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Contents

THE PROBLEM OF URBAN SQUATTING IN AFRICAN COUNTRIES — WITH A SPECIAL FOCUS ON NAIROBI (KENYA) AND HARARE (ZIMBABWE)

by

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Introduction

Urban squatter settlements are an increasingly prevalent phenomenon in many parts of the Third World countries as they hold substantial proportions of their populations. For example, it has been estimated that more than one-third of Nairobi residents[1] and about 40% of Lusaka residents[2] are squatters. It is therefore not surprising that the subject of squatting has attracted many researchers. All these researchers have sought, with varying degrees of focus and emphasis, to explain the origin, development and status of squatting and have suggested varying ways of dealing with the problem.

This paper will focus on the problem of squatting in African countries using Harare and Nairobi as case studies. The choice of Harare and Nairobi is based firstly, on the fact that in both cities, squatting has existed both in the colonial and post-colonial periods. Secondly, and more important, is the fact that Kenya and Zimbabwe have close similarities in their colonial experiences and the development of settler capitalism whose basic structures have continued to dominate since independence (in Zimbabwe for 13 years and in Kenya for 29 years).

While acknowledging the importance of the existing extensive research on the subject of squatting as contributing to our general understanding of the problem, this paper will call into question some of the assumptions and generalisations on squatting. For example, conventional wisdom would have us believe that squatter settlements are a "normal" phenomenon of urban growth[3] in the Third World and all that can be done is to devise policies that will simply ameliorate the problem, such as squatter upgrading. Conventional wisdom would further have us believe that squatter settlements in the Third World cities represent a situation where the residents of these areas have simply gone out and built their own homes.[4] Thus, from this perspective, the solution of the problem of housing for the urban poor is to give security of land tenure to the illegal occupiers who will in turn invest more money into housing and improve their living standards.[5]

This paper rejects the tendency of taking as given the structures and problems of a society and simply devising policies that keep the structures intact. While recognising that policies such as squatter upgrading have brought undoubted benefits to some squatter families, I, like Drakakis-Smith, reject the assumption that widespread inequalities in income distribution and lifestyles are normal and somehow acceptable.[6] I argue instead, that squatter settlements in most of the Third World countries are symptoms of exploitation in peripheral capitalist economies, and policies that will simply ameliorate the plight of squatters are inadequate.

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1 Kagagambe D and Monglitin C, "Housing the Poor: A Case Study in Nairobi" (1983) TWPR 2.

2 Rakodi C, "Land Layouts and Infrastructure in Squatter Upgrading: The Case of Lusaka" (1987) CITIES 352.

3 Drakakis-Smith D, *Urbanisation Housing and the Development Process* p 67.

4 Smart A, "Invisible real Estate: Investigation into the Squatter Property Market" (1986) Vol. 1 JU + RR 39.

5 See generally Turner JFC, "Housing Priorities, Settlement Patterns and Urban Development in Modernising Countries" (1958) *Journal of the American Institute of Planners*, Vol. 34 No. 6 p 354-363.

6 Drakakis-Smith, *op cit* note 4 p 67.

I further reject the popular notion that squatting by the urban poor relieves them of the obligation to pay rent and thus saving their incomes for other needs. The situation in squatter settlements in Nairobi and some parts of Harare, to be discussed in detail in later sections, does not lend support to this assumption.

As this paper seeks to break away from "conventional wisdom", the first part will attempt to identify the problem as well as explain the theoretical and analytical approach to be adopted. This will be followed by a brief examination of the origins and development of squatting and thereafter, by a survey of state responses to squatting and its current status and legal framework. In this section greater emphasis will be on Zimbabwe where we are more familiar with the relevant legislation and case law. Of particular interest in this section, are the mass evictions of squatters in the Harare urban area only a few days before the Commonwealth Heads of Government Meeting in October 1991 and the litigation that ensued between the authorities and the squatters.

The next section will attempt to address the theoretical and practical problems that have led to a failure to resolve the problem of urban squatting. This section will attempt to evaluate the views of some of the leading authorities on the subject of squatting. This will be followed by a discussion of possible policy options. This section will seek to examine the role, if any, the law should play in the resolution of the problem. The final section will be a brief conclusion drawn from the discussion.

Problem Identification, Theoretical And Analytical Approach

A preliminary problem one faces in this subject is the precise meaning of the term "squatting". Terms such as "popular settlements", "spontaneous settlements", "uncontrolled", "unauthorized", "temporary" settlements, "informal housing", have all been used to describe squatting.[7] Definitions have varied from those that stress the juridical interpretation to those that adopt a purely moral stance. For example, Ian Haywood in adopting a moral position, prefers the term "popular settlements" and asserts that popular settlements in the African context refers to settlements which are the result of a sector of the population taking spontaneous action to provide themselves with shelter and a range of services.[8]

He argues that every definition reveals both a historical condition and the stance of the observer. It is not surprising therefore, that according to him, "popular settlements" have an honourable tradition since this was and still is, in many sub-Saharan countries, the way in which most settlements were formed and developed. He further asserts that this tradition continued undisturbed until systems of land use control were introduced during the colonial period to regulate urban growth, largely resulting from migration, and conflict subsequently ensued between the traditional and bureaucratic systems of land allocation.[9]

There are several difficulties with the approach suggested by Ian Haywood, not least of which is the use of the term "popular settlements" — for popularity implies an element of choice on the settlers. It is doubtful that choice exists. Moreover, it is not strictly correct to assert that land controls appeared only during the colonial era, for it is clear from African historical accounts[10] that even prior to colonialism, land vested in the Chiefs who allocated it to their subjects so that people did not settle as they pleased. Haywood's formulation could only apply during the early period of primitive communalism.

It is submitted that whatever the moral arguments, the juridical element is crucial in the definition of squatting, especially in the present-day context. As David Drakakis-Smith has correctly pointed out:

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7 Drakakis Smith, *ibid* p 43.

