-1975 land value and open market pricing regime generally. The cardinal observation emanating from this review was that whilst the 1975 reforms materially modified the structure of property rights, through severe attenuation of property rights, the 1995 had only partial impact in reversal. Thus, while the consequences of the 1975 reforms were vastly detrimental to land market transactions, the 1995 reforms had a mixed effect. On the basis of these observations, it was especially concluded (see Table 3.4) that the problems of trade, land supply, and raising land/property prices posed by the 1975 policy would linger on to the 1995 era.

Chapter 5 examined the enigmatic urban land delivery problem to find out why, despite changes in land policy reforms (reforms that were hugely motivated by dysfunctional land delivery concerns), urban land scarcity persisted at a grand scale (see *research question* (2) in chapter 1). Using a multiple-method research strategy, the chapter examined the land-delivery systems across the entire land policy regimes in question to ascertain whether these land policy regimes generated any significant bottlenecks; and,

where this was the case, to assess the incidence of transaction costs. The research process was guided by research questions that queried the operational efficiency of the land delivery process.

The main findings of this chapter were that: (a) the land delivery systems under both 1975 and 1995 policy regimes were not fundamentally different;<sup>237</sup> and (b) the transactional (land delivery) processes under both policy regimes were positively and heavily burdened with transaction costs. The high incidence of the transaction costs was found to have been rooted in the state-administered land delivery systems. These delivery systems were characterised by: (i) multiple number of players and activities, (ii) lengthy transaction time, (iii) highly inadequate funding and staffing, and (iv) perverse incentives and rent-seeking behaviour. Two main conclusions naturally followed these study findings. First, it was held that market failure, the major concern of the 1975 reforms, was not the only notable phenomenon in land delivery; government/policy failure was also an issue; and, second, it was further noted that to be effective, land policy ought to be accompanied by an appropriate and supportive institutional framework. In short, in so far as land delivery was concerned, land policy alone could not produce the desired effect. Support institutions mattered as well. On basis of these insights and observations, it was recommended that the delivery system be reformed. Possible modes of reforms suggested included partial or outright liberalisation of the land alienation and/or reversion to the pre-1972 head-lease system. Additionally, partnerships and network schemes were considered as possible alternative means to reform.

Chapter 6 focused on transfer and exchange of land and land rights between economic agents. Predicated on chapters 1 and 2, it was held that the effects of land policy reforms on transfer and exchange of land could be analysed by reference to the extent to which the systems of property rights were transformed, through property rights attenuation, particularly with respect to the following factors:

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<sup>237</sup> This was attributed to legal and administrative inertia.

- Type and quantum of transferable rights
- Divisibility and fungibility of rights
- Freedom of exchange
- Terms and gains from trade

Based on the grand review in chapter 3, the chapter proceeded to analyse the effects of the land policy reforms in question with regard to the aforesaid factors. In line with chapter 3, chapter 6 found that the 1975 land reforms had relatively more detrimental effects on the land transfer and exchange than the latter (1995) reforms.

The evidence and arguments advanced in the chapter (see respective sections on property rights and transaction costs) led to four main observations and conclusions. Firstly, state intervention in land transfers and exchange should be carefully framed because policy intervention measures are not costless. It was observed, in particular, that each policy regime had its own pattern and/or level of transaction costs, just as each policy structure had its own set of incentives. Secondly, excessive detrimental market intervention engenders higher transaction costs. Put differently, the greater the extent of deleterious intervention, the heavier the incidence of transaction costs. Thirdly, policies stifling free market exchange may lead to non-compliant behaviours and other externalities. Fourthly, poor conceptualisation or definition of property rights in land generates variable effects that hinder market exchange. Notwithstanding the detrimental effects of state intervention, the chapter recommended state involvement in the land market that (a) reduces transaction costs; and (b) improves market incentives.

Chapter 7 addressed the central issue of land valuation and pricing. The core objective of the chapter was to resolve the paradoxical *research question* (3) mooted in chapter 1 (i.e., the persistent rise in property prices/values notwithstanding the policy measures taken to curtail their growth) and elucidate the related matter, valuation uncertainty, raised in chapter 3. Focusing on agent behavioural traits and responses to policy

constraints, in line with theory on institutional change,<sup>238</sup> the chapter established that, firstly, conventional valuation behaviour was not in consonance with the formal constraints. Valuation conventions systematically, but inadvertently defied public policy intended to curb price escalations. Notably, the use of backward-looking valuation methods, for instance, produced a ratchet effect that progressively generated valuation outcomes that reflected the true market behaviour rather than the policy intentions. Secondly, the buyer-seller behavioural attitudes were not in tandem with the formal regulations. Buyers and sellers, for instance, circumvented state consent requirements (see section 13 of the Lands Act 1975), which obliged *all* dealings in land to state control, through abridgement of tenancies to short-term lettings that remained virtually unaffected by these regulations from the outset. Against that background the chapter recommended that changes to land policy (or public regulations generally) should be founded on sound understanding of the extant formal and informal institutions.

Briefly, that is the summary account of the research findings emanating from chapters 3, 5 to 7. From the foregoing recapitulations, it is abundantly clear that, on the whole, Zambia's post-colonial (1975 and 1995) land policy reforms had significant, albeit variable, impact on the urban land market transactions. A common thread running through the chapters 3, 5 to 7 (policy evaluation, theory and evidence) suggests consistently that the 1975 policy reforms had far more pernicious effects than those of 1995. Specifically, the 1975 reforms were found to be closely associated with relatively higher transaction/institutional costs and various other trade encumbrances (in chapter 6) as well as non-compliant behavioural effects (in chapter 7). However, with regard to land delivery (in chapter 5), both reforms were adjudged to have had similar impact. The key policy factors responsible for these deleterious effects included, in the case of the 1975 reforms, state landownership and allocation; land value and property price controls; and general land/property exchange restrictions. As for the 1995, the key policy factors in question were limited largely to state landownership and allocation as trade/exchange restrictions, through the 'state consent' arrangement, were considerably

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<sup>238</sup> North (1990a) discusses this matter in detail. What is of particular interest here is the relationship between formal rules and informal constraints.

eased. Tables 3.3 and 3.4 (in chapter 3), 6.1 and 6.2 (in chapter 6) show the critical policy factors at play and chapters 5 to 7 demonstrate the variable nature and extent to which these factors impacted on urban land transactions. On the basis of the foregoing, the overall conclusion from the study is that, just as in rural/agricultural land markets (sectors that have been widely researched upon in land reforms/policy studies)<sup>239</sup>, land policy reforms matter in *urban* land market transactions as well.

Be that as it may, the conclusion that land policy matters should however be circumspectly qualified in the light of the lessons learnt from the study. True to form, as intimated in the literature (see chapter 2), property rights do not exist in an institutional vacuum. Although land policy did, indeed, modify the systems of property rights (quite radically for the 1975 reforms and moderately for the 1995 reforms), some of the desired cardinal policy goals and outcomes were not fully realised in each respective reform. First, the intentions of the 1975 reforms to deliver land at affordable prices, or even at 'no cost' at all (see GRZ/MoL, 2002) and the 1995 reforms' attempt to develop an efficient land delivery system, for example, failed lamentably (see chapter 5). Second, the 1975 policy objective to control property prices, as elucidated in chapter 7, was not achieved either, as prices kept on rising. As intimated in the respective chapters, the success or effectiveness of land policy reforms depend on, among other things,<sup>240</sup> the extent to which they are compatible with support institutions (see chapters 5 and 7). Good, effective policies operate in consonance with, and are supported by, relevant institutions. On the other hand, policies that conflict with support institutions are more inclined to failure. That is to say, besides land policy support, institutions matter, too. These findings and observations regarding the efficacy of land policy are consistent with the literature (see chapter 2, 5 and 7).

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<sup>239</sup> See Malpezzi (1999b & c).

<sup>240</sup> For example, the quality of the policy itself is one thing; its acceptance among the bureaucrats administering it is another matter. (The former is the central issue of this study and the latter was specifically referred to in chapters 2 and 7). Other social, political and economics factors may also be consequential. The World Bank (2001), for example, gives a wide variety of social, political and economics factors underlying its recent failed macroeconomic policy reforms.

The other noteworthy point confirming the validity and predictive power of NIE literature (and other related paradigms) include the observation made in chapter 5 that it is not only the market that fails, policy/government failure is an equally important issue to bear in mind when designing or altering institutional arrangements. Indeed, the failure of the 1975 reforms to provide sufficient land and stem the rapid growth of informal settlements under an alternative (administrative land delivery) system was a clear testimony that the alternative delivery mode was equally, if not more, flawed. In fact, in chapter 5, it was specifically pointed out that with land delivery, there are some costs that are inescapable (referred to as 'technological transaction costs' in the literature, see chapter 2) irrespective of the mode of delivery.

Similarly, it is important to note that although the study was grounded on the NIE theory, the research design included development of a specific conceptual framework that could be robust and versatile enough to address the research issues at hand and be of relevance to public policy analysis generally. With regard to this study, as the foregoing recapitulations and conclusions suggest, the conceptual framework in question appears to have ably guided the research process. Within the conceptual framework – property rights, transaction costs and institutional change – it was possible to mount a research programme, which included the normal research processes of data compilation, analysis and interpretation. Using a multiple research strategy, the study was able to demonstrate, that land policy reforms, through their *effect* on incentives and transaction costs, did affect land market transactions. The policy review and evaluations in chapter 3 were, of course, based on the conceptual approach in question; whilst the empirical evidence and critical analysis in chapters 5 to 7 used the conceptual framework's heuristic device of transaction costs. The conclusions arising from these analyses were not only consistent but also linked considerably well with the grand theoretical framework.

On the basis of the foregoing, it could be argued that the conceptual framework so developed is valid and quite helpful in research projects of this nature. That said, the conceptual framework is not, however, without flaws. As pointed out in chapter 2 (literature review), the major difficulty with the application of transaction costs as

heuristic devices is that some costs are hard to measure. With regard to this study, for example, although chapters 5 and 6 highlighted these issues, no quantitative data was procured to depict the scale of corruption or bribery at higher than nominal or ordinal levels of measurement. Due to the cryptic nature of corruption and other perverse incentives, transaction costs-based data are difficult to compile especially in land matters.

With these points and observations in mind, the next section now tenders some recommendations.

### **8.3 Recommendations**

The recommendations fall into two main categories, namely: research and policy issues. The former identifies areas requiring further study, in view of the study's limitation and the issues it has raised; and the latter addresses some critical policy factors that may be useful in future land policy reforms.

#### *Further research*

Within the conceptual framework presented in this study, it proposed that further study in the following research areas could shed some more light on the subject at hand. First, since the study only addressed three substantive areas of land market, namely land delivery, land transfer and exchange, and land valuation and pricing, further investigations are needed in other land market operations. For example, there would be need to explore and analyse landlord-tenant contractual relations, land value and property taxation issues, mortgage finance and informal transactions. In this respect, studies may also focus on one or more of the following sectors: financial, investment and development.

Second, although this study has recommended ways of rectifying the shortcomings of the land delivery systems identified in chapter 5, the proposals presented there were of general and strategic nature. Further research is, therefore, required to examine and prescribe specific operational methods and procedures of carrying out the proposals. In particular, there would be a need to institute or engage in *institutional design* of some kind, for example, using theoretical insights from literature that view markets, hierarchies, public bureaus, etc. as alternative governance structures that are susceptible to failure (see Alexander, 2001 a, b, & c; Buitelaar, 2003; Powell, 1990, 1991; Webster, 2005; Williamson, 1990, 1998, 1999, 2000; Wolf, 1979, 1988). These theoretical perspectives are vital in forging partnership and other network schemes, the third alternative approach to land delivery reforms proposed in chapter 5, that minimize the risk of failure associated with specific governance structures.

In addition to the aforesaid categories of study, research could be carried out addressing the same issues raised herein using other theoretical approaches and paradigms, such as pure neoclassical approaches, to test whether similar results could be arrived at as presented in this study. Moreover, data permitting, studies using quantitative (input-output) approaches may shed some light on, for instance, the effect of land policy on capital values, yields and rental growth across the policy regimes in question.

### *Policy issues*

Policy recommendations regarding specific land market operations, which were identified and analysed in the study, were aptly given in the respective chapters (see last sections of chapters 5, 6 & 7). This section highlights some fundamental aspects about markets and policies and outlines overarching policy recommendations.

Firstly, on markets, theory indicates that markets are social institutions that facilitate exchange (Coase, 1988b). Markets exist, in particular, to minimise transaction costs which economic agents encounter in the process of exchange (e.g., search and

information costs, and bargaining and decision-making costs; see Furubotn and Richter, 2000) (Coase, 1988b; Cheung, 1998; North and Thomas, 1973). Where transaction costs are prohibitively high, markets fail. To function efficiently markets require well-defined and freely transferable property rights to economic resources.

Policies, on the other hand, are defined as goals and desired outcomes (World Bank, 2002b). Policies do affect the functioning of markets. Causality, however, runs in the opposite direction as well, for market arrangements and institutions do influence the type policies being adopted. The impact of policies on markets may be negative or positive. Policies that affect markets negatively increase transaction costs; and vice versa.

What has been said of the markets and policies generally, as this study has demonstrated, applies to the 'urban land market' and 'land policies' respectively. For instance, in this study, chapters 5 and 6 elucidated the transaction costs consequences of the 1975 and 1995 policies on the land market. Similarly, the buyer-seller behavioural changes in chapter 7 suggests<sup>241</sup> that the high transaction costs generated by the 1975 policy framework (as demonstrated in chapter 5 and 6) prompted economic agents to alter their trade arrangements<sup>242</sup> in order to economise on transaction costs.

On the basis of the foregoing, it evident that: a good (market-friendly) land policy should aim at facilitating exchange through reduction of transaction costs faced by

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<sup>241</sup> The view that economic agents may divert their trade activities into informal sector if transaction costs and other trade barriers are prohibitively high in the formal sector is well supported by the transaction costs literature. The following quotations will suffice. "... five kinds of order that emerge to reduce co-operation costs. ... Central to our argument is the idea that individuals and firms seek co-operative opportunities with lower rather than higher transaction costs; and that as they seek exchange partners, these orders emerge spontaneously from their minimising behaviour (Webster and Lai, 2003, p. 53-54)." "Individual efforts to minimize transaction costs lead to the emergence of alternative institutional arrangements (Gabre-Madhin, 2003, online)." See also Cheung (1998, p. 518).

<sup>242</sup> In this case, transacting parties escaped the institutional/transaction/co-ordination costs and other trade impediments of the formal land market sector under the control of the government and sought some relief in the informal/extra-legal trade sector.

private transacting parties. It is therefore recommended that future land policy should consider the issue of *transaction costs* as one of the hallmarks of policy formulation. The key policy constraints identified in this study influencing transaction costs include flawed definition of property rights, 'state consent' regulations, and bureaucratic land allocation procedures. These issues need to be assessed and rectified (see chapters 5 to 7).

