

Women's registered ownership in an Improvement Area in Lusaka, Zambia

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Preface

This study has been carried out within the framework of the Minor Field Studies Scholarship Programme, MFS, which is funded by the Swedish International Development Cooperation Agency, Sida.

The MFS Scholarship Programme offers Swedish university students an opportunity to undertake two months of field work in a Third World country. The results of the work are presented in a report at the Master's degree level, usually the student's final degree project. The MFS study is primarily conducted within a subject area that is important from a development perspective and in a country supported by Swedish international development assistance.

The main purpose of the MFS Programme is to enhance Swedish university students' knowledge and understanding of these countries and their problems and opportunities. An MFS should provide the student with initial experience of conditions in such a country. A further purpose is to widen the Swedish human resources cadres for engagement in international cooperation.

The International Office at the Royal Institute of Technology, KTH, Stockholm, administers the MFS Programme for the faculties of engineering and natural sciences in Sweden.

Sigrun Santesson
Programme Officer
MFS Programme

Summary

Women in Zambia have unequal access to land ownership due to many different things; customary attitudes, high illiterate rates and lack of information about their rights are some examples. Poor women, living in informal settlements are among those who are struck the hardest by these problems.

The legal situation has changed for these women over the years. The Housing Act makes it possible for people living in informal settlements to get security of tenure when the settlements has been declared an Improvement Area according to the Act and they can apply for Occupancy Licenses. An Occupancy License gives the holder security of tenure for 30 years. The new Intestate Succession Act has also improved women's situation because it gives the widow the right to the house when the husband dies. Even if there have been some legal changes in the statutory laws, it is still common that people act in accordance with the customary laws, which are built on traditions and customs. A conflict between the statutory laws and the customary laws can easily occur.

In Chaisa, the Improvement Area and informal settlement chosen for this report, a gender group consistent of residents from Chaisa, is working with gender issues. This gender group is also involved in Lusaka City Council's and Swedesurvey's ongoing Land Initiative project in Chaisa, where the land delivery system is being improved and developed. Within the project they also inform the residents about the importance of having an Occupancy License.

Different studies together with my own survey revealed some of the gender problems that can occur during land registration. Some of these problems could be solved through better management and organisation at Lusaka City Council and the gender group could be a good information channel between the residents and Lusaka City Council.

The legal system is today cumbersome, especially for people living in poor areas where most of the residents are uneducated and the illiterate rate is high. The Government could look into it and try to make it more accessible. The process to apply for an Occupancy License is also time-consuming and cumbersome. Lusaka City Council must try to decentralise this process

so that the residents can apply from the site office instead of going in to the Civic Centre. A solution on the problem with the unpaid ground rents must be agreed between Lusaka City Council and the residents in Chaisa, otherwise these arrears stops many of the residents to apply or renew their Occupancy Licenses.

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1. Example of an Occupancy License
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1 Introduction

1.1 Background

Women in Zambia have unequal access to land ownership, which commonly results in less security of tenure. Several factors explain this inequality the legal situation, customary attitudes and bureaucratic practices, all of which can inhibit women from seeking land titles as individuals, or as joint landowners with their partners. There are also limitations placed on women either purchasing or inheriting parcels of land. Most women have an indirect access to land through their husbands, fathers or other family members, but this does not give the women enough security if the husband should die or if the family unit breaks down in some other way.

It can be argued that access to land is access to power. At the most basic level, land can be used to provide its owner(s) with the possibility of growing crops to feed a family. It can also be used as security in various financial agreements such as obtaining a bank-loan when starting a new business. At present over 40 per cent of the world's agricultural workforce is made up of women whose primary responsibility is to produce food for the family.¹ Having access to land is an important issue, which gives people the right or opportunity to use, manage or control the land and its natural resources.²

To measure access to land quantitative parameters can be applied such as the size of the land parcel or its economic value. Qualitative parameters can also be used such as the legal security or the documented rights to land.³ The intention of this thesis is to focus on the latter -the legal aspects regarding access to land -but also on the constraints a female applicant seeking security of tenure might meet, especially poor women living in Improvements Areas in Lusaka.

¹ Komjathy and Nichols, p 7

² Nichols, Ng'ang'a, Komjathy, Ericsson, p 3

³ Komjathy and Nichols, p 8

Swedesurvey in collaboration with Lusaka City Council (LCC) has started a programme called “The Lusaka City Council Land Tenure Pilot Initiative”. The programme aims to develop an effective land registration and record keeping system so that residents of Lusaka’s poorest residential areas can access the information. These areas, formerly illegal squatter settlements, have now been legally recognised as Improvement Areas, a term that means that the residents now have the opportunity to obtain Occupancy Licences (similar to land titles but with a shorter leasehold period). An Occupancy License gives the holder security of tenure if the holder pays ground rent and follows the building regulations for that area. An Improvement Area means any area of land declared as such in accordance with the provisions of The Housing Act, but these areas are sometimes still referred to as compounds and informal or squatter settlements. There are about 30 informal settlements within the borders of Lusaka City Council but not all of them have been declared as Improvement Areas.

Some of the problems encountered in the Improvement Areas arise from the fact that residents are not fully aware about their individual land rights and legal rights. The Lusaka City Council Land Tenure Pilot Initiative is a programme that aims also to improve the security of land tenure of residents in Improvement Areas. Chaisa, formerly a squatter area, has been selected by Swedesurvey and LCC as the pilot area in the project.

1.2 Aim

The purpose of this thesis is to investigate the current situation for women’s access to land in an Improvement Area and to identify residents’ views concerning the major constraints within their community that affect registered ownership of land by women. By analysing this information new measures can be found to improve women’s access to land. The conclusions can also be used in Land Tenure Pilot Initiative.

The purpose is also for me to learn and to teach and inform others about women’s access to land in Zambia as it currently stands.

1.3 Methodology

This thesis is based on a Minor Field Study that was carried out in Lusaka, Zambia in the autumn of 2001. To get to know the people living in Chaisa (the Improvement Area chosen for my thesis), their culture and traditions, I spent my first weeks working with Swedesurvey and LCC in the Land Tenure Pilot Initiative programme in Chaisa.

Using information gathered from different authorities and legal bodies, I collected various property laws and studied them to see the legal aspects relevant to women's registered ownership of land. By doing this I hoped to see if the laws contributes to either an improvement or a worsening of the women's situation. Almost all the material about the ongoing project in Chaisa was compiled by Swedesurvey.

I also interviewed different non-governmental organisations that were working with women's issues, and talked to different people from LCC as well as residents from Chaisa that were working on the Land Tenure Pilot Initiative in Chaisa. I also interviewed Mrs Kinnear, Chief Registrar of Lands Department, who is working with legal issues.

Together with an interpreter I carried out a local survey in Chaisa by knocking on doors and interviewing about 80 people living in the area. I tried to get a fair representation of the local population's opinions by interviewing different types of people in different age groups: men, women, married and single. The interviews were based on ten simple questions aimed at deducing the interviewees' awareness of the ongoing project and to find out if the interviewees were holders of Occupancy Licenses.

I attended the gender group meetings in Chaisa and other relevant meetings and workshops in Chaisa and at the Civic Centre, the Lusaka City Council's main office.

1.4 Delimitation

I have focused my study on the conditions in just one "Improvement Area" in Lusaka because there are just over 70 tribes in Zambia, which means that the traditions

and customs varies in different parts of the country. A survey that covers all the different parts of Zambia would therefore be impossible to do within my timeframe and budget.

The issue of women's access to land in "Improvement Areas" is also a serious and growing problem, which influenced my decision to focus on it.

1.5 Disposition

The thesis begins with a presentation of the facts about Zambia and Chaisa, the chosen Improvement Area. After the facts I have described the relevant laws. In the following chapters I have written about different studies that have been done on women's access to land, my study and problems that I found in the studies and on my stay in Zambia. After these chapters I discuss what can be done and services that can be offered the Zambians living in Improvement Areas today.

2 Facts about Zambia

Zambia is situated in the southern part of Africa. It is landlocked and borders eight different countries; Angola, Democratic Republic of the Congo, Malawi, Mozambique, Namibia, Tanzania, Botswana and Zimbabwe. Zambia has been a British colony but became independent in 1964, at the same time the name of the country was changed from Northern Rhodesia to Republic of Zambia.⁴

Map over Zambia⁵

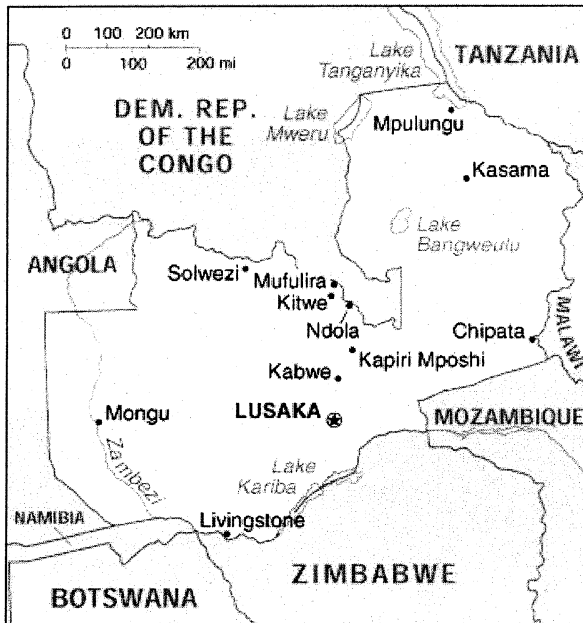


Figure 1

Zambia's population is of a bit over 10 million people and the surface area is 752,600 square km, which means that there are 14 people per square km. The population is young, 47 per cent of the inhabitants are under 15 years old and only 2.5 per cent are over 65 years old.⁶ Today the population growth is about 2 per cent.⁷ Lusaka is the

⁴ <http://www.odci.gov/cia/publications/factbook/index.html> 2002-05-30

⁵ http://www.lib.utexas.edu/maps/cia01/zambia_sm01.jpg 2002-05-30

⁶ <http://www.odci.gov/cia/publications/factbook/index.html> 2002-05-30

capital with in 1996 1.3 million residents. Zambia has got a big urban population, which at the moment is 44,5 per cent of the total population.⁸ The majority of the Zambians are Christians but Muslims and Hindus are also quite common. Many Zambians have traditional beliefs as well.⁹

Zambia is a republic with a President who is elected for five years.¹⁰ The President is both the chief of state and head of government.¹¹ The latest election took place in December 2001 and was won by Levy Mwanawasa.