8 Haywood I, "Popular Settlements in Sub-Saharan Africa — Their Emerging Role" (1986) TWPR p 315.

9 Haywood, *ibid* p 318.

10 See, for example, Moyana HV, *The Political Economy of Land in Zimbabwe* p 13.

> ... in almost all countries squatting has a strict legal connotation, referring either to the occupation of land without permission of the owner, or to the erection or occupation of a dwelling in contravention of existing legislation.[11]

Following the same approach Patrick McAuslan defines a squatter as:

> a person who has taken over land, a house or a building and occupies it without lawful authority to do so.[12]

What is important in both definitions is that they bring out or define the nature of the relationship between the squatter vis-à-vis the authorities or some other lawful owner. It is the nature of this relationship which normally gives the authorities legal justification for any action they choose to take against squatters. For this reason, Drakakis-Smith points out that:

> ... no matter how temporary or established a squatter community may be, almost all are vulnerable to legitimate demolition and clearance with minimal warning and little compensation.[13]

However, one must hasten to point out that even this juridical definition is not always easily sustainable, for example, when one is dealing with the so-called "hybrid housing" or when colonial and post-colonial codes conflict.[14] Moreover, the degree of tolerance exercised by authorities on squatters is not always consistent or predictable. In the final analysis, however, the juridical approach is still the more useful because it brings out the crucial element in the complex relationship rather than the other descriptions that do no more than take some of the sting from the reality of the condition of the urban poor.

A further distinction that needs to be made is between squatter settlements and slums. This distinction is necessary in order to avoid the common confusing situation alluded to by Drakakis-Smith where the term "slum" is used to encompass virtually all types of housing occupied by the urban poor, including squatter settlements.[15] Unlike squatter settlements, slums are

> ... legal, permanent dwellings which have become sub-standard through age, neglect and/or sub-division into micro-occupational units such as rooms or cubicles.[16]

We must point out, however, that the distinction between slums and squatter settlements in many African cities is largely a juridical rather than a physical one. Invariably squatter settlements, due to the poverty of the occupiers, show the physical characteristics of slums. I make this distinction in this paper, however limited, because I will concentrate only on squatters as defined above. This is important because the illegal nature of squatter settlements means that the authorities will not always deal with them in the same way as they would deal with slums. Further, it is submitted that slums prevail in so many African cities they merit a separate study in their own right.

In this paper I take the view that in order to understand the causes and development of squatting as defined above, it is important to understand the economic structures and formations where and in which illegal occupation and use of land exist. In other words, we must understand the production and production relations under which the problem emerges. From this perspective, we can assert that squatting has not always existed as a problem in all societies. Further, we can note that historically, squatting is a particular phenomenon linked to the emergence and development of capitalist relations of production. Historically, the problem did

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11 Drakakis-Smith, *op cit* note 3 p 44.

12 McAuslan P, *Urban Land and Shelter for the Poor* p 49.

13 Drakakis-Smith, *op cit* note 3 p 44.

14 Drakakis-Smith, *op cit* note 3 p 43.

15 Drakakis-Smith, *ibid* p 44.

16 Drakakis-Smith, *ibid* p 44.

not exist under the economic formations of primitive communalism or the slave mode of production and feudal economic formation that followed. Marx has brilliantly explained how in the West the development of commodity relations dominated by exchange-value in the transition from feudalism to capitalism created mass landlessness and poverty.[17]

> The proletariat created by the breaking up of the bands of feudal retainers and by the forcible expropriation of the people from the soil, this "free" proletariat could not possibly be absorbed by the nascent manufacturers as fast as it was thrown upon the world.[18]

It is not the object of this paper to document in detail the link between the development of capitalism and the development of illegal settlements. I merely point out that history has shown the inability of capitalism as a system, to eradicate the problem of squatting. Thus, in the advanced capitalist societies where the capitalist revolution is now complete with full proletarianisation and the disappearance of the peasantry as a class, one of the major problems created by capitalism is homelessness and destitution. McAuslan,[19] after pointing out that squatting is not exclusive to the Third World, cites major cities in Western Europe, such as London, Amsterdam and Berlin as centres where squatting is a common phenomenon.

From the materialist approach adopted above, it is possible to explain why squatting exists in capitalist economies and why those who take to "squatting" originate from definite social classes within the capitalist system. We can also interpret and understand which social classes are represented by the State and hence the behaviour of Governments and attitudes towards squatters.

In the case of Africa, the development of squatting is associated with the development of a particular form of capitalism — racist colonial capitalism. The next section seeks to explain the link between colonialism and squatting in Kenya and Zimbabwe.

Colonialism And The Development Of Squatting

Squatting was an unknown phenomenon in pre-colonial Africa. Under the feudal system of production, Chiefs and all sorts of tribal leaders assumed political and legal power through the medium of the state, over the people and productive forces, particularly land.[20] Although there were blatant inequalities within the society, squatting could not arise because the ruling classes made sure they controlled sections of the population through land allocations, and, because of the low level of development of productive forces, there was an abundance of land.[21]

It is under colonialism that Kenya and Zimbabwe started having squatter settlements. The colonialists expropriated land from the indigenous populations who became "tenants" of the capitalist state while the state created "public lands" and helped the settlers own "private lands." These developments, originally effected through armed conquest, were given legal expression in various enactments. In Zimbabwe, the following can be cited: the Matebeleland Order-in-Council 1894, the Southern Rhodesia Order-in-Council

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17 See in particular, Marx K, *Grundrisse* pp 508-9; 769-70 and *Capital* I pp 672-693.

18 *Ibid* Cap 28.

19 McAuslan, *op cit* note 12 p 49.

20 Moyana, *op cit* p 13.

21 Moyana is clearly wrong when he makes the rather startling argument that:

> "There was no limit to the amount of land one could cultivate as land was always available in large quantities. This factor, together with the egalitarian principles which governed its distribution ensured the peaceful operations of the customary land tenure system. Land was never a cause of grievance between subjects and rulers as it became during the colonial experience."
>
> The history of virtually all African tribal kingdoms show definite class divisions which were reflected in the manner in which land was allocated. Further, many of the tribal wars that were fought were linked to the issue of land.

1898, the Land Apportionment Act 1930, and the Land Tenure Act 1969. For Kenya we can note the following: the East African Order-in-Council 1897 and the Crown Lands Ordinances of 1901 and 1915. All these enactments had one major aim — the legitimation of colonial capitalist property relations.