Policy design alone is not, however, sufficient to yield the desired market outcomes. As outlined above, it is suggested that future policy reforms would have to incorporate the 'support institutions' (legal, administrative and suchlike) that have a bearing on policy efficacy. Secondly, in view of the findings in chapter 7, which demonstrate that informal constraints matter as well, an effective land policy should take into account both formal and informal institutions. In short, as intimated in chapter 3, a good policy should be compatible with other institutions.

Finally, it is worth emphasizing the NIE paradigmatic view that markets, like most other social institutions, are created to minimise transaction costs. Policies that attempt to undermine efficient functioning of land markets, as the 1975 policy reforms did, therefore rob society of the opportunity to increase exchange and economic productivity.<sup>243</sup> Future policy changes would, therefore, have to underline the role of land markets in urban development while, at the same time, take note of the importance of non-market institutions, including the State. As clearly indicated in the preceding chapters (see chapter 2, 5 and 6) the State, for instance, has an important (transaction costs minimising) part to play even in the functioning of land markets. Other non-market institutions – such as the customary land tenure system – are equally important in the development of the country, as they, too, have transaction costs minimising merits.<sup>244</sup>

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<sup>243</sup> Perhaps we need some reminding here by Coase (1998, p. 73) that the productivity of an economic system, ultimately, hinges on exchange (see epigraph in chapter 6).

<sup>244</sup> This is based on the theory that institutions evolve to reduce uncertainty (see North, 1990a); and, in so doing, minimise transaction costs. With regard to customary land tenure, even the World Bank (see, for example, Deininger, 2003; and Toulmin and Quan, 2000), which initially exclusively favoured freehold and individualised tenure, now recognises its desirability and cost-effectiveness under certainty

However, it is arguable that customary land tenure system is best suited to rural traditional lands (which support subsistent, land-based activities on which most rural people survive). Future policy reforms in Zambia, and elsewhere in the developing world where they are similar land tenure systems, would have to make a clear demarcation between urban and rural land policy reforms. This is necessary, first, due to the unique nature and scale of urban problems; and, second, in order to forestall opportunistic land seizures in rural areas and traditional lands by unscrupulous politicians, chiefs and other better enlightened individuals who may use their status and asymmetric information advantages.<sup>245</sup> This is easier said than done, however. The 1975 land reforms, for instance, were prompted by urban land market problems but the policy that evolved had wider implications, well beyond the urban sector.

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circumstances. This confirms the theory that all forms of economic organization, including the market, are second best; none dominates all others all the time (see Allen, 1999; Williamson, 1990).

<sup>245</sup> This is not to say that the rural sector should not be subjected to the Adam Smith's invisible hand of free market pricing and land allocation. On the contrary, with careful planning and allocation of land in rural areas, an evolving land market could be beneficial to rural development. Moreover, it must be pointed out that the customary landholding system itself has not been antithetical to land market exchanges (see Chinene *et al.*, 1998; Kajoba, 2003, online). However, it should be emphasised that, going by mass media reports in recent years, cases of dubious land allocations and outright corruption are growing in numbers.

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**CAP. 289**

**REPUBLIC OF ZAMBIA**

**LAND (CONVERSION OF TITLES)**

**CHAPTER 289 OF THE LAWS OF ZAMBIA**

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## CHAPTER 289

## THE LAND (CONVERSION OF TITLES) ACT

## ARRANGEMENT OF SECTIONS

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## CHAPTER 289

## LAND (CONVERSION OF TITLES)

20 of 1975

**An Act to provide for the vesting of all land in Zambia in the President, for the conversion of titles to land, for the imposition of restrictions on the extent of agricultural land holdings, for the abolition of sale, transfer and other alienation of land for value, and for matters connected with or incidental to the foregoing.**

[19th August, 1975]

1. This Act may be cited as the Land (Conversion of Titles) Act. Short title
2. This Act shall be deemed to have come into operation on the 1st July, 1975. Commencement
3. In this Act, unless the context otherwise requires— Interpretation
  - “Certificate of Title” means a certificate of title to land issued in accordance with the provisions of Parts III to VII of the Lands and Deeds Registry Act; Cap. 287
  - “land”, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land, but does not include any mining right as defined in the Mines and Minerals Act in or in respect of any land; Cap. 329
  - “Provisional Certificate” means a provisional certificate of title to land issued in accordance with the provisions of Parts III to VII of the Lands and Deeds Registry Act; Cap. 287
  - “registered” means registered in accordance with the provisions of the Lands and Deeds Registry Act; Cap. 287
  - “Registrar” has the meaning assigned thereto in the Lands and Deeds Registry Act; Cap. 287
  - “statutory leasehold” means a leasehold created by operation of section *five*, and “statutory lease” and “statutory leaseholder” shall be construed accordingly;
  - “unexhausted improvements” means anything resulting from the expenditure of capital or labour and includes carrying out of any building, engineering or other operations in, on, over or under land, or the making of any material change in the use of any building or land.

All land  
to vest  
in the  
President

4. Notwithstanding anything to the contrary contained in any other law, deed, certificate, agreement or other instrument or document, but subject to the provisions of this Act, all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.

Conversion  
of freeholds  
into lease-  
holds

5. Every piece or parcel of land which immediately before the commencement of this Act was vested in or held by any person—

(a) absolutely, or as a freehold or in fee simple or in any other manner implying absolute rights in perpetuity; or

(b) as a leasehold under any lease granted or deemed to have been granted by or held of the President for a term or years extending beyond the expiration of one hundred years from the date of the commencement of this Act;

is hereby converted to a statutory leasehold and shall be deemed to have been so converted with effect from the 1st July, 1975.

Creation  
of lease-  
hold by  
operation  
of law

6. A person whose rights over and interests in any land have become converted to a statutory leasehold under section *five* shall, as from the date of the commencement of this Act, hold such land, as if he has been granted a lease thereof by the President for a term of one hundred years commencing the 1st July, 1975, at such rent and on such terms and conditions and with such covenants as may be prescribed.

Renewal  
of  
statutory  
leases

7. (1) On the determination of a statutory lease by effluxion of time, the statutory leaseholder shall be entitled to a renewal of the lease for a further term of one hundred years, unless he had failed to comply with or observe any term, condition or covenant of the lease, where the non-compliance or non-observance is such as renders the lease liable to forfeiture.

(2) Where a statutory lease is not renewed, the statutory leaseholder shall be entitled to compensation for unexhausted improvements as provided in section *sixteen*.

Subleases  
and  
underleases

8. (1) Every lease of land, not being a lease granted or deemed to have been granted by or held of the President, subsisting immediately before the commencement of this Act, shall, on such commencement, become converted into a sublease held of and from the statutory leaseholder of the land, and the tenure, terms, conditions and covenants of the original lease shall be deemed to be the tenure, terms, conditions and covenants of such sublease and the same shall continue to be valid and binding between the sublessee and the statutory

leaseholder, in so far as they are not inconsistent with the prescribed terms, conditions and covenants applicable to the statutory lease:

Provided that the term of any such sublease, unless it expires earlier, shall expire one day before the expiry of one hundred years from the 1st July, 1975.

(2) Every sublease and underlease subsisting immediately before the commencement of this Act shall, on such commencement, become converted into an underlease of the next derivative class and the tenure, terms, conditions and covenants of the original sublease or underlease, as the case may be, shall be deemed to be the tenure, terms, conditions and covenants of the converted underlease and the same shall continue to be valid and binding between the parties thereto, in so far as they are not inconsistent with the prescribed terms, conditions and covenants of the related statutory lease:

Provided that the term of any such underlease, unless it expires earlier, shall expire one day before the expiry of one hundred years from the 1st July, 1975.

9. Subject to the provisions of section *ten* every mortgage, charge, trust and other encumbrance over any land and every easement or other right over, or appurtenant to any land which subsisted immediately before the commencement of this Act shall, after such commencement, continue to be enforceable or enjoyable, as the case may be, according to the terms, tenor and nature thereof, except in so far as such enforcement or enjoyment is inconsistent with the provisions of this Act:

Mortgages,  
charges,  
easements,  
etc.

Provided that the right of any mortgagee, trustee, beneficiary or holder of a charge or encumbrance to recover any amount of money to which he is entitled as such shall not be deemed to be inconsistent with the provisions of this Act merely on the ground that the rights and interests of the mortgagor, creator of trust or other holder of land have been converted or abridged by this Act.

10. (1) Any mortgage, charge, or trust subsisting over land immediately before the commencement of this Act shall, on such commencement, operate only on and against the unexhausted improvements on the land and, so far as regards land apart from the unexhausted improvements, shall be deemed to be extinguished.

Mortgages,  
etc., not  
to operate  
against land

(2) Nothing in subsection (1) shall be construed as debarring the sale or transfer of any land together with the unexhausted improvements thereon in the exercise of any right or power derived from or arising out of any mortgage, charge or trust or in execution of any legal process, provided previous consent of the President required under section *thirteen* has been obtained.

No new certificates to be issued relating to conversion of freeholds, etc.

11. (1) For the avoidance of any doubt, it is hereby declared that it shall not be necessary for the Registrar to issue or for any person to obtain a Provisional Certificate or a Certificate of Title to evidence any rights and interests in land having been converted into rights and interests under a statutory lease or a sublease or underlease derived from a statutory lease, but the Registrar shall, whenever any deed, instrument, Provisional Certificate or Certificate of Title relating to any land in respect of which the rights and interests have been so converted is next presented to him or produced before him in connection with any transaction or registration, stamp such deed, instrument or certificate with such stamp as may be prescribed indicating the fact of such conversion, and a reference to the terms, conditions and covenants applicable.

(2) On the publication of this Act, the Registrar shall endorse on the relevant folio of the register a memorandum to the effect that the piece or parcel of land has become subject to the provisions of section *five*.

Restriction on grant of land

12. No person shall be granted any land except for a specified term not exceeding one hundred years:

Provided that—

- (i) any lease for a specified term of years may, on the expiry of such term (unless the lease provides otherwise and subject to the conditions and covenants thereof), be renewed for a like term or such longer term not exceeding one hundred years as the President may think fit;
- (ii) notwithstanding anything contained in this Act, the President may, in the interests of international relations or in fulfilment of any international obligations of the Republic, grant land for a term exceeding one hundred years on such terms and conditions as he thinks fit, but any land so granted shall not be sold, mortgaged, encumbered or otherwise disposed of, except with the prior consent in writing of the President.

Restriction on subdivision and alienation of land

13. (1) Notwithstanding anything contained in any other law or in any deed, instrument or document, but subject to the other provisions of this Act, no person shall subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber, or part with the possession of, his land or any part thereof or interest therein without the prior consent in writing of the President.

(2) The President may in granting his consent under subsection (1) impose such terms and conditions as he may think fit, and such terms and conditions shall be binding on all persons and shall not be questioned in any court or tribunal.

(3) Without prejudice to the generality of subsection (2), the President may, in granting the consent under subsection (2), fix the maximum amount that may be received, recovered or secured—

- (a) in the case of a disposition by sale, transfer or assignment, as the price, premium or consideration;
- (b) in the case of a disposition by way of a sublease, as premium, consideration or rent;
- (c) in the case of a licence to occupy, by way of premium, consideration or rent or, as the case may be, by way of periodical payments for use and occupation;
- (d) in the case of a mortgage or charge, as a debt or advance:

Provided that in fixing any amount under this subsection no regard shall be had to the value of the land apart from the unexhausted improvements thereon.

14. (1) A leaseholder (whether a statutory leaseholder or not), unless the lease has become liable to forfeiture for reason of non-compliance with or non-observance of the terms, conditions and covenants thereof or it is otherwise provided in the lease, may at any time, by giving not less than six months' notice in writing to the President, surrender the land to the President.

Surrender  
of land

(2) On the expiry of such notice, the lease shall be deemed to have been determined and compensation shall be payable for unexhausted improvements as provided in section *sixteen*, as if the lease has been determined by effluxion of time.

15. The provisions of all agreements, deeds, instruments and other documents made before the publication of this Act but not registered before the 1st July, 1975, shall, in so far as they relate to the subdivision, sale, transfer, letting, subletting, occupancy, mortgage or other disposition of land, such as is inconsistent with the provisions of this Act, be null and void *ab initio*:

Nullification  
of certain  
agreements,  
etc.

Provided that—

- (i) this section shall not apply to any agreement, deed, instrument or document which is not required to be registered under any written law; and
- (ii) the provisions of the Law Reform (Frustrated Contracts) Act shall apply to all agreements, deeds, instruments and other documents nullified by this section.

Cap. 73

16. On the determination of a lease by effluxion of time, whether such lease is a statutory lease or not, just and fair compensation shall be payable to the person beneficially entitled to the land at the time of such determination, in respect of all unexhausted improvements on the land:

Compensation on  
determination  
of  
lease by  
effluxion

Provided that there shall be deducted from such compensation—

- (i) the amount of any rent due in respect of the land;
- (ii) any amount due in respect of the land to the Government or any body or organisation financed by the Government.

Restriction  
on  
agricultural  
holdings

17. (1) The Minister may, by regulations prescribe the maximum area of agricultural land (whether or not it has unexhausted improvements) which may be held by any person at any one time for any specified purpose; and different maxima may be so prescribed for different areas, districts or provinces.

(2) Such regulations may also provide that the contravention of any specified provision thereof shall constitute an offence and prescribe the penalties therefor.

(3) In this section "agricultural land" means land used or intended to be used exclusively or mainly for the purposes of agriculture as defined in the Town and Country Planning Act.

Cap. 475

Non-  
payment of  
compensa-  
tion

18. Save as provided in this Act, no compensation shall be payable by the President or by any other person in respect of the conversion of the nature of title in land or in respect of the extinguishment, restriction or abridgement of any rights or interests in or over land resulting from the operation of the provisions of this Act.

Construc-  
tion of  
references  
to freehold,  
etc.

19. Any reference to the ownership of land in fee simple, absolute ownership of land, freehold land, freehold tenure or to a like estate in land or to a leasehold the term whereof extends beyond one hundred years from the commencement of this Act, in any written law in force in the Republic, or in any deed, title, certificate, agreement, instrument or document subsisting, on the commencement of this Act, shall, after such commencement and in relation to any period subsequent to such commencement, be construed as a reference to a statutory lease.

Prohibition  
of un-  
authorised  
occupation  
of land

20. (1) No person shall without lawful authority occupy or continue to occupy any vacant land to which section *five* applies.

(2) Any person occupying any land in contravention of subsection (1) shall be liable to be evicted without any notice, and, if necessary, by the use of reasonable force.

Regulations

21. (1) The Minister may, by statutory instrument, make regulations for the proper carrying into effect of the provisions of this Act.

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(2) In particular and without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) the terms, conditions and covenants of statutory leases;
- (b) the manner of determining whether any land has or has not unexhausted improvements, and the settlement of disputes relating thereto;
- (c) procedure for making applications for the payment of compensation, where such compensation is payable, the determination of such compensation and the settlement of disputes relating thereto;
- (d) the procedure for applying for the President's consent to any transaction relating to or affecting land;
- (e) the procedure for applying for the renewal of a lease;
- (f) any other matter which is to be or may be prescribed under this Act.