Zambia's economy is dependent on mining of minerals such as copper, cobalt and zinc. Copper and other metal exports provide the country with nearly 75 per cent of its foreign exchange earnings. The copper market collapsed in 1970, which had a very negative effect on the country's economy. Since 1974 to 1990 the income per capita has annually been falling almost five per cent. Through privatisation of stately owned enterprises including the Zambia Consolidated Copper Mines (ZCCM), the Zambian economy has now started to grow. Zambia is also eligible for debt relief under the Heavily Indebted Poor Countries (HIPC) initiative.¹² At the moment the population below poverty rate is 86 per cent, and the unemployment rate is about 50 per cent.¹³

Zambia's climate can be divided into three periods. The rain season, hot and wet, starts in December, from May a period of dry and fairly cool weather begins. In September it gets hotter but stays dry until the rain season starts again.¹⁴

English is the official language in Zambia and most urban Zambians can speak it. Except the English there are about 70 different languages and dialects spoken in the country nearly one for every tribe. The illiteracy rate is high; among males over 15 years

⁷<http://lnweb18.worldbank.org/AFR/afr.nsf/dd4ae27820d2780f852567cf004cff45/54544aea448ca671852567d1004465e1?OpenDocument> 2002-05-30

⁸<http://devdata.worldbank.org/external/CPProfile.asp?CCODE=ZMB&PTYPE=CP> 2002-05-30

⁹ Chris McIntyre, p 4

¹⁰<http://www.worldbank.org/afr/zm2.htm> 2002-05-30

¹¹<http://www.odci.gov/cia/publications/factbook/index.html> 2002-05-30

¹²<http://www.worldbank.org/afr/zm2.htm> 2002-05-30

¹³<http://www.odci.gov/cia/publications/factbook/index.html> 2002-05-30

¹⁴ Chris McIntyre, p 3

old about 15 per cent are illiterate while there are nearly 30 per cent among the women.¹⁵ Other sources claim that up to half of the female population is illiterate.

The currency in Zambia is Kwacha and its exchange rate in January 2001 was 4 024 Kwacha per US dollar. There has been a heavy inflation in 1996 the rate was 1 208 Kwacha per US dollar.¹⁶

¹⁵ <http://devdata.worldbank.org/external/CPProfile.asp?CCODE=ZMB&PTYPE=CP> 2002-05-30

¹⁶ <http://www.odci.gov/cia/publications/factbook/index.html> 2002-05-30

3 Short facts about Chaisa and Swedesurvey's Pilot Project

3.1 Chaisa

For many decades the Zambian population has been migrating into the country's towns and cities in search of better living conditions and job opportunities. As a result, the need for urban accommodation has increased significantly. When the government realised that the urban housing demand could not be adequately and realistically met, it decided to accept the existence of squatter housing. In 1972 the government stated:

"It is recognised that although squatter areas are unplanned, they nevertheless represent assets both in social and financial terms. The areas require planning and service and the wholesale demolition of good and bad houses alike is not a practical solution." (Second National Development Plan, 1972-1976)¹⁷

In 1974 it became legally possible to declare unplanned and squatter areas as Improvement Areas according to the Housing Act. The Minister of Local Government and Housing, in accordance with the Act, declared Chaisa as an Improvement Area in 1987. Before the declaration Chaisa was a squatter compound. The declaration means that the residents can obtain Occupancy Licenses. Occupancy Licenses are similar to land titles but with a shorter period of leasehold - 30 years instead of 99 years.

Chaisa is situated in the northern part of Lusaka, about 5 kilometres from the town centre. (See map on next page.) It has a population of about 28 000, living in approximately 5 200 households, according to a survey Care Prospect¹⁸ carried out in 1999. The majority of Chaisa's residents are working in the informal sector, selling different items and products. Although the ratio of women to men is comparable, the vast majority of inhabitants holding down regular employment are men. The buildings in Chaisa are simple, most of them constructed of large bricks. There are no proper roads in Chaisa, just badly maintained gravel tracks. The area has two main markets as

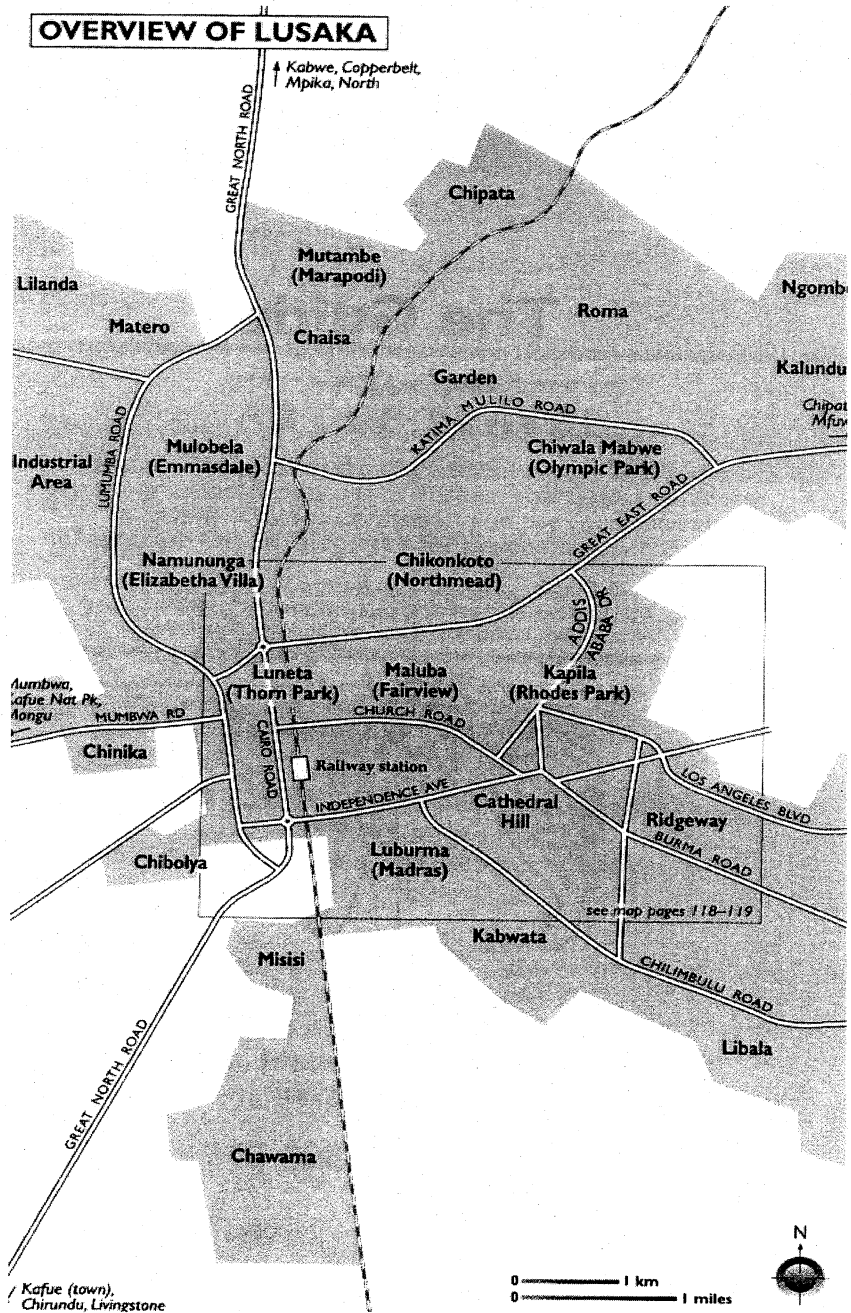
¹⁷ Cologne, 1982

¹⁸ Care Prospect is a Non Governmental Organisation

well as a variety of small bars that are located near the main roads. Although Chaisa has its own basic school, there is no official health service apart from just one nurse who works during the daytime.¹⁹

¹⁹ Riverine Consulting, p 7

Map on Lusaka and Chaisa²⁰



²⁰ Chris McIntyre, p 112, Figure 2

There are a few Non Governmental Organisations operating in Chaisa. Care Prospect is one of them that provide institutional building, infrastructure improvements and a micro finance scheme. Together with the RDC (Resident Development Committee), Care Prospect has formed a gender group, working with gender issues and providing advisory services in different gender cases. Property grabbing is one of the items within this scheme. The gender group is an Area Based Organisation (ABO) and consists of both male and female volunteers from Chaisa.

RDC, which is not connected to a political party²¹, is responsible when it comes to overseeing the dealings of the whole compound but Chaisa is divided into 16 zones and every zone has its own Zone Development Committee (ZDC).²² LCC, RDC and Care Prospect are housed together in the Council site office that is centrally located in Chaisa.