The courts also played an important part in the legitimation of colonial conquest. For example, in the leading case on the colonisation of Zimbabwe, the House of Lords unanimously held that conquest by Company arms followed by well settled constitutional practice was on behalf of the crown.[22] In Kenya, parallel cases which blessed all these earlier forms of land acquisition include *Ol le Njogo and Others* v *AG and Another*[23] and *Wa Gathomo and Another* v *Wa Indigara and Others*[24].

What emerges after the consolidation of colonial occupation is a situation where the bulk of the land is owned by settlers with the indigenous population being restricted to largely unproductive lands called "native reserves", later euphemistically called "tribal trust lands". In Zimbabwe, by 1914, 97% of the population occupied 23% of the land and 3%, made up of settlers, owned 77%.[25]

A number of writers have linked the development of urban squatting to colonial policies. On the development of squatting in Nairobi, Diane Kayongo-Male[26]argues that much of Nairobi's problems with squatters derive historically from colonial practices of racial segregation, reserving large tracts of land for Europeans and smaller tracts for Asians and almost minimal areas for Africans. She identifies two important features of colonial policy that contributed to the problem, namely:

1. Africans were considered temporary residents in Nairobi to be utilised as a labour force as required and removed to home areas when not needed. There was virtually no concern for Africans gaining security of land tenure in urban areas and there were restrictions on their purchase of urban land.

2. Little effort was made to improve the quality of housing for Africans.[27]

Philip Amis, also writing on Nairobi, states that Nairobi was conceived as a European city where Africans were "tolerated" only for their labour power.[28] In order to realise this policy with minimum public expenditure and a disease-free urban environment, the city was systematically racially zoned, leading to an extremely unequal land distribution which severely restricted the availability of urban land for the majority of the impoverished Africans, a situation which prevails today.

The same policy was applied in Zimbabwe's major urban centres where operations of legislation such as the Native-Urban Locations Act (1960), Land Apportionment Act (1930), Urban Areas Accommodation and Registration Act (1946) criminalised the movement of the dispossessed Africans and prohibited them from occupying urban lands reserved for Europeans. One of the functions of Provincial Governors under the colonial Land Apportionment Act was "the prevention of squatting on areas subject to the provisions of the Act".[29] Moyana has called this Act the "Magna Carta" of European policy with respect to the distribution of wealth in Rhodesia, as it effectively covered all land.[30]

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22 *In Re Southern Rhodesia* [1919] AC 211 at 221.

23 1913–14 (5) KLR 70.

24 1923 (9) KLR 102.

25 Ndoro TB, "The Land Question in Zimbabwe: Seven Years After" (1987) *Journal of Social Change and Development* p 22.

26 Kayougo-Male D, "Urban Squatters in Nairobi: Policies on Their Condition" in *Urban Legal Problems in Eastern Africa*, McAuslan and Kanyeihamba (eds), (1978) p 85.

27 *Ibid* p 85.

28 Amis P, "Squatters or Tenants: The Commercialisation of Unauthorised Housing in Nairobi" (1984) *World Development* Vol. 12 p 88-9.

29 *Land Apportionment Act*, 1931, s 33(d).

30 Moyana, *op cit* p 78.

At independence, in both Kenya and Zimbabwe, the repeal of some of the restrictive laws and the peoples' political hopes that a new democratic era had arrived, led to a sudden increase in squatting in rural and urban areas. Moyana has linked squatting on commercial farms in Zimbabwe to a practice called *madiro*[31] (settling where one pleased — a popular practice adopted during the liberation war by peasants in defiance of the Land Apportionment Act). This policy resulted in large-scale movements by Africans into European farms when the owners fled because of the intensity of the war.

When political independence was achieved in 1980, many Africans swiftly moved into European-owned land, and in some cases, even when the land was still occupied by the owners. In the cities, there was a sudden upsurge of migrations from the rural areas, many hoping to secure employment under a new black government hitherto denied. Many of these took to squatting as they soon found that neither work nor accommodation were available. The same process had taken place in Kenya some 29 years earlier, though to a lesser extent because the liberation process had been less protracted than in Zimbabwe.

In both Kenya and Zimbabwe, capitalism was not destroyed at independence, and peoples' actions and hopes were soon met with resolute state counter-action to preserve the system. However, limited legally sanctioned resettlements were initiated in both countries. I shall discuss these measures and other responses to squatting in the next section.

Responses To Squatting, Its Current Status And Legal Framework

In this section I examine how the problem of squatting manifests itself in Nairobi and Harare as well as the impact of state measures dealing with the problem. I noted above that Kenya has been independent for 29 years and Zimbabwe for 13 years. This time difference is of particular importance in assessing the adequacy or otherwise of measures taken in the respective countries and is the main reason for our adopting a comparative analysis of the problem.

In their case study of squatting in Nairobi, Kagagambe and Monglitin point out that:

> ... behind the expression of modernity and out of sight of tourists is housing for 60% to 70% of Nairobi's population who cannot afford either housing erected by the state or city Council or even site and services schemes sponsored by the World Bank.[32]

It is these people who resort to informal housing for themselves, erecting structures using iron sheets, cardboard, rags or whatever materials come to hand. Philip Amis describes this form of squatting as "conventional".[33] This form of squatting simply involves illegal occupation of land and self-construction of shelter. According to Amis, however, there is no necessary link between self-construction and illegality in the modern forms of urban squatting, especially in the case of Nairobi. There are therefore many instances where squatting does not involve both aspects. If we follow this approach, we need to draw a distinction between "subsistence shelter", where the builder, owner and occupier are contained within the same social unit so that there is no monetary exchange or tenancy relations, and where squatting involves capital, which results in the establishment of commercial relations. The latter process is what Amis calls the "commercialisation" of squatting, whereby housing is constructed in illegally occupied land for profit.

Unlike the conventional form of squatting where the poor occupier is at least freed from the obligation to pay rent, virtually all squatting in Nairobi is now commercialised, and this is evidenced by the existence of a large-scale unauthorised rental sector. From the evidence submitted by Amis and studies by other researchers

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31 *Ibid* p 185.