**Appendix 4.2: The Lands Act, 1995****THE LANDS ACT, 1995***[Enactment]***ARRANGEMENT OF SECTIONS****PART I - PRELIMINARY****PART II - ADMINISTRATION OF LAND****PART III - THE LAND DEVELOPMENT FUND****PART IV - THE LANDS TRIBUNAL****PART V - GENERAL****PART I****PRELIMINARY***Section:*

- 1. Short title
- 2. Interpretation

**PART II****ADMINISTRATION OF LAND***Section:*

- 3. All land to vest in President
- 4. Conditions on alienation of land
- 5. Consent of President
- 6. Surrender of land held by a Council
- 7. Recognition of Customary holdings
- 8. Conversion of customary tenure into leasehold tenure
- 9. Prohibition of unauthorised occupation of land
- 10. Renewal of leases
- 11. Ground rent and benefit of leasee's covenants and conditions
- 12. Apportionment of conditions on severance
- 13. Certificate of re-entry to be entered on register
- 14. Payment and penalty for late payment of rent
- 15. Application of tribunal on land disputes.

**PART III****THE LAND DEVELOPMENT FUND***Section:*

- 16. Land Development Fund
- 17. Administration of the Fund
- 18. Application of moneys of the Fund
- 19. Statement of income and expenditure

**PART IV  
THE LANDS TRIBUNAL**

*Section:*

- 20. Lands Tribunal
- 21. Assessors
- 22. Jurisdiction of Tribunal
- 23. Proceedings of Tribunal
- 24. Rules
- 25. Legal representation
- 26. Frivolous and vexatious proceedings
- 27. Expense of Tribunal
- 28. Secretarial and accounting
- 29. Appeals

**PART V  
GENERAL**

*Section:*

- 30. Saving of existing interests and rights
- 31. Regulations
- 32. Repeal of Cap. 289 and Laws in Schedule

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**GOVERNMENT OF ZAMBIA  
ACT No. 29 of 1995**

Date of assent: 6th September, 1995

An Act to provide for the continuation of Leaseholds and leasehold tenure; to provide for the continued vesting of land in the President and alienation of land by the President; to provide for the statutory recognition and continuation of customary tenure; to provide for the conversion of customary tenure into leasehold tenure; to establish a Land Development Fund and a Lands Tribunal; to repeal the Land (Conversion of Titles) Act; to repeal the Zambia (State Lands and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) Orders, 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 to 1964, and the Western Province (Land and Miscellaneous Provisions) Act, 1970; and to provide for matters connected with or incidental to the foregoing.

13th September, 1995  
ENACTED by the Parliament of Zambia.

## LANDS ACT, 1995 - PART I PRELIMINARY

*Section:*

### 1. [Short title]

This Act may be cited as the Lands Act, 1995.

### 2. [Interpretation]

In this Act, unless the context otherwise requires -

- "Certificate of Title" means a Certificate of Title to land issued in accordance with the Lands and Deeds Registry Act; [Cap. 287]
- "customary area" means, notwithstanding section thirty-two, the area described in the Schedules to the Zambia (State Lands and Reserves) Orders, 1928 to 1964 and the Zambia (Trust Land) Orders, 1947 to 1964; [Appendix 4 of the Laws of Zambia]
- "Fund" means the Land Development Fund established by section sixteen;
- "improvements" means anything resulting from expenditure of capital and labour and includes carrying out of any building, engineering or other operations in, on, over, or underland, or the making of any material change in the use of any building or land charges for services provided and other expenses incurred in the development or towards the development of land;
- "land" means any interest in land whether the land is virgin, bare or has improvements, but does not include any mining right as defined by the Mines and Minerals Act in respect of any land; [Act No. of 1995]
- "lease" means a lease granted by the President or a lease that was converted from a freehold title under the repealed Act and "lessee" shall be construed accordingly;
- "Permanent Resident" means an established resident or a person holding an entry permit in accordance with the Immigration and Deportation Act; [Cap. 122]
- "Provisional Certificate of Title" means a Provisional Certificate of Title to land issued in accordance with the Lands and Deeds Registry Act; [Cap. 287]
- "Registrar" has the meaning assigned to it in the Lands and Deeds Registry Act; [Cap. 287]
- "Repealed Act" means the Land (Conversion of Titles) Act; [Cap. 289]
- "State Land" means land which is not situated in a customary area;
- "Tribunal" mean the Lands Tribunal established by section nineteen.

## LANDS ACT, 1995 - PART II ADMINISTRATION OF LAND

*Section:*

### 3. [All land to vest in the President]

(1) Notwithstanding anything to the contrary contained in any other law, instrument or document, but subject to this Act, all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia.

(2) Subject to subsection (4) and to any other law, the President may alienate land vested in him to any Zambian.

(3) Subject to any other provisions and procedures relating to alienation of land, the President may alienate land to a non-Zambian under the following circumstances:

- (a) where the non-Zambian is a permanent resident in the Republic of Zambia;
- (b) where the non-Zambian is an investor within the meaning of the Investment Act or any other law relating to the promotion of investment in Zambia; [Act No. 39 of 1993]
- (c) where the non-Zambian has obtained the President's consent in writing under his hand;
- (d) where the non-Zambian is a company registered under the Companies Act, and less than twenty-five per centum of the issued shares are owned by non-Zambians; [Act No. 26 of 1994]
- (e) where the non-Zambian is a statutory corporation created by an Act of Parliament;
- (f) where the non-Zambian is a co-operative society registered under the Co-operative Societies Act and less than twenty-five per centum of the members are non-Zambians; [Cap. 689]
- (g) where the non-Zambian is a body registered under the Land (Perpetual Succession) Act and is a non-profit making, charitable, religious, educational or philanthropic organisation or institution which is registered and is approved by the Minister for the purposes of this section; [Cap. 288]
- (h) where the interest or right in question arises out of a lease, sub-lease, or under-lease, for a period not to exceed five years, or a tenancy agreement;
- (i) where the interest or right in land is being inherited upon death or is being transferred under a right of survivorship or by operation of law;
- (j) where the non-Zambian is a Commercial Bank registered under the Companies Act and the Banking and Financial Services Act; or [Act No. 26 of 1994, Act No. 21 of 1994]
- (k) where the non-Zambian is granted a concession or right under the National Parks and Wildlife Act. [Act No. 10 of 1991]

(4) Notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure--

- (a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act;
- (b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated;
- (c) without consulting any other person or body whose interest might be affected by the grant; and
- (d) if an appellant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated.

(5) 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.

(6) The President shall not alienate any land under subsection (2) or (3) for a term exceeding ninety-nine years unless--

- (a) the President considers it necessary in the national interest or in the fulfilment of any obligations of the Republic; and
- (b) it is approved by a two-thirds majority of the members of the National Assembly.

(7) In alienating land the President shall take such measures as shall be necessary to--

- (a) control settlements, methods of cultivation and utilisation of land as may be necessary for the preservation of the natural resources on that land; and

- (b) set aside land for forest reserves and game management areas and national parks and for the development and control of such reserves, game management areas and national parks.

#### **4. [Conditions on alienation of land]**

(1) The President shall not alienate any land under subsection (2) or (3) of section three without receiving any consideration, in money for such alienation and ground rent for such land except where the alienation is for a public purpose:

Provided that where a person has the right of use and occupation of land under customary law and wishes to convert such right into leasehold tenure, no consideration shall be paid for such conversion.

(2) In this section "public purpose" includes the following:

- (a) for the exclusive use of Government or for the general benefit of the people of Zambia;
- (b) for or in connection with sanitary improvements of any kind including reclamations;
- (c) for or in connection with the laying out of any new township or the extension or improvement of any existing township;
- (d) for or in connection with aviation;
- (e) for the construction of any railway authorised by legislation;
- (f) for obtaining control over land contiguous to any railway, road or other public works constructed or intended at any time to be constructed by Government;
- (g) for obtaining control over land required for or in connection with hydro-electric or other electricity generation and supply purposes;
- (h) for or in connection with the preservation, conservation, development or control of forest produce, fauna, flora, soil, water and other natural resources.

#### **5. [Consent of President]**

(1) A person shall not sell, transfer or assign any land without the consent of the President and shall accordingly apply for that consent before doing so.

(2) Where a person applies for consent under subsection (1) and the consent is not granted within forty-five days of filing the application, the consent shall be deemed to have been granted.

(3) Where the President refuses to grant consent within thirty days, he shall give reasons for the refusal.

(4) A person aggrieved with the decision of the President to refuse consent may within thirty days of such refusal appeal to the Lands Tribunal for redress.

#### **6. [Surrender of land held by a Council]**

(1) Subject to subsection (2), all land held by a Council on a lease including that which has been subleased, for a period of ninety-nine years or less shall, by virtue of this Act and without further assurance or conveyance, be deemed to have been surrendered to the President and the sub-lessee be deemed to hold that land, as if a direct lease had been granted by the President.

(2) Subject to subsection (3) the sublessee referred to in subsection (1) shall be deemed to hold land on the conditions and covenants of the lease granted to the Council, except that the lessee shall pay such annual ground rent to the President as may be prescribed by statutory instrument.

(3) Subsection (1) shall not apply to land held by the Councils for their own use or held under the Housing (Statutory Improvement Areas) Act. [Cap. 441]

(4) On the commencement of this Act, and on the payment of a prescribed fee, the Registrar shall endorse on the relevant folio of the register, the effect of this section.

#### **7. [Customary holdings to be recognised and to continue]**

(1) Notwithstanding subsection (2) of section thirty-two but subject to section nine, every piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act.

(2) Notwithstanding section thirty-two, the rights and privileges of any person to hold land under customary tenure shall be recognised and such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law.

#### **8. [Conversion of customary tenure into leasehold tenure]**

(1) Notwithstanding section seven, after the commencement of this Act, any person who holds land under customary tenure may convert it into a leasehold tenure not exceeding ninety-nine years on application, in the manner prescribed, by way of -

- (a) a grant of leasehold by the President;
- (b) any other title that the President may grant;
- (c) any other law.

(2) The conversion of rights from a customary tenure to a leasehold tenure shall have effect only after the approval of the chief and the local authorities in whose area the land to be converted is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, the land to be converted shall have been identified by a plan showing the exact extent of the land to be converted.

(3) Except for a right which may arise under any other law in Zambia, no title, other than a right to the use and occupation of any land under customary tenure claimed by a person, shall be valid unless it has been confirmed by the chief, and a lease granted by, the President.

#### **9. [Prohibition of unauthorised occupation of land]**

(1) A person shall not without lawful authority occupy or continue to occupy vacant land.

(2) Any person who occupies land in contravention of subsection (1) is liable to be evicted.

#### **10. [Renewal of leases]**

(1) The President shall renew a lease, upon expiry, for a further term not exceeding ninety-nine years if he is satisfied that the lessee has complied with or observed the terms, conditions or covenants of the lease and the lease is not liable to forfeiture.

(2) If the President does not renew a lease the lessee shall be entitled to compensation for the improvements made on the land in accordance with the procedure laid down in the Lands (Acquisition) Act. [Cap. 296]

### **11. [Ground rent and benefit of leasee's covenants and conditions]**

(1) Notwithstanding severance of a reversionary estate, ground rent and the benefit of every covenant or provision contained in a lease or any Act of Parliament having reference to the subject matter of the lease shall be annexed and incidental to, and shall go with, the reversionary estate in the land or in any part of the estate immediately expectant on the term granted by the lease.

(2) The obligation under a condition of a covenant entered into by the President or contained in any Act of Parliament having reference to the subject matter of the lease shall be annexed and incidental to and shall go with the reversionary estate, or the several parts of that estate, notwithstanding severance of that estate and may be enforced by the person in whom the term is vested by assignment, transfer, devolution in law or otherwise.

(3) Subsection (1) shall be without prejudice to any covenant, lease or Act of Parliament which imposes a duty on a lessee to observe or perform the covenant and to every condition of re-entry.

### **12. [Apportionment of conditions on severance]**

(1) Every condition or right of re-entry and every other condition contained in the lease except for ground rent fixed in the grant shall be apportioned, in like manner as if the land comprised in each several part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease, notwithstanding -

- (a) the severance by assignment, transfer, surrender, or otherwise of the reversionary estate in any land comprised in a lease or any other grant of land; and
- (b) the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised in the lease.

(2) Every condition or right of re-entry referred to in subsection (1), shall remain annexed to the severed parts of the reversionary estate as the term where each several part is reversionary, or the term in part of the land as to which the term has not been surrendered or has been avoided or has not ceased in the manner as if the land comprised in each several part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(3) This section applies to leases or any other grant subsisting before or made after the commencement of this Act and whether the severance of the reversionary estate was effected before or after the commencement of this Act.

### **13. [Certificate of re-entry to be entered on register]**

(1) Where a lessee breaches a term or a condition of a covenant under this Act the President shall give the lessee three months notice of his intention to cause a certificate of re-entry to be entered in the register in respect of the land held by the lessee and requesting him to make representations as to why a certificate of re-entry should not be entered in the register.

(2) If the lessee does not within three months make the representations required under subsection (1), or if after making representations the President is not satisfied that a breach of a term or a condition of a covenant by the lessee was not intentional or was beyond the control of the lessee, he may cause the certificate of re-entry to be entered in the register.

(3) A lessee aggrieved with the decision of the President to cause a certificate of re-entry to be entered in the register may within thirty days appeal to the Lands Tribunal for an order that the register be rectified.

**14. [Payment and penalty for late payment of rent]**

(1) A lessee shall pay such ground rent as may be prescribed by the President, by statutory instrument.

(2) Subject to subsection (3) where any amount of ground rent unpaid after the day on which it became payable under subsection (1) remains unpaid after the day on which it became payable, the lessee shall be liable to pay a penalty of twenty-five per centum of the rent due.

**15. [Application of tribunal on land disputes]**

(1) Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination.

(2) In this section "person in authority" means the President, the Minister or the Registrar.

**LANDS ACT, 1995 - PART III  
THE LAND DEVELOPMENT FUND***Section:***16. [Land Development Fund]**

(1) There is hereby established a Land Development Fund.

- (2) The Fund shall consist of -
  - (a) all moneys appropriated by Parliament for the purposes of the Fund;
  - (b) seventy-five per centum of the consideration paid under section four; and
  - (c) fifty per centum of ground rent collected from land.

**17. [Administration of the Fund]**

The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Minister responsible for land.

**18. [Application of moneys of the Fund]**

(1) The Ministers referred to in section seventeen shall apply the moneys of the Fund to the opening up of new areas for development of land.

(2) A council that wishes to develop any area in its locality may apply to the Fund for money to develop the area.

**19. [Statement of income and expenditure]**

The Ministers referred to in section seventeen shall cause an annual statement of the income and expenditure to be prepared and laid before the National Assembly.

**LANDS ACT, 1995 - PART IV  
THE LANDS TRIBUNAL**

*Section:*

**20. [Lands Tribunal]**

(1) There is hereby established a Lands Tribunal.