According to some figures given from LCC there are about 1250 Occupancy Licenses in Chaisa and about one hundred of them are joint titling, both the husband's and the wife's name are on the document. There are unfortunately no proper records on how many of these that have arrears (unpaid fees) and how many of the holders that pays ground rent regularly.

3.2 The Land Tenure Initiative Project

Security of tenure gives legal protection against forced evictions, harassment and other threats. There are also examples of people starting to invest in their houses when they are given security of tenure to improve their own living standards and that of the neighbourhood.²³ The idea with the Land Tenure Project is to make it easier for the people living in Improvement Areas to become holders of Occupancy Licenses and through the Occupancy License to obtain security of tenure. The Occupancy License also prevent property grabbing, because even if the new Law of inheritance gives the widow the right to the house after her husband's death there are still cases of property grabbing. Property grabbing is usually done by the husband's relatives, which means

²¹ Swedesurvey, p 6

²² Riverine Consulting, p 8

²³ Mulenga, Insight, p 1

that they occupy the house and force the widow and her children to move out. If there are no legal documents about the ownership it can sometimes be hard for the spouse to claim the property back, and in many cases the widow is not aware about her right to the house.

Another aim of the Project is to enable the residents in Chaisa to apply for Occupancy Licenses at the local site office without having to go into the Civic Centre, which is situated in the central part of Lusaka. This trip is both time consuming and expensive. It is hoped that this initiative will make obtaining an Occupancy License easier for the female-headed households. These women are usually poor and normally have to stay at home to look after the children, or if they are working they cannot usually afford to lose any time off. Most women that are working are selling things in one of the markets.

Swedesurvey and LCC also aim, within the project, to computerise the Deeds Registry at the Civic Centre. It is the Deeds Registry that is responsible for issuing the Occupancy Licenses. The Registry also handles the declaration of Improvement Areas.²⁴ Computerisation should lead to a manageable land information system, which the RDC could have access to so that they could solve their own problems or disputes at a local level.²⁵

To reach out to the people in Chaisa, LCC and Swedesurvey arranged for a drama-group to perform for the different area zones in Chaisa. The drama-group consisted mainly of members from the gender group. The performance was about property grabbing and what the law says about inheritance of land. It was performed two to three times in each zone and was scheduled for different times and different days so that the information would reach everyone, even those people working during the weekdays. Posters and pamphlets with information about property rights were also distributed. Both the drama-performance and the written information were given in one of the local languages Nyanja.

²⁴ Swedesurvey, p 7

²⁵ Swedesurvey, p 15

The LCC developed land titling system allows common ownership between husband and wife (joint titling) and land ownership to female-headed households.²⁶ Before it was only enough space for one name on the form and it was normally the head of the household that signed, which by traditions is a man. Joint titling might prevent property grabbing cases, for example when a spouse dies, which is very important considering all the HIV/AIDS cases in Zambia. WHO has estimated that 20 percent of the population have HIV/AIDS in Zambia²⁷, but according to people I have spoken to in Zambia they think the percentage is over 30. It is therefore very important that the people dealing with the Occupancy Licenses inform the applicants that they can have joint titling and the benefits with it.

The overall goal for Lusaka City Council and Swedesurvey is to replicate the process that they have carried out in Chaisa, to all the peri-urban areas in Lusaka.

LCC and Swedesurvey have commissioned a study to obtain the stakeholders views on security of land tenure in an Improvement Area in Lusaka. The Chaisa compound was chosen as the case study as it is the same unplanned settlement as LCC and Swedesurvey had been using in their ongoing project. LCC and Swedesurvey wanted to identify the constraints that stop the residents to obtain Occupancy Licenses. The study was carried out by Riverine Consulting and was finished in May 2001. Riverine Consulting used different methods to gain the information but discussions and interviews were the main ones. The total number of participants in the study was 312. The study is discussed further in chapter 5.

If women are given security of tenure and an effective access to land it can benefit a whole nation through; increased economic opportunities, improved land management and increased investment in land and food production.²⁸

²⁶ Swedesurvey, p 19

²⁷ www.who.int/emc-hiv/fact_sheets/pdfs/Zambia_EN.pdf 2002-05-15

²⁸ Nichols, Ng'ang'a, Komjathy, Ericsson, p 8

4 Relevant Laws

The Constitution of the Republic of Zambia is the supreme law of Zambia, and most of the acts were written during the time Zambia was a British colony. The Zambian judicial system therefore originates from English Common Law. Zambia has local courts through out the country and the Supreme Court in Lusaka is the final court.

The laws that are relevant for this report are listed below and I only deal with the sections that I thought were relevant. I also describe the customary laws, which are built on traditions and customs.

- The Lands Act, Chapter 184 of the laws of Zambia
- The Housing Act (Statutory and Improvement Areas) Chapter 194 of the laws of Zambia
- The Intestate Succession Act, Chapter 59 of the laws of Zambia
- The Wills and Administration of Testate Estate Act, Chapter 60 of the laws of Zambia
- Customary laws

4.1 The Lands Act

"An Act to provide for the confirmation 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... and to provide for matters connected with or incidental to the foregoing."

Section 3 says that *"all land in Zambia shall vest absolutely in the President and shall be held by him perpetuity for and on behalf of the people of Zambia."* It also says that *"all land in Zambia shall, subject to this Act, or any other law be administered and controlled by the President for the use or common benefit, direct or indirect, of*

the people of Zambia." (PART II, sec. 3) According to this section the President has the ownership to all land in Zambia. The power to act as the landlord is delegated to The Commissioner of Lands and it is the Commissioner of Lands that issues the leases. The Commissioner of Lands can also delegate the issuing of rights in land in the Improvement Areas to the City Council.²⁹ The Council is then given a 99 years leasehold and can then issue 30 years Occupancy Licenses to the residents in the Improvement Areas.

Any person who wants to sell, transfer or assign any land has to apply for the consent of the President before doing so, (PART II, sec. 5) but as mentioned before this is usually delegated to the Commissioner of Lands or the City Council depending what kind of area it is.

4.2 The Housing Act (Statutory and Improvement Areas)

"An Act to provide for the control and improvement of housing in certain areas; and to provide for matters connected with or incidental thereto."

The Housing Act makes it possible for people living in informal settlements to secure their tenure rights, and it also makes it possible for the Zambian Government to solve some of the problems with the big urbanisation, which results in lack of housing. The security of tenure encourages the residents to improve their dwellings since the high risk of demolition and eviction decreases. When the area is declared as an Improvement Area the residents can apply for Occupancy Licenses. An Occupancy License is a security of tenure in an Improvement Area and is valid during 30 years. The license is issued by the local council, in Chaisa's case it is the Lusaka City Council. The titleholder gets the original title document and a copy is filed in the register of the council. The Occupancy License is registered in a Presentation Book and in a register kept by the Deeds Registry at the Council.³⁰ The Council only registers the Occupancy Licenses and other Council Certificates that are issued for areas that have been declared Statutory Housing Areas or Improvement Areas in accordance with this Act. The

²⁹ Swedesurvey, p 16

³⁰ Swedesurvey, p 18

Certificates of Title that are issued for other residential areas are registered by the Lands and Deeds registry of Minister of Lands.

To avoid frauds the registrar shall attest every signature on documents that are registered or to be registered. (PART IX, sec. 41) It is normally the husband that applies for an Occupancy License and in some cases the wife is not even aware about the documents or where they are kept. There have been cases where only the husband's relatives know about the License and use it to grab the property after his death.

There should be a Register in every municipality where there is a Statutory Housing Area or Improvement Area. (A Statutory Housing Area is an area where the structures and buildings are in a better condition compared to an Improvement Area. The titles in a Statutory Housing Area are called Council certificates of title and can be valid for a period longer than thirty years.) The registers shall be maintained and shall contain all copies of all grants and all certificates of title issued under the Housing Act. (PART III, sec. 11) The registrar shall make a short description of every document and the date and time it is presented for registration, in the Presentation Book. (PART III, sec. 12) Documents that are unregistered but should be registered according to this Act are invalid, but can win validity if they are registered. (PART III, sec. 16) The council register may be open for search by anyone and certified copies may be obtained for prescribed fee. (PART III, sec. 20) A woman who does not know if the deceased husband was a holder of an Occupancy License or does not know where the documents are can then do a search to obtain a copy. But this is not much help for the women living in Chaisa who are normally not aware about the Register. The majority of them are illiterate which stops them from doing this search. The search would also mean an expense that they normally cannot afford. An Occupancy License is only issued when there is a building on the plot. A reason for this is that it makes it easier for the Council to repossess the plot if no development is done so they can give it to someone else, but it is negative for the residents who cannot be given any security during the process of the development.³¹

³¹ Nordin, p 16

The information you can get from the Occupancy License is the name on the title holder/holders, name of the Improvement Area, plot number, date of issue and all the terms of occupancy according to the Housing Act. (See appendix 1)

Before a plot has a proper building or structure or before Occupancy License is given an Agreement Form can be issued. An Agreement Form is issued when a person is given a parcel of land in an Improvement Area. After the issuing the person is given a certain time to start the development within and another date to where the development should be finished on the plot. The plot might be repossessed if the conditions in the Agreement Form not are fulfilled. The Agreement Form should lead to an Occupancy License and can be revoked if the time to acquire the actual Occupancy License elapses.³² The constructions of the buildings in an Improvement Area shall be in accordance with specifications approved by the National Housing Authority or by the Council. (PART IX, sec. 40) If an area has not yet been declared a Statutory Housing Area or an Improvement Area or if there is no layout plan over the area Land Record Card has been issued. The Land Record Card gives the holder a guarantee to occupy the house for a minimum period of ten years if he or she pays rent and other charges, during that period.³³ Land Record Card are no longer being issued but there are still some that are valid. All these different documents make people confused. There are some cases in Chaisa where holders of different documents thought they were holders of Occupancy Licenses with security of tenure, but they were in fact only holders of an Agreement Form or a Land Record Card.