32 Kagagambe D and Monglitin C, "Housing the Poor: A Case Study in Nairobi" (1983) TWPR p 2.

33 Amis, *op cit* p 87.

such as Alan Smart[34] and Rod Burgess[35], and our own investigations in Harare[36] there is no doubt that this is the current situation in most Third World cities. We shall discuss the problem of landlordism in more detail below.

There can be no doubt that the emergence of a large squatter population in Nairobi strikes directly at the perspectives and policies of urbanisation and development in Kenya. We noted above how the colonial policy of land expropriation and segregation contributed to the problem of the urban and rural poor. Post-independence policies such as resettlement under the World Bank, IMF and British sponsorship under the so-called "One Million Acre Scheme" have all failed dismally.[37] Even attempts at rural development in order to curb the rural-urban movement and to reduce pressure on the urban infrastructure have failed largely because of the scarcity of good agricultural land.[38] The rural-urban drift has therefore continued.[39]

The inevitable result of the failure of the Kenyan state to introduce viable solutions to housing has been the commercialisation of squatting in urban areas, especially in Nairobi. Amis[40] has argued that at the policy level, such commercialisation is being encouraged and the government has taken the view that Nairobi's housing shortage is to be solved by the market. The result is that the urban poor have been forced into a rental relation they cannot afford.

The development of landlordism in the illegal settlements has effectively made it impossible for the urban poor to exit themselves from the rental market. In his study of the squatter townships of Kibera in Nairobi, Amis has discovered that some landlords, owning up to 200 rooms per individual, receive annual capital returns of up to 131%.[41] But the rental market is also paradoxical. Even the urban poor who are unemployed and have no prospect of securing employment or alternative sources of income, for example, prostitutes, have invested their hard earned money in the illegal housing market. They thus get the little capital they can through exploitation of other poor people via the rental market.

While the early post-independence policies favoured demolition of squatter settlements, especially those too close to the city centre, the state in Kenya has come to accept that squatters are there to stay. Thus, even though there is no official recognition of squatting, it has nevertheless been given some tacit approval and legitimation has been achieved through state inaction. The unfortunate consequence of this is that instead of tolerance benefiting the urban poor, it has ultimately worsened their position because they now find themselves spending more and more of their meagre incomes on housing. Thus, the dominant feature of squatting in Nairobi today is landlordism which, even though not officially sanctioned, is fully operative. One writer has termed this the "invisible real estate".[42] We shall return to the problem of landlordism in its wider context and general implications in the next section.

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34 Smart, *op cit*. In this article on squatting in Hong Kong Smart uses the term "commoditisation", but his arguments and conclusions are substantially the same as those by Amis.

35 Burgess R, "The Limits of State Self-Help Housing Programmes" (1985) *Development and Change* 271. Burgess is perhaps one of the strongest and consistent critics of the Turner School. In one of his papers he makes the candid observation that the squatter" ... has not escaped capitalism ... he is merely in another part of it." Quoted by Drakakis-Smith, *op cit* p 69.

36 The problem of land-lordism is most prevalent in Epworth, a squatter settlement which is in the process of being upgraded by the government. Recently, one landlord, popularly known as "Mr Sheraton" had more than 80 dwellings which he was leasing demolished by authorities. He is now in the process of suing the authorities, for it now appears they invoked the wrong by-law in demolishing the structures.

37 See Macharia K, "Housing Policy in Kenya: the View from the Bottom" (1985) JU + RR Vol. 1 p 408.

38 Kagagambe and Monglitin, *op cit* p 31-3.

39 Macharia, *op cit* p 408. The writer gives the example of Mathare Valley in Nairobi where the squatter population in 1970 was 100 000, by 1983 it had reached 400 000.

40 Amis, *op cit* p 94.

41 *Ibid* p 91.

42 Smart A, *op cit* p 29. The phrase "invisible real estate" in this paper on squatting in Hong Kong, which the author employs, succinctly sums up what goes on in the major squatter settlements in the urban centres of the Third World today.

In Zimbabwe, squatting has been a burning issue in both the colonial and post-colonial periods. As noted earlier, the Land Apportionment Act and various other complimentary pieces of legislation were used to maintain a rigorous check on any unauthorised land use and occupation by the colonial state. The general failure of resettlement, housing policy in Harare and other attendant socio-economic problems have made squatting one of the most serious post-independence problems in Zimbabwe. It is therefore surprising that Moyana, writing in 1984, four years after independence claimed that:

> In most provinces the squatter problem is now a thing of the past. It is a credit to Zimbabwe's record that not a single shot was fired in the entire eviction saga[43]

In the period between 1980 and 1985 hardly a day passed without a report of some sort on squatters and squatter settlements. Indeed, it was because the problem had reached alarming proportions and was causing serious environmental degradations that Mugabe, the then Prime Minister, who is now the President, observed that the government:

> ... cannot have a policeman behind every tree and every rhino or elephant. Nor can we place a guard on every square metre of a river bank.[44]

Perhaps the seriousness of the squatting problem in Zimbabwe is best illustrated by the varied and sometimes contradictory reactions and actions of the state in handling cases of squatting. The most popular policy particularly in the urban centres, is the "police and bulldozer policy". This is a policy of physically dismantling squatter settlements which is carried out after "quit notices" have been served on the squatters. In some cases, however, surprise raids are conducted against squatters without any notice having been given. This policy has been operated without regard to whether or not alternative accommodation and means of livelihood have been found. Whenever this policy is implemented, squatters suffer greatly.

This draconic policy is still being implemented in Zimbabwe, 13 years after independence. In October 1987 *The Times*[45] of London reported that "a conservately estimated 40 000 black squatters" had been evicted in 1987. These massive evictions followed an announcement in September 1987, by the Minister of Local Government, Rural and Urban Development, published in the Zimbabwean leading papers, that "total war" should be declared on squatters. *The Herald*[46] quoted him as likening squatters to "dissidents" and he directed local authorities to take "immediate action" against squatters and to use "police force" if necessary.