(2) The Tribunal shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman who shall be qualified to be a judge of the High Court;
- (b) a Deputy Chairman who shall be qualified to be appointed as a judge of the High Court;
- (c) an advocate from the Attorney-General's Chambers;
- (d) a registered town planner;
- (e) a registered land surveyor;
- (f) a registered valuation surveyor; and
- (g) not more than three persons from the public and private sectors.

(3) The members referred to in paragraph (a) and (b) of subsection (2) shall be appointed after consultation with the Judicial Service Commission.

(4) The members of the Tribunal shall be appointed on such terms and conditions as may be specified in their letters of appointment.

**21. [Assessors]**

The Tribunal may appoint persons who have ability and experience in land, agriculture, commerce or other relevant professional qualifications as assessors for purposes of assisting it in the determination of any matter under this Act.

**22. [Jurisdiction of Tribunal]**

The Tribunal shall have jurisdiction to -

- (a) inquire into and make awards and decisions in any dispute relating to land under this Act;
- (b) to inquire into, and make awards and decisions relating to any dispute of compensation to be paid under this Act;
- (c) generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under this Act, of any person or the Government; and
- (d) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.

**23. [Proceedings of Tribunal]**

- (1) The Chairman or the Deputy Chairman shall preside over the sittings of the Tribunal.
- (2) The Tribunal, when hearing any matter, shall be duly constituted if it consists of five members which number shall include either the Chairman or the Deputy Chairman.
- (3) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members considering the matter.
- (4) A member of the Tribunal or an assessor shall not sit at a hearing of the Tribunal if he has any interest, direct or indirect, personal or pecuniary, in any matter before the Tribunal.
- (5) The Tribunal shall not be bound by the rules of evidence applied in civil proceedings.

**24. [Rules]**

The Chief Justice may, by statutory instrument, make rules -

- (a) regulating the procedure of the Tribunal; and
- (b) prescribing the procedure for the summoning and appearance of witnesses and the production of any document or other evidence before the Tribunal.

**25. [Legal representation]**

A person appearing as a party before the Tribunal may appear in person or through a legal practitioner at his own expense.

**26. [Frivolous and vexatious proceedings]**

If the Tribunal is satisfied that any application to the Tribunal is frivolous or vexatious, it may order the applicant to pay his costs, that of the other party and that of the Government in connection with the proceedings.

**27. [Expense of Tribunal]**

The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act.

**28. [Secretarial and accounting]**

The Ministry responsible for legal affairs shall provide the necessary secretarial and accounting assistance to the Tribunal to enable the Tribunal to perform its functions under this Act.

**29. [Appeals]**

Any person aggrieved by any award, declaration or decision of the tribunal may within thirty days appeal to the Supreme Court.

**LANDS ACT, 1995 - PART V  
GENERAL**

*Section:*

**30. [Saving of existing interests and rights]**

Subject to the other provisions of this Act, nothing in this Act shall affect any estate, right or interest legal or equitable, in or over any land which was at any time before the commencement of this Act created, granted, recognised or acknowledged.

**31. [Regulations]**

(1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. [Regulations]

(2) In particular, but without prejudice to the generality of subsection (1), such regulations may prescribe -

- (a) the terms, conditions and covenants of leases;
- (b) the procedure for applying for the President's consent to any transaction relating to or affecting land;
- (c) the procedure for converting customary tenure to leasehold tenure;
- (d) the procedure for applying for the renewal of a lease;
- (e) the ground rent for land;
- (f) fees for transactions in land; and
- (g) any other matter which is to be or may be prescribed under this Act.

*[As amended by Act No. 20 of 1996]*

**32. [Repeal of Cap. 289 and Laws in Schedule]**

(1) The Land (Conversion of Titles) Act is hereby repealed.

(2) The Laws set out in the Schedule are hereby repealed.

**SCHEDULE**

(Section 32)

**REPEALED LAWS**

- 1. The Zambia (State Lands and Reserves) Orders, 1928 to 1964.
- 2. The Zambia (Trust Land) Orders, 1947 to 1964.
- 3. The Zambia (Gwembe District) Orders, 1959 to 1964.
- 4. The Western Province (Land and Miscellaneous Provisions) Act, 1970.

## Appendix 5.1 Procedure on Land Allocation (Land Circular No. 1 of 1985)

### PROCEDURE ON ALIENATION

#### 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.



Appendix 5.2 Urban land delivery: semi-structured interview questionnaire (*cont'd*)**Notes & Questions**

Periods: 1975-1994 and 1995-2003<sup>1</sup>

1. *Department/Office*: What is the name of your department? [Include the current official postal address, E-mail, and telephone number of the department as well as the interviewee's name and post]
2. *Activity*: What is your department's role in the land delivery process? Has there been any change in this role since 1975? [State the specific *activity* or *set of activities* the department carries out in the delivery process from the initial stages of land identification to the stage when land is finally allocated to the applicants].
3. *Time involved*: Could you please give an indication of how long the ...(\*)... process takes to complete? [...(\*)... e.g. the issuance of title deeds, or the processes of survey, valuation, land identification & preparation of layout plans].

Indicate the approximate time period involved, whether in weeks, months or years. *For example, 2 to 6 weeks, 2 to 9 months, 1 to 3 years, as the case may be.*

- A simplest operation/activity of such a process takes approximately:
    - .... to..... weeks/months/years
  - A typical operation/activity of such a process takes approximately:
    - .... to..... weeks/months/years
  - A complex and/or large-scale operation/activity takes approximately:
    - .... to..... weeks/months/years
4. *Rules and regulations*: Are there specific rules or regulations (e.g. statutory regulations, government notices or ministerial directives) that govern the performance of the activities mentions in question 2? If so, when were they issued and has there been any changes to these regulations/rules over the said periods?
  5. *Resources and constraints*: Does your department face any of the resource constraints identified in the table, and how severe have they been over the said time periods?

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<sup>1</sup> These are the periods of interest to the study.

**DELAYS**

6. **Q:** How often do you receive complaints regarding:  
 Choose **one** item only (that concerns your department) from the following list, and then answer the subsequent questions in relation to this item.

- Delays in processing title deeds .....
- Delays in processing valuations .....
- Delays in processing land allocation .....
- Delays in processing state consent valuations .....
- Delays in identifying land and designing layout plans .....
- Delays in processing survey diagrams/cadastral plans .....

**A:** [Tick on the dotted line against the correct response]

- Many times .....
- Occasionally .....
- Rarely .....
- Never .....
- Cannot tell/remember .....

7. **Q:** If at all you do receive some complaints, who are the main complainants?

Rank them with the following numerals: 1, 2, 3, 4. Start with the one you consider to be the most important or the *usual* complainant, and end with the least important complainant.

**A:** [Write on the dotted line against the correct response]

- Land/Plot applicants .....
- The general public .....
- Senior government officials .....
- Private organisations .....
- Non-governmental organisations (NGOs) .....
- Political party officials .....
- Other Departments/Units in the land delivery process .....
- Other (if any, state precisely who they are and rank them accordingly):  
 .....

8. **Q:** Do you think these 'delay' complaints are legitimate?

**A:** [Tick on the dotted line against the correct response]

- Some of them are legitimate .....
- Most of them are legitimate .....
- Just a smaller number of them are legitimate .....
- Yes, all of them are legitimate .....
- No, none of them are legitimate .....

9. **Q:** If the *delay* complaints are somewhat legitimate, what do you think is the major cause, or causes, of these delays?

**A:** Identify the *cause(s)* of delays and, in your own words, briefly explain what they are. (*Note: Some of these may have something to do with the lack of adequate financial resources or manpower/skilled labour (staffing) or poor coordination between different land delivery departments/units.*)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

10. **Q:** Would you say that the 'delay' complaint has been more prominent in recent years than ever before?

**A:** [*Tick on the dotted line against the correct response*]

- It was more prominent in the period 1975-1990 than the 1995-2003. ....
- It has consistently been growing over the years ever since 1975. ....
- It is more prominent in the period 1995-2003 than the 1975-1990. ....
- It has been dwindling ever since 1975. ....
- It is difficult to tell. ....

**Appendix 5.3 Expert witness questionnaire survey****EXPERT WITNESS QUESTIONNAIRE SURVEY  
(Valuation Surveyors)****A NOTE TO INTERVIEWEES**

Please NOTE the following:

- The main purpose of this survey is to solicit for information from valuation surveyors on their experiences regarding the issues, over the time-periods, specified in the questionnaire.
- The survey is for academic purposes only and the questionnaire has been designed in such a way that *no individual will be identified with specific responses*.
- This survey covers all member *firms* of The Surveyors Institute of Zambia. It is intended to interview all registered valuation surveyors in each firm, particularly those with requisite knowledge and experience relating, at least to two, of the three time-periods indicated in the questionnaire.
- Although a copy of the questionnaire will be given to each interviewee, this is for the interviewee's information only. It is the task of *interviewer* to tick or write down the responses.
- We reckon that the interview would take *about* 15 minutes.

THANK YOU FOR YOUR PARTICIPATION IN THIS SURVEY.

**NOTE: This was later administered as a self-completion questionnaire  
(For further details, see chapter 4)**

<p>Unless stated otherwise, each question below should be answered by reference to the three (or at least the recent two) time-periods shown in the next three columns. Please tick or write your answers accordingly.</p>	1995-2003	1975-1995	Prior to 1975
<p><b>1. Valuation of commercial property</b></p> <p>1. Which of the following methods of valuation did you frequently use in your valuations for sale purposes? If you regularly used more than one method, please indicate the other methods as well in order of their importance (<i>start with the most important one; this should be number 1, then followed by 2, and so on</i>).</p> <p>a) Direct (Capital) Comparison Method  b) Investment Method (Income-cap. Approach)  c) Cost Method (including DRM)  d) Residual Method  e) Other (specify) .....</p> <p>2. If the most frequently used method indicated above was not consistently applied over the 3 or 2 time-periods shown in the next columns, could you please specify why you decided at some point in time to abandon the use of the said method and switch over to other method(s) of valuation?  <i>(Use space provided on page 6).</i></p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>
<p><b>2. Valuation of residential property</b></p> <p>1. Which of the following methods of valuation did you frequently use in your valuations for sale purposes? If you regularly used more than one method, please indicate the other methods as well in order of their importance (<i>start with the most important one; this should be number 1, then followed by 2, and so on</i>).</p> <p>a) Direct (Capital) Comparison Method  b) Investment Method (Income-cap. Approach)  c) Cost Method (including DRM)  d) Residual Method  e) Other (specify) .....</p> <p>2. If the most frequently used method indicated above was not consistently applied over the 3 or 2 time-periods shown in the next columns, could you please specify why you decided at some point in time to abandon the use of the said method and switch over to other method(s) of valuation?  <i>(Use space provided on page 7).</i></p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>
<p><b>3. Location, location, location</b></p> <p>1. In your valuations of developed property for sale purposes, were <i>location attributes</i> of urban land:</p> <p>a) Partially ignored?  b) Totally ignored?  c) Fully taken into account?</p> <p>2. If location attributes were totally ignored, what was the underlying factor for taking this decision?  <i>(Use space provided on page 8).</i></p>	<p>N/A</p>	<p>a) .....  b) .....  c) .....</p>	<p>N/A</p>

4. Data / information gathering	1995-2003	1975-1995	Prior to 1975
<p>1. In your task of searching and collecting data on the following types of property, which type of information/data did you find most difficult to compile? (Note: for each type of property, pick one item only from the given set of responses)</p>			
<p>(1.1A) Data on developed <i>commercial</i> property</p>			
<p>a) Sales prices            b) Rental values            c) Both sales prices and rental values            d) Other (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>
<p>(1.1B) What were the common difficulties that you encountered in collecting the said data? (Pick one or two items only from the given set of responses).</p>			
<p>a) Insufficient land transactions            b) Total absence of transactions            c) Other reasons (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>
<p>(1.2A) Data on developed <i>residential</i> property</p>			
<p>a) Sales prices            b) Rental values            c) Both sales prices and rental values            d) Other (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>
<p>(1.2B) What were the common difficulties that you encountered in collecting the said data? (Pick one or two items only from the given set of responses).</p>			
<p>a) Insufficient land transactions            b) Total absence of transactions            c) Other reasons (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>
<p>(1.3A) Data on serviced, but largely undeveloped <i>urban land</i> with planning permission.</p>			
<p>a) Sales prices            b) Rental values            c) Both sales prices and rental values            d) Other (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>	<p>a) .....            b) .....            c) .....            d) .....</p>
<p>(1.3B) What were the common difficulties that you encountered in collecting the said data? (Pick one or two items only from the given set of responses).</p>			
<p>a) Insufficient land transactions            b) Total absence of transactions            c) Other reasons (<i>specify</i>).....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>	<p>a) .....            b) .....            c) .....</p>
<p>2. Did the difficulties with data gathering indicated above have any significant consequences on valuations?</p>			
<p>a) Yes, as most valuations tended to exceed actual prices.            b) Yes, as most valuations tended to be lower than actual prices.            c) No, there weren't significant differences between valuations and prices.            d) Yes, there were significant differences between valuations and prices: some valuations were higher and others were lower than prices.            e) I do not know.</p>	<p>a) .....            b) .....            c) .....            d) .....            e) .....</p>	<p>a) .....            b) .....            c) .....            d) .....            e) .....</p>	<p>a) .....            b) .....            c) .....            d) .....            e) .....</p>



	1995-2003	1975-1995	Prior to 1975
<p><b>6. State consent and land/ property exchange</b></p>			
<p>1. Securing <i>state consent</i> to conclude a land transaction, whether under the Lands Act of 1995 or the Land [Conversion of Titles] Act of 1975, involved time. From your experience, how long did it <i>usually</i> take to obtain state consent for a sales transaction from the date of application?</p> <p>a) Less than 4 weeks  b) One (1) to 3 months  c) 4 to 12 months  d) Beyond 12 months  e) (Cannot remember/tell)</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>a) .....  b) .....  c) .....  d) .....  e) .....</p>	<p>N/A</p>
<p>2. When submitting an application for state consent (under the Land [Conversion of Titles] Act 1975), the price agreed between parties to a transaction would also be indicated. However, the state would only grant consent based on government valuation department's valuation.</p> <p>If one compared the agreed <i>prices</i> between the buyers and sellers, on one hand, and the state consent <i>valuations</i>, on the other, for <i>most</i> of the applications that sought state consent, the results might not tally. From your experience, however, would you say whether state consent valuations were <i>usually</i>:</p> <p>a) Same as the prices agreed between parties?  b) Lower than the prices agreed between parties?  c) Higher than the prices agreed between parties?  d) (Cannot remember/tell)</p>	<p>N/A</p>	<p>a) .....  b) .....  c) .....  d) .....</p>	<p>N/A</p>

	1995-2003	1975-1995	Prior to 1975
<b>7. Land delivery</b>			
1. State-administered land allocation systems are usually associated with certain undesirable practices, some of which may include the following. In Zambia, how often did the following practices occur in the state-administered land allocation system?			
▪ <i>Indicate whether:</i> (i) Always; (ii) Sometimes; (iii) Usually; (iv) Rarely; (v) Never; or (vii) Cannot remember/tell			
a) Double or multiple allocation of same plot to various applicants.	a) .....	a) .....	a) .....
b) The allocation of land by government officials without following laid down procedures.	b) .....	b) .....	b) .....
c) Party officials, from the ruling party, influencing the allocation of land.	c) .....	c) .....	c) .....
d) Subdivision and allocation by government officials, for private use or own benefit, land earmarked for public open spaces or public uses.	d) .....	d) .....	d) .....
e) Party officials, from the ruling party, allocating land in non-designated areas.	e) .....	e) .....	e) .....
f) Long waiting periods between the date of application and the actual date of allocation of land.	f) .....	f) .....	f) .....
2. Your observations on the undesirable practices in state-administered land allocation system in Zambia indicated above are based <i>mainly</i> on:			
a) Press reports.	a) .....	a) .....	a) .....
b) Personal experience.	b) .....	b) .....	b) .....
c) Court cases.	c) .....	c) .....	c) .....
d) Hearsay.	d) .....	d) .....	d) .....
3. What would you say about the sums of money that successful applicants <i>usually</i> pay to acquire land through the state-administered land delivery system?			
a) Same, or almost the same, as that paid for a similar plot in the open market.	a) .....	a) .....	a) .....
b) More than that paid for a similar plot in the open market.	b) .....	b) .....	b) .....
c) Less than that paid for a similar plot in the open market.	c) .....	c) .....	c) .....
d) I do not know/cannot tell	d) .....	d) .....	d) .....
4. How many times in a year did you see adverts for urban land allocation by the government?			
▪ <i>Indicate whether:</i> (i) Once a year; (ii) More than once a year; (iii) Rarely; or (vi) (Cannot remember/tell)	.....	.....	.....
5. Have you, yourself, ever applied for land through the state-administered land allocation system?			
▪ <i>Indicate whether:</i> Yes or No	.....	.....	.....
6. If 'Yes' to question 5, how many times did you apply and how many times were you successfully allocated a plot?			
▪ <i>I applied ---- times; and was successful ---- times.</i>	.... /.....	.... /.....	.... /.....