To declare an area as an Improvement Area according to the act the following steps needs to be taken:

1. The Council decides that a certain area should be declared as an Improvement Area.
2. A layout plan is made after a survey of the area.
3. The layout plan is approved by the Surveyor General.
4. The documents are taken to the Legal Services Department in the City Council.

³² Swedesurvey, p 18

³³ Swedesurvey, p 19

5. The Minister of Local Government and Housing declares the area to be an Improvement Area after a request from the Council.³⁴

Land can be declared as an Improvement Area by statutory order within the jurisdiction of a Council, according to this Act. Land cannot be declared as an Improvement Area if the land is not held by the council and if an Improvement Area Plan is not established by the Council. The Improvement Area Plan shall contain following details:

- the name of the Improvement Area and a description
- existing roads
- roads proposed to be constructed
- existing areas for common use
- proposed areas for common use
- the location of each building identified by a serial number

(PART VIII, sec. 37)

An Improvement Area Plan is a bit different from other layout plans because it does not show any plot borders, only the location of the buildings. This is because on the Occupancy License it says that the license only grants the right to occupy the land under and immediately adjoining the house.

Within an Improvement Area the Council has the possibility to:

- Subdivide the land.
- Erect any building or effect any improvement on any piece of land in accordance with the specifications prescribed by the National Housing Authority.
- Construct and maintain roads, pathways, waterworks, drainage, sewage etc.³⁵

A person is not allowed to be a holder of more than one Occupancy License and no person is allowed to build, use, let, sell, create a lien or security or in any way deal with any dwelling or building on any parcel of land without an Occupancy License and approval from the Council. When a resident want to sell his plot in an Improvement

³⁴ Swedesurvey, p 16

Area in Lusaka, the transfer has to be approved by LCC, The Housing and Social Services Department. Before anything can be done a Housing Officer checks if the seller is the right owner of the plot and all the arrears must be cleared before a transfer. Property transfer tax must also be paid before the registration and before a new Occupancy License is issued. In some cases a memorandum of the transferee can be signed on the old License.³⁶ An Occupancy License cannot be issued for longer than a period of thirty years but it can be extended or renewed for a further period.³⁷ A holder of a License has to pay prescribed fees, for example ground rent, during this period. They also have to pay a fee when they apply for an Occupancy License and that fee is at the moment about 30 SEK. These fees compared to the income of an average family living in an Improvement Area are quit high, especially for female-headed households, which usually have not got a steady income. It is also time consuming to pay the ground rent every month and at the moment the residents have to go to the Civic Centre, in the centre of Lusaka. The council can revoke an Occupancy License if the holder has failed to comply with any of the conditions of the license or failed to pay the prescribed fees. Before the council can revoke a written notice has to be given to the holder of the license not less than three month before the eviction. (PART VIII, sec. 39) Many of the occupancy holders in Chaisa have problems with these kinds of arrears but the Council has not evicted anyone yet. If nothing happens when the residents do not pay the ground rent it does not motivate them to do so.

4.3 The Intestate Succession Act

The Constitution's article number 23 says that a law shall not discriminate anyone on basis of their sex, but it also says that this does not apply on laws that make provisions for devolution of property on death.

"This act provides financial help and other provisions for the surviving spouse, children, dependants and other relatives of a person dying without made a will disposing of his estate."

³⁵ Swedesurvey, p 17

³⁶ Nordin, p 12

³⁷ Cologne, 1983

According to sec. 5, PART II, the estate of an intestate shall be distributed as follows:

- Twenty per cent of the estate shall devolve upon the surviving spouse. If there is more than one widow, twenty per cent of the estate shall be divided among them proportional to the duration of their respective marriages to the deceased.
- Fifty per cent of the estate shall be divided between the children commensurate with a child's age or educational needs or both.
- Twenty per cent of the estate shall devolve upon the parents of the deceased.
- Ten per cent of the estate shall be divided between the dependants in equal shares. A dependant can be a relative or a person who has been provided for by the deceased.

Exception from the dividing rules above is if the estate includes a house. In that case the spouse or child or both are entitled to that house. This means that they also are entitled to the Occupancy License if there is one, but they have to visit the Council's register office and change the names on the License. If there is more than one spouse or child or both they shall hold the house as tenants in common. Tenants in common have equally shares in the house. The spouse shall have a life interest in that house which determines if the spouse remarries. (PART II, sec. 9) If there is more than one spouse then each widow or her child or both of them shall be entitled to the homestead property and in equal shares to the common property of the intestate. (PART II, sec. 10)

Any person entitled to a share of the estate is able to transfer his or her share to a priority dependant. (PART II, sec. 13)

If anyone deprives any person the part of the estate that the person is entitled to or unlawfully interferes he or she is guilty of an offence and shall be convicted to a fine or imprisonment or both. (PART II, sec. 14)

An Administrator distributes the estate after the owner's death. The Administrator is chosen by the deceased family and is not supposed to have any benefit in the estate. The main task for the Administrator is to ensure a good administration of the estate and if he or she fails to do so the court can revoke an order granted by the Administrator.³⁸ There are unfortunately cases where Administrators register the property in their own names, then sell it and take the profit themselves. Without legal documents it is hard for the deceased's family to prove their rights.³⁹

4.4 The Wills and Administration of Testate Estate Act

"An Act to simplify the law governing the making of wills; to provide for adequate financial and other provisions to be made for dependants in a will; to provide for the administration of estates of persons dying having made a valid will; and to provide for matters connected with or incidental to the foregoing."

This Act allows any adult to dispose his/her property in any way he or she wants by writing a will. (PART II, sec. 5) This means that the wife and the children have no absolutely right to the property, which can have a negative effect. If the will is going to be valid it has to be signed by the testator in the presence of two witnesses who are not beneficiaries under the will. The witnesses must also sign the will in the presence of the testator and each other. (PART II, sec. 5) The will must also be the last will the testator is writing to be valid. (PART II, sec. 13)

Certain beneficiaries, wife and children, can appeal against the will if it did not provide for them or if there only was inadequate provision made for them in the will. (PART III, sec. 20) According to this Act a woman can appeal but the courts are of opinion that wills should be respected and are therefore reluctant to change the provisions of the will. They only do so when they are convinced that the will was not reasonable and that it did not provide for certain of its beneficiaries.⁴⁰

³⁸ Chisanga, p 4

³⁹ Mrs Kinnear, interview

⁴⁰ Chisanga, p 6

If the will, according to section 20, PART III, provides a spouse periodical payments the payments shall stop when the spouse remarries, or if the payments are made for a child then they stop when the child has become eighteen or graduate from school or college.

Before the execution of the will the will has to be probated and the probate is done by the court. (PART V, sec. 29) After the probate the executor can distribute the remainder of the estate after paying all the debts, taxes and funeral expenses. If the will does not mention an executor the court decides who is going to execute the will. The executor is not entitled any benefits unless the will says so.⁴¹

In an Improvement Area as Chaisa it is not very common to write a will so in most cases The Intestate Succession Act is applied.

4.5 Customary Laws

I have chosen to write about the customary laws as well as the statutory laws, because a lot of the people that are moving into cities from rural areas, rural areas which are held under customary laws, think that the customary laws still are applicable in the urban areas, but urban land is not held under customary tenure. In many African countries the statutory and customary laws continue to exist, side by side. The customary laws are built on traditions customs and are normally found in the more rural areas of Zambia. The Chiefs in these areas are the ones who decides in most cases when a conflict occur, including land matters. Usually it is the tribe that look after the people in their community. For a women to have access to land in an area held under customary law they are dependent upon their male relatives. The women get access to land through their husbands, fathers, brothers or uncles. Customary laws do not recognise widows as beneficiaries, which means that a widow does not normally inherit from the estate of her deceased husband and the Intestate Succession Act does not apply to land held under customary law or property that has been institutionalised property of a chieftainship or family property⁴². (PART I, sec. 2) Even if the women in these communities not are

⁴¹ Chisanga, p 6

⁴² "Any property, whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property"

allowed to own land or inherit from their husband according to the customary laws, there is usually some kind of “safety net” in these communities. They can go back to their families after the husbands’ deaths or his relatives might provide for the woman and her children.

When the people start to move into cities they are used to the customary law’s customs and act as if they were still valid at the new place. A lot of people in Chaisa have this kind of background and when a woman is exposed to property grabbing there is no “safety net” as she might be used to and if she does not know her rights according to the statutory laws she does not take the case any further. It is therefore important to inform these people about the statutory laws and what they can do if they are exposed to a crime.

In most of the statutory laws there are exceptions for customary laws. This includes the Acts I have previous written about. In the Wills Act it says that the Act is not applicable on land that is held under customary law and which under that law is not disposed by a will or property held as part of a chieftainship. (PART I sec. 2)

In the Lands Act it says that if any piece of land was vested in or held by any person under customary tenure before this Act was approved it shall continue to be held so and that the Act shall not infringe on any customary right enjoyed before the commencement of this Act. (PART II, sec. 7) Any person that holds land under customary tenure can convert it into leasehold tenure but the conversion must be approved by the Chief and the local authorities to have affect. (PART II, sec. 8) In section 3, part II it also says that the President should not alienate any land held under customary tenure without consulting the Chief. These two paragraphs can make it difficult for women to get land tenure. It gives the Chief the authority to decide who is going to get the tenure.⁴³ As a result of this there can be areas where the Chief does not approve of giving women land tenure, which then can result in that some women in these areas moves to more urban areas, where the land is not held under customary tenure, and a lot of these women end up in the Improvement Areas.