Evictions of squatters using the police reached alarming levels in September and October 1991 in Harare. This was directly linked to the Commonwealth Heads of Government Meeting which was due to take place in the middle of October. The case of *The City of Harare* v *Tichaona Mudzingwa and 193 others*[47], decided in the High Court in October, caused a great deal of embarrassment to the government. In that case, the City of Harare made an urgent application to the High Court to evict 194 families illegally occupying council land at Mbare Musika, some 3 km from the city centre. The urgency of the application, according to the Town Clerk of the City of Harare, Edward Kanengoni, was necessitated by the fact that the Queen had expressed an interest to visit Mbare Musika during the Commonwealth Meeting. In his effort to persuade the High Court to grant the application the Town Clerk stated in his affidavit:

> Unless the main application is heard and determined before the date of the Queen's visit and the squatters evicted from the Camp, then the Queen will inevitably see the camp during the course of her visit to Mbare.

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43 Moyana, *op cit* p 87.

44 *The Herald* Nov 5, 1985 p 1.

45 *The Times*, London, 1987 p 6.

46 *The Herald* Sept 1987.

47 Case No. HC. 3177/91.

> It has been impressed on me and on the Mayor of Harare by representatives of the Zimbabwe Government that it would be considered contrary to the interests of Zimbabwe if the Camp were still in existence at the time of the Queen's visit. The Camp, like squatters everywhere, is an eyesore. The visit of the Queen will be minutely covered by the world's press and a squatter camp in the area she is visiting is highly likely to attract press attention. Pictures of and comments on the Camp on the television and in the newspapers of many countries of the world would inevitably cause severe embarrassment to Zimbabwe and it is for this reason that the Applicant would like to ensure, if possible that the Camp is cleared before the Queen's visit.[48]

The decision by Mr Justice Robinson on this case made headlines as he roundly dismissed the grounds of urgency as subjective and political. So severe was the embarrassment on Government that first, *The Herald* carried a comment condemning the Town Clerk for using the Queen as the justification for the evictions and, subsequently, the Senior Minister of Local Government, Rural and Urban Development issued a press statement dissociating the Government from the Town Clerk's statements.

The respite for the squatters was, however, shortlived as the Municipal authorities, with the help of the police, simply ignored the judgment when they moved into the Camp a few days later and loaded the squatters into trucks and took them to a farm owned by the Municipality, some 30 or so km from Harare. Mr Matyszak, who represented the squatters could have taken legal action against the Municipality, but on consultations with the squatters at the farm, he discovered that they were generally content since the Municipality had supplied them with food and set up facilities such as toilets. There is very little doubt that the High Court judgment and the publicity given to the case made this eviction and subsequent evictions more humane, unlike in the past where property belonging to squatters was destroyed and at times they were assaulted.

Another policy adopted by Government in dealing with squatters is that of upgrading through the provision of basic infrastructure and amenities in squatter camps in peri-urban and semi-rural areas close to urban centres. However, to date, there is only one squatter settlement where this policy has been implemented. Upgrading has been effected in Epworth, a settlement some 20km from Harare housing more than 40 000 families.

However, Government policy, and in particular, the Ministry of Local Government, has shown a lot of confusion on the upgrading of Epworth. It is now more than five years since the Ministry of Local Government announced that it had received more than 6 million dollars from the World Bank to develop the place, but very little development has actually taken place. In the meantime, building and construction costs have continued to escalate. This will inevitably be passed to the residents who are supposed to benefit from the scheme.

At the heart of the Epworth problem is the rather unrealistic view by the Government that it is only those who settled prior to 1983 who should benefit from the upgrading scheme. The reality is that many of these squatters are long-established urban dwellers in regular wage employment. The many threats of bull-dozing that have been made by the Ministry have been ignored by the residents.

The Epworth problem is best illustrated by an editorial in *The Herald* in 1983:

> Epworth with its estimated 30 000 squatters is a tragic object lesson in how to turn a beauty spot into a slum.
>
> ... For the genuinely homeless one can feel sympathy. But most of the squatters are not: they are there to escape the higher rents and restrictions of urban living.
>
> Late last year the Government attempted to halt the creeping cancer that is Epworth by ordering a freeze on all authorised and haphazard development in the area.

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48 I am greatly indebted to Mr Derek Matyszak, the Director of the Legal Aid Clinic of the Law Faculty for letting me have access to this affidavit and other documents relating to his legal work with the squatters. Mr Matyszak represented the 194 squatters in this case and has continued to defend and advise squatters in many other subsequent matters.

> But there was a loophole: the ban did not extend to extensions or new structures on existing stands. The standholders were quick to seize on it by erecting still more squalid hovels and renting them out, a move profitable enough for many of them to live on. They could now afford better accommodation elsewhere.[49]

Legalisation of the settlement has therefore led to the development of landlordism on similar lines as Nairobi. However, in simply condemning landlordism, *The Herald* editor does not seem to appreciate the fact that it is the exhorbitant rentals that are charged elsewhere in Harare that are pushing minimum wage-earners and other self-employed people to the Epworth market. It is therefore not surprising that Epworth is probably the most crowded suburb in Harare.

Recently, a legal dispute arose between the Epworth Local Board (which is the authority responsible for administering the settlement) and some residents. This followed demolition of the alleged illegal extensions and structures in some stands. However, these demolitions have now been stopped following a High Court injunction obtained by the residents with the assistance of Mr Matyszak.[50] It appears the local authority invoked the incorrect by-law in ordering the demolitions. The anticipated action for damages by the aggrieved parties will provide an important test case on how alleged squatters should deal with illegal actions by authorities.

It is beyond the scope of this paper to examine how other policies such as resettlement have influenced the development of squatting in Harare. It is sufficient for us to merely point out that the resettlement policy has been a major failure and currently government is trying to find new ways of approaching the question. There can therefore be no doubt that some of the more recent incidents of squatting in Harare are associated with the failure of resettlement.

Failure To Resolve The Problem Of Squatting: Practical And Theoretical Problems

The discussions of squatting as it prevails in both Kenya and Zimbabwe have shown that policies adopted by both governments (at times no policy has been adopted at all, as we saw in the case of Nairobi squatters) have either been inadequate or have totally failed to redress the problem.