### Appendix 5.4 (a) Land delivery malpractices 1975-1995

#### Statistics

		Double/multiple plot allocations	Govt officials ignoring procedures	Party officials influencing allocations	Illegal land subdivisions	Land allocations in non-designated areas	Land allocation waiting periods
N	Valid	24	22	22	22	24	23
	Missing	2	4	4	4	2	3

#### Frequency Table

##### Double/multiple plot allocations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Sometimes	12	46.2	50.0	50.0
	Usually	4	15.4	16.7	66.7
	Rarely	4	15.4	16.7	83.3
	Never/almost never	3	11.5	12.5	95.8
	Cannot remember/tell	1	3.8	4.2	100.0
	Total	24	92.3	100.0	
Missing	System	2	7.7		
Total		26	100.0		

##### Govt officials ignoring procedures

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	2	7.7	9.1	9.1
	Sometimes	9	34.6	40.9	50.0
	Usually	2	7.7	9.1	59.1
	Rarely	5	19.2	22.7	81.8
	Never/almost never	2	7.7	9.1	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

## Party officials influencing allocations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	10	38.5	45.5	45.5
	Sometimes	2	7.7	9.1	54.5
	Usually	5	19.2	22.7	77.3
	Rarely	3	11.5	13.6	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

## Illegal land subdivisions

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	2	7.7	9.1	9.1
	Sometimes	10	38.5	45.5	54.5
	Usually	1	3.8	4.5	59.1
	Rarely	3	11.5	13.6	72.7
	Never/almost never	4	15.4	18.2	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

## Land allocations in non-designated areas

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	3	11.5	12.5	12.5
	Sometimes	7	26.9	29.2	41.7
	Usually	8	30.8	33.3	75.0
	Rarely	3	11.5	12.5	87.5
	Never/almost never	1	3.8	4.2	91.7
	Cannot remember/tell	2	7.7	8.3	100.0
	Total	24	92.3	100.0	
Missing	System	2	7.7		
Total		26	100.0		

## Land allocation waiting periods

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	11	42.3	47.8	47.8
	Sometimes	3	11.5	13.0	60.9
	Usually	4	15.4	17.4	78.3
	Rarely	3	11.5	13.0	91.3
	Cannot remember/tell	2	7.7	8.7	100.0
	Total	23	88.5	100.0	
Missing	System	3	11.5		
Total		26	100.0		

## Appendix 5.4 (b) Land delivery malpractices 1995-2003

### Statistics

		Double/multi ple plot allocations	Govt officials ignoring procedures	Party officials influencing allocations	Illegal land subdivision s	Land allocations in non- designated areas	Land allocation waiting periods
N	Valid	24	22	22	22	24	23
	Missing	2	4	4	4	2	3

### Frequency Table

#### Double/multiple plot allocations

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	1	3.8	4.2	4.2
	Sometimes	14	53.8	58.3	62.5
	Usually	7	26.9	29.2	91.7
	Rarely	1	3.8	4.2	95.8
	Cannot remember/tell	1	3.8	4.2	100.0
	Total	24	92.3	100.0	
Missing	System	2	7.7		
Total		26	100.0		

#### Govt officials ignoring procedures

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	1	3.8	4.5	4.5
	Sometimes	11	42.3	50.0	54.5
	Usually	5	19.2	22.7	77.3
	Rarely	3	11.5	13.6	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

**Party officials influencing allocations**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	6	23.1	27.3	27.3
	Sometimes	7	26.9	31.8	59.1
	Usually	7	26.9	31.8	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

**Illegal land subdivisions**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	1	3.8	4.5	4.5
	Sometimes	10	38.5	45.5	50.0
	Usually	7	26.9	31.8	81.8
	Rarely	1	3.8	4.5	86.4
	Never/almost never	1	3.8	4.5	90.9
	Cannot remember/tell	2	7.7	9.1	100.0
	Total	22	84.6	100.0	
Missing	System	4	15.4		
Total		26	100.0		

**Land allocations in non-designated areas**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	5	19.2	20.8	20.8
	Sometimes	7	26.9	29.2	50.0
	Usually	10	38.5	41.7	91.7
	Cannot remember/tell	2	7.7	8.3	100.0
	Total	24	92.3	100.0	
Missing	System	2	7.7		
Total		26	100.0		

## Land allocation waiting periods

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Always/almost always	10	38.5	43.5	43.5
	Sometimes	3	11.5	13.0	56.5
	Usually	7	26.9	30.4	87.0
	Rarely	1	3.8	4.3	91.3
	Cannot remember/tell	2	7.7	8.7	100.0
	Total	23	88.5	100.0	
Missing	System	3	11.5		
Total		26	100.0		

**Appendix 5.5 Perception of corruption in the public land delivery system: some noteworthy comments and observations**

Eminent commentators and/ or observers		Noteworthy comments and observations made
<i>Title of the Person or Name of Organisation</i>	<i>The commentator or observer in question</i>	
President of Zambia	Kenneth Kaunda (Mr) (Former president: 1964-1991)	From the presidential 'watershed speech' (1975): <ul style="list-style-type: none"> <li>▪ "We have heard so much about corrupt practices in the allocation of houses [in local authorities]. ... We are fighting exploitation... we are also very ready to fight corruption in local authorities in the allocation of houses and plots which we have now taken over." (GRZ, 1975a, p. 4748)</li> </ul>
Government of Republic of Zambia	Chairman, Political and Legal Affairs Sub-Committee, Central Committee of the United Independence Party	<ul style="list-style-type: none"> <li>▪ From the terms of reference on the problems in the administration of the Land (Conversion of Titles) Act 1975.</li> </ul> <p>The Law Development Commission was asked by the Chairman (Political and Legal Affairs Sub-Committee, Central Committee of the United Independence Party) to <i>investigate</i>, among other things, "the alleged misuse of certain sections of the Act for the personal benefit of officials in the Ministry of Lands and Agriculture." (Law Development Commission, 1981, p. 1)</p>
Law Development Commission	Working Party, Law Development Commission	<ul style="list-style-type: none"> <li>▪ From the deliberations of the Working Party:</li> </ul> <p>The Working Party noted that: "there are areas which present opportunities for corruption under the Act and other related legislation (Law Development Commission, 1991, p. 69). Examples given included (i) the operations of land inspectors/land use officers and (ii) valuation.</p>
Chairman, Lands Tribunal	Lloyd Siame (Mr) (Previous Chairman)	<p>A speech by Mr Siame to the Forum for the Copperbelt University Student Surveyors, August 25, 2001:</p> <ul style="list-style-type: none"> <li>▪ Please note that individual councillors and party officials in their individual capacities are not allowed to allocate land to anybody. Unfortunately, this practice appears to be rampant in all local authorities. (Formal written speech by <i>Lloyd Siame</i>, 2001, p. 6).</li> </ul>

President of Zambia	Levy Mwanawasa (Mr) (Current president: 2001- To date)	<p>Article from a newspaper:</p> <ul style="list-style-type: none"> <li>▪ President Levy Mwanawasa has expressed worry at the rampant corruption in the Ministry of Lands. ... he [the president] had been worried with the rate of corruption which has been going on at the Ministry of Lands for a long time where officers allocated land without following laid down procedures.</li> </ul> <p>“There is a lot of corruption at the Ministry of Lands, there are certain individuals who allocate themselves land, at times land will be owned by Mr A, and without knowledge of Mr A it will be transferred to Mr B all because someone is paying them under the table,” he said. (<i>The Post</i>, Thursday, November 14, 2002)</p>
Vice-President of Zambia	Enoch Kavindele (Mr) (Former vice-president)	<p>Article from a newspaper:</p> <ul style="list-style-type: none"> <li>▪ Vice-President Enoch Kavindele has directed the Ministry of Lands to assess the performance of the lands tribunal and find out how it has performed and the impact it has had since its creation. Mr Kavindele said he was aware of the lengthy bureaucracy and unnecessary delays in land administration to an extent that even corruption has been alleged. (<i>Zambia Daily Mail</i>, Saturday, July 22, 2002)</li> </ul>
Consultant/Researcher	Martin Adams	<p>From a draft report:</p> <ul style="list-style-type: none"> <li>▪ Ironically, insecurity is not confined to Customary Land. Holders of State Land also feel insecure: because of the problems of survey and registration of interim (14 year) leases; because of the over-centralised and inefficient land administration; because of rent-seeking officials and the lack of information about the law and regulations and the lack of transparency. (Adams, 2003, p. 15)</li> </ul>
The Post	The Post news-reporter (Brighton Phiri)	<p>Article from The Post (newspaper):</p> <ul style="list-style-type: none"> <li>▪ Government is giving miners title deed in Mufulira to get their support during next week's Kantanshi parliamentary by-election. Sources at the ministry of lands headquarters disclosed yesterday that workers were ordered to complete processing the title deeds for ZCCM houses by today in readiness for the official handover in Mufulira.</li> </ul> <p>“We have been told to complete this exercise before Saturday ... We have also been told to give preference to Mufulira miners because they will receive the title deeds before the by-election.</p> <p>President Mwanawasa will tomorrow address a campaign rally in Mufulira to drum up support for his party candidate... (<i>The Post</i>, May 22, 2004)</p>

The Post	The Post news-reporter (Alfarson Sinalungu)	<p>Article from The Post (newspaper):</p> <p>The government has U-turned on its offer of a farm in Chisamba to Vice-President Nevers Mumba. Ministry of Lands permanent secretary George Kawatu on Wednesday confirmed that the farm has been repossessed because its allocation to him was an oversight ... Kawatu said the best person to answer why the farm was given to Vice-President Mumba was the Minister of Lands. Vice-President Nevers Mumba was offered the farm which belongs to Zambia Railways without following procedure</p> <p>“Ask the minister. What I know is that the farm was repossessed after it was offered to him. The commissioner, too, is in a better position to explain. (<i>The Post</i>, September 11, 2004)</p>
Jesuit Centre for Theological Reflection	Jesuit Centre for Theological Reflection (Lusaka, Zambia)	<p>Article from the Jesuit Centre for Theological Reflection website:</p> <ul style="list-style-type: none"> <li>▪ What does it mean in Zambia to say that all land is “owned by the President”? This is a carryover from the colonial times when land was vested in the Governor General for the Crown. ... Among many consequences today of this legal fiction, two are outstanding: ... we have seen in recent years the political manipulation of land allocation for the purposes of securing votes. For instance, during a 2001 political rally on the Copperbelt, President Chiluba even issued title deeds to sitting tenants of mining houses – over-riding the technical petitions of others for these titles.</li> </ul> <p>Civil society has urged that a more fair understanding of ownership would be to vest land in the <i>state</i>, not in the <i>President</i>, with clear mechanism for distribution of the land. (<a href="http://www.jctr.org.zm/publications/landzambia.htm">http://www.jctr.org.zm/publications/landzambia.htm</a>)</p>

Minister of Lands	Judith Kapijimpanga (Mrs) (Previous Minister)	<p>Article from newspaper:</p> <ul style="list-style-type: none"> <li>▪ “I visited Kanyama and Munali constituencies where I talked to cadres over this issue [illegal land allocation] and I directed them to stop the practice and asked people affected to drag culprits to court.</li> </ul> <p>I am yet to get to Makeni and I shall ensure culprits are dealt with,” she said.</p> <p>The minister said because issues of land were delicate and concerned Government and the general public, it was important that they were dealt with in accordance with the law.</p> <p>She admitted that there was corruption at her ministry in the issuance of title deeds but stated that people that dangled money before officials at her ministry perpetrated the vice.</p> <p>“The public should stop this tendency of flashing money before my officials at the ministry if graft is to be rooted out. It is, however, gratifying that the levels of this scourge have reduced,” Ms Kapijimpanga said. (<i>Times of Zambia</i>, Friday, May 20, 2005)</p>
Minister of Lands	Gladys Nyirongo (Rev.) (Current Minister)	<p>Articles from newspapers:</p> <ul style="list-style-type: none"> <li>▪ “Rev Nyirongo said it was unfortunate that people had no regard for the law whenever they wanted to acquire land. [The] issues of land were sensitive and needed to be handled with great care. ... ‘It is sad that the rule of law has been ignored on issues of land acquisition,’ the minister said. She said her ministry had a huge task of bringing sanity in land acquisition and would, therefore, seek the cooperation of all Zambians.” (<i>The Post</i>, Monday, August 29, 2005)</li> <li>▪ “Lands Minister Gladys Nyirongo has warned that Government will not tolerate councillors who are involved in illegal allocation of land because the act can breed anarchy in the country. The minister said she had overwhelming evidence that some councillors were flouting the law by allocating land when they had no jurisdiction to do so.</li> </ul> <p>She said her office had embarked on a serious monitoring campaign to ascertain some of the serious complaints regarding land allocation and repossession. ‘Councillors have no powers to allocate and repossess land. In fact the councils’ task is to recommend whether there is available land for plots and plans for the city. It is this system that leads to one plot allocated to more than four people,’ Rev Nyirongo said.</p> <p>She said councillors should also stop posing as lands</p>