⁴³ Mrs Kinnear, interview

5 Previous Studies

The three major previous studies I have used for this report are Komjathy and Nichols, “Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines”, Riverine Consulting’s study in Chaisa and Gopal’s report “Gender-Related Legal Reform and “Access to Economic Resources in Eastern Africa” written by Gopal. I have divided the problems found in the studies into three chapters: legal, economic and social and traditional.

It is easy to forget the partial or the indirect land rights the women might have, through their husbands and families, when formalising the land rights through adjudication and registration.⁴⁴ This can result in unintended results when a land project is carried out. A formal registration might take that indirect land right away when the registration is done only in the husband’s name. It is therefore very important for project leaders to look into these problems that might occur before they start a project. It is easy to forget that without participation from women it is nearly impossible to accomplish equally land rights, not only on the papers and according to the law but also in practise. New laws that for example are implemented through centralised legal institutions are not carried out to the full extensions in practice and most of the women continue to live under customary laws that are outdated and constraining. In a wider perspective, to have total equitable access to land includes having equitable access to other resources such as finances, roads and other services that usually are connected to tenure of land.⁴⁵

5.1 Legal

To give women equal access to land through statutory law is very important but if the local community, with its customary laws, does not support the written law then it will have little power in a conflict between the two. This is common in the rural areas but as mentioned before, people living in peri-urban areas sometimes act as if the customary law is the current law. This is a common phenomenon. In 1960, for example, Ethiopia

⁴⁴ Komjathy and Nichols, p 5

⁴⁵ Komjathy and Nichols, p 8

made all customary law invalid but most communities carried on applying the old customs and traditions. The legal reforms are in many cases based on personal relationship norms that are very different from the current situation, which results in not providing enough security for most women. At the same time customary laws have lost their exclusivity and do not protect the women as they used to. This results in that none of the systems give the women enough protection.⁴⁶ The conflict between the two laws is common when it comes to women's rights, which is very connected with the traditions. To change the situation of today it is necessary to make sure that both the society and the national laws are supporting women's access to land.

To get people to participate in different projects they have to be aware about the benefits it can provide. According to Riverine's survey in Chaisa there were more participants that said they were aware about the Occupancy License than those who was not and that men were more aware than the female partakers. This is understandable since it is normally the husband's name on land tenure documents and he is the one who participates a lot more in the land matters processes. The RDC members in Chaisa believe that most of the community members are aware about the Occupancy License. Another different aspect is age, the elderly were also more aware than the younger ones according to Riverine and people living close to the Council site office knew more about the Occupancy License than the people living in the margins of Chaisa.⁴⁷ An explanation to why young residents were less aware about the Occupancy License is that many young people in Chaisa are only tenants or live with their parents until they get married.

During discussions together with Riverine men and women discussed different issues. Some of the male participants did not think the Occupancy License gives enough security because they did not trust the Council while the women were discussing the benefit of the Occupancy License when the husband dies and how it helps them to prove their rights in property grabbing cases.⁴⁸

⁴⁶ Gopal, p 3

⁴⁷ Riverine Consulting, p 13

⁴⁸ Riverine Consulting, p 11

The formal legal system in Zambia has not made a big difference for poor women in comparison with old customary laws. Women were paid more attention to in the old customary system. When a woman wants to solve a dispute in an area where land is held under customary law she turns to the Chief or elder members of the community who makes a decision with the whole group in mind. But with the formal legal system she has to pay court fees, attorney fees and the procedure can be very complex and time consuming.⁴⁹ This comparison is with the old customary laws, but when these laws lost their exclusivity they are now not providing the same security for its members.

This means that none of the legal systems provide enough security for poor women. Many people in Africa want to change their situation and therefore want a new legal system but at the same time they are not willing to give up their traditions totally. Gopal writes about a solution that has been tried out in Ethiopia. It is a process-based approach, with greater emphasis on the processes instead of on the norms when dealing with personal laws. This process permits the parties involved in a dispute to agree on which law they want to apply, customary law or the Civil Code, providing that all parties agree. The Civil Code is the formal legal system in Ethiopia. To make the process-based approach successful men and women must be provided with relevant and necessary information to be able to make the choice that would benefit them the most. Unfortunately Gopal does not explain how the courts are going to act when the parties cannot agree on which law they want to apply. Before this method was implemented in Ethiopia the courts could sometimes use old traditions and customary rules when the decision was made, which could result in that the courts were reluctant to give women full property rights. According to some African traditions a woman is not considered as an adult within a family. Through this approach the people do not have to give up their customs or traditions if they do not want to.

In this process-based approach Ethiopia has also introduced the concept of a “family administrator” instead of the “head of the household”. According to the Civil Code the “head of the household” is the husband and through introducing this new notion when it comes to land registration female-headed household can easier register their land. After

⁴⁹ Gopal, p 24

this legislation was implemented in Ethiopia the land holdings of women increased with 28 per cent.

To enforce this process-based approach a general decentralisation has been carried out in Ethiopia. Investments in local authorities with important legislative and judicial powers have been done. This results in a dispute solving system that is less formal, less costly and the processes are not as complex and it is much more like the old customary system where the community solved the problems locally. One still does not know the result of the process-based approach; the time scale from implementing it and up till today is too short. What one does know is that the norm-based approach that most African countries have today is not working.⁵⁰

5.2 Economic

The participants in Riverine's survey had different explanations to why only about 500 people in Chaisa were holders of Occupancy Licenses. The most common reason was that a lot of the residents that are in the Council's register owe the Council ground rent from previous years and these arrears stop the residents of renewing or applying for the Occupancy License. The Council says that they cannot issue any Occupancy Licenses to the ones who have not cleared these arrears. This is a big problem because in most cases the arrears are quite big since they have been accumulated over a long period and it is therefore nearly impossible for the people in Chaisa to raise the money and pay it off in one go. This makes it especially hard for the big part of Chaisa's residents that are unemployed and especially the women who have normally no steady income. The ground rent, that the holders of Occupancy Licenses have to pay, stops people from applying, they cannot afford another monthly bill and there are also complaints about what they get for the money. They think that if they pay ground rent the Council will provide them and the area with more services and do not see it as just a land rent. A lot of people in Chaisa are therefore not seeing the point in paying the arrears or the ground rent, they do not believe that the Council is delivering acceptable service or will do in the nearest future.⁵¹

⁵⁰ Gopal, p 30-40

⁵¹ Riverine Consulting, p 14

The Land Registration, for people living in Lusaka and its suburbs, is centralised to Lusaka in the Civic Centre. To obtain an Occupancy License the residents in Chaisa have to go to the Civic Centre in the town centre. This prevents some of the residents to apply because it is both time and money consuming.⁵²

Having an Occupancy License makes it legal to transfer the plot to potential buyers. Most of the participants in Riverine's study thought that buyers were willing to pay more for the plot if it gave them security of tenure. But it was mostly men that were discussing the possibility to use the Occupancy License as security when they apply for loans from lending institutions.⁵³ In the past, before joint titling and allowing female households to be holders of Occupancy Licenses, women could not start up their own businesses, because they had no security to get a loan. Even if the women are given that security today it will take some time before the attitudes have changed and for women to start up their own businesses.

A lot of the constraints to apply for an Occupancy License were connected with lack of commitments from LCC. The participants in Riverine's survey thought that the information from LCC was very meagre, for example information about the procedure how to acquire an Occupancy License, the planned developments in the community and the existing arrears. Most of the participants also thought the procedure to acquire the Occupancy License was very awkward and time-consuming and did not have faith in the Council's records over the Occupancy Licenses. There have been cases where the records differ between the site office's record and the Civic Centre's. The participants also mentioned that bribery is common both at the site office and the Civic Centre and they say that in most cases unless you give the person in charge something the procedure will take a long time or not take place at all.⁵⁴

⁵² Riverine Consulting, p 15

⁵³ Riverine Consulting, p 12

⁵⁴ Riverine Consulting, p 15

5.3 Social and Traditional

In Riverine's study it was not a big difference between the participants concerning the importance of security of tenure of land after dividing them into groups regarding gender, age and status in relation to ownership of land. All of the participants also thought that an Occupancy License is very good proof of ownership of property and that it gives security against any conflicts that might arise over the ownership. It, for example, entitles the owner to compensation if the Council wants to develop the area.⁵⁵

It is very common that poor families in Zambia only let the sons go to school while their daughters have to stay home to help their mother. This leads to high illiteracy among women and it is a problem when it comes to obtaining Occupancy Licenses and especially for female-headed households. Illiterates are more reluctant to go to the Civic Centre where they have to deal with educated people, which make them feel less equal.⁵⁶

When the participants in Riverine's study were discussing the advantages with Occupancy License there was a difference between men and women. The women were pointing out the security the Occupancy License would give them and that they would feel safer and not suffer property grabbing if their husband died. The men were focusing more on the economical benefits, getting security for obtaining loans, compensation from the Council if the area had to be developed and giving the children a better future.