The situation in Kenya, in particular Nairobi, is much more serious than in Zimbabwe's towns, but there can be little doubt that if the same policies as adopted in Kenya are followed in Zimbabwe, cities like Harare may well turn out to be other versions of Nairobi in terms of squatting within the next decade. In 1987 the official housing waiting list for Harare stood above 30 000[51] and one can speculate that the figure for those unregistered was probably double that. Even in the face of such a serious housing backlog the Harare City Council was seriously considering spending a conservatively estimated Z$105 million on building a show-piece civic centre for purely prestigeous reasons. Even though bull-dozing policies have worked so far to "eradicate" squatting in major urban centres they can never be a lasting solution as has been found in other countries.

At this stage it may be useful to review some of the leading literature on squatting that is of direct relevance to the situations discussed above. In particular it may be useful to evaluate the validity of some of the conventional theories on squatting and those that seek to challenge them. In this exercise, in such a short paper we must be mindful of the inherent dangers, in particular, the dangers of misrepresenting other peoples' works, because we can do no more than summarise briefly selected writings.[52]

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49 *The Herald*, 22 Sept, 1983.

50 *Christina Managachena and 31 others* v *The Epworth Local Board* H C 4955/91.

51 *The Worker* No. 3, Nov 1987 p 5.

52 For a staggering example of the danger we refer to here see Gilbert A, and Van der Linder in an article entitled: "The limits of a Marxist Theoretical Framework for Explaining State Self Help Housing" (1987) 18 D+C 137 In this article the learned

Official attitudes and academic thinking on squatting have gone through many changes over the years, especially within the last decade. The immediate post-independence reaction to squatter settlements was to bulldoze them. One writer has attributed this attitude to national pride which led the independence governments to be less tolerant to low quality housing, leading to a determination to remove signs of poverty from parts of the capital most accessible to tourists and foreign dignitaries.[53] A classical example of this negative and naive attitude is contained in a 1970, May 31 editorial carried in the *Zambia News*

> The demolition of squatter compounds ... might seem to some very inhumanistic in that it deprives many of the roof over their heads. But it is a necessary exercise which has got to be undertaken. Our cities, and more particularly our capital, must rid themselves of the scar of such squalid settlements, thus removing the liability from the Municipal authorities who are doing their best ... secondly, and possibly more important, the squatters themselves must realise that the days of living in unauthorised areas and expecting the councils to provide for them — without offering anything in return — are well and truly over. If the people living in these terrible areas which are, of course, perfect havens for the criminal element, use more initiative instead of sponging from a community to which they contribute nothing, they need not suffer in any way by being moved away from their hovels.[54]

Such myths about squatters have long been abandoned by most authorities and researchers. Sadly though, the authorities in Zimbabwe still harbour these myths as has been shown above.

It is now generally accepted that there is no necessary connection between crime and squatting. McAuslan has pointed out that the

> ... vast majority of squatters are not there by choice but through necessity; they either cannot obtain land or houses, or cannot get them at the right price or in the right place.[55]

The same author also points out that most of the "crime" associated with squatting is in most cases technical, for example, trading without official licences, crowded houses which contravene public health regulations.[56]

It is in the search for a new approach to squatting and solutions that new "myths," "misconceptions" and "generalisations" have emerged. For example, Abrams argues that:

> ... It may be conceded that in the formative years of industrialisation, the slum will be the inevitable by-product of urban development. In other words, squatter settlements are the manifestations of normal urban growth processes under the exceptional conditions of rapid urbanisation.[57]

We have already stated above that even in fully industrialised capitalist countries, squatting is still a serious problem, so Abram's assertion must be questioned. Indeed it would appear squatting has attained some permanance in most of those countries although the extent of the problem varies greatly. Drakakis Smith is correct when he says:

> ... but it is surely wrong to assume that widespread inequality in income distribution and lifestyle is normal and thus somehow acceptable.[58]

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authors seek to challenge an earlier article by Burgess on "The Limits of State Self-Help Housing Programmes" (1895) Vol. 16 D + C 2 without even understanding the latter's views. For a brilliant reply to the two authors see Burgess "A Lot of Noise and No Nuts: A Reply to Gilbert and Van der Linden" (1987) D+C 463.

53 Peil M, "African Squatter Settlements: A comparative Study" (1976) 13 *Urban Studies* 155 at 159.

54 Quoted in Haywood I, "Popular Settlements in Sub-Saharan Africa —Their Emerging Role" (1986) TWPR Vol. 18 No. 4 315 at p 3.

55 McAuslan, *op cit* note 12 p 49.

56 McAuslan, *ibid* p 50.

57 Quoted in Eke EF, "Changing Views on Urbanisation, Migration and Squatters" (1982). *Habitat* Vol. 6 No. 1/2 143 p 153.

58 Drakakis-Smith, *op cit* note 3 p 67.

Such a trend brings into question the developmental patterns and structures of these countries.

Undoubtedly one of the most influential writers on the subject of squatting is JF Turner and this paper would be incomplete if no reference is made to his views. Turner's basic argument stresses the importance of urban home ownership because it provides at least a partial alternative source of economic and social security. Thus he asserts:

> Even if the dwelling is no more than a shack, it frees the owner from rent payments, it also provides him with a chance for additional income and a chance to invest his small savings, skills and spare time.[59]

The solution to the problem of the urban squatters according to Turner lies in giving security of tenure to the urban poor. He thus advances the formula that:

> The more secure land ownership is, the more resources men will put into their homes.[60]

A similar approach is discernible in Mangin, who views squatter settlements not as a problem but as a solution to the problem:

> ... people have taken matters into their own hands, gone beyond the inadequate, slow and inefficient national and international welfare and aid programmes and created their own communities in and around large urban centres ...[61]

The impression one gets from reading Turner and other authors who share his views on squatting is that residents of squatter areas in Third World cities have simply gone out and built their own homes. Thus one gets the disturbing feeling that the message they are trying to put across is that the problem of squatting, if and when allowed to develop its full course, will somehow resolve itself in the long run. The facts point to the contrary. It is clear from the studies on Nairobi and other cities like Hong Kong that residents of those squatter settlements have either purchased their homes, had them built for them, paid for access to the land on which they built their homes or are just renting their homes.[62]

From the account of squatting in Nairobi, it is clear that the approach suggested by Turner and others is untenable. Turner's arguments could only apply in the sixties and early seventies, when the most common reaction to squatting was bulldozing with minimal or no resettlement in public housing as evidenced by the *Zambia News* editorial quoted in an earlier section. At that time there was a case for academics to focus on the positive aspects of squatter areas and give heroic portrayals of squatters.[63] However, recent Marxist analyses[64] laying stress on social relations and production have highlighted the exploitative relations in squatter structures and also that many questions remain either unanswered or inadequately posed.