		<p>officers and running around to get title deeds for people they had sold plots to using dubious means because it was illegal. She advised that all documentation must be left with the commissioner of lands because that was his responsibility. The minister revealed that her ministry would reintroduce the lands development fund, which was banned some time back because councils were misusing it. (<i>The Post</i>, Thursday, August 25, 2005)</p> <ul style="list-style-type: none"> <li>▪ There has been lot of scandals in the way councils have been allocating land to interested applicants in the country, lands minister Gladys Nyirongo has said. Addressing councillors and other chief council officers at the Kitwe City Council chambers on Friday, Nyirongo also told councils to exhaust all laid down procedures before land can be allocated.</li> </ul> <p>She said most councils in the country have been using shortcuts when it comes to the allocation of land without the full involvement of the Ministry of Lands.</p> <p>“We need to bring sanity to the councils. ... We cannot continue having scandals, no shortcuts, time has come to take the long route,” she said.</p> <p>...</p> <p>She said it was very sad that when President Levy Mwanawasa talks about corruption it was when people took full gear of the vice. (<i>The Post</i>, Sunday, August 24, 2005)</p>
Member of Parliament & UPND deputy president	Sakwiba Sikota (Mr)	<p>Article from newspaper:</p> <ul style="list-style-type: none"> <li>▪ “The Baobab land saga smells of corruption at the highest level in the country, UPND deputy president for administration Sakwiba Sikota has said.</li> </ul> <p>Sikota yesterday said MMD and those in government should not be allowed to make land allocation a source of revenue for the party. He said a few years back, State House involved itself in the dubious allocation of plots at the University of Zambia and President Mwanawasa then Republican vice-president acquired the piece of land.” (<i>The Post</i>, Sunday, September 4, 2005)</p>

Chairman, Lands Tribunal	Sebastian Zulu (Mr) (Current chairman)	Judgement by the Lands Tribunal: <ul style="list-style-type: none"><li data-bbox="692 271 1347 517">▪ The Lands Tribunal sitting in Lusaka has found that the offer of a plot in Kabulonga near Kalikiliki dam to Base Security Systems by the Ministry of Lands was irregularly done as it was a double allocation. ... the commissioner's [of lands] office did not follow procedure in withdrawing the offers from the former offerees. (<i>Times of Zambia</i>, Saturday, September 17, 2005)</li></ul>
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(Source: Excerpts from various documents/publications)

### Appendix 6.1 Fees for transacting in land

Note: Prescribed fees, as per Lands (Fees) Regulation CAP 184, Statutory Instrument 143 of 1996	Fees Units
1. Preparation of a lease in respect of land situated in a city council	111
2. Preparation of a lease in respect of land situated in a municipal council	83
3. Preparation of a lease in respect of land situated in a district council	56
4. Preparation of documents for the conversion of customary tenure into leasehold tenure	28
5. Surrender fees	56
6. Certificate of cancellation of re-entry	278
7. Certificate of expiration of lease	56
8. Inspection of land at the instance of the applicant	556
9. Deed of rectification	56
10. Tenancy agreement	556
11. Drawing affidavits relating to land:	
(a) for land situated within state land	111
(b) for land situated within customary area	28
12. Certificate of incorporation enabling holding of land by associations or organisations	278
13. For each application for consent under section five to sell, transfer or assign	278
14. Renewal of each application for consent to sell, transfer or assign	278
15. Application form for land from the Council or the Lands Department	56
16. Preparation of documents relating to any transaction in land which is not specifically mentioned	89

Source: Lands Act 1995; Ministry of Lands

Note: (1) Presently (March 2007), 1 Fee Unit = K 180; and (2) Fees are reviewed occasionally, as there is no standard fee-review period.

Appendix 6.2 Government Valuation Department: Staffing and work output

V A L U A T I O N D E P A R T M E N T  
STATISTICS CONCERNING 'CONSENT' APPLICATION

<u>YEAR</u>	<u>VALUATION OFFICES</u>			<u>NO. OF CASES RECEIVED</u>			<u>OUTSTANDING CASES AT END OF JUNE</u>			
	TOTAL	LUSAKA	KITWE	TOTAL	LUSAKA	KITWE	TOTAL	LUSAKA	KITWE	
July 75	to June 76	7	4	2+1SVA	1568	1105	2674	375 (23.9%)	237(21.4%)	612(22.8%)
July 76	to June 77	9	5	3+1SVA	1664	968	2632	110 (6.6%)	91(9.4%)	201(17.6%)
July 77	to June 78	8	5	3	1292	607	1899	68 (5.2%)	33(5.4%)	101(5.3%)
July 78	to June 79	5	3	2	1243	772	2015	69 (5.5%)	65(8.4%)	134(6.6%)
<u>TOTAL NO.</u>					5767	3453	9220			

**NOTE:-** Professional and Senior Technical Staff Recommended by the Personnel Division. 17 Valuation Officers, 1 Chief Valuation Assistant and 2 Senior Valuation Assistants. 333

## Appendix 6.3 Focus groups: Copperbelt and Lusaka

### Focus Group Discussion

*Topic:* Effect of land policy on land exchange

#### **Part I: 1975 Land Policy**

1. *Policy aspects:*
  - State consent to transact.
  - Price controls.
  - No value on land, except on un-exhausted improvements.
  - Abolition of freehold estates, entrenchment of state-stewardship and leasehold tenure.
2. *Question for the Discussion:* Did these policy aspects affect the way land was exchanged or transacted in the market? If so, how?
3. *Points of interest* to the discussion (participants are free to include any other relevant items):
  - Time, effort, fees, and other resources expended in carrying out transactions.
  - Investment/pecuniary incentives and risk.
  - Availability of land on the market.
  - Valuation/Price issues: data, methods, practice, etc.

#### **Part II: 1995 Land Policy**

4. *Policy aspects:*
  - Retention, *albeit in a modified form*, of state consent to transact.
  - Repeal of the 1975 “price controls and no value on land, except on un-exhausted improvements” policy aspects.
  - Retention of the state-stewardship and leasehold tenure.
5. *Question for the Discussion:* Have these policy aspects affected the way land is exchanged or transacted in the market? If so, how?
6. *Points of interest* to the discussion (as above, participants are free to include any other relevant items).

**To aid your recollection of past events, perhaps the following tables would be useful. You may wish to jot down some points in the blank spaces for the discussion.**

Table 1

<b>Points for consideration and discussion.</b>	From your professional experience, what effect (if any) did the 1975 land policy in general, and the following policy issues in particular, have on the <i>points</i> raised in the first column?  <i>Note: We expect the discussion to be enriched with empirical examples.</i>	
	<ul style="list-style-type: none"> <li>• State consent to transact.</li> <li>• Price controls.</li> </ul>	<ul style="list-style-type: none"> <li>• No value on land, except on un-exhausted improvements.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Transaction costs</b> <ul style="list-style-type: none"> <li>○ Transaction time.</li> <li>○ Professional fees.</li> <li>○ Information gathering.</li> <li>○ Other costs of exchange, if any, (e.g. those arising from bureaucracy, perverse incentives, administrative costs, etc. when seeking state consent).</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Investment risk.</b> <ul style="list-style-type: none"> <li>○ Rental values.</li> <li>○ Capital values.</li> <li>○ Other.</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Incentives</b> <ul style="list-style-type: none"> <li>○ Willingness to investment.</li> <li>○ Willingness to undertake major developments.</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Availability of land</b> <ul style="list-style-type: none"> <li>○ State-Private sector transactions (<i>initial allocations of land</i>).</li> <li>○ Private-Private sector transactions (<i>subsequent trading</i>).</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Valuation/Price issues.</b> <ul style="list-style-type: none"> <li>○ Valuation data, methods, practice, etc.</li> <li>○ Price-setting process (agreed prices <i>versus</i> state consent valuations).</li> </ul> </li> </ul>		

Table 2

<p><b>Points for consideration and discussion.</b></p>	<p>From your professional experience, what effect (if any) has the <i>1995</i> land policy in general, and the following policy issues in particular, on the <i>points</i> raised in the first column?</p> <p><i>Note: We expect the discussion to be enriched with empirical examples.</i></p>	
<ul style="list-style-type: none"> <li>• <b>Transaction costs</b></li> <li>○ Transaction time.</li> <li>○ Professional fees.</li> <li>○ Other costs of exchange, if any, (e.g. those arising from bureaucracy, perverse incentives, administrative costs, etc. when seeking state consent).</li> </ul>	<ul style="list-style-type: none"> <li>• Retention of the 1975 policy aspect of "State consent."</li> <li>• Repeal of the 1975 policy aspect of "Price control."</li> </ul>	<ul style="list-style-type: none"> <li>• Repeal of the 1975 policy aspect of "No value on land, except on un-exhausted improvements."</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Investment risk.</b></li> <li>○ Rental incomes.</li> <li>○ Capital values.</li> <li>○ Other.</li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Incentives</b></li> <li>○ Willingness to investment.</li> <li>○ Willingness to undertake major developments.</li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Availability of land</b></li> <li>○ State-Private sector transactions (<i>initial allocations of land</i>).</li> <li>○ Private-Private sector transactions (<i>subsequent trading</i>).</li> </ul>		
<ul style="list-style-type: none"> <li>• <b>Valuation/Price issues.</b></li> <li>○ Valuation data, methods, practice, etc.</li> <li>○ Price-setting process (agreed prices <i>versus</i> state consent valuations).</li> </ul>		

## List of Participants

### Lusaka: Friday, 21/11/03

Name	Title/Occupation	Tel/Cell No.	Organisation
Mr. John Banda (Registered valuation surveyor)	Consultant	01-224547	Bitrust Consult, Lusaka.
Mr. Mukelabai Kabisa (Registered valuation surveyor)	Managing Consultant	095-819207	D W Zyambo & Associates, Lusaka.
Mr. A. Kateule (Registered valuation surveyor)	Principal Consultant	TBA	Hallmark Property Services, Lusaka.
Mr. Holland Mulenga (Registered valuation surveyor)	Managing Partner	097-779155	Bitrust Consult, Lusaka.
Mr. Sonny P. Mulenga (Snr) (Registered valuation surveyor & FRICS [UK])	Managing Consultant	01-221293/ 221208/097- 77256	S P Mulenga Associates International, Lusaka.

### Kitwe: Thursday, 27/11/03

Name	Title/Occupation	Tel/Cell No.	Organisation
Mr. C. D. Bufumu (Registered valuation surveyor)	Managing Partner	TBA	Versed Property Consultants, Kitwe.
Mr. Amos Kambenja (Registered valuation surveyor)	Managing Partner, Rainbow Surveys & Lecturer, CBU.	096-944141	Rainbow Surveys, Kitwe & Copperbelt University (CBU), Kitwe.
Mr. Dennis Kasonde (Registered valuation surveyor)	Acting Chief Valuation Officer, Northern Region.	095-758840	Government Valuation Department, Kitwe.
Mr. R. M. Lombe (Valuation surveyor)	Acting Chief Valuation Officer	096-923841	Kitwe City Council
Mr. Nalumino Akakandelwa (Land economist)	Acting Head of Department	096-784065	Land Economy Department, Copperbelt University (CBU), Kitwe.

**Appendix 6.4 Perception of corruption in the Ministry of Lands: some noteworthy statements and observations**

Date	Subject - Speaker/author	Land issues: noteworthy statements and observations
<p><i>The Post:</i>  <a href="http://www.postzambia.com/post-read_article.php?articleId=19363">http://www.postzambia.com/post-read_article.php?articleId=19363</a>            Wednesday, May 24, 2006</p>	<p>My ministry is corrupt -            Nyirongo</p>	<p>Rev Nyirongo said complaints from the public have confirmed that the Ministry of Lands was the most corrupt government department.</p>
<p><i>The Post:</i>  <a href="http://www.postzambia.com/post-read_article.php?articleId=10544">http://www.postzambia.com/post-read_article.php?articleId=10544</a>            Saturday May 27, 2006</p>	<p>Ministry of Lands under ACC probe            By Mercy Banda</p>	<p>ANTI Corruption Commission (ACC) says it has received over ten complaints of corruption against Ministry of Lands in the first quarter of the year.</p> <p>ACC public relations manager Timothy Moono ... He said based on the findings from the National Governance Baseline Survey undertaken in all the nine provinces, the Ministry of Lands stood out among the top public service institutions perceived to be corrupt.</p> <p>Moono echoed President Mwanawasa's statement that Ministry of Lands was one of the most corrupt institutions in the country.</p>
<p><i>The Post:</i>  <a href="http://www.postzambia.com/post-read_article.php?articleId=12373">http://www.postzambia.com/post-read_article.php?articleId=12373</a>            Monday July 10, 2006</p>	<p>Mkushi council challenges lands ministry over corruption allegations            By McDonald Chipenzi</p>	<p>MKUSHI District Council has petitioned Anti-Corruption Commission (ACC) to establish who is corrupt between Ministry of Lands and itself in a matter involving the allocation of land in Munkochi.</p>
<p><i>The Post:</i>  <a href="https://www.postzambia.com/post-read_article.php?articleId=13384">https://www.postzambia.com/post-read_article.php?articleId=13384</a>            Tuesday August 01, 2006</p>	<p>Ministry of Lands problems            By Mweelwa Muleya</p>	<p>From the legal point of view, the institutional capacity of the Ministry of Lands, the poor conditions of service for officers, some apparently deliberately created internal bureaucracy and blending all that with the desperation for land ownership, it is clear that there is an enabling environment for corruption at the Ministry of Lands.</p>