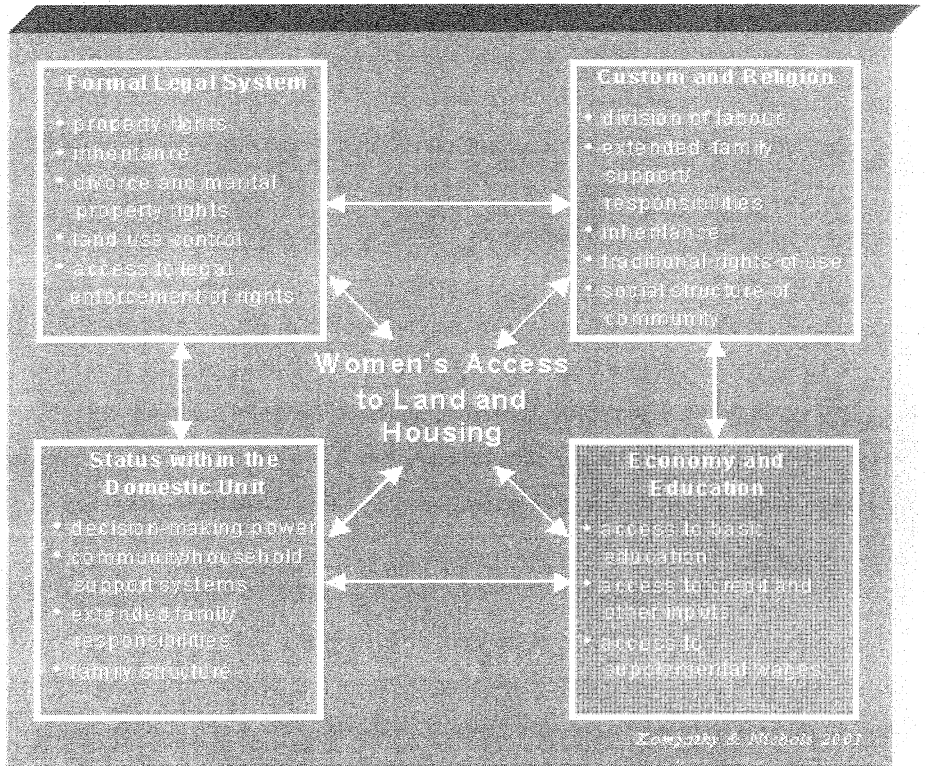
One of the advantages of land tenure according to Riverine's survey is that some of the participants in the study thought that residents with security of tenure would keep the surroundings and buildings on the premises better maintained and cleaner. This can contribute to a reduction of diseases that prevail when surroundings have been neglected.

Women's access to land and registered ownership in an Improvement Area is a very complex problem and many things have to improve and develop before it will be an equal society when it comes to land matters. (See the figure below.)

⁵⁵ Riverine Consulting, p 10

⁵⁶ Riverine Consulting, p 15

Figure 3 Institutions that Affect Women's Access to Land and Housing⁵⁷



⁵⁷ Komjathy and Nichols, p 9

6 My Survey

I carried out a survey in Chaisa about the residents' awareness about the ongoing project in the area, the Land Initiative project, and what they thought was the best ways to inform people in the area and people living in other compounds. I also asked if they were holders of an Occupancy License and if they could consider changing it to one with joint titling.

The survey was carried out in the four different zones where the Land Initiative project had started in and I interviewed people at random, by stopping people in the streets and knocking on doors. I tried to get groups with different age, sex and marital status represented, but it was difficult to find men to interview since the survey was carried out during daytime and most of the men were away working. I interviewed 79 residents in Chaisa, 53 women and 26 men. I had a questionnaire with eleven questions and to my help I had an interpreter, Mrs Moyo, who also lived in Chaisa. (See appendix 2.)

The residents were willing to answer my questions, there were only a few that were reluctant to answer. A few women did not want to answer without the presence of their husband and a few men said that they did not have the time or were not willing to answer.

Nearly everyone knew that there was an ongoing Land Tenure project in Chaisa and more than half of the participants had seen the drama-group's performance. Thirteen people had heard about the drama but not seen it themselves and a few of the participants had heard about the project through their family, neighbour or meetings at the site office in Chaisa.

Among the people that had seen the drama-performance, about half of them remembered the information about the importance of Occupancy Licenses. Many of them also remembered what can happen when you are exposed to property grabbing and what happens when a husband dies, that the widow is entitled the house. Only

two participants in my survey remembered the information about the joint titling. One of the participant said that she realised that she did not have to lose her house when her husband died nearly ten years ago. She was now renting a house in Chaisa. Everyone that had seen the drama-performance thought that the information was very important to him or her.

When I asked about their opinion on how they thought was the best way to inform people living in the compounds most of them answered drama-performances. They also mentioned meetings at the site office and door-to-door knocking. Only one suggested pamphlets, which can be explained by the high illiteracy. I also think drama-performances is the best way to reach these people. They do not have TVs and only some of them have radios so when a drama group comes to perform a drama that involves jokes and for them an important message, the rumour spreads and a lot of people get the message. The drama-performance in Chaisa was also performed among the houses so the residents did not have to go far to see it and it attracted lots of children who can be a good information channel for their parents. This was one of the ideas with the pamphlets that were handed out by LCC, that the children could take them home and give them to their parents.

Twenty-five people answered that they were holders of Occupancy Licenses but most of them thought the documents were too old or in the wrong name. Some of them said that they were holders but were not really sure if it was an Occupancy License they had or an Agreement Form. Many of the participants that were not holders said that they were going to apply and as many as 77 participants said that they were positive towards joint titling, which means that only two, who were men, said that they could not consider joint titling. 32 of the participants were only renting their house and did not know if the real owner had an Occupancy License or not. Most of the real owners lived in Chaisa or in a compound nearby. That they were owner of more than one house might be a problem when they apply for an Occupancy License since you only can be holder of one Occupancy License.

I also interviewed a couple that told me that they had just paid all their arrears

to someone at the site office in Chaisa and that they were now waiting for their Occupancy License. I know that the site office unfortunately cannot deal with payments yet and that they still have to go to the Civic centre in town to pay. This is an example on how the corruption can be. Someone being at the site office has probably taken their money and put it in his or her pocket instead.

7 Problems

The three different surveys and studies together with my survey and my stay in Zambia revealed a lot of problems when it comes to land matters in undeveloped countries such as Zambia. Below I have listed the problems I think are most important for the poor people living in compounds and especially important for the women.

Without proper information and knowledge about their rights it is very difficult for poor people to change their situation. When a woman does not know her rights she cannot defend herself in a property grabbing case. Property grabbing is becoming less frequent but is still a problem that many poor women are exposed to.

If process-based approach is a solution it is important that the women participate. Traditionally there has always been men participating in these matters and there are only a very few groups that can represent poor women effectively. Here is also a problem with lack of access to information. If a person is going to choose which law she wants her trial to follow she must be well informed and understand her different options. The communities also need to be aware about the gender discrimination so they can support or start local groups that speak for poor women.

It is important to remember that it is impossible to force a change through a new legal reform the change the residents must be informed and then it is up to every household and community to decide how the future is going to look like. It is also important that the legal framework supports a change in the status of women.

It is a problem that many people think that they are holders of Occupancy Licenses but are in fact holder of an Agreement form instead or in some cases their Occupancy Licenses are not valid because of the arrears from not paying ground rent.

I think illiteracy, which was very common among the women in Chaisa and other poor areas, is one of the main obstacles in getting women involved in registration of land and get them to participate more in the process. The documents are written in

English, which makes it even more difficult since English is the second or third language for most of the Zambians. It is common in the poor areas that people do not speak or understand English at all.

It can also be very difficult to get the women to share their views and ideas openly about land issues especially to strangers – people working in a international funded project and most of the people working in these projects are men. Organisations have to start to recruit women for their projects abroad. As a first step they can try to employ women from the area where the project is carried out. Another problem is that women are normally not involved in politics and this might be one of the reasons for why it takes so long to change to a more equal society.

The departments that deal with land delivery and ground rents are usually understaffed and there is lack of modern equipment. The registers are manual which results in that they are not up to date and since most of them are out of date the control over payments from the residents is not reliable which results in lack of income for the Council. This is a bad circle, which can be hard to get out from. There has been a big migration into Lusaka and the population in the compounds has been growing. This makes it even harder to keep a good record over the residents.

The big problem with HIV/AIDS needs to be taken into account when a land project is being planned. The percentage of households headed by children is growing and these orphans to parents that have died in AIDS need to be protected as well. HIV/AIDS affect the traditionally societies and safety nets. The people living in the Improvement Areas are usually marginalised and end up in a negative spiral where they become more marginalised because they live in an Improvement Area.

Everyone has the same right to access to land, the written law does not look different on men and women but there is a difference in practice. The number of plots owned by females has increased but joint titling together with their husbands is still very rare. The reason is that husbands do not consult their wives in land matter they see themselves as heads of the households and, as the Riverine's study said, that some husbands

think that the wives will kill them to take over the land if they agree on joint titling. Even if the wives want joint titling they might try to avoid an argument that might lead to a divorce and that would leave them with nearly nothing instead. But some women do not want to register their land, they do not see the benefits, and they think it is enough if their husband registers so both men and women need to change their attitudes.

Another problem with the land delivery system, distribution of Occupancy Licenses, is that it is based on that the residents themselves have to take the initiative to apply for Occupancy Licenses and follow up their own cases.

8 Discussion about different solutions

A lot of the problems can be solved easily with better organisation and more information but some need longer time and effort to change. According to Cologne, *Self-Help Housing Groups in Squatter Settlements of Zambia*, the process to encourage people to try to change their situation includes three important things:

- to create awareness about their own living conditions you have to have their **attention**.
- through **information** you can show the possibilities how people can improve their situation.
- to make people to take action for changing their situation you have to **motivate** them.