The failure to address the issue of landlordism arising from the commoditization or commercialisation of the squatter property means that Turner's theories can only apply in cases where squatting in the conventional sense as explained above exists. Since this form of squatting has virtually disappeared in all major Third World cities giving security of tenure is not necessarily beneficial to the urban poor. If rich land developers are profiting from the process of squatting and policies of rapid regularisation of squatter areas lead to higher prices and greater profits for speculators why should it be encouraged? Even in the absence of landlordism, Turner's theory that the inhabitants can bring about progressive improvements in their respective

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59 This is not a direct quotation from the text of the author, but a summary of the main thesies of his argument in: Turner J, "Barriers and Channels for Housing in Modernising Countries" JAIP Vol. 23 No. 3 p 167-181.

60 Quoted in Eke, *op cit* note 57 p 153.

61 Quoted in Eke, *ibid* p 155.

62 See Smart A, *op cit* note 4.

63 Smart, *ibid* p 34.

64 Prominent in this perspective on squatting is Burgess R. See Articles cited in note 50 above. See also Varley A, *op cit* note 5.

conditions of accommodation has been questioned by other researchers. For example, Ann Varley appears to us correct when she points out that:

> The basic problem with the argument concerning legalisation and housing improvements is that security of tenure is not a fixed, objective concept, and that it is affected by a variety of other considerations; not only the legality or illegality of tenure.[65]

The argument here is that legal tenure is not a pre-condition for the gradual improvement of housing. Other policies, such as service installation and help with reconstruction, appear to be more effective than mere formal legalisation which ultimately incorporates settlements into the land market leading to higher prices and the displacements of the poor by the rich. We are not suggesting that legal tenure is completely irrelevant, but simply pointing out that too often it is used as a shield whereby legal questions are stressed to the exclusion of other issues. It seems in terms of priorities provision of services ought to come first. If we follow Ann Varley's argument to its logical conclusion, it seems where a government wishes to make improvements the status of the land is surely irrelevant, but where there is no genuine desire for this because of lack of resources or no priorities being given to the poor, the perfect shield is to point to the illegality of the settlements.[66] Perhaps this explains why development in the illegal settlements in Nairobi is left entirely to the private market.

Other researchers have advocated for active government participation in the upgrading of squatter settlements. Squatter upgrading has been implemented in conjunction with site and services schemes and invariably financed by international agencies such as the World Bank. A moderate success of this is the squatter upgrading programme in Lusaka, Zambia.[67] However, even this scheme has had problems because of the inclusion of the questionable land tenure legalisation in the package of orthodox upgrading policies by the World Bank. This inevitably creates problems such as:

> ... re-introducing exploitation in the form of absentee landlords, upper income groups buying up the land and evicting the poor owners who have to start all over again, indebtedness leading to evictions.[68]

What is now clear is that because of administrative costs involved squatter upgrading and site and services schemes have been too expensive for the urban poor, for whom they are intended.[69] Perhaps the intentions of the World Bank are brought clearest and most cynically by a publication of the World Bank by Grimes who has argued that site and service areas should provide a spectrum of plots within which the

> middle income families can outbid the poor for the choice of sites and finish their houses faster by sub-contracting large portions of the work.[70]

Also, the enthusiasm with which many Third World countries are taking advantage of the increased availability of such funds is a reflection of the character of the state. A pertiment question one author has posed is this:

> ... is security of tenure being urged for the benefit of residents of an upgraded scheme or for the lenders of funds (often international agencies) that is, for internal national reasons or for international reasons?[71]

Part of the answer can be found in Lynn's work where he points out that the charging of squatters for

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65 Varley, *op cit* note 5 p 464.

66 Varley, *ibid* p 478.

67 See Rakodi's article cited in note 2.

68 McAuslan, *op cit* note 12 p 50.

69 McAuslan, *ibid* p 62. The author gives the example of Tanzania where World Bank projects on site and services schemes have turned out to be too expensive for those for whom they were designed.

70 Quoted in Drakakis-Smith, *op cit* note 3 p 14.

71 McAuslan, *op cit* note 11 p 62.

upgrading in Cairo was expected to bring in considerable surplus to the responsible agency within a relatively short time.[72]

What Are The Alternative Solutions?

From the foregoing account it is clear that in spite of the extensive research and schemes that have been undertaken on squatting we are nowhere near a solution to the problem. In fact the trend has been towards the increase of squatting rather than a decrease in most countries. While most of the research has been valuable in informing us of the extent of the problem and has brought new insights into the problem the solutions advanced so far tend to be ameliorative rather than solve the problem outright. In fact the problem is worsened by the fact that even the ameriolative solutions have either been inadequately posed or not seriously implemented. A classic example of this, as already shown, is the squatter upgrading scheme in Epworth, Harare. We explained how in Kenya and Zimbabwe the problem of squatting was closely linked to the colonial policy of land expropriation. We also noted how after independence this has continued to be linked to the continued development of peripheral capitalism.

In suggesting policy options we will only limit ourselves to the short-term ameliorative policies since we have to take into account the prevailing conditions and policies in the respective countries. Perhaps a useful starting point can be found in McAuslan who makes the instructive point that:

> Squatting is not only a land issue, it is an economic and social issue which tends to be discussed maily in terms of land.[73]

On similar lines it is suggested by Steinberg that we should not approach the housing question of the urban poor as a "technical issue, by technocratic means, when it needs a comprehensive approach".[74] Steinberg further suggests that the social conditions of the urban poor demand even more attention and concern than housing problems which are of relatively minor importance.[75] A technocratic approach that looks at housing *per se* without paying attention to the need for betterment of income generation and overall social condition of the poor cannot solve the problem fully.[76]

From the foregoing it would appear that we need to look at the whole structure of society and see why the economic structure reproduces itself. In the case of squatting it is clear that poor housing conditions and squatting in both urban and rural areas prevail predominantly among the poorest categories in society. These include minimum wage earners, the unemployed and peasants living in overcrowded and infertile land in rural areas. Faced with this situation Ashraf Huque says:

> Therefore, to understand the phenomenon it will be important to explain poverty as well as to analyse how poverty is manifested in different forms in the conditions of accommodation.[77]

We are therefore called upon to address the socio-political conditions which are the underlying causes of squatting and shanty towns. Indeed we have reached a stage where the problem of squatting and shanty towns ... cannot be planned away without removing the underlying causes of their formation.[78]

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72 Linn JF, *Cities in the Developing World* p 14.