<p>Times of Zambia: (article available at:  <a href="http://www.alsa.ab.ca/releases/other/050921.htm">http://www.alsa.ab.ca/releases/other/050921.htm</a>)  September 21, 2005</p>	<p><i>Probe Land Allocation Scams, Orders Nyirongo</i>   By Edward Mulenga</p>	<p>LANDS Minister, Gladys Nyirongo, has asked the Anti- Corruption Commission (ACC) to immediately investigate serious land allocation scams at Monze District Council in which some council staff connived with Lands ministry officers to illegally offer land in a sacred place - Lot 86 Malende.</p>
<p><i>The Post:</i>  <a href="http://www.postzambia.com/post-read_article.php?articleId=19363">http://www.postzambia.com/post-read_article.php?articleId=19363</a>  Monday December 11, 2006</p>	<p>Corruption main cause of land disputes - Muteteka  By David Silwamba</p>	<p>Commenting on land wrangles that repeatedly erupt, Muteteka yesterday said it was very clear that most land disputes were a direct result of corruption and negligence among the people issuing land.</p>
<p><i>The Post:</i>  <a href="http://www.post.co.zm/homenews.html#HOMEF">http://www.post.co.zm/homenews.html#HOMEF</a>  Wednesday March 16, 2005</p>	<p>Mutti accuses Inambao of maligning her  By Noel Sicalwe</p>	<p>ANTI-Corruption Commission chairperson Nellie Mutti yesterday accused Commissioner of Lands Nathaniel Inambao and lawyer Sam Chisulo of maligning her name by alleging that she had forged a document.  .....  Inambao had also alleged that finance deputy minister Mbita Chitala offered a US\$20,000 bribe for him to give him the land. The ACC has since rejected Inambao's complaint and Chitala has been cleared. Hearing comes on April 13.</p>
<p>Times of Zambia:  <a href="http://www.times.co.zm/news/view_news.cgi?category=4&amp;id=1116534789">http://www.times.co.zm/news/view_news.cgi?category=4&amp;id=1116534789</a>  Friday, May 20, 2005</p>	<p><i>Kapijimpanga gets tough with illegal Lusaka land allocators</i>   By Times Reporter</p>	<p>She admitted that there was corruption at her ministry in the issuance of title deeds but stated that people that dangled money before officials at her ministry perpetrated the vice.   "The public should stop this tendency of flashing money before my officials at the ministry if graft is to be rooted out. It is, however, gratifying that the levels of this scourge have reduced," Ms Kapijimpanga said.</p>
<p>Zamnet website:  <a href="http://www.zamnet.zm/zamnet/post/homenews.html#HOMEE">http://www.zamnet.zm/zamnet/post/homenews.html#HOMEE</a>  Thursday 25th September, 2003</p>	<p>Corrupt people are very powerful - Mumba  By Sheikh Chifuwe</p>	<p>CORRUPT people are very powerful, Vice-President Nevers Mumba said yesterday.... Vice-President Mumba asked the workers to reverse the perception that the Ministry of Lands was the most corrupt and ensure that the lost confidence over the years was restored.</p>
<p>Zamnet website:  <a href="http://www.zamnet.zm/zamnet/post/homenews2.html#HOMEB">http://www.zamnet.zm/zamnet/post/homenews2.html#HOMEB</a></p>	<p>Probe Chitala over land - Shamenda  By Noel Sicalwe</p>	<p>Finance deputy minister Mbita Chitala should be investigated for allegedly trying to offer a US \$20,000 bribe to commissioner of lands Nathaniel Inambao, demanded former Zambia Congress of Trade Unions (ZCTU)</p>

Wednesday August 4, 2004		president Fackson Shamenda yesterday.
<p>Zamnet website:  <a href="http://www.zamnet.zm/zamnet/post/homenews2.html#HOMED">http://www.zamnet.zm/zamnet/post/homenews2.html#HOMED</a></p> <p>Thursday November 18, 2004</p>	<p>Judge Nyangulu orders ACC to investigate lands commissioner          By Noel Sichelwe</p>	<p>LUSAKA High Court judge Anthony Nyangulu yesterday ordered the Anti-Corruption Commission (ACC) to investigate the Commissioner of Lands and another person for corrupt practices.          Judge Nyangulu made an order after one Davies Rusfers Mkandawire sued the Commissioner of Lands and Asumani James, seeking the court's declaration that he was the legal owner of stand 5847 in Kitwe.          Mkandawire also wanted an order that the Commissioner of Lands should issue a certificate of title to him and another order of an injunction against Asumani restraining him from developing the same piece of land or tampering with it.</p>
<p><i>The Post</i>,          No. 2587          Monday, November 17, 2003</p>	<p>Gen Tembo asks Levy to return UNZA land          By Larry Moonze</p>	<p>Opposition FDD president Lieutenant General Christon Tembo yesterday asked President Levy Mwanawasa to return the UNZA land he had grabbed when he was vice-president in Chiluba's government. Commenting on President Levy Mwanawasa' continued silence over the land saga involving lands minister Judith Kapijimpanga and Copperbelt deputy minister Webby Chipili, Lt Gen Tembo said President Levy Mwanawasa cannot fire them before he returns the land he grabbed from the University of Zambia (UNZA).</p> <p>"It is important that leaders are free from charges of corruption or such related charges before they commit themselves to rid society of the vice," he said.</p> <p>... in the case in which Magnet Freight Services and K. Lukama Enterprises sued Pineland Investment Limited owned by Kapijimpanga, W. C. Engineering Builders Limited owned by Chipili, the Commissioner of Lands and the Attorney General over the alleged illegal allocation of land. Delivering judgment, tribunal chairman Sebastian Zulu strongly condemned Kapijimpanga and Chipili for irregularly allocating themselves the land.</p>
<p><i>The Post</i>,          No. 2589          Wednesday, November 19, 2003</p>	<p>Levy corruptly obtained UNZA land, Says Chongwe          By Brighton Phiri</p>	<p>Mwanawasa corruptly obtained two pieces of land belonging to University of Zambia (UNZA) in 1994, charged Lusaka lawyer Roger Chongwe yesterday. Commenting on President Levy Mwanawasa's continued silence over the land saga involving lands minister Judith Kapijimpanga and Copperbelt deputy minister Webby Chipili, Chongwe</p>

		<p>said President Levy Mwanawasa benefited from Chiluba's corrupt leadership.</p> <p>"It is corrupt and wrong for any political leader to obtain pieces of land in the manner, then vice-president, Mwanawasa obtained land from UNZA," Chongwe said.</p>
<p><i>The Post</i>, No. 2592SA104 Saturday, November 22, 2003</p>	<p>Another land problem flares up for Levy By Amos Malupenga</p>	<p>President Levy Mwanawasa should explain why his house is sitting on Zambia Air Force's (ZAF) City Airport land, demanded Patriotic Front president Michael Sata yesterday. ...</p> <p>"He has to explain how he acquired that land. Neither ZAF nor the Commissioner of Lands can do anything about this because the man is now President. He is not like Judith Kapijimpanga or Webster Chipili."</p>

(Source: Excerpts from media reports)

### Appendix 6.5 Inflation and exchange rates (Zambia)

Year	Inflation Rate (Annual CPI)	Exchange Rate Kwacha per US\$
1971	5.79	0.71
1972	5.79	0.71
1973	6.62	0.65
1974	8.04	0.65
1975	10.01	0.65
1976	18.18	0.79
1977	19.61	0.76
1978	15.98	0.79
1979	9.80	0.78
1980	11.60	0.80
1981	13.71	0.85
1982	12.50	0.93
1983	13.09	1.51
1984	20.18	2.22
1985	36.80	5.70
1986	54.79	12.71
1987	46.99	8.69
1988	54.10	8.26
1989	128.27	13.84
1990	109.58	31.40
1991	118.00	64.63
1992	200.00	172.21
1993	91.40	231.40
1994	35.0	697.60
1995	46.0	947.16
1996	35.2	1,282.45
1997	18.6	1,393.97
1998	30.6	2,281.45
1999	20.6	2,593.59
2000	30.1	4,110.34
2001	18.7	3,820.33
2002	26.7	4,740.05
2003	17.2	4,583.88
2004	17.5	4,524.29
2005	15.9	3,416.34
2006	8.2	4,127.83

Source: Central Statistical Office (CSO) & Bank of Zambia

**Appendix 7.1 State consent valuations: semi-structured interview questionnaire**

**State Consent Valuations**

*Respondents*  
**Valuation – GVD<sup>1</sup>**  
**Estates & Valuation – Min. of Lands<sup>2</sup>**

**Part 1: 1975-1994.**

**A: Valuation Practice**

1. **Q:** In carrying out valuations for state consent purposes in urban areas, were the 'location' attributes of the landed property taken into account?

**A:** [*Tick on the dotted line against the correct response*]

- a) Partially taken into account. ....
- b) Totally ignored. ....
- c) Fully taken into account. ...√...
- d) If none of the above choices (a - c), give a short explanation below:

.....

.....

.....

.....

2. **Q:** *If your response was (a) or (c) to question 1, answer the following question.*

In considering location tributes of landed property, was there any statutory or regulatory guideline on how valuation cases of such nature should be handled, or was it left to the professional judgement of valuation surveyors?

**A:** [*Tick on the dotted line against the correct response*]

- a) Guidelines were issued ....
- b) Professional judgement ...√...
- c) If none of the above choices (a or b), give a short explanation below:

.....

.....

.....

<sup>1</sup> Part I to be completed by a Senior Officer of Government Valuation Department (GVD).  
<sup>2</sup> Part II to be completed by a Senior Officer of Estates and Valuation Section, Min of Lands.

3. **Q:** After carrying out state consent valuations, were professional valuations subject to alterations or any other changes by a higher authority (e.g. Commissioner, or Minister, of Lands) before state consent would be granted?

**A:** [*Tick on the dotted line against the correct response*]

- a) Yes, in some of the cases .....  
 b) Yes, in all cases .....  
 c) No, not at all ...  ..

4. **Q:** In 1979 a working party - set up by the Law Development Commission following a request by the Government to consider and report on the problems in the administration of the Land (Conversion of Titles) Act No. 20 of 1975 - noted, among other things, that the Act lacked regulation governing the determination of prices on property.

Subsequent to the 1981 Law Development Commission's submission (i.e. the *Report on the Land (Conversion of Titles) Act No. 20 of 1975*), did the government issue any guidelines or regulations to the valuation profession in general, or government valuation department in particular, on how property prices should be determined?

**A:** [*Tick on the dotted line against the correct response*]

- a) Yes, the government issued valuation guidelines to valuers in both public and private sectors. ....  
 b) Government issued valuation guidelines to valuers in public sector only. ....  
 c) Government issued valuation guidelines to valuers in private sector only. ....  
 d) No guidelines were issued at all. ...  ..  
 e) Other (give details of your response if none of the above apply):

.....  
 .....  
 .....

**B: Fees**

1. **Q:** Aside from the consent fees, were applicants for state consent 'to transact' also required to pay valuation fees by the Government Valuation Department (GVD)?

**A:** [Tick on the dotted line against the correct response]

- a) Yes, GVD charged fees for its services in addition to consent fees. ....  
 b) No, consent fee was the only charge. ...√....  
 c) Other (give details of your response if none of the above apply):  
 .....

**C: Delays**

1. **Q:** How often did you receive complaints regarding delay in processing state consent valuations?

**A:** [Tick on the dotted line against the correct response]

- a) Many times .....  
 b) Occasionally ...√..  
 c) Rarely .....  
 d) Never .....  
 e) Cannot tell/remember .....

2. **Q:** If at all you did receive some complaints, who were the main complainants?

Rank them with the following numerals: 1, 2, 3, 4. Start with the one you consider to be the most important or the *usual* complainant, and end with the least important complainant.

**A:** [Write on the dotted line against the correct response]

- a) State consent applicants ...√..  
 b) The general public .....  
 c) Senior government officials .....  
 d) Private organisations .....  
 e) Non-governmental organisations (NGOs) .....  
 f) Political party officials .....  
 g) Other Departments/Units in the land delivery process .....  
 h) Other (if any, state precisely who they are and rank them accordingly):  
 .....



**Part 2: 1995-2003**

1. Does the current practice (under the 1995 land policy) of granting state consent require 'consent valuations' as well?

[Tick on the dotted line against the correct response]

- a) Yes, in all cases. ....
- b) No, no valuations required in all cases, as the price agreed between parties is officially accepted. ...√..
- c) Yes, though not in each and every case (if so, give examples)  
.....  
.....  
.....  
.....

2. If 'Yes' (a or b) to question 2, answer the following question.

Is this *current* practice consistent with stipulated policy provisions?

[Tick on the dotted line against the correct response]

- a) Yes .....
  - b) No .....
  - c) I don't know .....
-

## Appendix 9.1 Corrections<sup>1</sup>

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### Chapter 2

*P36: Viva question: Please elaborate on the proposition of Gu and Hitt and others that a reduction in transaction costs (TC) need not be beneficial. This controversial claim is not followed up sufficiently in the text.*

As highlighted above (at p. 36), Gu and Hitt (2001) argue quite strongly that a reduction in transaction costs need not be beneficial. This controversial claim is based on a financial market inefficiency model, constructed and partially empirically tested by themselves, which show that an “increase in uninformed individuals can increase market risk (volatility), can decrease efficiency, and may reduce social welfare even when markets participants are perfectly rational” (Gu and Hitt, 2001, p. 85). It is noteworthy that Gu and Hitt’s test results support the model prediction. In conclusion they (Gu and Hitt) intimate that similar outcomes may be obtained for markets deemed to be less efficient than securities markets, implying pervasive effects.

Arguing from a rather similar perspective, Hsiung (1998, 1999) contend that under certain circumstances, transaction costs can, in fact, be valuable. Hsiung’s central argument is encapsulated in the following passage. “...transaction costs and transactions are nonseparable. The existence of transaction costs makes transactions as we know them possible ... Specifically, money and prices are the natural products

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<sup>1</sup> As instructed by the Internal and External Examiners.

of positive transaction costs, and the monetary prices help determine the values of various goods and services. As such, transaction costs are the driving force behind the whole valuation process. Without transaction costs, the valuation process loses its driving force and the concept of value is void of its meanings.” (Hsiung, 1999, p. 164).

Little wonder, perhaps, Coase (1988), like Stigler (1972), remarked that “A world without transaction costs has very peculiar properties” (p. 14). Earlier on, Stigler (1972, p. 12) had amazingly noted that: “The world of zero transaction costs turns out to be as strange as the physical world would be without friction.” It appears there is more to the world of transaction costs than we currently know about. Needless to say that the ‘unknown’ aspects, which may appear anomalous once discovered or suggested for the first time (as Gu and Hitt have done), would therefore require further scrutiny and analysis through subsequent research before they are accepted as conventional knowledge.

*Section 2.4 is highly informative discussion on institutional change and efficiency/progress, addressing effectively the question ‘why do bad institutions persist?’ Viva question: In later chapters, particularly chapter 7, more might have been made of the obverse question – why do good institutions persist? Or why do good institutions sometimes (or often) replace bad ones? This is a gap in the argument that could be filled with very little effort. The question might mention the role of democracy; other feedback mechanisms; Popper’s open society; and Hayek’s discovery processes.*

Apart from the aforesaid observation on institutional change (see section 7.4), which draws from chapter 2's discussion on 'why bad institutions persist,' alternative obverse questions could be posed here. Why, for instance, do good institutions persist? Or why do good institutions sometimes (or often) replace bad ones?

Clearly, in this case, it has been established that the 1975 land policy reforms were detrimental to urban land market transactions. Yet in the face of this deleterious regulation, some good (market-friendly) institutions resisted change. Arguably, this serves as a good example of why good institutions may persist, or even why good institutions may sometimes replace bad ones.

Of course, theories abound, as in chapter 2, explaining why good institutions persist or why good institutions sometimes (or often) replace bad ones. Besides North (1990) and Roland (2004)'s explanation of slow and resilient nature of informal constraints (some of which may be good) proffered above, other reasons may have to do with, for instance, the role of democracy (e.g. the desire among the populace to retain what it sees as good institutions); Popper's open society; and Hayek's discovery processes; or, indeed, other feedback mechanisms (for more details see, for example, Popper, 1945; Hayek, 1978; Webster and Lai, 2003; Kingston and Caballero, 2006).

(see Popper, K. (1945, reprint 2006) *The Open Society and Its Enemies*, Volume One, Routledge; Hayek, F. A. 1978. *New Studies in Philosophy, Politics and Economics*. University of Chicago Press, Chicago).