I will try to describe what can be done on different levels in the Zambian society and what have already been started. I start with what the residents in Chaisa can do and then look at it in a bigger perspective.

8.1 The Gender Group

The gender group is formed by Care Prospect together with the RDC and has been active for three years. It has about 30 members and consists of volunteering men and women living in Chaisa. The group is working with gender issues and provides advisory services in all kinds of gender cases, which includes property grabbing. The members have been educated in the statutory laws, including the Housing Act and the Intestate Succession Act, by Care Prospect.

To market themselves and get their messages across they arrange meetings in the different zones, make speeches in schools and are now performing the drama as a part of Swedesurvey's and LCC's Land Initiative project.

When a woman who has been exposed to property grabbing comes to see them, they explain her rights and discuss her options and then they tell her to contact the Victim support unit at the nearest police station. They are aware about the other helping organisations like Women's Legal Clinic and Women and Law in South Africa but have not been in contact with them. (You can read about the different organisations and their work in chapter 8.4.)

The group have meetings twice a week at the LCC's site office in Chaisa and they also have meetings with other gender groups from other Improvement Areas in Lusaka. I attended some of their meetings, but during the time I was there they did not handle a property grabbing case. They said that the cases were not as usual today as they were before and they thought people were more aware about the statutory law and Occupancy Licenses now. The gender group had also noticed a difference in attitudes towards women's property rights. Men are more positive to joint tilting now and they think it has a lot to do with more information from LCC and the gender group and the drama performances.

I think that involving people living in Chaisa is the best way to reach out to the residents. They know best how to reach out to their own people. In one meeting I attended they were discussing the possibilities to arrange for a teacher to teach illiterate adults to read and write but it always comes down to the financial problem. I think if the gender group were given some funds and encouragement it could become an important organ in Chaisa's society.

I think also drama is a good way to reach out to people in rural and in peri-urban areas, especially women, since illiteracy is so high among them. It is also a good way to attract their attention in the initial stage of a project. But it is important that the dramas are performed in the areas that are going to be involved in the project because poor women have not got the money nor the time to leave their home areas.

8.2 Lusaka City Council

It was the arrears that most of the participants in Riverine's study saw as the biggest problem in obtaining Occupancy License so most of their solutions were about how to deal with the arrears. According to the Riverine's survey Council staff have said that they would not issue any Occupancy Licenses to anyone with outstanding arrears. Both men and women thought that the Council should write off the old debts and start counting from today. There were also suggestions that they could pay the debt in small instalments over a longer period but obtain the Occupancy License before the arrears were cleared.⁵⁸ The arrears are also a big problem for LCC. If they do not solve it people cannot apply for or renew their old Occupancy Licenses. The ground rent is also one of LCC's incomes and without it the LCC cannot afford to provide the services they are supposed to. A solution could be that they come to an agreement with the residents about a debt-paying plan.

Another suggestion made by the participants in Riverine's survey that were not connected with the arrears, was moving the whole Occupancy License-process to the site office. They also thought that the staff from LCC should be more service-minded. None of the participants had a good solution on the problem with bribery and corruption. Many thought that better and more information from LCC to the residents was important. It could be done by regular meetings and door-to-door visitations. They also thought that a registration of all the plots in Chaisa was needed because of the problem with duplications of plot numbers in the past.⁵⁹

The Council has now, together with Swedesurvey, arranged that the residents can apply for an Occupancy License at the site office and is at the moment investigating to see if it is possible to let the staff at the site office to deal with the payment of the arrears and the ground rent. It is necessary if contact between the residents and LCC is going to improve. Supporting the gender group more than they are doing today would be a good way to start the relationship with the residents.

⁵⁸ Riverine Consulting, p 18

⁵⁹ Riverine Consulting, p 18

The LCC is thinking of employing a full-time gender officer.⁶⁰ If they will do so they will have a better overview over what needs to be done in the organisation to achieve the gender goals. This person could also act as a co-ordinator between different groups and organisations. They also have to educate all the officers working with land matters so that they not are biased in gender issues. A few years ago it was common to ask married women that applied for land if they could present consent from their husbands.

Computerisation of the Council's Deed Registry is necessary if the land delivery system is going to be effective. Maps over the areas would also be a big help. Plots and borders could be drawn from an ortho photo map. It is important that the Council try to solve the all the problem with security of tenure before they start to upgrade the areas with roads, sanitation facilities and water. When an area is under development the plot values increases and disputes about ownership becomes more common.

It is difficult to motivate the residents of Chaisa to apply for Occupancy Licenses because the process is cumbersome and money consuming. They have to feel motivated to take the initiative to apply and then follow up their case throughout the process. I think that if the procedure is made easier and more accessible more people would apply.

8.3 The Government

The Government has to work in a bigger perspective. They have to look into the legal system to see what needs to be changed. Maybe not a total new process-based approach but the legal processes needs to be decentralised to be less cumbersome. Another change is no exceptions for land matters. The Lands Act is one example; it validates the customary laws in areas held under customary tenure, which normally do not give women security of tenure in their own name. The same Act allows conversions from customary tenure to leasehold tenure, which can give the plots monetary value. Since most plots in an area held under customary tenure is owned by males the Lands Act indirect gives them monetary power.

Quoting in women in different organisations and positions would be a way of getting more women represented in important positions. They also have to do something about the women's lack of education, for example a national wide programme about the importance of an education.

8.4 Organisations

There are many different international and local helping organisations in Zambia. I interviewed three different non-governmental organisations that are working with women issues. The organisations were: Women's Legal Clinic, Women and Law in South Africa (WLSA) and Women in Law and Development in Africa (Wildaf). I also interviewed the Victim support unit, an organisation that are based in every police station.

8.4.1 Women's Legal Clinic

Women's Legal Clinic is a non-governmental organisation that gives legal help to poor women. The office in Lusaka has five lawyers but they also have an office in Adola. Law Association of Zambia funds the clinics but they also get sponsored by different donors. The clinic handles all kinds of cases; divorcees are among the most common ones. Property grabbing is a criminal offence and is therefore taken care of by the police and the Victim support unit. The property cases Women's Legal Clinic is handling are cases where the woman wants her name on the title.

They have arranged workshops in the compounds to inform people about their rights and what to do and where to turn when they have been exposed to a crime.

8.4.2 Women and Law in South Africa (WLSA)

WLSA is a non-governmental organisation that has members in seven countries and is working on improving the legal situation. They look into the different problems that occur when the written law is put into practice. They also provide legal training and collaborate with other organisations. To inform people about their activities they have

been on the Radio, TV, in the news papers and they have also arranged drama-performances.⁶¹

Ms Chileshe who is the research associate at WLSA says that women are more aware about their rights today compared to a few years back.

8.4.3 Women in Law and Development in Africa (Wildaf)

Wildaf is a non-governmental organisation that is working national wide. It is a networking organisation that is promoting and protecting women's rights and has members in 24 African countries. It co-ordinates different activities of women's rights organisations. Lobbying and advocacy are the major activities for Wildaf. The lobbying revolves informing and educating policy makers, traditional and opinion leaders, men and women to change the existing discriminations against women. This includes promoting law reforms to make the laws more equally and trying to change the negative customary practises. The activities that Wildaf carries out can for example be training the people working for organisations within the network and creating awareness among the Local Courts.⁶² Since they mostly work with lobbying there is only one office in Zambia.

To reach out to people Wildaf arrange meetings with different groups for example women groups, the police and justice groups. They have also been interviewed in the Radio a couple of times, which is a good way to inform many people at once.

Mrs Lewanika, who is the country co-ordinator at Wildaf, says that there is no big difference between the women's awareness about their rights in different parts of the country. She also says that she has seen a change for the better in the last two years.

8.4.4 Victim Support Unit

Every police station in Lusaka has a Victim support unit. The unit is funded by the government and they handle cases like rape, child abuse, spouse abuse and property grabbing. Spouse abuse is the most common case but property grabbing comes second.

⁶¹ Mrs Chileshe, interview 2001-11-04

The victim support unit in the police headquarter gets about five property-grabbing cases a day. People with other land dispute cases are directed to private lawyers.⁶³

It is mostly women that come to the Victim support unit asking for help with property grabbing. The people working at the Victim support unit are special trained police officers and according to Mrs Lewanika at Wildaf the Victim supports units have improved when it comes to handling women's rights and property grabbing cases. When the unit investigate a property grabbing case they first check if there are any documents on the owner on the property, if they cannot find any they look for other evidence that tells which one that is the owner. When they find the evidence then they evict the illegal residents occupying the house. They get arrested if they refuse to move and the case is then taken to court.⁶⁴

Not everyone knows about the Victim support unit and to inform people the unit arrange meetings in different compounds. They are also trying to use priests and people working in hospitals to spread the information. They have found that this is a good way to reach out to a lot of people.

The women's access to land is not always depending on the laws or the traditions, it can also depend on how much the community support the issue for example how willing the police is to force the rights and the access to courts in the rural areas.⁶⁵ There has also been a problem with corruption among the police officers. Some people say that if you have money you can easily bail your self out. I therefore think it would be better if the Victim support unit would not be so in such a tight connection with the police. It would be better if it were an independent organisation that was funded by the government.

8.5 Swedesurvey's influence

Land surveyors main assignments are establishing cadastral and land registration system, land-adjudication, planning the land use and sometimes involved in

⁶² Mrs Lewanika, interview 2001-11-03

⁶³ Mr Kasang, interview 2001-11-04

⁶⁴ Mr Kasang, interview 2001-11-04

⁶⁵ Nichols, Ng'ang'a, Komjathy, Ericsson, p 5

improvement and development of land laws and regulations. Their actions are therefore important when it comes to women's access to land especially when they are transferring rights of land.