73 Steinberg F, "Housing Policy Reforms: the Social and the Housing Question" (1983) 71 JU+RR at 267.

74 Steinberg, *ibid* p 267.

75 On this issue Amis asks the pertinent question: "Is housing so important that we should push individuals towards mulnutrition as they divert more and more of their meargre incomes away from food towards housing?" And suggests that perhaps it is better for the poor to spend all their money on food and sleep on the streets rather than enter into a housing market they cannot afford! See Article cited in note 23 at 95.

76 Huque A, *The Myth Of Self-Help Housing*.

77 Huque, *op cit*.

78 *Ibid*.

It is in the light of the above theoretical framework that we must ask whether the policy and legal framework so far adopted in Zimbabwe will in any way solve the problem. The policies adopted so far imply an acceptance of the given economic structure without any serious attempt to create an egalitarian society. Even the modest policy of resettlement, which falls far short of expropriation which most Zimbabweans legitimately expected, cannot be called a success. The policy of bulldozing squatter settlements reduces national wealth and leaves affected occupiers poorer and less secure — it merely shifts the problem from one place to another.

The legal framework itself remains highly inadequate. Squatters, if we accept that they are driven, not by mere want of squatting, but by need, must be afforded as much protection from the law as the owners of land occupied. There is a clear and urgent need to curb and supervise the actions of the Minister as well as local authorities in dealing with squatters. "Eviction" orders issued through the national press are clearly illegal. In a country like Zimbabwe where squatting is a reality it would seem there should be a clear and simple statute explaining the powers of the authorities and rights of squatters. Clearly use of statutory instruments or by-laws by local authorities not governed by a clear Act of Parliament does not sound just as it increases the danger of overzealous authorities circumventing the need to give the required notice even on squatters prepared to move away peacefully. The eviction of squatters in Harare just before the Commonwealth Meeting of Heads of Governments illustrates this danger. The lead taken by the Legal Aid Clinic at the University of Zimbabwe in assisting victims of overzealous state functionaries shows that although the law has limitations in solving social problems, it can nevertheless be used to put brakes on the authorities. Thus, where authorities carry out an eviction in contravention of the law or where they invoke the incorrect law, they must be made to account for their actions and make good any damage suffered by the squatters affected.

The wisdom of having a completely unregulated rental market in an illegal settlement like in some parts of Nairobi is questionable. Clearly the limits of the squatter property market have to be set by law. Once the authorities have decided to recognize the settlement it would appear the law ought to intervene to prevent extremes such as over-charging or illegal evictions. This is particularly important in housing because, unlike other illegally dealt with objects, housing is by its nature a fixed or immovable assert. One may pose the question: if one buys a squatter house, what rights has the buyer actually acquired if one takes into account the fact that security comes not from the seller, but from the political authority whose vagaries are not always predictable? This question is particularly pertinent in the case of Epworth where land transactions have taken place on a large scale. In some cases the illegal occupiers, i.e., those who came after 1983, claim to have "bought" their land from ZANU-PF party officials or some other former resident. To ignore that reality by simply evicting the residents would be a blatant disregard of the principles of justice and fairness. These are practical and real issues which perhaps need to be addressed in more detail in future.

A counter argument may be that regulation would reduce the availability of housing stock, but it seems to us that shortage is caused not by regulation, but by the mere fact that there is a shortage. Even in the formal sector where there is regulation that is the position. What we are against is the idea of having a "jungle" in squatter settlements when other members of society outside are protected, at least potentially or nominally. We are quite aware also of the fact that regulation would require commitment by the authorities, and that means expenditure of some resources. But surely if the authorities are collecting taxes and other forms of revenue from a squatter settlement ordinary grounds of fairness require that they do something in return. In any event, it does not follow that residents of squatter settlements are less law abiding than others.

Concluding Remarks

One of the main conclusions arising from this study is that squatting arises because of lack of choice. People who have access and means to obtain land or housing legally will not resort to illegal squatting. It is for this reason that we rejected the use of the term "popular settlements" in describing squatting. It is also for this reason that we rejected the use of bulldozing to move squatters. Rather than bull-doze, the authorities must examine their policies and find the reasons behind squatting.

There is a danger, as shown by some of the works referred to, of seeing squatting as an end in itself. Such idealism which assumes that squatting always conforms to the needs of the poor and that if the poor are given security of tenure they will always progressively improve their living conditions is not borne out by modern forms of squatting as shown in the case of Nairobi and Harare. McAuslan has argued that providing security of tenure does not provide people with jobs; providing roads does not provide them with the means of getting to work. Providing water, lights and roads does not make a squatter settlement a balanced community; schools, medical centres and buildings for much needed community services are rarely supplied.[79] This really calls for an integrated form of squatter development and governments dealing with aid agencies ought to insist on such amenities being provided, since ultimately the aid providers have been shown to benefit substantially also. Even policies involving squatter upgrading are only ameliorative, as inequalities will continue and in some cases they even cause greater hardships when the poor are forced to sell to the higher income groups.

Finally, it seems there is a need for us to adopt new perspectives on the problem of squatting — perspectives that start by rejecting the inevitability of squatting as a normal way of development and industrialisation. Any development that marginalises (in the exploitative sense) large sections of the urban and rural communities cannot and should not be encouraged. As most Third World countries facing the problems of squatting fall under the peripheral form of capitalism, there is a need to address the question of how this economic and legal system reproduces the problem of squatting which all researchers agree must be removed.

79 McAuslan, *op cit* note 12 p 62-3.