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#### **Chapter 4**

*P133 and 144: is critical multiplism the same as triangulation?*

Is critical multiplism the same as triangulation? Literature review indicates that they are essentially the same: they both aim to reduce biases in research methods. However, as highlighted at page 133, it is claimed by post-positivist proponents that critical multiplism (as the name suggests) is much broader in scope than triangulation as it encourages 'exhaustive study of phenomena from as many different perspectives as possible' (Letourneau and Allen, 1999, p. 625). Perhaps that is why critics such as Guba (1990) refer to critical multiplism as a method of 'elaborated triangulation.'

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#### **Chapter 5**

*P149 Why differentiate between market and 'circumstantial' land delivery? (Larbi's terms)*

Notwithstanding Larbi's (1995) commendable attempt to define and develop various typologies of land delivery, it is noted that 'market-led' and 'circumstantial' land delivery systems have something in common, that is, they are both 'market-based'

mechanisms. Thus, the latter could, alternatively, be referred to as 'informal' market-led land delivery.

*P194: There is a Northian conclusion here: no real change between 1975 and '95 with respect to state ownership. Viva comment: Nowhere do you really ask the question why? Why did the '95 government system not re-establish decentralised property rights? This is an omission that should be addressed.*

As noted earlier (see section 5.3.1 above and chapter 3), no real change, for example, took place between 1975 and 1995 with respect to state ownership and the attempts to decentralise property rights under the 1995 MMD government never really gained ground. Why? The resistance to change in spite of the 'MMD manifesto' that proclaimed the policy is explicable, first, by tracing the development of the policy up to the stage of its transformation into statutory law; and, second, by analysing how the support institutions reacted to the policy. Facts of the matter are that, although MMD party manifesto advocated private property rights, other political and social entities (e.g UNIP) in the country were not totally in support of such a policy. This is evident from the changes that occurred subsequent to the policy.

First, as indicated in chapter 5 (p. 159), it is interesting to note that the MMD government adopted the Land Circular No 1 of 1985 (see Appendix 5.1) after denouncing the inefficient land allocation system of the previous regime. This could only have been done out of the lack of knowledge of what the said circular stood for. As pointed out in chapter 2, inefficient institutions may persist because of economic

agents' inability to comprehend (bounded rationality) the full implications of their actions due to lack of information. Alternatively, there could have been a powerful dissenting political faction within the rank and file of the party and its government that derailed the return to a private property rights regime. This, too, is well supported by theory (see chapter 2, on politics, interest groups and path dependence). Outwith the MMD government the political opposition was categorical clear: people did not want to loose their land again (as in colonial era) through commodification and privatization. Thus, the public opposition to private property rights was based on the fear of losing land to foreigners. In doing this, what many people did not realize, however, is the transaction costs implication that equally denies them access to the use of the land under a state ownership arrangement.

Second, the other important point to note is that of rent seeking. Theory (see chapter 2 also) informs us that bureaucrats often face perverse incentives to maximize inefficiencies in the delivery of public services. The persistent use of the Land Circular No 1 of 1985 following the enactment of the Lands Act 1995 is a case in point. Adams (2003) reports that, besides the said circular having been the basis of drafting the latter statutory law, it is in continual usage because 'it [i.e., the administrators and the powers that be who are responsible for drafting the law] was felt that the 1985 regulations served the purpose' (p. 36). So, not only was the 1985 land circular the basis of Lands Act 1995, it is in fact the basis of current land administration. Suggestions for change, it is claimed, are resisted (see Adams 2003, p. 36).

*There are a set of sequential questions that are all addressed in the text to degrees but could be more clearly summarised at some point. There may be a need for a little more elaboration with some. I shall include these in the viva questions:*

- *What were the causes of high land prices and landlessness pre 1975?*
- *You say that high TC contributed – please elaborate.*
  - The underlying causes of the pre-1975 high land prices and urban landlessness were: strong, vibrant economy; rapid urbanisation, following independence and removal of colonial regulation that restricted free movement of people; and an unprecedented increase in state and private sector investments in social, commercial and industrial projects.
  - Each mode of economic coordination (including the market) has its own typical structure of transaction costs (Coase, 1937; 1960). This is now conventional knowledge in transaction costs economics (see most of Williamson, O. E's writings). Now, in relation to the Zambian land market, it will be recalled that the 1975 land reforms were prompted by escalation in land prices. The sharp rise in market prices in the pre-1975 period was particularly attributed to the activities of estate agents and other intermediaries involved in land transactions (see Presidential Watershed Speech, 1975). As pointed out in chapter 3, the state considered these intermediaries as part of the pricing system since their fee structures were closely tied to land prices.

Naturally, the higher the prices the greater the fees such intermediaries would receive. The fees were [are] part of transaction costs. Thus, the rise in property prices was interpreted by the government as partially motivated by agent fee. To avoid such costs (market-based transaction costs), the government felt it would itself allocate land; monitor property prices; and, thus, cut down on such expenses.

- *What land market outcomes could you have predicted as a result of the tenure and price reforms in the 1975 act?*
  - These are summarised in Table 3.4 'Policy implications.' In particular, the table identified trade and land supply constraints (described and analysed in detail in chapters 5 and 6). In Table 3.4, it was predicted that these would prompt further price escalations. Table 7.5 in chapter 7 shows that house prices (for instance) never abated generally. Table 3.4 also identified likely property rights and transaction costs implications: the very source of such consequences.
  
- *You have not brought Hayek into the analysis (apart from one or two citations). Why not? He would have a lot to say about the removal of prices.*
  - Agreed. Hayek's (1945) insights on price theory and dispersed knowledge are supremely important in the discussion of policy/government failures. Hayek propounded that dispersed

knowledge (especially tacit knowledge), which is vital in the allocation of scarce resources, is not readily transmittable to central authority. Without such information central planning would be unable to perform the functions that the price system does effectively (communicating information), though sometimes imperfectly. In short, without information provided by the market prices, Hayek (1945) noted, it is impossible to rationally allocate resources.

The policy or government failure identified in the land delivery system of 1975 and, indeed, in the entire Zambian price control regime of that era could be attributed to this factor. As highlighted in the study, government search for information (or the lack of it), led to high transaction costs (the very source of market and policy failure). In the land delivery case, the information-related costs revolve largely around staffing (the scarce human resources that gather and process such data) and coordination matters (the transmission of information among the bureaucrats and the delays such a process entails).

- *You do not say much at all in Chapter 5 about the crucial step in the state administrative system – administrative selection of developers (in the post 1975 system). What criteria were used in selection?*
  - The administrative allocation issues are guided by the Land Circular No 1 of 1985 (highlighted at p. 156-159 of the thesis). As intimated in chapter 5 (p. 156-159 and 163), local authorities (wherever they are in

the country) act as agents of the state (Commissioner of Lands in Lusaka) in the actual selection of prospective developers. The criteria for selection of such land-seekers are not clearly stipulated (in my data collection exercise, I unsuccessfully solicited for this information from the relevant local authority offices). However, from experience it is known that the major criteria the local authorities use for individuals persons are: (1) citizenship; and (2) financial ability to develop the land (usually evidenced by a bank statement). For organisations, it is even more unclear. This is all more the reason why the selection process is shrouded in a cloudy of 'perverse incentives and rent seeking' and why, for that matter, corruption charges never go away (see remarks in Appendixes 5.5 and 6.4).

- *Neither do you say anything about de Soto's thesis – the economic effects of a widespread reallocation of property rights (or the converse). Was there a reason for this omission? It seems an important strand of literature, given your focus.*
  - I concur with de Soto's thesis. In fact, the findings in chapter 5 (if not the whole thesis) confirms de Soto's (2000/2001) thesis that formal regulations have alienated the masses (bulk of the people) and consigned them to the extralegal [informal] sector. *My thesis shows that it is in fact the high transaction costs which these regulations spawn that hinder wide spread allocation of property rights to land*

(without transaction costs encumbrances, the formal rules would not matter a great deal - even if they conflicted with informal constraints).

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## **Chapter 6**

*P204: Some statistics on land supply might have been helpful here. Similarly, statistics/figures could have been supplied to show reduction in private sector investment and mortgage lending. Add these in if they are readily available. Disregard if not.*

Not done – due to data constraints.

*P210: When discussing the transfer of power to the president, I think that the Hayekian knowledge problem should have at least been acknowledged, if not used to add to the analytical commentary. This could easily be related to the underlying TC thesis since the costs of acquiring centralised information are non-zero.*

As a corollary, besides the negative impact on *divisibility and fungibility of rights*, it is worth emphasizing further that the aforesaid provisions of the Lands Act 1975 (section 13) have other cardinal transaction costs implications. This has mainly to do with the Hayekian ‘dispersed knowledge’ problem (see Hayek, 1945). The transfer of power from the market to the president on decisions regarding the fixing of prices, which section 13 imposes, is inherently problematic. The problem here is plainly clear that the president, or his duly appointed representatives (e.g. Commission of

Lands or Government Valuers), being a central organ detached from the day-to-day functions of the land market, lack the relevant information (dispersed knowledge)<sup>2</sup> on which to rationally make decisions. To obtain that information/knowledge entails costs, mainly in terms of human resources and time. More importantly, however, most of the market/social knowledge required for effective land market control and monitoring is in fact *tacit knowledge* and therefore virtually inaccessible to the government. Thus, viewed from this Hayekian 'dispersed knowledge' perspective, the presidential land market control and pricing fixing policy has huge and far-reaching transaction costs<sup>3</sup> and other market efficiency implications. Clearly, the solution, as Hayek (1945) pointed out, is imbedded in price system (a mechanism for communicating information) rather than central planning (as suggested by the Lands Act 1975, section 13).<sup>4</sup>

*P213: Under-counter payments may have made up some of the difference between imposed ceiling price and market price. Is there any evidence that this shadow market 'cleared' efficiently (as there is for example in the UK surrogate education*

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<sup>2</sup> Dispersed knowledge is "information that is dispersed throughout the marketplace, and is not in the hands of any single agent" ([http://en.wikipedia.org/wiki/Dispersed\\_knowledge](http://en.wikipedia.org/wiki/Dispersed_knowledge)).

<sup>3</sup> For example, the problem of human resources constraints was clearly identified as one of the important problems which hindered the effective implementation of the Lands Act 1975 (see Law Development Commission, 1981, p. 6). It was discovered that the availability of valuers (and their logistical support) was central to the operation of the Act. However, valuers were not readily available in the country and required time and appropriate institutions to train them.

<sup>4</sup> Hayek (1945) specifically pointed out that: "Fundamentally, in a system where the knowledge of the relevant facts is dispersed among many people, prices can act to coordinate the separate actions of different people in the same way as subjective values help the individual to coordinate the parts of his plan (p. 526).

*market, where the premium paid for a house in the catchment area of a good high school is about equal to the NPV of the cost of private education for the number of children in the average household).*

A question could be asked here that ‘under-counter payments may have made up some of the difference between imposed ceiling price and market price,’ but ‘is there any evidence that this shadow market “cleared” efficiently?’ The answer to this question is that it is difficult to tell whether or not the market “clearly” efficiently since data and empirical evidence to support such an assertion are not readily available (for the very reason that these were covert transactions). However, ingenious methods of data collection could be devised and the matter ultimately analysed through further research.

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## **Chapter 7**

*P257: to clarify, how exactly did valuers use the comparative method to value structures only? (you don't seem to commit yourself as strongly as you might to saying what it was they did that had the effect of keeping prices rising.)*

The foregoing comments and analysis (see section 7.2.2) regarding Zambian valuation methods are consistent with the actual valuation practice generally.

First, as will be shown below (see section (b) Land value), due to the inherent difficulties in separating land value from improvement value, most valuers did in fact incorporate the land value aspect into improvement values. Thus, the statutory requirement that only improvement values be assessed was inadvertently ignored through persistent usage of *conventional* (backward-looking) valuation practices. Valuers, including government valuation surveyors (see section 7.2.2 (d) State consent valuation, items *i to iii*), applied the *usual valuation methods and procedures* referred to above.

Second, despite the Lands Act 1975's inhibiting provisions on land value, as highlighted in section 7.2.2 '(d) State consent valuation,' the failure by the government to provide guidelines on how improvement value could be assessed separately from land value undoubtedly promoted the 'business as usual' traditional valuation behaviour not only in the private sector but also in the state domain (again, see section '(b) Land value'). Without guidelines, professional judgement prevailed (see Appendix 7.1). This, of course, as intimated above, impacted negatively on policy objectives of keeping down prices.

The failure to provide valuation guidelines was rooted, arguably, in the fact that there had not been, thus far, a viable valuation method in practice that could adequately assess *exchange values* in landed property when the two components (land and improvements) are severed. If there had been such a method (or set of methods) government valuers, in particular, undertaking state consent valuations would have effectively applied it/them. It is worth underlining here that the alternative methods of valuation highlighted in section 7.2.1, though useful in certain circumstances,

were [are] not particularly suited for market exchange purposes (see review in section 7.2.1).

Thus, it could be argued that the 1975 policy failure was, in part, a direct consequence of 'valuation failure' (valuation failure in the sense that the policy failed to devise an appropriate valuation mechanism that could have facilitated the valuation process).

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***Other general comments***

*Please consider the use of parametric tests where appropriate.*

Not done due to time constraints. It should be noted however that, give the nature of the research design and data presentation, parametric tests may enhance the validity of the research findings quite all right but will not significantly alter the overall research findings and conclusions.

*Please consider including a table of statistics or graph to demonstrate economic effects where appropriate and where the data are readily available. Do not put yourself to any extraordinary lengths to procure these data.*

Table 7.5 House prices: 1974-1990

Year	Price (in Kwacha)	Inflation Rate (Annual CPI)	Exchange Rate (Kwacha per US\$)	Inflation adjusted Prices	Exchange rate adjusted Prices
1974	9,570	8.04	0.65	1,190	14,723
1976	19,380	18.18	0.79	1,066	24,532
1977	13,370	19.61	0.76	682	17,592
1979	17,170	9.8	0.78	1,752	22,013
1980	19,945	11.6	0.8	1,719	24,931
1983	34,730	13.09	1.51	2,653	23,000
1986	86,000	54.79	12.71	1,570	6,766
1987	120,000	46.99	8.69	2,554	13,809
1988	145,320	54.1	8.26	2,686	17,593
1989	450,000	128.27	13.84	3,508	32,514
1990	650,000	109.58	31.4	5,932	20,701

## Notes:

- (a) The inflation adjusted prices also support, though to a lesser degree, the notion that property prices did rise for most of the years following the 1975 land reforms; and (b) the exchange rate adjusted prices are however unreliable because the exchange rate was administratively determined, as part of the price controls regime, during that era.

2. Time series data on land and property prices is difficult to come by, but most of those who have lived in the country agree that urban land and property values had been rising generally virtually every year. The NHA, from whom the data was obtained, is a state-mandated organisation. Data from such organisations may be authentic, but could equally be conservative (i.e. more likely reflecting the official position rather than the volatile market situation).
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