Sida (Swedish International development Agency), that is financing Swedesurvey, has required that 50 per cent of all the participants in cadastral training and education projects abroad should be women.⁶⁶

In Swedesurvey's inception report they suggest that they would educate women and men on the rights of women and make a priority to female households and the couples applying for joint titling, in the process of issuing Occupancy License.

8.5.1 FIG Commission No 7

Commission No 7 is a task force established within FIG (International Federation of surveyors Federation Internationale des Geometres). The Commission No 7 is formed to promote Women's Access to land in developing countries. The task force's work is focused on the impact Land surveyors have on women's access to land and how to make the women to participate in the different stages in a project. The task force shall recommend and advice land surveyors how they can improve women's access to land and security of tenure. Some of their recommendations are:

- When a land allocating process are being carried out, the land title can be issued in both the husband's and the wife's name.
- When a cadastral system is being developed it should be able to handle a common or a joint title.
- In a land use planning process it is important that both men and women are engaged.
- If it is possible the Land Register should be decentralised to make it easier for the women to apply for a title.⁶⁷

⁶⁶ Komjathy and Nichols, p 19

⁶⁷ FIG, Women's Access to Land, p 2.

It is important to remember that the women in a country are not equal. There is usually a big difference between rich and poor women when it comes to land rights especially how influential they are.

9 Glossary

Agreement Form	is a temporal document that means that an agreement between the owner and the Council has been established. An Agreement form does not give absolute security and can be revoked if the time to acquire an Occupancy License or the time to construct a building on the plot expires.
Customary law	in accordance with customs
Family property	any property, whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property
Intestate	a person who dies without having made a will and includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property
Land Tenure	legal right or title by which land is held
Leasehold	holding of land on rental for a fixed period
Occupancy Licence	licence issued under the Housing Act for a piece of land in Improvement Areas
Statutory law	passed by the state
Squatter Compounds	spontaneous, unregistered settlements in and around towns and cities

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Figures

Figure 1 – Map over Zambia, http://www.lib.utexas.edu/maps/cia01/zambia_sm01.jpg
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Figure 2 – Map on Lusaka and Chaisa, McIntyre Chris, Zambia the Bradt Travel Guide, second edition, 1999 Bradt Publications

Figure 3 – Institutions that Affect Women's Access to Land and Housing Rights, **Komjathy and Nichols**, Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines, Department of Geodesy and Geomatics Engineering, University of New Brunswick, Canada, 2001

4. (d) On any breach by the occupant of the stipulations and conditions herein contained which is in the opinion of the Council in incapable of being remedied and is stated so to be in the notice given by the Council and upon the determination of the within licence the occupant shall immediately vacate the land upon which such buildings are situated and shall remove such buildings from such land and shall reinstate level off and restore such land to its former state and condition.

In default of such removal and restoration being effected within ninety days of the determination of this licence it shall be lawful for the Council to effect the same themselves and there shall be no right of action against such Council for so doing.

5. Upon failure of the occupant to pay within three calendar months next following its due date any one or more of the monthly instalments of fees enumerated in paragraph 2 above the Council shall have the right to discontinue the supply of water to the part of the Improvement Area within which the building or buildings of the occupant are situated.
6. Nothing herein contained shall prevent the occupant receiving the proper consent of the Council and only then, from using all or part of the licensed premises for the purpose of operating a shop or of conducting artisanal activities upon or within the said building as the Council may permit, provided that such operation does not in any respect violate provisions of this licence.
7. The licence shall confer to tenancy upon the occupant, and possession of the premises shall be retained by the Council shall at anytime have the right to create by this licence, and the Council shall at anytime have the right to enter upon the lands and inspect the buildings upon such lands or to instal or erect any works thereon which the Council deems to be in the interest of the Improvement Area or its occupants. If the medical officer of health considers that the dwelling or any out building thereof unfit for human habitation or use, he shall be entitled to serve notice of such decision of the occupant and the occupant shall do or cause to be done such alteration (including demolition if such notice as prescribed) as such notice shall order.
8. The cost charges and expenses in connection with this licence including any charges for registration thereof in the Council Registry shall be paid by the occupant.
9. Any notice to be given to the Council under or pursuant to the licence shall be sufficiently given by mailing such notice postpaid to the Council at P.O. Boxand
and notice to be given to the occupant shall be sufficiently given by posting the same upon the dwelling or other building on the licenced premises.

- (4) To exercise the rights hereby granted in such manner as to do as little damage as possible and to make adequate compensation for any damage nevertheless caused.
- (5) To keep the premises clean and tidy and clear of litter and in a good state of repair, and not to pollute the premises or allow any pollution to escape therefrom.
- (6) Not to sub-licence or assign the benefit or part with the rights hereby granted over the premises or any part thereof except with the express approval of the Council; but upon the death or mental incapacity of the Occupant during the term of this licence or any extension or renewal thereof, the person or persons entitled by law to succeed the Occupant shall be entitled to continue to occupy the said buildings during the unexpired period of such term.
- (7) To keep the Council and all those authorised by them to use the premises indemnified against all damage loss and injury of every description which may occur to or affect the Council or such other persons as aforesaid or their property and which may arise from or through the exercise of the rights by any authorised person including any persons invited or permitted by the Occupant or the non-observance of any of the items of this licence however expressed or implied.
- (8) Within three calendar months of the termination of this licence or any renewal or extension thereof by effluxion of time or for any other reason whatsoever on an appropriate written request being served by posting on the premises such request to be made either before or within three calendar months thereafter to remove all buildings fixtures or other works constructed on the land before or after the date hereof, and to leave the site clean and tidy to the reasonable satisfaction of the Council.

4. This licence may be determined forthwith by notice given by the Council:

- (a) By the effluxion of time.
- (b) If at any time any payment due hereunder is unpaid for three calendar months after becoming due whether demanded or not.
- (c) If the Occupant shall have failed for a period of three calendar months to remedy any breach capable of remedy of the stipulations and conditions herein contained after being required to remedy the same by notice in writing from the Council specifying the breach and requiring the same to be remedied.
- (d) On any breach by the Occupant of the stipulations and conditions herein contained which is in the opinion of the Council incapable of being remedied and is stated so to be in the notice given by the Council and upon the determination of the within licence the Occupant shall immediately vacate the land upon which such buildings are situated and shall remove such buildings from such land and shall reinstate level off and restore such land to its former state and condition.

THE HOUSING (STATUTORY AND IMPROVEMENT AREAS) ACT, 1974

TERMS OF OCCUPANCY

1. During the terms of the licence and any extension or renewal thereof the occupant shall for such licence pay to the Council on or before the last day of each month commencing with the month next following the date of the licence such fee as shall be declared by the Council (with the approval of the Minister responsible for housing) with respect to the following components:
 - (a) a charge for water supplied to the Improvement Areas;
 - (b) a charge for sewerage service if any supplied to the improvement areas;
 - (c) a charge in lieu of rates based on the value of the average or normal dwelling and out buildings within the Improvement areas;
 - (d) a charge for a fair share of the cost of any service provided especially for such Improvement Areas;

2. (a) The Council shall not be liable to the occupant for any personal injury damage loss or inconvenience however or where person upon the premises; it being the intention of an agreed between the parties hereto that the occupant and any other person exercising the rights at the invitation of the occupancy shall do so at the risk of the occupant and accordingly the occupant agrees to indemnify the Council against all claims by any visitor to the premises, whether with or without the permission of the occupancy.

- (b) By "Claims" in the preceding sub-clause is meant a claim or claims in respect of the condition of the premises or for breach of the statutory or common duty of care or for the negligence of the Council or of the occupant or of those for whose negligence the Council could or might otherwise be responsible.

3. The occupant covenants with the Council as follows:-
 - (1) To make the payments in accordance with the foregoing provisions and with the licence whether the same be demanded or not.

 - (2) Where the building is a dwelling and its out buildings to occupy the premises as a residence for himself and his immediate family only, and to use his best endeavours to expel and person or person poaching or trespassing on the premises; and in particular act to take in any lodger or other occupant without the consent of the Council; and not to do or permit or suffer to be done anything which shall cause annoyance inconvenience or disturbance to any adjoining occupant.

 - (3) Not to use the premises for any purposes other than the permitted use and not to do any damage to the premises or any part thereof; and to observe and perform all statutory requirements and give prompt and sufficient effect to all orders directions notices and requests of any competent authority; and in particular not to do.

Questions

- 1) Sex
- 2) Age
- 3) Marital status
- 4) Have you noticed that Lusaka City Council is carrying out a Land Tenure project in Chaisa?
- 5) If you have noticed, how have you noticed? (Drama, posters, pamphlets, neighbours, family)
- 6) What kind of information did you receive?
- 7) Do you find the information important to you?
- 8) How do you think is the best way to reach out and inform people in Chaisa?
- 9) Are you a holder of an Occupancy Licence?
- 10) Would you consider joint titling on your Occupancy Licence?
- 11) Zone

Hej!

Här är mitt examensarbete.

Jag hoppas att det är allt du behöver,
annars kan du nå mig på 073-9960420.

Idag 28/11 är jag tyvärr på kurs men
ska sitta på telefonen mellan 12-13, du kan
även lämna ett meddelande om niger jag upp
om fort jag kan.

Från & med innehålls förteckningen kan
sidorna tryckas med text på båda sidorna
Ejjobbet ska tryckas i 25 exemplar.

Mvh

Lisa Hydren

